ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC001552
Case Name	Jonathan Ryan v. State of Illinois - Illinois Dept of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0264
Number of Pages of Decision	23
Decision Issued By	Maria Portela, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	Danielle Curtiss

DATE FILED: 6/4/2024

/s/Maria Portela, Commissioner

Signature

DISSENT: /s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JONATHAN RYAN,

Petitioner,

vs. NO: 17WC001552

STATE OF ILLINOIS /
ILLINOIS YOUTH CENTER - CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

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

We initially note that Petitioner's Petition for Review (PFR) lists accident, notice, causation, temporary total disability and medical expenses as issues on Review but Petitioner's brief does not address any of these. Further, even though the issue of permanency was not checked on the PFR, Petitioner's brief only addresses whether he should be entitled to a wage differential award under §8(d)1 of the Act instead of the person-as-a-whole award under §8(d)2 that the Arbitrator awarded.

Although we affirm the Arbitrator's award of 40% of the person as a whole, we add the following 5-factor analysis pursuant to §8.1b(b) of the Act:

i) AMA Impairment rating: None in evidence; No weight

ii) Occupation: Juvenile Justice Specialist Intern; Moderate weight

Analysis: There is no dispute that Petitioner was unable to return to his previous position working for Respondent. The June 28, 2018 Functional Capacity Evaluation (FCE) report is not in evidence but its conclusions are described in the July 17, 2019 vocational rehabilitation report. *Px11, T.1004*. We note that this vocational report misstates the date of the FCE as "6/28/2019" instead of 2018. *Id*. Petitioner's testimony also seems to indicate it occurred in "approximately June of 2019." *T.32*. However, the medical payment listing indicates that the FCE occurred on June 28, 2018. *Rx3, T.1897*. In addition, on July 27, 2018, Respondent's §12 examiner, Dr. Howard An, noted, "He recently underwent a functional capacity evaluation, which put him at about 30 pounds lifting restrictions." *Rx6, T.1906*. Dr. An recommended that Petitioner return to work "with 30-pound lifting restrictions per FCE." *Id. at 1907*.

iii) Age at time of injury: 40 years old; Some weight

Analysis: Petitioner is a younger individual and will have to live with the symptoms and limitations of his condition for many years before reaching normal retirement age.

iv) Future Earning Capacity: No weight

Analysis: Although Petitioner has been partially incapacitated from pursuing the duties of his usual and customary line of employment as a Juvenile Justice Specialist Intern, as evidenced by his permanent restrictions, he has failed to prove that this has resulted in a loss of earning capacity or an impairment in earnings. Despite Petitioner's unsuccessful vocational rehabilitation and assisted job search, there is insufficient evidence to support a finding that, given his transferrable skills and education level, he is unable to obtain full-time employment in some other suitable occupation within his restrictions earning at least as much as he did in his previous occupation.

v) Evidence of Disability Corroborated by Treating Records: Significant weight

Analysis: We incorporate the "Arbitrator's Summary of Petitioner's Medical Treatment" at pages 6 through 11 of the Decision. Petitioner testified that he has problems with Activities of Daily Living (ADLs) including maintaining the inside and outside of his home, lifting and carrying groceries, etc. *T.42.* He is unable to lift more than 30 pounds and cannot sit or stand "for a period of time" or he gets symptoms in his neck, shoulder and back. *T.42-43*. He obtains Norco from Dr. Ammar Wahood, his pain management doctor who he sees every 3 months, at Amita St. Joseph's Hospital. *T.43.* He has problems sleeping and can't sleep on his left side at all. *T.44*.

We also make the following clerical corrections:

1. Page 1: strike “Respondent’s Proposed” before “Findings of Fact and Conclusions of Law”
2. Page 4, paragraph 2, last sentence: strike "progress" and replace with "process"
3. Page 12, Section F: insert "hand, shoulder" after "left"

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 15, 2022 is hereby affirmed and adopted with the clarifications noted above.

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

June 4, 2024

/s/ *Maria E. Portela*

/s/ *Kathryn A. Doerries*

SE/
O: 4/16/24
49

DISSENT

After carefully considering the totality of the evidence, I respectfully dissent from the opinion of the majority. I would reverse the Decision of the Arbitrator and find that Petitioner proved his entitlement to wage differential benefits pursuant to Section 8(d)1.

It is undisputed that Petitioner was unable to return to his previous occupation as a Juvenile Justice Specialist due to his permanent restrictions. On June 9, 2019, Mr. Edward Pagella conducted a vocational evaluation. Mr. Pagella opined: “[H]e does have skills that are directly transferable to the position of an unarmed security guard, typically performed at the light physical demand level.” PX11. Petitioner previously worked as a security guard at various schools. He earned $15.00/hour at Minooka High School and $13.00/hour at Oswego East High School. He also earned $15.50/hour as an In-School Suspension Supervisor for Bradley Bourbonnais. Petitioner secured employment as a full-time substitute teacher at Minooka High School on October 7, 2019, wherein he earned $120/day, or $600/week. However, he continued

to conduct a diligent job search until November 19, 2021, and even sought additional education and certifications.

The Act requires Petitioner to obtain suitable employment in order to qualify for a wage differential award. There is no requirement that Petitioner find a full time, year-round position to qualify for a wage differential award. Similarly, Petitioner does not have to find employment that relates to his degree or certification. Given the totality of the evidence, it is clear that Petitioner's current positions qualify as suitable employment. Petitioner continued to diligently search for more lucrative positions for two years after he began working as a substitute teacher. He holds a bachelor's degree in criminal justice, has extensive experience working as a security guard, and even sought an additional certification in information security. Despite these qualifications, his extensive job search spanning two years, and his submission of over 1,000 applications, Petitioner received no job additional offers. Furthermore, Petitioner's current average weekly wage is comparable with what he previously earned as a security guard. Petitioner previously earned $600/week as a security guard, and his current maximum earning potential as a substitute teacher is $600/week.

Petitioner had no obligation to continue his already exhaustive job search until he obtained a better paying job. He also is not required to continue to search for work indefinitely after he obtained suitable employment. There is simply no evidence that additional searching would lead to a position paying a higher average weekly wage, or a job Respondent deemed suitable. After so much time and effort by Petitioner, $600/week is an appropriate reflection of his earning capacity.

/s/ *Amylee H. Simonovich*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC001552
Case Name	Jonathan Ryan v. State of Illinois/Illinois Youth Center - Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Luis J. Magaña
Respondent Attorney	Danielle Curtiss

DATE FILED: 11/15/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 15, 2022 4.44%

/s/ Charles Watts, Arbitrator

Signature

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

November 15, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Jonathan Ryan Case #**17** WC **001552**
Employee/Petitioner

v.

State of Illinois/Illinois Youth Center-Chicago
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 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. ☒ 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 the date of accident, **August 7, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned ***$57,057.00***, the average weekly wage was $***1,097.25.***

On the date of accident, Petitioner was ***40*** years of age, ***married*** with ***0*** dependent children.

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

Respondent shall be given a credit of $**89,327.27** for TTD, $**10,007.82** for TPD, $**51,609.22** for maintenance, and $**54,865.94** for other benefits, for a total credit of $**205,810.25.**

ORDER

- Respondent shall pay Petitioner permanent partial disability benefits of **$658.35**/week for **200** weeks, because the injuries sustained caused **40% loss of use of the person as a whole,** as provided in Section **8(d)** of the Act.

- Respondent shall pay Petitioner temporary total disability of$731.50/week for 95 weeks and 1/7 days, because Petitioner was temporarily and totally disabled fromAugust 15, 2016 through June 28, 2018. Petitioner was paid his full salary from August 15, 2016 through August 31, 2016, and is therefore not entitled to temporary total disability benefits for that time period. Respondent is entitled to a credit for all TTD paid.

- Respondent shall pay Petitioner maintenance of $731.50/week for 66 weeks and 3/7 days, from June 29, 2018 through October 6, 2019. Respondent is entitled to a credit for all maintenance payments made.

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

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

NOVEMBER 15, 2022

Signature of Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jonathan Ryan	)	
	)	
Employee/Petitioner	)	
v.	)	
	)	Case No. 17WC001552
State of Illinois,	)	
Illinois Youth Center-Chicago	)	
	)	
	)	**Chicago**
	)	
Employer/Respondent	)	

Respondent's Proposed Findings of Facts and Conclusions of Law

I. FINDINGS OF FACT

Petitioner pursued this action under the Workers' Compensation Act and sought relief from the Respondent Illinois Youth Center- Chicago (hereinafter "IYC-Chicago"). A previous hearing was held on June 21, 2022. Luis Magana from Rathburn Cservenyak & Kozol appeared on behalf of Petitioner. Assistant Attorney General Danielle Curtiss of the Illinois Attorney General's Office appeared on behalf of Respondent. At hearing, Petitioner's Exhibits 1-9, 11-15, and 17 and Respondent's Exhibits 1-6 were admitted into evidence. Respondent objected to the admission of Petitioner's Exhibit 10 as it was not received pursuant to subpoena or certification. The Arbitrator reserved ruling on the admission of this Exhibit until the completion of the trial. The issues at hearing were causation, medical bills, temporary total disability, maintenance, and nature and extent. (Arbitrator's Exhibit "AX" 1). After hearing the proofs and reviewing the evidence presented, the Arbitrator makes the following findings on the disputed issues.

Testimony

Petitioner was employed by the Illinois Department of Juvenile Justice beginning in approximately February 2014. In August 2016, he had the job title of "Juvenile Justice Specialist Intern." His average weekly wage at the time was approximately $1,100. Petitioner holds a bachelor's degree in criminal justice, which he earned in 2014.

Petitioner was assigned to work on the C unit on August 7, 2016. While in the day room common area, two of the juvenile inmates began arguing. In an effort to deescalate, Petitioner moved to sit between the two juveniles as well as verbally tell them to calm down. Shortly after this, one of the two juveniles picked up a plastic chair and approached quickly. Petitioner stood up to intervene and the approaching juvenile threw the chair hard from a distance of 2-3 feet. Petitioner, who is left hand dominant, had extended his left arm outwards and in front of his body and was struck on the hand by the thrown chair. Petitioner initially felt intense pain for 30 seconds to a minute in his left hand, but also began to feel pain in his left shoulder and neck at this time.

Petitioner notified his shift supervisor and went to the on-site nurse. Shortly thereafter, he was sent to seek treatment at Morris Hospital. Petitioner then began undergoing treatment including occupational therapy, seeing a chiropractor, and visiting other specialists. He began seeking treatment for the symptoms in his left hand, but by December, 2016, the neck pain and the numbness and tingling in the left arm and shoulder were the more pressing issues. In December 2016, Petitioner underwent surgery, which provided temporary relief for three to four weeks before symptoms returned. Petitioner received two injections in his left shoulder which did not help. Petitioner had a second surgery on February 2018. The relief prov*ide*d by the second surgery was also temporary, and the symptoms never fully resolved. Petitioner continues

to see a specialist for pain in his left shoulder, neck and back and to treat with Norco as needed. An independent medical examination was performed in July 2018.

In February 2019, Petitioner was terminated from his position at the Illinois Department of Juvenile Justice because he had exhausted his leave of absence. In June 2019, Petitioner underwent a Functional Capacity Evaluation ("FCE") and was released to work with permanent restrictions, including not lifting more than 30 pounds. The following month, Petitioner underwent a vocational assessment and began a job search with Health Connections. Petitioner continued his job search from July 2019, until December 2021, when he was informed by Health Connections that he could stop looking for new work.

During this time, he submitted job applications and met regularly with a designated staff member of Health Connections. He received four requests for interviews over the phone or video conference and no offers of full time employment. Petitioner is competent using a computer, but believes he would have trouble with pain from prolonged sitting at a job that required use of a computer all day. Petitioner has previously worked as a security guard, but believes that he is no longer able to handle the physical requirements that such a position would entail.

Petitioner is currently employed by Minooka School District. He began as a wrestling coach approximately three years ago, and has since completed a substitute teaching license as well. Petitioner teaches roughly 2-4 days per week with a varied schedule as needed and makes $120-125 per day. Coaching wrestling pays a flat rate per season, roughly $1,700 for the most recent year. Petitioner reports an average weekly wage of between $200-300 at this position. Neither coaching nor substitute teaching is available during the summer months. A substitute teaching license would not allow Petitioner to transition into a full time teaching role; a different license and additional education are required to become a full time teacher.

Presently, Petitioner has trouble with daily activities like carrying groceries, home maintenance, and playing with his six-year-old son. Petitioner has lingering pain that is increased by cold weather and by prolonged periods of walking, sitting, or standing.

Vocational Evaluation

Petitioner underwent a Vocational Assessment with Health Connections on July 9, 2019. (RX 4). Petitioner obtained a bachelor's degree in Criminal Justice from Governors State University in 2014. *Id.* Prior to his positon as a Juvenile Justice Specialist at IYC-Chicago, Petitioner held numerous positions at local high schools. *Id.* Petitioner has experience working as a security guard and campus monitor. *Id.* Petitioner was previously a wrestling coach at Oswego East High School. *Id.* He received training on bullying and concussions. *Id.* Based upon Petitioner's training and experience, the vocational case manager ("VCM") noted that Petitioner has the skills transferrable to an unarmed security guard. A Career Assessment Inventory was completed. The VCM recommended that Petitioner become certified as a paralegal. *Id.* He noted that DePaul University offers a 17-week Paralegal Studies Certificate Program. *Id.* The VCM further recommended that Petitioner begin the job search progress with assistance from the VCM. *Id.*

Activity Report #1 was completed on August 19, 2019. (PX 11). Petitioner reported that he is interested in becoming either a private investigator or a travel agent. The VCM determined that Petitioner holds the valid bachelor's degree to become a private investigator, and would just need to find another private investigator to work with. Petitioner also applied to jobs to work as a travel agent. The VCM recommended Petitioner pursue jobs in probation, security, or in the travel industry. *Id.*

Activity Report #2 was completed September 19, 2019. The VCM recommended that Petitioner obtain a Permanent Employee Registration Card ("PERC") which would allow Petitioner to carry a gun for armed security positions. *Id.*

Petitioner began working as a substitute teacher at Minooka Community High School on October 7, 2019. (RX 5).

On November 19, 2019, the VCM reported that Petitioner has been working as for the Minooka School District, first as a campus monitor, then as a substitute teacher. *Id.* (PX 11). This position ends at the completion of the school year. *Id.*

On March 5, 2020, Petitioner reported that he was enrolled in courses as DeVry for informational security. *Id.*

On May 19, 2020, the VCM reported that Petitioner was expected to work as a campus monitor at Minooka School District until the end of the school year. *Id.* However, due to the Covid-19 pandemic, he has been off work since March 20, 2020 due to the shelter-in-place mandate. *Id.*

On August 4, 2020, Petitioner was offered a paid substitute teacher position at Minooka School District earning $120 per day. *Id.*This position is considered long-term. *Id*.

On September 29, 2020, Petitioner reported that he was supposed to start his substitute teaching position last month, but the Board of Education prolonged student attendance, so he will start the following week. The school developed a hybrid model of in-school attendance and e-learning on October 19, 2020. *Id.* Petitioner also reported that he only has four weeks left on online courses at DeVry. *Id.* Petitioner noted that he intends to broaden his job search following the completion of this program. *Id.*

The VCM reported on November 9, 2020 that Petitioner works as a substitute teacher on a full-time basis. *Id.* Petitioner has also obtained his online certification for information security. Petitioner continued his job search efforts.

On August 2, 2021, the VCM reported that he is expected to start working again as a substitute teacher at Minooka School District. The last report submitted is dated November 19, 2021. *Id.* Petitioner reported that he was still working as a substitute teacher at Minooka School District. *Id.*

Summary of Petitioner's Medical Treatment

Petitioner first sought treatment at Morris Hospital on August 8, 2016. (PX 3). He reported that left hand pain started at 7:45 p.m. the previous night after a work incident. *Id.* Petitioner stated that he was attempting to stop an altercation at work, and he was hit in the left hand with a chair. *Id.* The chair struck him in the top of the 4th digit and then jammed the finger, causing pain to radiate into the left hand. *Id.*

Petitioner saw his primary care physician Dr. Trevino at DuPage Medical Group on August 11, 2016, who referred him to an orthopedic specialist. (PX 9).

Petitioner followed up with Dr. Michael Cohen at DuPage Medical Group on August 8, 2016. (PX 9). He reported that he is experiencing numbness and tingling in his left hand. X-rays were reviewed, which were negative for fracture. *Id.* Petitioner was diagnosed with a left hand sprain, specifically the left ring finger, metacarpophalangeal radial collateral ligament. *Id.* Dr. Cohen noted that the subjective symptoms outweigh the objective findings. *Id.* Petitioner was instructed to avoid usage of his left hand until the next assessment. *Id.*

Petitioner followed up with Dr. Cohen on September 8, 2016, at which time he reported no change in symptoms. *Id.* Petitioner noted that he was unable to close his hand into a fist. *Id.*

Petitioner continued to follow up with Dr. Cohen until December 6, 2016, at which time he was discharged from care for his left hand. *Id.* Dr. Cohen noted that Petitioner's left hand symptoms have resolved. Petitioner reported on this date that over the last few days, he has developed some cervical radicular symptoms, radiating down his neck to the dorsal aspect of his hand. *Id.* Dr. Cohen noted that this issue is unrelated to work, and not related to the left hand injury. *Id.* Petitioner reported that he has been undergoing care with a chiropractor. *Id.*

Petitioner underwent an MRI of the cervical spine on December 6, 2016, which revealed degenerative disc bulging at C5-6 and C6-7 levels with central canal stenosis and IVF stenosis. *Id.*

Petitioner saw Dr. Dalip Pelinkovic at DuPage Medical Group on December 12, 2016, complaining of pain and numbness in his left arm. *Id.* Dr. Pelinkovic noted that for three weeks he has been experiencing increased pain and numbness in his left arm.

Petitioner underwent surgery with Dr. Pelinkovic on December 20, 2016. (PX 5) Petitioner underwent a C4-C5 anterior cervical discectomy and fusion and instrumentation. *Id.* The post-operative diagnosis is left C4-5 progressive motor radiculopathy. *Id.*

Petitioner underwent a course of physical therapy with ATI from March 8, 2017 through May 8, 2017. (PX 6).

Petitioner was seen on February 6, 2017 for a post-surgical follow up with Dr. Pelinkovic. Dr. Pelinkovic noted improving symptoms in the neck and left arm, but noted limited movement in left shoulder and referred Petitioner to a shoulder specialist. (PX 5). Petitioner was noted to have a delayed union or non-union at C4-C5 and had a posterior procedure to fuse at level C4-C5 on February 7, 2017.

On February 7, 2017, Petitioner was also evaluated by Dr. Matlock for his left shoulder. *Id.* Petitioner reported left shoulder numbness. *Id.* X-rays of the left shoulder revealed no glenohumeral or AC arthrosis. No fractures or other bony abnormalities noted. *Id.* Dr. Matlock noted significant weakness in the left shoulder. *Id.*

Petitioner underwent an x-ray of the cervical spine on February 21, 2017 which revealed status post ACDF across C4-C5, and spondylotic changes at C4-C5 and C5-C6. *Id.*

Petitioner followed up for his left shoulder with Dr. Matlock on February 22, 2017. *Id.* He underwent a left shoulder MRI which revealed minimal tenodesis of the insertion of the supraspinatus without rotator cuff partial thickness or full thickness tears. *Id.* Contour and signal abnormality of the anterior and superior labrum suggest an underlying tear with a small paralabral cyst of the inferoposterior labrum, suggesting an additional underlying labral tear. *Id.* Mild osteoarthritic changes of the AC joint are noted. Dr. Matlock recommended an EMG nerve conduction velocity test to evaluate for dysfunction in the suprascapular nerve, axillary nerve, and upper and lower subscapularis nerves. *Id.*

Petitioner underwent a nerve conduction study on March 1, 2017 which was normal. *Id.*

Petitioner presented up for left shoulder pain with Dr. Welch at DMG on April 19, 2017 for a second opinion on the normal EMG. *Id.* Dr. Welch noted that there was no peripheral focus which would explain his symptoms. *Id.* He opined that the symptoms are still related to his cervical spine injury. *Id.* He recorded positive Waddell signs over the scapula which showed possible symptom magnification or fibromyalgia. *Id.* He recommended a repeat EMG in two months. *Id.*

Petitioner underwent a CT of the cervical spine on May 18, 2017 which revealed (2) prior C4-C5 anterior plate and screw fixation; (2) non-fused segments degenerative changes are

present, most pronounced at C6-C7; (3) moderate C6-C7 central canal stenosis; (4) borderline to mild C4-C5 and C5-C6; (5) neural foraminal narrowing is most pronounced left C6-C7 cons*ide*red moderate. *Id.*

Petitioner underwent an Independent Medical Evaluation at the request of his attorney on May 30, 2017 with Dr. Coe. (PX 9). A deposition was taken by the parties on December 1, 2017. *Id.* Dr. Coe diagnosed Petitioner with status post C4-C5 anterior cervical discectomy and fusion with successful fusion healing, residual left cervical radiculopathy symptoms, left shoulder internal derangement (likely glenoid labral tear with left shoulder adhesive capsulitis) and residuals of left and fourth and fifth finger contusions. *Id.* He opined that all of the conditions are casually related to the accident that Petitioner suffered at work on August 7, 2016. *Id.* He further noted that the treatments have been reasonable and necessary. *Id.* Petitioner is in need of ongoing medical treatment for the conditions described above. *Id.* Petitioner is additionally in need of work restrictions of no use of left arm due to weakness and stiffness. *Id.* Dr. Coe opined that Petitioner will require permanent work restrictions due to the condition of his upper left extremity. *Id.*

Petitioner saw Dr. Pelinkovic on August 7, 2017 for a follow up on his cervical spine. *Id.* Dr. Pelinkovic recommended an MRI following a finding of cervical spine stenosis at C6-C7. *Id.* On August 14, 2017, Petitioner followed up with Dr. Pelinkovic following the cervical spine MRI. *Id.* The cervical spine MRI revealed status post interior instrumented fusion at C4-C5 with no central canal or foraminal stenosis. *Id.* Mild spondylotic and degenerative disc changes at the remaining levels resulting in mild right foraminal stenosis at C5-C6 due to uncinated spurring similar to the previous CT myelogram and mild central canal and probably mild bilateral foraminal stenosis greater on the left at C6-C7. *Id.* Dr. Pelinkovic noted that the MRI of the

cervical spine shows no cord compression, and therefore the tremor does not correlate with his cervical spine. He recommended a neurology consult. *Id.*

Petitioner saw Dr. Manish on August 23, 2017 for a neurological consultation of tremors on left hand. *Id.* Petitioner reported that the left hand tremors occur when gripping or making a fist. *Id.* A neurological examination revealed left-sided weakness, but no significant tremor was noted. *Id.* A brain MRI was recommended. *Id.*

Petitioner followed up with Dr. Pelinkovic regarding his cervical spine on September 1, 2017. *Id.* Full range of motion for the neck and head were noted. The chest and both shoulders were able to be reached with the chin. There were no signs of atrophy or asymmetry in the right compared to the left extremity. *Id.* The cervical spine was noted as stable. *Id.*

Petitioner sought treatment at Pain and Spine Institute on October 23, 2017 for his neck pain and cervical radiculopathy. (PX 7). Petitioner was provided with a refill of Norco. *Id.* Petitioner continued to treat at Pain and Spine Institute until February 14, 2018. *Id.*

Petitioner completed a second course of physical therapy for his neck and left upper extremity at ATI from September 21, 2017 through February 1, 2018. (PX 4).

Petitioner underwent a C4-5 posterior spinal fusion with Dr. Templin on February 7, 2018. (PX 10). The post-operative diagnosis was C4-5 nonunion. *Id.* This record was admitted conditionally. This record was not obtained pursuant to certification or subpoena. The record is referenced in Dr. An's IME. However, Dr. An reflects a surgery date of February 7, 2017. (RX 6). Petitioner's Exhibit 10 is not admitted due to the inconsistencies of the record.

Petitioner underwent a Functional Capacity Evaluation ("FCE") on June 28, 2018. The Arbitrator notes that the FCE was not entered into evidence at trial. However, the FCE was referenced in the IME completed by Dr. An and the Vocational Assessment. (PX 11). Petitioner

was diagnosed with cervical radiculopathy and cervical spondylosis without myleopathy. Occupational demand level was noted as medium demand level. *Id.* Petitioner was found to be performing at a light demand level. *Id.* Petitioner capabilities were the following: (1) above shoulder work for 8 hours; (2) desk to chair 4 hours 35 minutes; (3) chair to floor 2 hours 15 minutes; (4) Carry 6 to 7 hours, frequent long distances.

Petitioner underwent an IME with Dr. An for his cervical spine on July 27, 2018. (RX 6). Dr. An diagnosed Petitioner with status post C4-5 fusion with some residual neck pain due to cervical spondylosis. Dr. An opined that Petitioner had a preexisting condition of cervical spondylosis at multiple levels, but the work accident probably caused the herniated disc at C4-C5, which ultimately required surgery. He noted that Petitioner's objective findings of the cervical spine is consistent with his subjective symptoms following the fusion. *Id.* Dr. An did not observe any malingering or exaggeration. *Id.* He did not recommend any further treatment for the cervical spine. He noted that Petitioner's condition had plateaued. *Id.* Dr. An recommended that Petitioner return to work with a 30 pound lifting restriction per the FCE. *Id.*

Petitioner reached MMI on November 21, 2018 per Kelly Burgess PA.

Petitioner underwent a cervical spine MRI on August 15, 2019 which revealed interval changes of anterior cervical disc fusion of C4-6 vertabrae with resulting improvement in the central canal and left neural foraminal stenosis since the prior MRI. Mild progression of disc disease was noted with degenerative changes at C5-6 and C6-7 levels causing varying degree of central canal and neural foraminal stenosis. *Id.*

Petitioner followed up with DMG between March 22, 2019 and March 19, 2021 for pain management. (PX 8). He underwent an epidural steroid injection during this time, which provided no relief. *Id.*

II. CONCLUSIONS OF LAW

The Arbitrator adopts the above findings of material facts in support of the following conclusions of law:

F. Is the current condition casually related to the work accident?

The Arbitrator finds that medical records and testimony in this case establish by a preponderance of the evidence that the state of Petitioner's left and cervical injures are causally related to the work accident of August 7, 2016.

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 that the medical expenses incurred in this case were reasonable and necessary. Petitioner shall receive credit for all expenses already paid, and may pay any outstanding medical expenses directly to the providers pursuant to the medical fee schedule or the negotiated rate under section 8(a) of the Act.

K. What temporary benefits are in dispute?

Petitioner was paid his full salary from August 15, 2016 through August 30, 2016. Petitioner treated for the work accident from August 7, 2016 through November 21, 2018, at which time he reached MMI. Petitioner underwent an FCE on June 28, 2018, at which time he was functioning at a light physical demand level. The facility was unable to accommodate Petitioner's permanent restrictions. Petitioner was entitled to temporary total disability from August 31, 2016 through June 28, 2018. Petitioner began working at Minooka School District on October 7, 2019. The Arbitrator finds that Petitioner is entitled to maintenance from June 29, 2018 through October 6, 2019. The Respondent is entitled to a credit for all temporary total disability and maintenance paid.

L. What is the nature and extent of the injury?

There are two potentially mutually-exclusive permanent disability awards that could apply to this case. A wage differential award may apply pursuant to 820 ILCS 305/8(d)(1), where (1) he is partially incapacitated from pursuing her usual and customary line of employment; and (2) there is a difference between the average amount which he would be able to earn in the full performance of her duties in the occupation in which she was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. 820 ILCS 305/8(d)(1) (2012).

Alternatively, a man-as-a-whole award may apply as Petitioner sustained serious and permanent injuries not covered by paragraphs (c) and (e) of Section 8 of the Act. Based upon the testimony of the Petitioner and other credible evidence, the Arbitrator finds that the Respondent failed to sustain his burden of establishing that he is entitled to a wage differential award. Petitioner has sustained his burden of proving that he is entitled to permanent partial disability benefits.

Petitioner has failed to prove that he suffered a loss in earning capacity. Under Section 8(d)(1), the crucial issue in determining which type of PPD award is appropriate is whether Petitioner suffered an impairment of his "earning capacity." *Jackson Park Hospital v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 142431WC, ¶¶ 42-45, 47 N.E.3d 1167

In this case, IYC-Chicago does not dispute that Petitioner is incapacitated from pursuing his "usual and customary line of employment." Therefore, a percentage-of-the-person-as-a-whole award under 8(d)(2) would be appropriate *only* if he has suffered no loss in his "earning capacity," or having suffered a loss in "earning capacity," he elected to waive his right to an award under 8(d)(1). *Id.* (Citing 820 ILCS 305/8(d)(2) (West 2002); *Lenhart v. Illinois Workers'*

Compensation Comm'n, 2015 IL App (3d) 130743WC, ¶ 48, 390 Ill. Dec. 716, 29 N.E.3d 648; *Gallianetti*, 315 Ill. App. 3d at 728, 734 N.E.2d at 488).

In this case, Petitioner has not waived his right to a Section 8(d)(1) award. Therefore, the issue is whether Petitioner's work-related injuries have resulted in an "impairment of earning capacity." 820 ILCS 305/8(d)(2) (West 2002). The Supreme Court has held that "[a]lthough wages are indicative of earning capacity, they are not necessarily dispositive." *Cassens Transp. Co. v. Industrial Comm'n*, 218 Ill. 2d 519, 531, 844 N.E.2d 414, 423, 300 Ill. Dec. 416 (2006). The test does not focus exclusively on the amount earned, but instead focuses on the *capacity* to earn. *Id.* "[P]ost-injury earnings and earning capacity are not synonymous" because other ev*ide*nce can show that "the actual earnings do not fairly reflect claimant's capacity." 4 A. Larson & L. Larson, *Larson's Workers' Compensation Law* § 81.03[1] (2005). Therefore, whether the claimant has sustained an impairment of earning capacity cannot be determined by simply comparing pre- and post-injury income. The analysis requires consideration of other factors, including the nature of the post-injury employment in comparison to wages the claimant can earn in a competitive job market.

In this case, Petitioner failed to sustain his burden of proving the wages he is capable of earning in a competitive job market. Petitioner presented evidence at trial that he is employed as a substitute teacher at Minooka School District. He teaches 2-4 days per week, earning $120-$125 per day. He also coaches wrestling for a flat rate of roughly $1,700 for 2022. Petitioner reports and average weekly wage of between $200-300 at this position. Neither coaching nor substitute teaching is available during the summer months. He testified that the secretary of the school contacts him on an as-needed basis, and he works an average of 20-25 hours per week.

Petitioner testified that he stopped searching for jobs in December 2021 because he was told it was no longer required.

Despite the fact that Petitioner holds a Bachelor's degree in Criminal Justice, and has extensive experience in the security guard role, Petitioner voluntarily stopped job searching after obtaining a part-time, short term employment. While in vocational training, Petitioner obtained a certification for information security from DeVry. The VCM recommended Petitioner pursue a Paralegal Studies certification, which was never completed.

The Arbitrator holds that Petitioner has failed to sustain his burden of proving impairment of earning capacity. The Vocational Assessment completed July 17, 2019 by Health Connections did not provide an evaluation of Petitioner's earning capacity.

The Arbitrator finds that based upon Petitioner's permanent restrictions which prevented him from returning to employment at IYC-Chicago, Respondent shall pay the Petitioner permanent partial disability benefits at $658.35 per week for 200 weeks. This represents 40% loss of use of man as a whole as provided in section 8(d) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC002380
Case Name	Timothy Sperry v. State of Illinois - Illinois Dept. of Transportation
Consolidated Cases	18WC017339; 19WC033183;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0265
Number of Pages of Decision	25
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Elizabeth Reynolds
Respondent Attorney	Joseph L. Moore

DATE FILED: 6/5/2024

/s/Christopher Harris, Commissioner

Signature

24IWCC0265

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TIMOTHY SPERRY,

Petitioner,

vs. NO: 17 WC 2380

STATE OF ILLINOIS,
ILLINOIS DEPARTMENT OF TRANSPORTATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, employment relationship, causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability ("TTD"), 8(j) credit, 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.

This claim was consolidated with claim number 18 WC 17339 and 19 WC 33183 for purposes of the arbitration hearing and review before the Commission. A separate decision has been issued for claim 18 WC 17339 and 19 WC 33183.

The Petitioner sustained a work-related injury to his left shoulder and left wrist on June 16, 2016. He continued to work and eventually underwent an MRI that demonstrated a full thickness left rotator cuff tear with some retraction. Dr. Greatting reviewed the MRI on January 4, 2017 and recommended a left shoulder arthroscopy with subacromial decompression, a rotator cuff repair and a possible open tenodesis of the long head of the biceps. Dr. Greatting opined that Petitioner's condition was casually related to the June 16, 2016 injury. Petitioner continued to work despite progressively worsening pain and stiffness as TriStar, the workers' compensation carrier, denied

the surgery. Dr. Nogalski authored a Section 12 opinion on August 7, 2018 agreeing with Dr. Greatting's surgical recommendation. The surgery was subsequently approved. However, before the surgery was performed, Petitioner sustained a second work-related injury to his left shoulder on October 19, 2017. He was taken off work on October 20, 2017 and Dr. Greatting performed a left shoulder arthroscopy with subacromial decompression and rotator cuff repair, and open tenodesis of the long head left biceps on December 29, 2017. Dr. Greatting released Petitioner back to work on August 1, 2018.

While the Petitioner was taken off work following the October 19, 2017 accident, the Commission finds that the second accident represents an aggravation of the first injury which did not change the prior diagnosis, the course of treatment, or the surgical recommendation. As such, the Commission finds that TTD benefits are necessary because of the June 16, 2016 work-related injury, not the October 20, 2017 work-related injury. Because of this, the Commission vacates the award of TTD benefits in claim 18 WC 17339.

The Commission next modifies the duration of the TTD benefits awarded by the Arbitrator and finds that the Petitioner is entitled to TTD benefits from October 20, 2017 through August 1, 2018. The evidence establishes that the Petitioner was taken off work October 20, 2017 due to the full thickness left rotator cuff tear sustained June 16, 2016. Dr. Greatting surgically repaired the left shoulder on December 29, 2017 and released Petitioner back to work on August 1, 2018. The Commission disagrees with the Arbitrator's decision to terminate benefits effective January 26, 2018. The Commission finds that the evidence does not sufficiently establish that Petitioner was performing work outside of his restrictions. As such, Petitioner is entitled to TTD benefits from October 20, 2017 through August 1, 2018.

Next, the Commission modifies the PPD award and finds Petitioner is entitled to 17.5% person-as-a-whole. While the Commission agrees with the Arbitrator's analysis of Section 8.1(b), the Commission assigns greater weight to subsection (v). The Petitioner sustained a tear of the left rotator cuff. He underwent a left shoulder arthroscopy with subacromial decompression and rotator cuff repair, and open tenodesis of the long head left biceps. The medical records document mild ongoing weakness with limitation of active range of motion in his left shoulder as well as a small area of numbness on the anterior aspect of the shoulder. Dr. Greatting stated this was likely permanent. Therefore, the Commission finds that Petitioner sustained 17.5% loss of use of the person-as-a-whole.

Finally, the Commission clarifies the Arbitrator's award to indicate that Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent receives credit pursuant to Section 8(j) of the Act.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 21, 2023 is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner

the sum of $856.61 per week for a period of 40-6/7 weeks, October 20, 2017 through August 1, 2018, 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 $770.95 per week for a period of 118.25 weeks, as provided in Sections 8(d)2 and 8(e)9 of the Act, for the reason that the injuries sustained caused 17.5% loss of use of the person-as-a-whole to the left shoulder and 15% loss of use of the left hand as related to the carpal tunnel syndrome.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit for payments made by the group medical plan and shall hold Petitioner harmless from any and all claims by any provider of the services for which Respondent is receiving this credit, as provided in Section 8(j) 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.

Pursuant to Section 19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

June 5, 2024
O: 5-9-24
CAH/tdm
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC002380
Case Name	Timothy Sperry v. Illinois Department of Transportation
Consolidated Cases	18WC017339; 19WC033183;
Proceeding Type	
Decision Type	***Corrected*** Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Kathy Olivero
Respondent Attorney	Chelsea Grubb

DATE FILED: 7/21/2023

/s/ Jeanne AuBuchon, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEEK OF JULY 18, 2023 5.25%

CERTIFIED as a true and correct
copy pursuant to 820 ILCS
305/14

July 21, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

24IWCC0265

STATE OF ILLINOIS)

) SS.

COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

AMENDED ARBITRATION DECISION

Timothy Sperry
Employee/Petitioner

Case # **17 WC 002380**

v.

Consolidated cases:

Illinois Dept. of Transportation
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 Jeanne L. AuBuchon, Arbitrator of the Commission, in the city of Springfield, on February 23, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ 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 **June 16, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**66,816.00**; the average weekly wage was **$1,284.92**.

On the date of accident, Petitioner was **55** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0** 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 $**any paid** under Section 8(j) of the Act.

ORDER

Following arbitration, the parties stipulated that all medical expenses were paid.

Respondent shall pay Petitioner the sum of **$770.95**/week for a further period of **93.25** weeks, as provided in Sections 8(d)2 and 8(e)9 of the Act, because the injuries sustained caused **12.5% loss of use of the person as a whole related to the left shoulder and 15% loss of use of the left hand as related to carpal tunnel syndrome.**

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

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

Jeanne L. AuBuchon

Signature of arbitrator

July 21, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on February 23, 2023, on all disputed issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) whether the Respondent was given proper notice; 3) the causal connection between the accident and the Petitioner's left shoulder and wrist conditions; 4) payment of medical bills; and 5) the nature and extent of the Petitioner's injuries. This case was consolidated for purposes of trial with 18WC17339, involving an injury to the left shoulder in an accident on October 19, 2017, and 19WC33183, involving an injury to the right hand in an accident on September 9, 2019. The parties later stipulated in their proposed decisions that medical bills had been paid.

At arbitration, the Respondent objected to Petitioner's Exhibits 5 and 6, which were Section 12 examination reports, on the basis of hearsay. The objection was sustained. The Petitioner objected to several of the Respondent's exhibits: RX1, the Petitioner's personnel file, with the exception of page 53, on the basis that it was inadmissible character evidence, hearsay, lack of foundation and relevance; RX6, property tax records for 2420 South Ninth Street, on the basis of relevance and foundation; RX7, property tax records for 2425 South Ninth Street, on the basis of relevance and foundation; RX9, records from the Sangamon County Tax Assessor, on the basis of relevance and foundation; RX10, surveillance video from Lowe's, on the basis of foundation; RX11, City of Springfield Building and Zoning subpoena response, on the basis of relevance and foundation; and RX12, surveillance file, on the basis of foundation.

The objection to RX1 was sustained on the basis of lack of foundation, and the exhibit was not admitted. The objections to RX6, RX7, RX9 and RX 11 were overruled, as the exhibits are public records of which the Arbitrator could take judicial notice. Regarding relevance, the

Arbitrator will give the exhibits the weight which she believes they should be afforded. The objection to RX10 was sustained based on lack of foundation, and that exhibit was not admitted. A foundation was laid for RX12, and that exhibit was admitted. The rest of the exhibits were admitted without objection.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 55 years old and employed by the Respondent as a highway maintainer. (AX1, T. 20). On June 16, 2016, the Petitioner was removing debris from the roadway when he was notified that there was a deceased deer on the edge of the road. (T. 21-22) He said the piece of equipment he normally used to hoist the deer onto the back platform of the truck was broken, so he physically dragged the deer down to the timber line for it to decompose. (T. 22) He said he was called by dispatch to go back and remove the deer because nearby residents wanted it removed as they did not want to smell the decay. (Id.) He said he put a rope around the deer, which he said weighed approximately 250-275 pounds, brought it back up to the roadway and started to lift it onto the back platform of his truck. (T. 22-23) He said he knew he had "pulled something" but did not know what at the time. (T. 23) He said that at the end of the day, he got back to the shop and reported that something was going on with his shoulder. (Id.) He said he felt pain in his left shoulder and going down his arm. (Id.) The Petitioner, who is right-handed, said he had not experienced prior left shoulder or arm pain. (T. 23-24)

The Petitioner testified that he reported the accident to his acting lead worker and one of the supervisors, filled out paperwork and spoke to someone with the Respondent's insurer, Tristar. (T. 24) He finished his shift and did not seek medical treatment because he thought he had just pulled something. (T. 24-25) He said he continued to work, but his left upper extremity was

progressively getting more painful, stiff and less mobile. (T. 25) He stated that he had difficulty getting dressed and picking up a grocery bag or pot of water. (T. 54) He said he had to start using his right hand more than his left. (Id.)

The Petitioner testified that he waited until October 26, 2016, to seek medical treatment because he thought he might have had a pulled muscle and the pain would dissipate and go away. (Id.) He said the pain got worse and he could not sleep on his left side. (T. 26) At that time, he filled out an accident report. (T. 26) He said that because of confusion or negligence, the paperwork he filled out on the day of the accident was lost. (Id.) The accident report completed on October 26, 2016, stated that he injured his left shoulder pulling a deceased deer from a ditch. (RX1) The Employer's First Report of Injury characterizes the injury as a strain of the left shoulder. (RX2)

On cross-examination, the Petitioner acknowledged helping put a roof on a house in Chatham as a church volunteer on October 22, 2016. (T. 55-56) He said he climbed a ladder and may have used a shovel but used his right hand. (Id.) He identified himself in photos on top of the roof. (T. 56, RX13) He did not recollect being under any work restrictions at that time. (T. 91-92) He said he did not injure himself at that time. (T. 92)

On October 26, 2016, the Petitioner saw Josiah Hamilton, a physician assistant at Springfield Clinic, and complained of left shoulder pain for the past three months that began when pulling a dead deer out of a ditch on July 16, 2016. (PX1) He said that since then, the pain had gotten worse. (Id.) He was diagnosed with rotator cuff syndrome of the left shoulder, referred to orthopedics and physical therapy, told to continue taking over-the-counter NSAIDs and given work restrictions of a 25-pound lifting limit. (Id.)

On December 12, 2016, the Petitioner saw Dr. Mark Greatting, an orthopedic surgeon at Springfield Clinic, and reported the work accident consistently with his testimony, accident report and report to PA Hamilton. (PX1) After a physical examination and X-rays, Dr. Greatting expressed concern that the Petitioner had a full-thickness rotator cuff tear and recommended an MRI. (Id.) On January 4, 2017, the Petitioner followed up with Dr. Greatting, who noted that the MRI showed a full-thickness rotator cuff tear with some retraction, medial subluxation of the long head of the biceps and arthritis in the acromioclavicular (AC) and glenohumeral joints. (Id.) Dr. Greatting recommended arthroscopy with subacromial decompression, rotator cuff repair and possible open tenodesis of the long head of the biceps. (Id.) The Petitioner testified that Tristar denied approval of the surgery. (T. 27) He said he continued to work full duty. (T. 28) Dr. Greatting continued to recommend surgery at a follow-up visit on May 18, 2017. (PX1)

At another visit on June 29, 2017, the Petitioner reported numbness in his left index and middle fingers. (Id.) Dr. Greatting suspected chronic carpal tunnel syndrome and recommended a nerve conduction study. (Id.) The study was performed on August 7, 2017, by Dr. David Gelber, a neurologist at Springfield Clinic, who diagnosed severe left carpal tunnel syndrome and possible diabetic neuropathy or mild diffuse brachial plexopathy. (Id.)

The Petitioner testified that he underwent a Section 12 examination on August 7, 2017, after which Tristar denied the surgical request but later approved it. (T. 27-28)

Dr. Greatting saw the Petitioner on September 13, 2017, continued his recommendation for shoulder surgery and added a recommendation for left carpal tunnel syndrome surgery. (PX1) He thought the problems with the Petitioner's left upper extremity were work-related. (Id.)

On October 19, 2017, the Petitioner injured himself again. (AX2, AX5) He said he was working his normal duties when he came across a mattress and tried to lift it into the back of the

truck. (T. 29-30) He said he hurt his left hand and another part of his arm was hurting. (Id.) He said he reported the incident to his lead worker shortly after he injured himself or at the end of his shift. (T. 31-32) He filled out an accident report that day, stating that his left shoulder was further injured when he was loading a mattress onto a truck. (PX4)

The next day, the Petitioner saw Dr. Marc DeJong, a non-surgical orthopedic specialist at the Springfield Clinic and reported further injury of his left shoulder when loading a mattress onto a truck, at which time he heard a pop with increased pain and subsequent further diminished range of motion. (PX1) Dr. DeJong diagnosed acute on chronic left shoulder pain in the setting of known rotator cuff rupture with further aggravation in the setting of a strain/lifting injury at work. (Id.) Dr. DeJong prescribed pain medication, placed the Petitioner on a 15-pound lifting restriction with no lifting above shoulder and referred him to Dr. Greatting. (T. 32) The Petitioner said the Respondent did not accommodate the restriction, so he was off work. (Id.) The Petitioner saw Dr. Greatting on November 15, 2017, who noted that surgery was scheduled. The Petitioner testified that Tristar had approved the surgery. (T. 33)

On December 29, 2017, Dr. Greatting performed a left shoulder arthroscopy with subacromial decompression and rotator cuff repair, open tenodesis of the long head left biceps and a left carpal tunnel release. (PX1) The Petitioner was ordered off work from the date of surgery until further notice. (Id.) At follow-up visits with Dr. Greatting, the Petitioner noted improvement except for continued numbness and tingling in his index and middle finger and new numbness in his thumb as of March 28, 2018. (Id.) The Petitioner testified that the surgery did not alleviate all his symptoms. (T. 33)

The Petitioner underwent physical therapy at Springfield Clinic from January 26, 2018, through June 19, 2018, for a total of 42 visits. (Id.) At his first visit, the Petitioner described the

two work accidents consistently with his testimony and reports to his physicians. (Id.) In the physical therapy notes from February 27, 2018, the Petitioner reported doing low-intensity exercises in the pool at the gym and using a machine at the gym to stretch his shoulder. (Id.) He was advised to avoid resistance exercises with his left upper extremity. (Id.) On March 13, 2018, he reported working on a shelf in his garage over the weekend and being frustrated with continued soreness in his left shoulder. (Id.) On March 26, 2018, he reported doing exercises at the gym using a weighted pulley system and was instructed to discontinue this type of exercise. (Id.) On March 28, 2018, the Petitioner informed Dr. Greatting that he was doing exercises at the gym using up to 5-10-pound weights. (Id.) Dr. Greating told him he should not be doing any strengthening activities or using any weights above and beyond what he was doing in therapy. (Id.) On April 3, 2018, he reported to his physical therapist that he was doing jobs around the house that caused his left shoulder to be sore. (Id.) On April 12, 2018, he reported fishing the day before and that repeated casting irritated his shoulder. (Id.) April 26, 2018, the Petitioner reported working on his home, moving a water heater and doing some plumbing the day before. (Id.)

At a visit with Dr. Greatting on May 9, 2018, the Petitioner reported he had constant numbness in his median nerve distribution and felt it had not improved. (Id.) He felt his shoulder was improving, although he had significant decreased range of motion and weakness. (Id.) Dr. Greatting recommended a new nerve conduction study. (Id.)

On May 15, 2018, Dr. Greatting filled out a work status slip regarding the Petitioner's left shoulder with an injury date of June 16, 2016, that did not allow the Petitioner to return to work at even sedentary activities and stated that travel outside the home should be limited. (PX1, RX3) The only job requirements he was allowed to perform were driving a pickup truck with automatic

transmission and power steering; bending, kneeling and squatting; and standing and walking. (Id.) The restrictions were to not last more than 120 days. (Id.)

The Petitioner underwent additional nerve conduction studies at Springfield Clinic on June 1, 2018, that showed: 1) evidence of significant median nerve slowing at the wrist and ongoing denervation of the median supply muscles of the hand, although values were a bit improved from the prior study; 2) Evidence to suggest a chronic, fairly diffuse, left brachial plexopathy as noted previously; and 3) no evidence of cubital tunnel syndrome or radial neuropathy and no evidence of acute cervical radiculopathy. (PX1) Dr. Greatting reviewed the results with the Petitioner on June 14, 2018, and said the Petitioner's symptoms were chronic and severe prior to the surgery and that he may not have any improvement. (Id.) Dr. Greatting did not feel any further carpal tunnel surgery would likely be helpful. (Id.) Because of lack of significant improvement in the shoulder, Dr. Greatting recommended a new MRI to evaluate the integrity of the repair. (Id.)

At the Petitioner's last physical therapy appointment on June 19, 2018, the therapist noted that the Petitioner made overall progress with range of motion and strength. (Id.) The therapist wrote that his goals were met with the exceptions of external rotation and ability using the left upper extremity for some daily function without difficulty or much pain. (Id.) The Petitioner reported the ability to perform home improvement tasks and remodeling of garages and a home throughout the whole time he was in physical therapy. (Id.) He rated his pain at 1/10 with normal activity. (Id.) He was given an extensive home exercise program and discharged from physical therapy. (Id.)

On July 12, 2018, Dr. Greatting filled out a Semi-Annual Disability Medical Report for the State Employees Retirement System that included diagnoses of complete tear of the left rotator cuff and left carpal tunnel syndrome. (PX1, RX4) Dr. Greatting restricted the Petitioner to no

work at that time, with use of the right arm as tolerated and gave an estimated return to work date of September 1, 2018. (Id.) The Petitioner testified that he abided by those restrictions while he was off work "probably for the most part." (T. 83)

On August 1, 2018, Dr. Greatting reviewed an MRI performed on July 20, 2018, that he said showed a partial-thickness, articular-sided supraspinatus tendon tear with retraction and some underlying supraspinatus tendinopathy as well as a partial-thickness articular surface tear of the infraspinatus. (PX1) Dr. Greatting thought a significant portion of the supraspinatus tendon was intact and did not think further surgery was necessary because he was not certain that a further surgical procedure to attempt to repair of the partial-thickness tear would benefit the Petitioner. (Id.) He recommended a return to work without restrictions on August 15, 2018. (Id.) On October 10, 2018, Dr. Greatting found that the Petitioner could continue to work without restrictions or limitations but was going to have some ongoing symptoms in his left shoulder and ongoing numbness in his left hand, which he thought would be permanent. (Id.) Dr. Greatting released the Petitioner from care and found him to be at maximum medical improvement. (Id.)

On September 9, 2019, the Petitioner was injured again. (AX3, AX6) He said he was wrestling a recliner onto the back of the truck because the winch was not operating and thought he strained his right hand. (T. 37) He said he reported the incident to the lead worker and called Tristar. (Id.) He thought he had injured his hand enough that he could not continue working and had to get medical attention. (T. 38) Because this accident involved a separate body part, the Arbitrator finds it unnecessary to further address that injury herein.

The Petitioner saw Dr. Greatting on May 5, 2021, and reported continuing pain in his left shoulder. (Id.) He had received a traffic citation for improper use of his seatbelt. (Id.) Dr.

Greatting wrote a note stating that the Petitioner had chronic pain in his left shoulder and wearing a shoulder strap on his seatbelt could potentially exacerbate his pain. (Id.)

None of the Petitioner's treating physicians nor the Section 12 examiners testified. (Id.)

The Petitioner testified as to his involvement with the business Sperry Family Properties and him rehabbing properties. He said the business, which purchased and remodeled homes, was owned by his brother, Kevin Sperry, who lives in Florida and put the Petitioner on the business as a signatory so that he could purchase things and pay contractors. (T. 44-45) The Petitioner said he never received compensation for being a signatory on the business accounts. (T. 46) He said he purchased a residence from the business to use as his home that needed a total renovation. (T. 46-47) He said his injuries have delayed his work on the house by several years. (T. 47)

Sangamon County property tax records for 2420 S. Ninth St. showed that the Petitioner purchased the house in 2008 and sold it in 2020. (RX6) The house at 2425 S. Ninth St. was purchased by Sperry Family Properties in 2016 and sold to the Petitioner in 2020. (RX7) Articles of Dissolution from the Florida Secretary of State show that Sperry Family Properties was organized in 2015 and was dissolved on April 18, 2021, due to the company having sold its property. (RX8)

The Petitioner testified that he was only doing light maintenance on the house at 2425 S. Ninth St. – mowing the yard, putting up fascia, putting a small board on the front stoop – but was not doing construction. (T. 62-63) The Petitioner identified a photo of the back of 2425 S. 9th St. depicting an outbuilding and a large tree, with a time stamp of July 18, 2016, and a photo with a time stamp of September 1, 2016, showing that the outbuilding and tree had been removed. (T. 71, RX9) He said he paid contractors to do the work. (T. 72) He said cousins and friends built a new garage and he may have done some measuring and cutting boards. (T. 73) A photo with a

time stamp of November 6, 2017, shows the new garage. (RX9) The Petitioner said that other than the time stamp on the photos, he did not know when they were taken. (T. 93-94)

Joshua Roughley, planning coordinator and building official for the city of Springfield, testified as to the photos of the tree and garage and stated that a permit would be needed for removal of the garage and construction of a new garage, but he did not believe any such permits were issued. (T. 127-128, RX9)

According to the city building records, the Petitioner was subject to administrative proceedings from October 2017 through May 2018 regarding not following regulations for obtaining building permits. (RX11) The Petitioner testified that he signed for building permits at 2425 S. Ninth St. as an agent for Sperry Family Properties. (T. 68-69) However, the applications stated both properties were owner-occupied by the Petitioner, which was a violation of city ordinances. (RX11) On January 24, 2018, the Petitioner applied for permits to install a new furnace and air conditioning system, three new bathrooms and new electrical at 2425 S. Ninth St. on behalf of Sperry Family Properties. (Id.) The applications did not list contractors and said the property was owner-occupied. (Id.) On May 2, 2018, an electric permit was issued for 2420 S. Ninth St. naming a contractor. (Id.) On May 9, 2018, a plumbing permit and mechanical permit were issued for 2420 S. Ninth St. naming a contractor. The Petitioner acknowledged that he told his physical therapist in May 2018 that he was working on his residence at that time and clarified in his testimony that he was doing cleaning and maintenance. (T. 75-76) He admitted that he told Dr. Greatting on May 9, 2018, that he had not noticed any improvement with his numbness and tingling. (T. 81) He maintained that he was not able to work on his house during that time. (T. 82)

The Petitioner acknowledged that he went to the emergency room on May 12, 2018, for a thumb laceration he suffered while moving a saw. (T. 76-77, RX14) According to Memorial Health System records, the Petitioner reported that he was working with an electrical saw when he accidentally sliced into his thumb and nail. (RX14)

Mr. Roughley identified inspection reports for 2425 S. Ninth St. from August 9, 2019 (framing); March 12, 2021 (electrical and plumbing); and March 19, 2021 (mechanical). (T. 129-130, RX11) Mr. Roughley said the inspection reports reflected a full remodel of a home. (T. 133) He also identified a photograph of the interior of 2425 S. Ninth St. with a time stamp of November 29, 2018, showing bare framing. (T. 135, RX9) He said there were no contractors who acquired permits for remodeling work at 2425 S. Ninth St. (T. 135-136) Regarding the framing work at 2425 S. Ninth St. in 2019, the Petitioner testified that a friend had been helping him. (T. 86) He acknowledged using a framing nailer and possibly a screw gun. (T. 86-87) He denied that any construction work on his house caused the numbness and tingling in his hands and said they were already numb by that time. (T. 87) He said he used power tools most of his life and vibratory tools very randomly. (T. 88)

On cross-examination, Mr. Roughley testified that he did not know when the photos of the garage and tree in RX9 were taken and had no independent knowledge of the address for which they were taken. (T. 139) He said the response to the subpoena for the records contained in Respondent's Exhibit 11 were gathered by someone else with the city and he was not involved with any of the permits issued. (T. 140-141) He said he did not look up in the city system if there was a permit for the demolition of the garage at 2425 S. Ninth St. (T. 142) He said there were permits issued for the property but did not recall what they were. (T. 143)

Tommy Fenton, a surveillance investigator with Frasco Investigations, testified as to surveillance he conducted of the Petitioner as reflected in his reports covering the period of March 11, 2018, through July 19, 2018. (RX15) Mr. Fenton stated that on April 27, 2018, he observed the Petitioner going to the grocery store and unloading several bags of groceries into his vehicle. (T. 102) On May 12, 2018, he saw a gray tarp, several table saws and equipment on the front porch at 2420 S. Ninth St. (T. 102-103, RX15) On May 20, 2018, he observed the Petitioner sanding the front porch railings at 2410 S. Ninth St. with a vibrational sander and using a broom. (T. 103, RX15) He took a video of the Petitioner at that time that showed the Petitioner using his right hand then both hands. (T. 103, RX12) On July 12, 2018, Mr. Fenton noted that the back porch was under construction and the garage roof had several rows of shingles nailed down. (T. 106) On July 13, 2018, he saw the Petitioner push-mowing the grass of a neighboring yard and his yard for about 40 minutes – using both hands to push the mower and his right hand to pull the mower up a hill. (T. 106, 109) He felt that activity was odd because it would be painful for a person with carpal tunnel and rotator cuff injuries. (T. 121) On July 19, 2018, Mr. Fenton observed the Petitioner sitting on his front porch, then walking across the street multiple times carrying an 8-foot long 1x4 wood plank weighing approximately 8 pounds and pushing a fan weighing about 35 pounds on a dolly across the street – both with his right hand. (T. 109-110, 113, 116)

Mr. Fenton identified the photos in his reports as still shots taken from the videos. (T. 114, RX15) He said he never observed anyone assisting the Petitioner or working at his house or the house across the street and did not see any work trucks at either of the properties. (T. 114) On cross-examination, Mr. Fenton testified that he conducted 13 days of surveillance for generally

eight hours per day, and the activity he described on direct was the only activity he saw by the Petitioner. (T. 119-120)

The videos were consistent with Mr. Fenton's testimony. (RX12)

On cross-examination, the Petitioner acknowledged that he recently served a suspension at work for actions related to an incident in which he was dishonest with his employer. (T. 48- 49)

The Petitioner testified that he has been working full duty for the Respondent since October 30, 2020. (T. 40) He denied receiving income from any other job from 2016 to the present. (Id.) He said he currently had decreased range of motion in his left shoulder, and his left arm needed help getting past 90 degrees. (T. 35, 40-41) He said his index finger, middle finger and half of the right thumb have been numb for several years. (T. 35) He later said the numbness was on the left. (T. 41) He said his left biceps seemed to have recovered. (Id.) He said he has modified how he performs his job duties, such as using different tools and mechanisms to remove debris from the roads. (T. 35-36) He said he could not get his job done as fast as before the injuries. (T. 42) He said the numbness in his hand was more frustrating than anything, and he couldn't pick up a straight pin unless he used his pinkie because he can't feel anything fine. (T. 41) He said he had to watch and concentrate on putting a nut on a bolt because he had no feeling. (Id.) Regarding other aspect of his life, the Petitioner said he could no long play the guitar or swing a golf club. (T. 42) He said even zipping and unzipping a zipper took concentration. (Id.) He said he was not currently taking any medications related to his injuries and did not wear any assistive devices like wrist or shoulder braces. (T. 89-90)

CONCLUSIONS OF LAW

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

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

If an accident occurred how the Petitioner said it did, it would meet the criteria for arising out of an in the course of employment as set forth in *McAllister v. Ill. Workers' Comp. Com'n*, 2020 IL 12484. Because the accident was not witnessed, much depends on the Petitioner's credibility. The Arbitrator finds issues with the Petitioner's credibility in his testimony regarding whether he was working on his house and the Sperry Family Properties house while he was temporarily disabled. This is more concerning in determining eligibility for TTD and the nature and extent of the injury. The Arbitrator believes the most reliable evidence as to whether this accident occurred lies in the accident report the Petitioner completed and his reports to his medical providers. The Petitioner's description of the incident in the accident report and to numerous medical providers was consistent. The Arbitrator finds this evidence to be credible.

There was evidence that a week before formally reporting the accident, the Petitioner was working on a roof as a church volunteer. The Petitioner denied that he injured his shoulder during this activity, and there was no evidence – other than photos of the Petitioner standing on a roof – to support such a claim.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the Petitioner's left shoulder and left wrist injuries occurred in the course of and arose out of his employment.

Issue (E): Was timely notice of the accident given to Respondent?

The Petitioner testified that he informed his supervisor of the accident on the day it occurred. However, an accident report was not submitted until four months later, on October 26,

2016. The Petitioner said this was because he believed he merely pulled a muscle and decided to seek medical treatment because his symptoms were worsening.

Section 6(c) of the Act provides that notice of an accident shall be given to an employer as soon as practicable, but not later than 45 days after the accident. This section also provides that no defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. The legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering, Inc. v. Workers' Comp. Comm'n*, 373 Ill. App. 3d 259, 265, 870 N.E.2d 821, 312 Ill. Dec. 377 (4th Dist. 2007) In *S&H Floor Covering, Inc.*, the court found that because some notice was given to employer, it was then incumbent upon employer to show that it was unduly prejudiced. *Id*. at 266.

The Request for Hearing form claimed that the Petitioner provided notice to Steve Harris, temporary lead worker, and Adam Stork, supervisor, on June 16, 2016. Neither of these gentlemen testified to refute the claim. In addition, the Petitioner's statement that he thought he only suffered a pulled muscle and didn't know the full extent of his injury until later is supported by the fact that he continued to work full duty until after he sought treatment. Lastly, the Respondent provided no evidence of prejudice as a result of the delay in notice.

Therefore, the Arbitrator finds that the Petitioner provided timely notice.

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

Dr. Greatting opined in his September 13, 2017, notes that the Petitioner's left upper extremity problems were work-related. There was no evidence to the contrary.

However, there is the question of whether the Petitioner's "current" condition was a result of the June 16, 2016, accident or the accident on October 19, 2017. For an employer to be relieved

of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition. *Boatman v. Industrial Commission,* 256 Ill.App.3d 1070, 628 N.E.2d 829, 195 Ill.Dec. 365 (1st Dist. 1993).

As of January 4, 2017 – nine months before the second accident – the Petitioner was found to have a full-thickness rotator cuff tear with retraction and medial subluxation of the long head of the biceps, for which Dr. Greatting recommended surgery. On June 29, 2017, the Petitioner reported numbness in his left index and middle fingers, and Dr. Greatting suspected carpal tunnel syndrome, which was confirmed by a nerve conduction study on August 7, 2017. When Dr. Greatting wrote his finding on September 13, 2017, that the Petitioner's upper extremity problems were work-related, he recommended carpal tunnel surgery as well as the previously recommended shoulder surgery.

Certainly, the Petitioner's hand and shoulder conditions worsened after the October 19, 2017, accident – to the extent that he required work restrictions. Dr. DeJong diagnosed acute-on-chronic left shoulder pain in the setting of known rotator cuff rupture with further aggravation in the setting of a strain/lifting injury at work. After the second accident, there was no new MRI performed that would have determined if there was additional pathology that did not exist before the second accident. Lastly, Dr. Greatting did not testify as to whether any of the pathology he noted during the surgery would have resulted from the second accident rather than the first.

Based on all the above, the Arbitrator finds that the Petitioner's current left shoulder and wrist conditions are causally related to the work accident on June 16, 2016, and that the accident of October 19, 2017, did not break the causal connection.

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?

Following arbitration, the parties stipulated that the medical expenses had been paid.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner continues to work as a highway maintainer and faces the same physical challenges as he did prior to the accident. Therefore, the Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 55 years old at the time of the injury. He has several work years left during which time he will need to deal with the residual effects of the injuriesy. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner has been working full duty without restrictions but said he has had to modify how he performs his duties and that he does not work as quickly as before the accident. He said he still had decreased range of motion in his left shoulder and numbness in

his left hand. He said he could no longer play the guitar or swing a golf club. Dr. Greatting believed the shoulder symptoms and hand numbness would be permanent. However, the Petitioner's reports to the physical therapist regarding his shoulder were less severe than his complaints to Dr. Greatting during the same time period – the majority of his therapy goals were met, he reported the ability to perform home improvement tasks and remodeling of garages and a home, and he rated his pain at 1/10 with normal activity. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 12.5 percent of the person as a whole as it relates to his left shoulder and 15 percent of the left hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC017339
Case Name	Timothy Sperry v. State of Illinois - Illinois Dept. of Transportation
Consolidated Cases	17WC002380; 19WC033183;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0266
Number of Pages of Decision	20
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Elizabeth Reynolds
Respondent Attorney	Joseph L. Moore

DATE FILED: 6/5/2024

/s/Christopher Harris, Commissioner

Signature

24IWCC0266

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TIMOTHY SPERRY,

Petitioner,

vs. NO: 18 WC 17339

STATE OF ILLINOIS,
ILLINOIS DEPARTMENT OF TRANSPORTATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, employment relationship, causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability ("TTD"), and 8(j) credit, 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.

This claim was consolidated with claim number 17 WC 2380 and 19 WC 33183 for purposes of the arbitration hearing and review before the Commission. A separate decision has been issued for claim 17 WC 2380 and 19 WC 33183.

For reasons stated in claim 17 WC 2380, the Commission vacates the Arbitrator's award of TTD benefits as they are being awarded in claim 17 WC 2380. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 21, 2023 is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a

credit for payments made by the group medical plan and shall hold Petitioner harmless from any and all claims by any provider of the services for which Respondent is receiving this credit, as provided in Section 8(j) 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.

Pursuant to Section 19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

June 5, 2024
O: 5-9-24
CAH/tdm
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC017339
Case Name	Timothy Sperry v. Illinois Dept of Transportation
Consolidated Cases	17WC002380; 19WC033183;
Proceeding Type	
Decision Type	***Corrected*** Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Kathy Olivero
Respondent Attorney	Chelsea Grubb

DATE FILED: 7/21/2023

/s/ Jeanne AuBuchon, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEEK OF JULY 18, 2023 5.25%

CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/14

July 21, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

24IWCC0266

STATE OF ILLINOIS)

) SS.

COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

AMENDED ARBITRATION DECISION

Timothy Sperry
Employee/Petitioner

Case # **18 WC 017339**

v.

Consolidated cases:

Illinois Dept. of Transportation
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 Jeanne L. AuBuchon, Arbitrator of the Commission, in the city of Springfield, on February 23, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **Credit for $35,734.96 for TTD paid while Petitioner was working another job outside restrictions**

FINDINGS

On **October 19, 2017**, 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 $**66,816.00**; the average weekly wage was **$1,284.92**.

On the date of accident, Petitioner was **56** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**35,734.96** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**35,734.96.**

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

ORDER

Respondent shall pay for necessary medical services, pursuant to the medical fee schedule, as provided in Section 8(a) and 8.2 of the Act, and shall be given a credit for payments made by the group medical plan, and shall hold Petitioner harmless from any and all claims by any provider of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$856.61**/week for **14** weeks from **10/20/17** through **1/26/18**, as provided in Section 8(b) of the Act.

Permanent partial disability benefits awarded in 17WC2380.

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

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

Jeanne L. AuBuchon

Signature of arbitrator

July 21, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on February 23, 2023, on all disputed issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) the causal connection between the accident and the Petitioner's left shoulder and wrist conditions; 3) payment of medical bills; 4) entitlement to temporary total disability benefits for the period of October 20, 2017, through August 1, 2018; and 5) the nature and extent of the Petitioner's injury. This case was consolidated for the purposes of trial with 17WC2380, involving an accident on June 16, 2016, and 19WC33183, involving an accident on September 9, 2019.

At arbitration, the Respondent objected to Petitioner's Exhibits 5 and 6, which were Section 12 examination reports, on the basis of hearsay. The objection was sustained. The Petitioner objected to several of the Respondent's exhibits: RX1, the Petitioner's personnel file, with the exception of page 53, on the basis that it was inadmissible character evidence, hearsay, lack of foundation and relevance; RX6, property tax records for 2420 South Ninth Street, on the basis of relevance and foundation; RX7, property tax records for 2425 South Ninth Street, on the basis of relevance and foundation; RX9, records from the Sangamon County Tax Assessor, on the basis of relevance and foundation; RX10, surveillance video from Lowe's, on the basis of foundation; RX11, City of Springfield Building and Zoning subpoena response, on the basis of relevance and foundation; and RX12, surveillance file, on the basis of foundation.

The objection to RX1 was sustained on the basis of lack of foundation, and the exhibit was not admitted. The objections to RX6, RX7, RX9 and RX 11 were overruled, as the exhibits are public records of which the Arbitrator could take judicial notice. Regarding relevance, the Arbitrator will give the exhibits the weight which she believes they should be afforded. The

objection to RX10 was sustained based on lack of foundation, and that exhibit was not admitted. A foundation was laid for RX12, and that exhibit was admitted. The rest of the exhibits were admitted without objection.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 56 years old and employed by the Respondent as a highway maintainer. (AX2, T. 20). The Petitioner testified that on October 19, 2017, he was working his normal duties when he came across a mattress and tried to lift it into the back of the truck when he hurt his left hand and another part of his arm was hurting. (T. 29-30) He said he reported the incident to his lead worker shortly after he injured himself or at the end of his shift. (T. 31-32) He filled out an accident report that day, stating that his left shoulder was further injured when he was loading a mattress onto a truck. (PX4)

The Petitioner had injured his left shoulder and hand in a similar manner on June 16, 2016, while removing a dead deer from the side of the road. (T. 21-23) Following that accident, the Petitioner sought treatment on October 26, 2016. (PX1) After an MRI, Dr. Mark Greatting, an orthopedic surgeon at Springfield Clinic, diagnosed a full-thickness rotator cuff tear with some retraction, medial subluxation of the long head of the biceps and arthritis in the acromioclavicular (AC) and glenohumeral joints. (Id.) Dr. Greatting recommended arthroscopy with subacromial decompression, rotator cuff repair and possible open tenodesis of the long head of the biceps. (Id.) The Petitioner testified that Tristar denied approval of the surgery and he continued to work full duty. (T. 27-28) On June 29, 2017, the Petitioner reported numbness in his left index and middle fingers. (Id.) Dr. Greatting suspected chronic carpal tunnel syndrome and recommended a nerve conduction study, which confirmed the diagnosis. (Id.) On September 13, 2017, Dr. Greatting continued his recommendation for shoulder surgery and added a recommendation for a left carpal

tunnel syndrome surgery. (Id.) He thought the problems with the Petitioner's left upper extremity were work-related. (Id.)

On December 29, 2017, Dr. Greatting performed a left shoulder arthroscopy with subacromial decompression and rotator cuff repair, open tenodesis of the long head left biceps and a left carpal tunnel release. (PX1) The Petitioner was ordered off work from the date of surgery until further notice. (Id.) At follow-up visits with Dr. Greatting, the Petitioner noted improvement except for continued numbness and tingling in his index and middle finger and new numbness in his thumb as of March 28, 2018. (Id.) The Petitioner testified that the surgery did not alleviate all of his symptoms. (T. 33)

The Petitioner underwent physical therapy at Springfield Clinic from January 26, 2018, through June 19, 2018, for a total of 42 visits. (Id.) At his first visit, the Petitioner described the two work accidents consistently with his testimony and reports to his physicians. (Id.) In the physical therapy notes from February 27, 2018, the Petitioner reported doing low-intensity exercises in the pool at the gym and a machine at the gym to stretch his shoulder. (Id.) He was advised to avoid resistance exercises with his left upper extremity. (Id.) On March 13, 2018, he reported working on a shelf in his garage over the weekend and being frustrated with continued soreness in his left shoulder. (Id.) On March 26, 2018, he reported doing exercises at the gym using a weighted pulley system. (Id.) He was instructed to discontinue this type of exercise. (Id.) On March 28, 2018, the Petitioner informed Dr. Greatting that he was doing exercises at the gym using up to 5-10-pound weights. (Id.) Dr. Greating told him he should not be doing any strengthening activities or using any weights above and beyond what he was doing in therapy. (Id.) On April 3, 2018, he reported to his physical therapist that he was doing jobs around the house that caused his left shoulder to be sore. (Id.) On April 12, 2018, he reported fishing the day

before and that repeated casting irritated his shoulder. (Id.) April 26, 2018, the Petitioner reported working on his home and moving a water heater and doing some plumbing the day before. (Id.)

At another visit with Dr. Greatting on May 9, 2018, the Petitioner reported he had constant numbness in his median nerve distribution and felt it had not improved. (Id.) He felt his shoulder was improving, although he had significant decreased range of motion and weakness. (Id.) Dr. Greatting recommended a new nerve conduction study. (Id.)

On May 15, 2018, Dr. Greatting filled out a work status slip regarding the Petitioner's left shoulder with an injury date of June 16, 2016, that did not allow the Petitioner to return to work at even sedentary activities and stated that travel outside the home should be limited. (PX1, RX3) The only job requirements he was allowed to perform were driving a pickup truck with automatic transmission and power steering; bending, kneeling and squatting; and standing and walking. (Id.) The restrictions were to not last more than 120 days. (Id.)

The Petitioner underwent additional nerve conduction studies at Springfield Clinic on June 1, 2018, that showed: 1) evidence of significant median nerve slowing at the wrist and ongoing denervation of the median supply muscles of the hand, although values were a bit improved from the prior study; 2) Evidence to suggest a chronic, fairly diffuse, left brachial plexopathy as noted previously; and 3) no evidence of cubital tunnel syndrome or radial neuropathy and no evidence of acute cervical radiculopathy. (PX1) Dr. Greatting reviewed the results with the Petitioner on June 14, 2018, and said the Petitioner's symptoms were chronic and severe prior to the surgery and that he may not have any improvement. (Id.) Dr. Greatting did not feel any further carpal tunnel surgery would likely be helpful. (Id.) Because of lack of significant improvement in the shoulder, Dr. Greatting recommended a new MRI to evaluate the integrity of the repair. (Id.)

At the Petitioner's last physical therapy appointment on June 19, 2018, the therapist noted that the Petitioner made overall progress with range of motion and strength. (Id.) The therapist wrote that his goals were met with the exceptions of external rotation and ability to use the left upper extremity for some daily function without difficulty or much pain. (Id.) The Petitioner reported the ability to perform home improvement tasks and remodeling of garages and home throughout the whole time he was in physical therapy. (Id.) He rated his pain at 1/10 with normal activity. (Id.) He was given an extensive home exercise program and discharged from physical therapy. (Id.)

On July 12, 2018, Dr. Greatting filled out a Semi-Annual Disability Medical Report for the State Employees Retirement System that included diagnoses of complete tear of the left rotator cuff and left carpal tunnel syndrome. (PX1, RX4) Dr. Greatting restricted the Petitioner to no work at that time, with use of the right arm as tolerated and gave an estimated return to work date of September 1, 2018. (Id.) The Petitioner testified that he abided by those restrictions while he was off work "probably for the most part." (T. 83)

On August 1, 2018, Dr. Greatting reviewed an MRI performed on July 20, 2018, that he said showed a partial-thickness, articular-sided supraspinatus tendon tear with retraction and some underlying supraspinatus tendinopathy as well as a partial-thickness articular surface tear of the infraspinatus. (PX1) Dr. Greatting thought a significant portion of the supraspinatus tendon was intact and did not think further surgery was necessary because he was not certain that a further surgical procedure to attempt to repair of the partial-thickness tear would benefit the Petitioner. (Id.) He recommended a return to work without restrictions on August 15, 2018. (Id.) On October 10, 2018, Dr. Greatting found that the Petitioner could continue to work without restrictions or limitations but was going to have some ongoing symptoms in his left shoulder and ongoing

numbness in his left hand, which he thought would be permanent. (Id.) Dr. Greatting released the Petitioner from care and found him to be at maximum medical improvement. (Id.)

On September 9, 2019, the Petitioner was injured again. (AX3, AX6) He said he was wrestling a recliner onto the back of the truck because the winch was not operating and thought he strained his right hand. (T. 37) He said he reported the incident to the lead worker and called Tristar. (Id.) He thought he had injured his hand enough that he could not continue working and had to get medical attention. (T. 38) Because this accident involved a separate body part, the Arbitrator finds it unnecessary to further address this injury herein.

The Petitioner saw Dr. Greatting on May 5, 2021, and reported continuing pain in his left shoulder. (Id.) He had received a traffic citation for improper use of his seatbelt. (Id.) Dr. Greatting wrote a note stating that the Petitioner had chronic pain in his left shoulder and wearing a shoulder strap on his seatbelt could potentially exacerbate his pain. (Id.)

None of the Petitioner's treating physicians nor the Section 12 examiners testified.

The Petitioner testified as to his involvement with the business Sperry Family Properties and him rehabbing properties. He said the business, which purchased and remodeled homes, was owned by his brother, Kevin Sperry, who lives in Florida and put the Petitioner on the business as a signatory so that he could purchase things and pay contractors. (T. 44-45) The Petitioner said he never received compensation for being a signatory on the business accounts. (T. 46) He said he purchased a residence from the business to use as his home that needed a total renovation. (T. 46-47) He said his injuries have delayed his work on the house by several years. (T. 47)

Sangamon County property tax records for 2420 S. Ninth St. showed that the Petitioner purchased the house in 2008 and sold it in 2020. (RX6) The house at 2425 S. Ninth St. was purchased by Sperry Family Properties in 2016 and sold to the Petitioner in 2020. (RX7) Articles

of Dissolution from the Florida Secretary of State show that Sperry Family Properties was organized in 2015 and was dissolved on April 18, 2021, due to the company having sold its property. (RX8)

The Petitioner testified that he was only doing light maintenance on the house at 2425 S. Ninth St. – mowing the yard, putting up fascia, putting a small board on the front stoop – but was not doing construction. (T. 62-63) The Petitioner identified a photo of the back of 2425 S. 9th St. depicting an outbuilding and a large tree, with a time stamp of July 18, 2016, and a photo with a time stamp of September 1, 2016, showing that the outbuilding and tree had been removed. (T. 71, RX9) He said he paid contractors to do the work. (T. 72) He said cousins and friends built a new garage and he may have done some measuring and cutting boards. (T. 73) A photo with a time stamp of November 6, 2017, shows the new garage. (RX9) The Petitioner said that other than the time stamp on the photos, he did not know when they were taken. (T. 93-94)

Joshua Roughley, planning coordinator and building official for the city of Springfield, testified as to the photos of the tree and garage and stated that a permit would be needed for removal of the garage and construction of a new garage, but he did not believe any such permits were issued. (T. 127-128, RX9)

According to the city building records, the Petitioner was subject to administrative proceedings from October 2017 through May 2018 regarding not following regulations for obtaining building permits. (RX11) The Petitioner testified that he signed for building permits at 2425 S. Ninth St. as an agent for Sperry Family Properties. (T. 68-69) However, the applications stated both properties were owner-occupied by the Petitioner, which was a violation of city ordinances. (RX11) On January 24, 2018, the Petitioner applied for permits to install a new furnace and air conditioning system, three new bathrooms and new electrical at 2425 S. Ninth St.

on behalf of Sperry Family Properties. (Id.) The applications did not list contractors and said the property was owner-occupied. (Id.) On May 2, 2018, an electric permit was issued for 2420 S. Ninth St. naming a contractor. (Id.) On May 9, 2018, a plumbing permit and mechanical permit were issued for 2420 S. Ninth St. naming a contractor. The Petitioner acknowledged that he told his physical therapist in May 2018 that he was working on his residence at that time and clarified in his testimony that he was doing cleaning and maintenance. (T. 75-76) He admitted that he told Dr. Greatting on May 9, 2018, that he had not noticed any improvement with his numbness and tingling. (T. 81) He maintained that he was not able to work on his house during that time. (T. 82)

The Petitioner acknowledged that he went to the emergency room on May 12, 2018, for a thumb laceration he suffered while moving a saw. (T. 76-77, RX14) According to Memorial Health System records, the Petitioner reported that he was working with an electrical saw when he accidentally sliced into his thumb and nail. (RX14)

Mr. Roughley identified inspection reports for 2425 S. Ninth St. from August 9, 2019 (framing); March 12, 2021 (electrical and plumbing); and March 19, 2021 (mechanical). (T. 129-130, RX11) Mr. Roughley said the inspection reports reflected a full remodel of a home. (T. 133) He also identified a photograph of the interior of 2425 S. Ninth St. with a time stamp of November 29, 2018, showing bare framing. (T. 135, RX9) He said there were no contractors who acquired permits for remodeling work at 2425 S. Ninth St. (T. 135-136) Regarding the framing work at 2425 S. Ninth St. in 2019, the Petitioner testified that a friend had been helping him. (T. 86) He acknowledged using a framing nailer and possibly a screw gun and that on November 25, 2019, his nerve studies showed bilateral carpal tunnel syndrome. (T. 86-87) He denied that any construction work on his house caused the numbness and tingling in his hands and said they were

already numb by that time. (T. 87) He said he used power tools most of his life and vibratory tools very randomly. (T. 88)

On cross-examination, Mr. Roughley testified that he did not know when the photos of the garage and tree in RX9 were taken and had no independent knowledge of the address for which they were taken. (T. 139) He said the response to the subpoena for the records contained in Respondent's Exhibit 11 were gathered by someone else with the city and he was not involved with any of the permits issued. (T. 140-141) He said he did not look up in the city system if there was a permit for the demolition of the garage at 2425 S. Ninth St. (T. 142) He said there were permits issued for the property but did not recall what they were. (T. 143)

Tommy Fenton, a surveillance investigator with Frasco Investigations, testified as to surveillance he conducted of the Petitioner as reflected in his reports covering the period of March 11, 2018, through July 19, 2018. (RX15) Mr. Fenton stated that on April 27, 2018, he observed the Petitioner going to the grocery store and unloading several bags of groceries into his vehicle. (T. 102) On May 12, 2018, he saw a gray tarp, several table saws and equipment on the front porch at 2420 S. Ninth St. (T. 102-103, RX15) On May 20, 2018, he observed the Petitioner sanding the front porch railings at 2410 S. Ninth St. with a vibrational sander and using a broom. (T. 103, RX15) He took a video of the Petitioner at that time that showed the Petitioner using his right hand then both hands. (T. 103, RX12) On July 12, 2018, Mr. Fenton noted that the back porch was under construction and the garage roof had several rows of shingles nailed down. (T. 106) On July 13, 2018, he saw the Petitioner push-mowing the grass of a neighboring yard and his yard for about 40 minutes – using both hands to push the mower and his right hand to pull the mower up a hill. (T. 106, 109) He felt that activity was odd because it would be painful for a person with carpal tunnel and rotator cuff injuries. (T. 121) On July 19, 2018, Mr. Fenton

observed the Petitioner sitting on his front porch, then walking across the street multiple times carrying an 8-foot long 1x4 wood plank weighing approximately 8 pounds and pushing a fan weighing about 35 pounds on a dolly across the street – both with his right hand. (T. 109-110, 113, 116)

Mr. Fenton identified the photos in his reports as still shots taken from the videos. (T. 114, RX15) He said he never observed anyone assisting the Petitioner or working at his house or the house across the street and did not see any work trucks at either of the properties. (T. 114) On cross-examination, Mr. Fenton testified that he conducted 13 days of surveillance for generally eight hours per day, and the activity he described on direct was the only activity he saw by the Petitioner. (T. 119-120)

The videos were consistent with Mr. Fenton's testimony. (RX12)

On cross-examination, the Petitioner acknowledged that he recently served a suspension at work for actions related to an incident in which he was dishonest with his employer. (T. 48- 49)

The Petitioner testified that he has been working full duty for the Respondent since October 30, 2020. (T. 40) He denied receiving income from any other job from 2016 to the present. (Id.) He said he currently had decreased range of motion in his left shoulder, and his left arm needed help getting past 90 degrees. (T. 35, 40-41) He said his index finger, middle finger and half of the right thumb have been numb for several years. (T. 35) He later said the numbness was on the left. (T. 41) He said his left biceps seemed to have recovered. (Id.) He said he has modified how he performs his job duties, such as using different tools and mechanisms to remove debris from the roads. (T. 35-36) He said he could not get his job done as fast as before the injuries. (T. 42) He said the numbness in his hand was more frustrating than anything, and he couldn't pick up a straight pin unless he used his pinkie because he can't feel anything fine. (T. 41) He said he had

to watch and concentrate on putting a nut on a bolt because he had no feeling. (Id.) Regarding other aspect of his life, the Petitioner said he could no long play the guitar or swing a golf club. (T. 42) He said even zipping and unzipping a zipper took concentration. (Id.) He said he was not currently taking any medications related to his injuries and did not wear any assistive devices like wrist or shoulder braces. (T. 89-90)

CONCLUSIONS OF LAW

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

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

If an accident occurred how the Petitioner said it did, it would meet the criteria for arising out of an in the course of employment as set forth in *McAllister v. Ill. Workers' Comp. Com'n*, 2020 IL 12484. Although the accident was not witnessed, the Petitioner reported it immediately and gave consistent histories of the incident to his medical providers. There was no evidence to rebut the claim of an accident.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the Petitioner's shoulder injury occurred in the course of and arose out of his employment.

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

Dr. Greatting opined that the Petitioner's left upper extremity problems were work-related. There was no evidence to the contrary. However, that opinion was given prior to the accident in this case, which leads to the question of whether the Petitioner's "current" condition was a result

of this accident or the accident on June 16, 2016. For a subsequent incident to be found to be an intervening cause, it must completely break the causal chain between the original work-related injury and the ensuing condition. *Boatman v. Industrial Commission,* 256 Ill.App.3d 1070, 628 N.E.2d 829, 195 Ill.Dec. 365 (1st Dist. 1993).

As of January 4, 2017 – nine months before the accident in this case – the Petitioner was found to have a full-thickness rotator cuff tear with retraction and medial subluxation of the long head of the biceps, for which Dr. Greatting recommended surgery. On June 29, 2017, the Petitioner reported numbness in his left index and middle fingers, and Dr. Greatting suspected carpal tunnel syndrome, which was confirmed by a nerve conduction study on August 7, 2017. When Dr. Greatting wrote his finding on September 13, 2017, that the Petitioner's upper extremity problems were work-related, he recommended carpal tunnel surgery as well as the previously recommended shoulder surgery.

Certainly, the Petitioner's hand and shoulder conditions worsened after the October 19, 2017, accident – to the extent that he required work restrictions. Dr. DeJong diagnosed acute on chronic left shoulder pain in the setting of known rotator cuff rupture with further aggravation in the setting of a strain/lifting injury at work. There was no new MRI performed that would have determined if there was additional pathology that did not exist before the second accident. Lastly, Dr. Greatting did not testify as to whether any of the pathology he noted during the surgery would have resulted from the second accident rather than the first.

Based on all the above, the Arbitrator finds that the Petitioner's current left shoulder and wrist conditions were causally related to the work accident on June 16, 2016, and that the accident of October 19, 2017, caused an aggravation of these conditions but was not an intervening cause.

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?

As the Arbitrator found the accident in this case did not break the causal connection with the June 16, 2016, accident, this issue is addressed in 17WC2380.

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

According to the Request for Hearing (AX2), the parties are disputing entitlement to TTD benefits from October 20, 2017, through August 1, 2018. Based on the findings above that the accident in this case caused an aggravation to the injuries suffered on June 16, 2016, plus Dr. DeJong giving the Petitioner work restrictions and Dr. Greatting taking the Petitioner off work for surgery, the Arbitrator finds that the Petitioner is entitled to TTD benefits.

However, the Arbitrator finds the Petitioner did not prove entitlement to TTD benefits for the entire period of October 20, 2017, through August 1, 2018. The Arbitrator finds the Petitioner's claim was undermined by his statements to his physical therapists and Dr. Greatting about his activities – exercises with weights, jobs around the house, fishing, moving a water heater and plumbing. At his last physical therapy visit, he said he was performing home improvement tasks and remodeling of garages and his home throughout the whole time he was in physical therapy.

Also, the Petitioner was treated in the emergency room on May 12, 2018, for a thumb laceration that he reported occurred when he was working with an electrical saw. The Petitioner testified that he was only moving the saw.

The Arbitrator finds the Petitioner's statements to his medical providers to be more reliable than his testimony that he was not physically remodeling the houses on South Ninth Street – especially in light of evidence in the public records that the remodeling was taking place at 2425

S. Ninth St. in early 2018, but no contractors were listed on the permit applications. As stated above, this is an area in which the Arbitrator finds the Petitioner's testimony to not be credible.

The surveillance of the Petitioner adds nothing to this inquiry, as the Petitioner was shown performing the tasks primarily with his right hand.

Based on this, the Arbitrator finds the Petitioner was entitled to TTD benefits from October 20, 2017, until he began physical therapy on January 26, 2018 – for a total of 14 weeks.

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

As the Arbitrator found the accident in this case did not break the causal connection with the June 16, 2016, accident, this issue is addressed in 17WC2380.

Issue (O): Credit for $35,734.96 for TTD paid while Petitioner was working another job outside restrictions

The issue of TTD paid and credit therefore was not disputed in Paragraph 9 of the Request for Hearing. Whether this credit is due to the Petitioner working another job is irrelevant.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC033183
Case Name	Timothy Sperry v. State of Illinois - Illinois Dept. of Transportation
Consolidated Cases	17WC002380; 18WC017339;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0267
Number of Pages of Decision	16
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Elizabeth Reynolds
Respondent Attorney	Joseph L. Moore

DATE FILED: 6/5/2024

/s/Christopher Harris, Commissioner

Signature

24IWCC0267

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TIMOTHY SPERRY,

Petitioner,

vs. NO: 19 WC 33183

STATE OF ILLINOIS,
ILLINOIS DEPARTMENT OF TRANSPORTATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, employment relationship, causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability ("TTD"), and 8(j) credit, and being advised of the facts and law, clarifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

This claim was consolidated with claim number 17 WC 2380 and 18 WC 17339 for purposes of the arbitration hearing and review before the Commission. A separate decision has been issued for claim 17 WC 2380 and 18 WC 17339.

The Commission clarifies the Arbitrator's award to indicate that Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent receives credit pursuant to Section 8(j) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 21, 2023 is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $856.61 per week for 15-2/7 weeks, from September 10, 2019 through October 28, 2019 and September 3, 2020 through October 30, 2020, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $770.95 per week for a further period of 30.75 weeks, as provided in Section 8(e)9 of the Act, because the injuries sustained caused 15% loss of use of the right hand as related to carpal tunnel syndrome.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit for payments made by the group medical plan and shall hold Petitioner harmless from any and all claims by any provider of the services for which Respondent is receiving this credit, as provided in Section 8(j) 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.

Pursuant to Section 19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

June 5, 2024

O: 5-9-24
CAH/tdm
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC033183
Case Name	Timothy Sperry v. Illinois Dept. of Transportation
Consolidated Cases	17WC002380; 18WC017339;
Proceeding Type	
Decision Type	***Corrected*** Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Kathy Olivero
Respondent Attorney	Chelsea Grubb

DATE FILED: 7/21/2023

/s/ Jeanne AuBuchon, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEEK OF JULY 18, 2023 5.25%

CERTIFIED as a true and correct
copy pursuant to 820 ILCS
305/14

July 21, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)

) SS.

COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

AMENDED ARBITRATION DECISION

Timothy Sperry
Employee/Petitioner

Case # **19 WC 033183**

v.

Consolidated cases:

Illinois Dept. of Transportation
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 Jeanne L. AuBuchon, Arbitrator of the Commission, in the city of Springfield, on February 23, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **Reimbursement for $12,360.38 for TTD paid while Petitioner was working another job outside restrictions**

FINDINGS

On **September 9, 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 $**66,816.00**; the average weekly wage was **$1,284.92**.

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

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

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

Respondent shall be given a credit of $**12,360.38** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**12,360.38.**

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

ORDER

Following arbitration, the parties stipulated that all medical expenses had been paid.

Respondent shall pay Petitioner temporary total disability benefits of **$856.61**/week for **15 2/7** weeks from **9/10/19** through **10/28/19** and **9/3/20** through **10/30/20**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the sum of **$770.95**/week for a further period of **30.75** weeks, as provided in Section 8(e)9 of the Act, because the injuries sustained caused **15% loss of use of the right hand as related to carpal tunnel syndrome.**

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

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

Jeanne L. AuBuchon
Signature of arbitrator

July 21, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on February 23, 2023, on all disputed issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) the causal connection between the accident and the Petitioner's right wrist condition; 3) payment of medical bills; 4) entitlement to temporary total disability benefits for the periods of September 10, 2019, through October 28, 2019, and September 3, 2020, through October 30, 2020; and 5) the nature and extent of the Petitioner's injury. This case was consolidated for the purposes of trial with 17WC2380, involving an accident on June 16, 2016, 2017, and 18WC17339, involving an accident on October 19, 2017, both of which deal with injuries to the Petitioner's left shoulder and wrist. The parties later stipulated in their proposed decisions that medical bills had been paid.

At arbitration, the Respondent objected to Petitioner's Exhibits 5 and 6, which were Section 12 examination reports, on the basis of hearsay. The objection was sustained. The Petitioner objected to several of the Respondent's exhibits: RX1, the Petitioner's personnel file, with the exception of page 53, on the basis that it was inadmissible character evidence, hearsay, lack of foundation and relevance; RX6, property tax records for 2420 South Ninth Street, on the basis of relevance and foundation; RX7, property tax records for 2425 South Ninth Street, on the basis of relevance and foundation; RX9, records from the Sangamon County Tax Assessor, on the basis of relevance and foundation; RX10, surveillance video from Lowe's, on the basis of foundation; RX11, City of Springfield Building and Zoning subpoena response, on the basis of relevance and foundation; and RX12, surveillance file, on the basis of foundation.

The objection to RX1 was sustained on the basis of lack of foundation, and the exhibit was not admitted. The objections to RX6, RX7, RX9 and RX 11 were overruled, as the exhibits are

public records of which the Arbitrator could take judicial notice. Regarding relevance, the Arbitrator will give the exhibits the weight which she believes they should be afforded. The objection to RX10 was sustained based on lack of foundation, and that exhibit was not admitted. A foundation was laid for RX12, and that exhibit was admitted. The rest of the exhibits were admitted without objection.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 58 years old and had been employed by the Respondent as a highway maintainer. (AX3, T. 20). The Petitioner testified that on September 9, 2019, he was wrestling a recliner onto the back of the truck because the winch was not operating and thought he strained his right hand. (T. 37) He said he reported the incident to the lead worker and called Tristar. (Id.) He thought he had injured his hand enough that he could not continue working and had to get medical attention. (T. 38)

The Petitioner had similar accidents while removing debris from the roadways on June 16, 2016, and October 19, 2017. These involved the Petitioner's left shoulder and left hand and are not relevant in this case.

On the day of the accident in this case, the Petitioner went to Springfield Clinic and saw Certified Medical Assistant Lizabeth Smith, to whom he reported the accident consistently with his testimony. (PX1) After X-rays and an examination, CMA Smith diagnosed right wrist pain with questionable scaphoid lunate dissociation, fit the Petitioner for a thumb abductor splint, gave him a work note for no use of the right upper extremity and recommended rest, ice, compression, elevation and an MRI. (Id.) At a follow-up visit on October 1, 2019, the Petitioner saw Dr. Rishi Sharma, a family and sports medicine physician, who read the MRI as showing degenerative changes along the carpometacarpal (CMC) joint and diagnosed a right wrist acute exacerbation of

osteoarthritis. (Id.) He recommended rest, ice, compression, elevation, physical therapy, a home-exercise program and blood tests related to arthritis. (Id.) Dr. Sharma gave work restrictions of desk work only. (Id.) At a visit on October 29, 2019, Dr. Sharma reported that the Petitioner's right wrist osteoarthritis was stable but that the Petitioner had right hand numbness and tingling indicating possible median nerve involvement. (Id.) He recommended nerve conduction studies and released the Petitioner for all activities. (Id.) The Petitioner underwent physical therapy at Springfield Clinic from October 8, 2019, through October 31, 2019, for a total of seven visits. (Id.)

On November 25, 2019, the Petitioner underwent nerve conduction study at Springfield Clinic Neurology that showed severe carpal tunnel compression of the median nerves on the right side, severe residual/recurrent carpal tunnel compression of the median nerve on the left, no evidence of ulnar entrapment at the cubital tunnel level on the right side and no evidence of large fiber distal peripheral neuropathy. (Id.)

Upon referral by Dr. Sharma, the Petitioner saw Dr. Jianjun Ma, an orthopedic hand surgeon at Springfield Clinic, on December 13, 2019, and described the work incident consistently with his testimony and other reports. (Id.) He reported that the numbness and tingling in his right hand were progressing since the accident. (Id.) Dr. Ma reviewed the nerve conduction studies and examined the Petitioner. (Id.) He diagnosed carpal tunnel syndrome of the right wrist and recommended a right carpal tunnel release. (Id.)

The Petitioner testified that he underwent a Section 12 examination by Dr. Ryan Calfee, an orthopedic hand surgeon at Washington University and, afterwards, the Respondent's insurer approved the surgery recommended by Dr. Ma. (T. 39)

Dr. Ma performed the right carpal tunnel release on September 3, 2020. (PX1) The Petitioner underwent physical therapy at Springfield Clinic from September 29, 2020, through

October 29, 2020, for a total of nine visits. (Id.) At his last visit he reported his range of motion was fine and his strength continued to improve, but he still had significant numbness in his hand. (Id.) The Petitioner followed up with Dr. Ma on October 30, 2020, and complained of significant numbness in his right index and middle fingers and over the medial aspect of the right thumb, as well as mild muscle atrophy in the thenar area. (Id.) Dr. Ma wanted to give the Petitioner more time for his nerve to regenerate and advised him to continue with a home exercise program. (Id.) He released the Petitioner to return to work as tolerated. (Id.)

At a follow-up visit to Dr. Ma on December 29, 2020, the Petitioner reported that he had no sensation in his right hand. (Id.) Dr. Ma said the Petitioner's lack of sensation could be complicated by his history of diabetes and that it could take up to a year to recuperate. (Id.) At his last visit to Dr. Ma on February 23, 2021, and reported that he felt his sensation in both hands was poor. (Id.) Dr. Ma was not sure if this was related to carpal tunnel syndrome or other reasons such as diabetic neuropathy. (Id.) He released the Petitioner to return on an as-needed basis. (Id.)

None of the Petitioner's treating physicians nor the Section 12 examiner testified. (Id.)

The Petitioner testified as to his involvement with the business Sperry Family Properties and him rehabbing properties. He said the business, which purchased and remodeled homes, was owned by his brother, Kevin Sperry, who lives in Florida and put the Petitioner on the business as a signatory so that he could purchase things and pay contractors. (T. 44-45) The Petitioner said he never received compensation for being a signatory on the business accounts. (T. 46) He said he purchased a residence from the business to use as his home that needed a total renovation. (T. 46-47) He said his injuries have delayed his work on the house by several years. (T. 47)

Sangamon County property tax records for 2420 S. Ninth St. showed that the Petitioner purchased the house in 2008 and sold it in 2020. (RX6) The house at 2425 S. Ninth St. was

purchased by Sperry Family Properties in 2016 and sold to the Petitioner in 2020. (RX7) Articles of Dissolution from the Florida Secretary of State show that Sperry Family Properties was organized in 2015 and was dissolved on April 18, 2021, due to the company having sold its property. (RX8)

The Petitioner testified that he was only doing light maintenance on the house at 2425 S. Ninth St. – mowing the yard, putting up fascia, putting a small board on the front stoop – but was not doing construction. (T. 62-63) The Petitioner identified a photo of the back of 2425 S. 9th St. depicting an outbuilding and a large tree with a time stamp of July 18, 2016, and a photo with a time stamp of September 1, 2016, showing that the outbuilding and tree had been removed. (T. 71, RX9) He said he paid contractors to do the work. (T. 72) He said cousins and friends built a new garage and he may have done some measuring and cutting boards. (T. 73) A photo with a time stamp of November 6, 2017, shows the new garage. (RX9) The Petitioner said that other than the time stamp on the photos, he did not know when they were taken. (T. 93-94)

Joshua Roughley, planning coordinator and building official for the city of Springfield, testified as to the photos of the tree and garage and stated that a permit would be needed for removal of the garage and construction of a new garage, but he did not believe any such permits were issued. (T. 127-128, RX9)

According to the city building records, the Petitioner was subject to administrative proceedings from October 2017 through May 2018 regarding not following regulations for obtaining building permits. (RX11) The Petitioner testified that he signed for building permits at 2425 S. Ninth St. as an agent for Sperry Family Properties. (T. 68-69) However, the applications stated both properties were owner-occupied by the Petitioner, which was a violation of city ordinances. (RX11) On January 24, 2018, the Petitioner applied for permits to install a new

furnace and air conditioning system, three new bathrooms and new electrical at 2425 S. Ninth St. on behalf of Sperry Family Properties. (Id.) The applications did not list contractors but said the property was owner-occupied. (Id.) On May 2, 2018, an electric permit was issued for 2420 S. Ninth St. naming a contractor. (Id.) On May 9, 2018, a plumbing permit and mechanical permit were issued for 2420 S. Ninth St. naming a contractor.

Mr. Roughley identified inspection reports for 2425 S. Ninth St. from August 9, 2019 (framing); March 12, 2021 (electrical and plumbing); and March 19, 2021 (mechanical). (T. 129-130, RX11) Mr. Roughley said the inspection reports reflected a full remodel of a home. (T. 133) He also identified a photograph of the interior of 2425 S. Ninth St. with a time stamp of November 29, 2018, showing bare framing. (T. 135, RX9) He said there were no contractors who acquired permits for remodeling work at 2425 S. Ninth St. (T. 135-136) Regarding the framing work at 2425 S. Ninth St. in 2019, the Petitioner testified that a friend had been helping him. (T. 86) He acknowledged using a framing nailer and possibly a screw gun and that on November 25, 2019, his nerve studies showed bilateral carpal tunnel syndrome. (T. 86-87) He denied that any construction work on his house caused the numbness and tingling in his hands and said they were already numb by that time. (T. 87) He said he used power tools most of his life and vibratory tools very randomly. (T. 88)

Tommy Fenton, a surveillance investigator with Frasco Investigations, testified as to surveillance he conducted of the Petitioner as reflected in his reports covering the period of March 11, 2018, through July 19, 2018. (RX15) That surveillance is addressed in the companion cases but not herein because it occurred prior to the accident in this case.

On cross-examination, the Petitioner acknowledged that he recently served a suspension at work for actions related to an incident in which he was dishonest with his employer. (T. 48- 49)

The Petitioner testified that he has been working full duty for the Respondent since October 30, 2020. (T. 40) He denied receiving income from any other job from 2016 to the present. (Id.) He said his index finger, middle finger and half of the right thumb have been numb for several years. (T. 35) He later said the numbness was on the left. (T. 41) He said he has modified how he performs his job duties, such as using different tools and mechanisms to remove debris from the roads. (T. 35-36) He said he could not get his job done as fast as before the injuries. (T. 42) He said the numbness in his hand was more frustrating than anything, and he couldn't pick up a straight pin unless he used his pinkie because he can't feel anything fine. (T. 41) He said he had to watch and concentrate on putting a nut on a bolt because he had no feeling. (Id.) Regarding other aspect of his life, the Petitioner said he could no long play the guitar or swing a golf club. (T. 42) He said even zipping and unzipping a zipper took concentration. (Id.) He said he was not currently taking any medications related to his injuries and did not wear any assistive devices like wrist or shoulder braces. (T. 89-90)

CONCLUSIONS OF LAW

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

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

If an accident occurred how the Petitioner said it did, it would meet the criteria for arising out of an in the course of employment as set forth in *McAllister v. Ill. Workers' Comp. Com'n*, 2020 IL 12484. The Petitioner reported the accident immediately and his descriptions of the incident to his medical providers was consistent. There was no evidence to the contrary.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that the Petitioner's right wrist injury occurred in the course of and arose out of his employment.

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

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

Although there were no causation opinions from any doctors, the circumstantial evidence showed that the accident caused an acute onset of carpal tunnel syndrome. The Petitioner had no right-hand complaints before the accident. Afterwards, he was diagnosed with carpal tunnel syndrome.

Therefore, the Arbitrator finds that the Petitioner's right hand/wrist condition was causally related to the work accident on September 9, 2019.

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?

Following arbitration, the parties stipulated that the medical expenses had been paid.

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

According to the Request for Hearing (AX3), the parties are disputing entitlement to TTD benefits from September 10, 2019, through October 28, 2019, and from September 3, 2020, through October 30, 2020. Based on the findings above regarding causation and the medical records showing that the Petitioner either was under restrictions or ordered off work entirely for the above periods, the Arbitrator finds that the Petitioner is entitled to TTD benefits.

Although in the cases involving the injuries the Petitioner suffered on June 16, 2016, and October 19, 2018, the Arbitrator found credibility issues regarding the Petitioner's temporary total disability (see 18WC17339), those issues are not present here. The Petitioner made no reports to his medical providers that he was performing tasks that would have been beyond his restrictions.

Therefore, the Arbitrator finds the Petitioner was entitled to TTD benefits from September 10, 2019, through October 28, 2019, and from September 3, 2020, through October 30, 2020 – for a total of 15 and 2/7 weeks.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner continues to work as a highway maintainer and faces the same physical challenges as he did prior to the accident. Therefore, the Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 58 years old at the time of the injury. He has several work years left during which time he will need to deal with the residual effects of the injury. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner has been working full duty without restrictions but said he has had to modify how he performs his duties and that he does not work as quickly as before the accident. He said he still had numbness in his right hand. He said he could no longer play the guitar or swing a golf club and had difficulty with fine motor tasks. Dr. Ma was unsure if the continued loss of sensation this was related to carpal tunnel syndrome or other reasons such as diabetic neuropathy. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 15 percent of the right hand.

Issue (O): Reimbursement for $12,360.38 for TTD paid while Petitioner was working another job outside restrictions

As the Arbitrator found above that the Petitioner is entitled to TTD benefits, no reimbursement is ordered, but the Respondent shall have credit for TTD paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010820
Case Name	Lisa Baird v. Solace Hospice
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0268
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Haris Huskic
Respondent Attorney	Lauren Serafin, Peter Havighorst

DATE FILED: 6/6/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LISA BAIRD,

Petitioner,

vs. NO: 21 WC 010820

SOLACE HOSPICE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary disability, and permanent disability, and being advised in the facts and law, reverses the Decision of the Arbitrator and awards workers' compensation benefits for the reasons stated below.

Petitioner testified she worked for Solace Hospice (hereinafter "Respondent") performing holistic care for hospice patients. Petitioner testified on direct examination that some of her duties with Respondent included toileting, bathing, dressing, feeding, and transferring hospice patients/residents that were incapable of performing these tasks on their own. Petitioner was assigned nine patients. Petitioner testified that she would have to feed each resident three times a day- breakfast, lunch, and dinner- approximately 27 times per day. Petitioner was required to wear rubber-soled shoes. Petitioner's job duties required a lot of standing, sitting, bending, lifting, and crouching.

According to the Incident Report Petitioner started her shift at 7:00 am on March 25, 2021. She testified that she had taken no breaks until the accident took place. Petitioner testified that she had gone down to get a resident from the salon about 1:15 p.m., as the patient/resident

had her hair done and had missed lunch. Petitioner went to warm up food and get the patient a glass of water.

Petitioner described the dining area on cross examination as, "an open space in between, like outside of their rooms. We have a little kitchenette in one of the other rooms. And that's where we prepare their plates and that's where our water is." The floor of the dining room was tiled.

On cross examination Petitioner testified that she was carrying the resident's food and drink when "my (left) knee gave out and I fell and hit it on the floor, along with the food and drink." Petitioner testified that she was carrying a tray with a regular sized dinner plate and a glass containing 8 ounces of water and was walking to the table to feed the resident when she fell. Petitioner did not testify to any defects or hazards contributing to the fall.

On March 30, 2021, Petitioner presented to Northwestern Medicine complaining of left knee pain. She reported the onset of symptoms five days earlier when she took a step with her right foot, her left leg locked, and her ankle rolled, and she fell at work. Following a physical examination and an x-ray Petitioner was diagnosed with a sprain of the medial collateral ligament and an acute medial meniscal tear of the left knee. Additionally, there was a suspected diagnosis of avascular necrosis secondary to aggressive steroid therapy for asthma. Petitioner was ordered off work at that time.

An MRI was performed on April 2, 2021, at Northwestern Memorial Hospital. The impression of the radiologist was "Multifocal subchondral marrow edema, as described. Due to multi-focal bilaterality, consider avascular necrosis. Subchondral fractures could have similar appearance." The medical records indicate the April 2, 2021, left knee MRI was compared to a right knee MRI dated December 12, 2019. The left knee MRI showed mild degenerate changes on the anterior horn of the lateral meniscus, bandlike subcortical marrow edema of the lateral femoral condyle, similar small subcortical lesion, small defect noted posteriorly on the medial femoral condyle and the findings due to multifocal bilaterality avascular necrosis should be considered. Mild chondromalacia was also described.

Petitioner denied any prior medical treatment or complaints involving her left knee. Prior to March 25, 2021. Petitioner was able to work full duty without any restrictions prior to the March 25, 2021, work-related accident.

On April 7, 2021, Petitioner returned to Northwestern Medicine complaining of left knee pain. According to the medical records she reported her activities were limited by pain that was located around the patella and radiating down to her toes. She was ordered off work and prescribed crutches. Petitioner was to return to clinic in 4 weeks. The medical records reflect that Petitioner's diagnosis was contusion of the left knee, avascular necrosis of medial condyle of the left femur due to adverse effects of steroid therapy.

Petitioner transferred her medical care and first presented to Dr. Howard Freedberg, an orthopedic surgeon on April 27, 2021. The medical records document continued complaints of pain in the lateral aspect of Petitioner's left knee. The pain is described as constant with intermittent "pins and needles" sensation down to her toes. Dr. Freedberg prescribed a knee brace and home exercise program. Petitioner was kept off work and was directed to return to clinic in one week with MRI results. Dr. Freedberg determined that Petitioner was medically unable to work.

Petitioner returned to Dr. Freedberg on May 4, 2021; at which time he continued her off work status. He documented that Petitioner was to continue wearing a Shield's knee brace and that she was ambulating with crutches.

On May 25, 2021, Petitioner reported to Dr. Freedberg that her knee was sore from therapy. She stated that she was doing physical therapy three times per week which she noted was helping. Dr. Freedberg ordered continuation of the knee brace and physical therapy.

Dr. Freedberg released Petitioner to return to work with light duty restriction on June 14, 2021, and continued her on light duty throughout June and July. On August 10, 2021, Dr. Freedberg's clinical note elaborated on the light duty restrictions. He specified that "Patient is allowed to walk, but with breaks every 2 hours or as needed. Lifting as tolerated. Left knee sprain/strain."

On September 7, 2021, Petitioner reported to Dr. Freedberg that two weeks prior she was walking up the stairs and her left knee gave out after feeling sharp pain and she fell forward on the left knee. According to Petitioner her left knee was worse following that incident and she felt sharp, constant pain when walking. Dr. Freedberg noted that patient had failed extensive conservative measures and surgical intervention was now recommended pending medical clearance. At this appointment Dr. Freedberg gave Petitioner a note stating that she was medically unable to work.

Petitioner was seen in clinic by Dr. Freedberg on October 19, 2021. She reported her left knee was in constant pain. She reported increased pain since the prior office visit even with use of her knee brace. Petitioner had been taking Tramadol as needed and requested a refill. She reported her pain level as 8/10. On physical examination she expressed exquisite tenderness over the medial joint line. Dr. Freedberg discussed surgery as a current treatment option, specifically knee arthroscopy with possible core decompression of femoral condyles. Petitioner elected surgery and informed consent was obtained. Surgery was planned for October 26, 2021, at St. Alexius.

Petitioner underwent arthroscopic surgery on her left knee performed by Dr. Freedberg on October 26, 2021, at St. Alexius Medical Center. The post-operative diagnosis was left knee sprain/strain, possible avascular necrosis effusion. Post-operatively she was medically unable to work.

On December 14, 2021, Petitioner presented to Dr. Freedberg's office for post-operative follow-up 7 weeks following surgery. She was attending physical therapy two times per week. Dr. Freedberg had her off work with range of motion and weight-bearing as tolerated. She was to return to clinic in 4 weeks.

Petitioner began post-operative physical therapy at Northern Rehab Physical Therapy on November 11, 2021, on orders from Dr. Freedberg. She continued physical therapy through April 8, 2022. Petitioner reported that her initial injury occurred in March 2021, and she had to work light duty through August 2021. The physical therapy record documents that Petitioner was off work since August 2021. In the PT Discharge Summary from April 8, 2022, Petitioner stated that she felt stronger and able to perform regular work duties. Any soreness was reported as aching and fatigue that resolved with rest. Her self-reported pain score was 1/10. She was assessed as having returned to her prior level of function with good left knee stability. Petitioner was determined to be appropriate to return to full, unrestricted duty once cleared by her physician.

The medical records from Dr. Freedberg document that Petitioner was cleared to return to full-duty work without restriction effective January 18, 2022. She was directed to return to clinic for follow up in 4 weeks.

According to Dr. Freedberg's medical records he returned Petitioner to light duty work effective February 15, 2022. At her appointment she reported increased pain and tingling after long periods of standing or sitting.

On April 12, 2022, Petitioner was seen by Dr. Freedberg once again in follow-up. She had been released from physical therapy. She denied any numbness or tingling and self-rated her pain score at 3/10. She reported increased pain after prolonged periods of activity. Dr. Freedberg noted that she could work full duty and was to return to clinic in 4 weeks.

Petitioner presented to Dr. Freedburg on May 10, 2022, for follow up of her left knee. She reported that her knee hurts toward the end of her shift at work. On physical examination there was no swelling or effusion and no tenderness to palpation. Dr. Freedberg released petitioner to unrestricted full-duty work and discharged from care. Dr. Freedberg documented that Petitioner had achieved MMI.

At hearing Petitioner testified that she continues to work for Respondent taking care of hospice patients. She still experiences left knee pain at the end of her shift. Petitioner takes over the counter Tylenol for pain. She has made some adjustments at work to accommodate her left knee, she does not do a lot of bending, takes the elevator instead of the stairs, and takes breaks to elevate her left knee more often. Petitioner characterized her knee surgery as "a success".

The Arbitrator found that Petitioner failed to prove accident and denied the claim. The Commission relies on the nature of Petitioner's job with Respondent and the credible testimony of Petitioner to define the constellation of responsibilities that comprise her job. Petitioner testified that prior to the work accident she had no issues and no medical treatment for her left knee. She was able to work unrestricted full-duty up to the accident. The Commission finds that a preponderance of the evidence in the records supports a work-related aggravation of a pre-existing condition, under *Sisbro,Inc. v. Industrial Comm'n.,* 207 Ill.2d 193 (2003) i.e. avascular necrosis. Petitioner testified at hearing that she had begun her shift at 7:00 am and was scheduled to work until 7:00 pm. She was on her feet throughout that time until she fell, attending to the needs of 9 patients assigned to her care.

Petitioner testified that her responsibilities included bathing, dressing, transferring patients, feeding, toileting, and transporting patients to various activities. She described her job as being physically demanding including a lot of standing, walking, and operating a Hoyer lift.

On March 25, 2021, Petitioner had worked straight through from the start of her shift until the work-related accident which occurred at approximately 1:15 p.m. Immediately prior to the fall she had gone down to the salon to retrieve a resident who had gotten her hair done. Petitioner transferred the resident from the salon chair to the patient's wheelchair and returned her to the dining area where she would prepare and feed her lunch. Petitioner then walked to the kitchenette area where she warmed the food, poured a glass of water, and carried the items on a 12-inch tray and was returning to the resident when she fell.

It is clear that Petitioner was engaged in an activity that was causally connected to her employment when she fell. Petitioner's fall risk was directly associated with her employment. She was carrying a food tray to the resident in order to feed her. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill. 2d 52,58 (1989). A risk is "incidental to employment" when it belongs to or is connected with what the employee has to do in fulfilling her job duties. *McAlister, 2020 IL 124848.* The record further shows that Petitioner gave timely notice to Respondent. The Commission finds that Petitioner did sustain a work-related accident and awards benefits accordingly. The parties stipulated to AWW of $640.00 at the time of the accident.

The Commission finds that Petitioner's employment as a Certified Nursing Assistant/ Hospice worker presents many unique risks of injury as it involves substituting one's own strength, mobility, and dexterity to support the needs of a person disabled either by the infirmities of age or illness. It requires lifting, turning and safely transferring patients who may be unable to assist or cooperate resulting in an increased risk of harm to the worker. While Petitioner was engaged in the rather benign task of carrying a food tray at the moment she fell, that act had been preceded by 6 hours of assisting hospice patients. The Commission finds that it

would be remiss if it failed to recognize the employment context in which Petitioner sustained her injury.
Applying a "chain of events" analysis the Commission finds that the injury was causally related to the fall Petitioner sustained while bringing a lunch tray to the patient/resident.

Petitioner asserts in her brief that she is entitled to TPD benefits when she worked fewer hours during several pay periods following her injury. The Commission notes that there was no testimony elicited from Petitioner linking the reduced hours to light duty work restrictions. Examination of the paystubs themselves only reflect the hours worked but make no mention of light duty restrictions or any other accident related reason for the reduced hours. For this reason the Commission finds that Petitioner failed to meet the burden of proof on the issue of entitlement to maintenance or TPD benefits.

Turning to the determination of TTD benefits due to Petitioner, Commission finds that Petitioner was temporarily totally disabled from April 7, 2021, through June 14, 2021, when Dr. Freedberg released her to light duty work. According to Petitioner's pay stubs which were entered into evidence, (PX8) Petitioner however actually returned to work on June 8, 2021.

The Commission finds that Petitioner is entitled to TTD benefits commencing April 8, 2021, though June 7, 2021, and again from November 8, 2021, through January 18, 2022, in the amount of $426.67 per week representing 18 weeks and 5 days.

Petitioner submitted in evidence a Consolidated Medical Bills Exhibit List (PX9) which reflects a total of $57,022.83 in unpaid medical bills. These bills reflect expenses incurred in the reasonable and necessary treatment and rehabilitation of Petitioner's left knee following her work-related accident on March 25, 2021. No evidence has been introduced rebutting the reasonableness or necessity of the treatment and the Commission finds that it is causally related to Petitioner's work injury.

Lastly, the Commission determines the permanency award. The Commission considers the five factors enumerated in section 8.1b(b) of the Workers' Compensation Act: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Regarding factor (i), the Commission notes no impairment rating has been submitted into evidence. The Commission therefore gives no weight to the factor.

Regarding factor (ii), at the time of the injury Petitioner was a CNA/hospice worker, which is a physically demanding job. Petitioner testified that upon completion of her medical treatment she returned to work for Respondent and still worked there at the time of hearing. The Commission gives moderate weight to this factor.

Regarding factors (iii) and (iv), the parties stipulated that Petitioner was 38 years of age at the time of the injury. She is now 41 years old. Dr. Freedberg released Petitioner to return to her employment with Respondent. The Commission finds no evidence to support impairment of earnings causally connected to the work accident and places more weight to this factor.

Regarding factor (v), the Commission notes that Petitioner underwent surgery on her left knee and was left with residual complaints. The Commission further notes that the medical records show avascular necrosis in Petitioner's right knee secondary to chronic steroid therapy for treatment of asthma in addition to a left knee sprain. No medical evidence was presented causally connecting any aggravation of the condition of avascular necrosis as a consequence of Petitioner's fall. The medical record shows that Petitioner was diagnosed with avascular necrosis in Petitioner's right leg dating back to December 12, 2019. According to the medical records from Northwestern Medicine the avascular necrosis was secondary to aggressive steroid therapy for asthma. For this reason, the Commission finds that Petitioner's condition of avascular condition was pre-existing and the only injury causally related to Petitioner's fall on March 25, 2021, was a knee sprain/strain and soft tissue injury to the left knee.

At the arbitration hearing Petitioner was not wearing a knee brace. She takes over the counter Tylenol when she has knee pain. Petitioner described the left knee surgery as "a success". The Commission finds it telling that Petitioner put on no medical evidence to attribute Petitioner's ongoing left knee pain and swelling to the aftereffects of the sprain versus the condition of avascular necrosis. The Commission places greater weight on this factor. Accordingly, the Commission finds that Petitioner sustained 10% loss of use of the left leg pursuant to Section 8(e) of the Act

For the foregoing reasons the Commission reverses the Decision of the Arbitrator.

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IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 5, 2023, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $426.67 per week commencing April 8, 2021, through June 7, 2021; and commencing November 8, 2021, through January 18, 2022, representing 18 weeks and 5 days, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner related unpaid medical bills in evidence totaling $57,022.83 through May 10, 2022, pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $426.67 per week for a period of 21.5 weeks, as provided in Section 8(e) of the Act, for the reason that the injuries sustained caused the loss of use of 10% of the left leg.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $65,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 6, 2024
SJM/msb
o-04/10/2024
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010820
Case Name	Lisa Baird v. Solace Hospice
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Lauren Serafin

DATE FILED: 6/5/2023

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

/s/Frank Soto, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Kane)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

LISA BAIRD
Employee/Petitioner

v.

SOLACE HOSPICE
Employer/Respondent

Case #**21 WC 10820**

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 Soto, Arbitrator of the Commission, in the city of Geneva, on March 31, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 25, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $33,280.00; the average weekly wage was $640.00.

On the date of accident, Petitioner was 38 years of age, ***single*** with 3 dependent children.

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

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

Respondent shall be given a credit of $ for TTD, $ for TPD, $ for maintenance, and $82.71 for other benefits, (medical bills) for a total credit of $82.71.

Respondent is entitled to a credit of $82.71 as well as a credit for any bills paid by group under Section 8(j) of the Act.

ORDER

Petitioner failed to prove by the preponderance of the evidence she sustained an accidental injury that arose out of her employment, as set forth in the Conclusions of Law attached hereto. Based upon the above finding, the remaining issues are moot and need not be address. The relief sought by Petitioner is hereby denied.

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

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

By: /s/ Frank J. Soto
Arbitrator

JUNE 5, 2023

Procedural History

This case proceeded to trial on March 31, 2023 and the disputed issues were accident, causation, medical bills, TTD and TPD benefits, and the nature and extend of Petitioner's injury. (Arb. Ex. 1).

Findings of Fact

Petitioner's Testimony

Lisa Baird (hereinafter referred to as "Petitioner" testified she worked for Solace Hospice (hereinafter referred to as "Respondent") performing holistic care for hospice patients. (R. at 10.) She described her job duties as toileting, bathing, dressing, transferring patients and feeding them. *Id*. Petitioner testified, on March, 25, 2021, she had gone down to get a resident from the salon to take to lunch. Because the patient missed lunch, Petitioner went to warm up food and get the patient a glass of water. (R. at 11.) Petitioner testified as she was walking her left knee gave out and she fell to the ground. *Id*. Petitioner further testified she was carrying a food tray when she fell. (R. at 47). Petitioner testified there was no water or broken tiles on the floor where she fell. *Id.*

Petitioner testified after her injury, she completed an Employee Incident Report and she writing under the description of injury, "*left knee locked, went down rolling the ankle and knee popped when I hit the floor*." Petitioner confirmed checking "no" when the form asked if there were any contributing factors to the injury. (Resp. Ex. 1) Petitioner testified that she did not think she told all her physicians she was carrying anything at the time of her injury but she did recall telling Dr. Freedberg. (R. at 48.)

Petitioner testified prior to March 25, 2021, she did not have any left knee complaints nor did she receive medical treatment for the left knee. (R. at 12.) Petitioner testified since her work injury, she had a hernia removal on May 24, 2022 and had three other surgeries due to complications from unrelated treatment. (R. at 38).

Accident Report

Pursuant to the First Report of Injury, Petitioner indicated was working for Respondent as a regular full-time employee when her knees locked and she fell, rolling her ankle. On the form, Petitioner stated her knee popped as she hit the floor. (Resp. Ex. 3)

Medical

Petitioner treated at Northwestern Medicine from March 30, 2021 through May 5, 2021. On March 30, 2021, Petitioner initially presented to Northwestern complaining of left knee pain for the past 5 days. The medical records state "*Pt took a step with her right foot, left leg locked and her ankle rolled, and she heard a loud pop and that is when she fell*." (Pet. Ex. 3). X-rays showed no evidence of an acute fracture or dislocation. An MRI was ordered which Petitioner underwent on April 2, 2021. The medical records indicate the April 2, 2021 left knee MRI was compared to a right knee MRI dated December 12, 2019. [1] The left knee MRI showed mild degenerate changes on the anterior horn of the lateral meniscus, bandlike subcortical marrow edema of the lateral femoral condyle, similar small subcortical lesion, small defect noted posteriorly on the medical femoral condyle and the findings may be compatible with a bone contusion which are similar to the right knee findings due to multifocal bilaterality and that avascular necrosis should be considered. (Pet. Ex. 3).

Petitioner was originally diagnosed a left knee contusion but subsequently she was diagnosed with a left knee contusion, avascular necrosis of the medial condyle of the left femur, and avascular necrosis of the left femur due to an adverse effect of steroid therapy. (Pet. Ex. 3). The medical records dated April 7, 2021 states "*We discussed her MRI. She has similar lesions noted on the right MRI from 2019. She was on high dose steroids for a good portion of her life due to asthma…I believe most of her pain to be mediated from the anterior contusion she suffered with the fall, but her period of rest should allow AVN and contusion to improve.*" (Pet. Ex. 3).

On April 27, 2021, Petitioner presented to Dr. Freedberg of Suburban Orthopaedics. On that date, Petitioner reported placing a patient at a lunch table and when she went to pick up lunch in the cafeteria her left knee locked up, popped and she fell. (Pet. Ex. 4, Resp. Ex. 2). The Suburban Orthopaedics medical records indicate Petitioner reported receiving medical treatment at Kiswaukee Northwestern emergency room in Dekalb and she had undergone x-rays and was referred to Dr. Wang. Petitioner further reported to Dr. Freedberg she came to Suburban Orthopaedics for a second opinion since the physician recommended by the ER told her she was bleeding internally and her next appointment with Dr. Wang was scheduled for 5/5/21.[2] Dr.

[1] Petitioner underwent a right knee MRI on April 7, 2021. At trial, Petitioner denied undergoing left knee medical treatment and experiencing left knee complaints prior to her alleged work accident of March 25, 2021.

[2] The Arbitrator notes Petitioner did not testify to going to the emergency room at Kiswaukee Northwestern or treating with Dr. Wang nor did she submit those medical records into evidence.

Freedberg diagnosed a left knee sprain/strain and possible MMT and knee effusion. Dr. Freedberg reviewed the MRI dated 4/2/21 which, he believed, showed multifocal subchondral marrow edema due to multifocal bilaterally and consider avascular necrosis with mild patellar chondrmalacia. (Pet. Ex. 4).

Petitioner underwent surgery on October 26, 2021. The operative report states surgical intervention was recommended after conservative measures failed and because the MRI showed avascular necrosis. The surgery performed consisted of left knee arthroscopy, chondroplasty to the patella, lateral tibial plateau, medial femoral condyle with an open reduction, curettage, and bone grafting of the avascular necrosis of the lateral femoral condyle with AlloSync DBM. The post operative diagnosis was chondromalacia of the medial femoral condyle, chondromalacia of the patellae, and chondromalacia of the lateral tibial plateau with an avascular necrosis of the lateral femoral condyle. (Pet. Ex. 4).

On January 18, 2022, Petitioner returned to Suburban Orthopaedics reporting physical therapy was making her paid worse but she was improving with the home exercises. At that time, Petitioner was released to return to work full duty. (Pet. Ex. 4). Petitioner returned to Suburban Orthopaedics on April 12, 2022. At that time, Petitioner reported completing physical therapy and that she was experiencing increased pain after prolonged periods of activity. On May 10, 2022, Petitioner followed up at Suburban Orthopaedic and Dr. Freedberg released Petitioner found Petitioner to be at MMI and he released her from care. (Pet. Ex. 4)

Conclusions of Law

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

With respect to issue "C" whether an accident occur that arose out of and in the course of Petitioner's employment, the Arbitrator finds as follows:

To obtain benefits under the Act, a claimant must establish by a preponderance of the evidence that he or she sustained an accidental injury "arising out of" and "in the course of" one's employment. 820 ILCS 305/1(d) (West 2014); *McAllister*, 2020 IL 124848, Par. 32; *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d. 193, 203 (2003); The "arising out of" component is primarily connected with causal connection. *McAllister*, 2020 IL 124848, Par. 36. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or

incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Id.* Par. 36; *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). A risk is "incidental to the employment" when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *McAllister*, 2020 IL 124848, Par. 36; *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App. (4th) 200359WC, Par. 18.

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

The first category of risks involves risks that are distinctly associated with employment. "Employment risks include the obvious kinds of industrial injuries or occupational diseases and are universally compensated." *McAllister*, 2020 IL 124848, Par. 40; *Illinois Institute of Technology Research Institute v. Industrial Comm'n,* 314 Ill. App. 3d. 149, 162 (2000). Examples of employment-related risks include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work side, or performing some work-related tasks which contributes to risk of falling." *McAllister*, 2020 IL 124848, Par. 40; *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106 (2006). Injuries resulting from a risk distinctly associated with employment are deemed to arise out of the claimant's employment and are compensable under the Act. *McAllister*, 2020 IL 124848, Par. 40; *Steak 'n Shake v. Illinois Workers' compensation Comm'n*, 2016 IL. App. 3d 150500WC Par. 35.

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

The third category of risks involves neutral risks that have no particular employment or personal characteristics. *McAllister*, 2020 IL 124848, Par. 44; Injuries resulting from a neutral

risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Id.; Springfield Urban League v. Illinois Workers' Comm'n*, 2013 IL App (4th) 120219WC, Par. 27. Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. *McAllister,* 2020 IL 124848, Par. 44; *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n,* 407 ILL. App. 3d 1010., 1014 (2011).

The Arbitrator finds Petitioner failed to prove by the preponderance of the evidence she sustained an accidental injury that arose out of her employment.

The Arbitrator further finds Petitioner failed to prove by the preponderance of the evidence that her left knee injury was the result of an employment risk distinctly associated with her employment. Petitioner fell because her left leg locked up or gave out while she was walking. To prevail under a personal risk analysis, the clamant would have to establish by a preponderance of the evidence that the conditions of the workplace significantly contributed the claimant's injury or expose the claimant to an increased risk of injury. *Buckley v. Illinois Workers' Compensation Comm'n*, 2022 IL App (2d) 21055WC-U, citing *McAllister v. Illinois Worker's Compensation Comm'n*, 2020 IL 124848 (2020) and *Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1229 (2000). Examples of employment-related risks include "tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work side, or performing some work-related tasks which contributes to risk of falling." *McAllister*, 2020 IL 124848, Par. 40; *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106 (2006). In this case, Petitioner did not proffer any evidence that carrying the tray created an employment risk distinctly associated with her employment. No evidence was presented that carrying the tray contributed to Petitioner fall. Petitioner fell because her leg locked up or gave out while walking, which is not due to any risks distinctly associated with her employment.

The Arbitrator finds Petitioner's injury was due to a personal risk. Petitioner's knee locked up which caused her to fall. At Northwestern Medicine, on March 30, 2021, Petitioner said she took a step with her right foot and her left leg locked up causing her ankle to roll and when she heard a loud pop she fell. (Pet. Ex. 3). Petitioner told Dr. Freedberg, on April 27, 2021, after she placed a patient at a lunch table, she went to pick up lunch in the cafeteria when her left knee

locked up, popped and she fell. (Pet. Ex. 4, Resp. Ex. 2). At trial, Petitioner testified she was walking when her left knee gave out and she fell to the ground. (R. at 11.) Petitioner testified no conditions on the floor contributed to her falling such as water or broken tiles. (R. at 47). After the fall, Petitioner was diagnosed with a left knee contusion but the medical records also showed Petitioner's avascular necrosis previously effecting her right leg was now present in her left femur. (Pet. Ex. 3). The avascular necrosis was caused by steroid therapy used during Petitioner's asthma treatment. (Pet. Ex. 3). Based on the evidence, it is reasonable to infer Petitioner's leg locked up due to her unrelated previously existing avascular necrosis and not due to any risks distinctly associated with her employment.

Injuries with no particular employment or personal risks are considered neutral risks. Assuming Petitioner did not fall due to a personal risk, the Arbitrator further finds Petitioner failed to prove by the preponderance of the evidence that she sustained an accidental injury under neutral risk analysis. Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Id.; Springfield Urban League v. Illinois Workers' Comm'n*, 2013 IL App (4th) 120219WC, Par. 27. Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. *McAllister,* 2020 IL 124848, Par. 44; *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n,* 407 ILL. App. 3d 1010., 1014 (2011).

In this case, Petitioner did not proffer any evidence showing that her employment increased the risk of falling under either qualitative or quantitative neutral risk analysis. Immediately after her injury, Petitioner completed an Employee Incident Form. When specifically questioned as to whether there were any contributing factors, she remarked "no." No evidence was proffered showing the amount of walking Petitioner performed at work increased her risk of falling or that she was exposed to a risk greater than the general public. By itself, the act of walking across a floor at the employer's place of business does not establish a risk greater a risk greater than the faced by the general public and, therefore, is a neutral risk. *First Cash Financial Services v. Industrial Comm'n*. 367 Ill. App. 3d 102, 215; Walking on level ground at work is a neutral risk because it is not a risk that is distinctly associated with most workers' employment and workers

are generally not specifically paid to simply walk on level ground. *Illinois Consolidated Telephone Co. V. Industrial Comm'n*, 314 Ill. App. 3d 347, 353 (2000).

With respect to issues "C", "J", "K", and "L", the Arbitrator finds as follows:

Based upon the Arbitrator's finding that Petitioner failed to prove by the preponderance of the evidence that she sustained an accidental injury "arising out of" her employment all other issues are moot and need not be addressed.

By: /o/ Frank J. Soto — June 2, 2023

Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC019726
Case Name	Steven Michalak v. Segerdahl Corporation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0269
Number of Pages of Decision	27
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Martha Niles
Respondent Attorney	Nicholas Rubino

DATE FILED: 6/7/2024

/s/ Deborah Simpson, Commissioner

Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

24IWCC0269

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEVEN MICHALAK,

Petitioner,

vs. NO: 11 WC 19726

THE SEGERDAHL CORPORATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering all issues and being advised of the facts and law, modifies the Decision of the Arbitrator as stated herein and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

The Commission, after a careful review of the entire record, finds that Petitioner reached MMI for his causally related eye injuries as of December 3, 2013. In so finding, the Commission affirms the Arbitrator's award of reasonable and necessary medical expenses through the MMI date of December 3, 2013, but denies all further medical expenses incurred thereafter, as Petitioner's condition ceased to be work related as of the MMI date.

On April 27, 2010, Petitioner, who was employed by Respondent in a feeder position, was exposed to UV lights without eye protection and had UV fluid splashed into his eyes. Immediately after the accident, two coworkers helped Petitioner irrigate his eyes. The following morning, on April 28, 2010, Petitioner presented to Delnor Hospital ER and reported a consistent accident history, specifically that he had been exposed to UV light as well as chemicals while at work on a printing press the previous night. Dr. Jeffrey Bohmer initially diagnosed Petitioner with bilateral UV keratitis. Apart from the reported accident, Delnor Hospital noted no significant prior medical history. Petitioner also testified that before the accident, his vision was 20/20 and he never wore glasses. A pre-employment eye evaluation contained in the treatment records further classified Petitioner's eyes as normal and found Petitioner to be employable. However, after his accident, Petitioner consistently complained of and was treated for ongoing vision and eye problems, was placed under off-work restrictions, and wore tinted glasses. The Commission finds that

Petitioner's prompt post-accident treatment and no history of pre-accident eye problems supports a causal finding.

Very shortly after Petitioner's initial hospital visit, on April 29, 2010, Petitioner began treating with Dr. Anjali Hawkins, who also determined that Petitioner had UV keratitis. However, Dr. Hawkins noted that Petitioner's examination was not consistent with the amount of pain that Petitioner claimed to be experiencing. Dr. Hawkins eventually referred Petitioner to a cornea specialist for the treatment of his keratitis, and on May 4, 2011, Petitioner began seeing Dr. Janet Lee of the Wheaton Eye Clinic. Petitioner told Dr. Lee that since his work accident in April 2010, he continued to have blurred vision, photophobia, and a foreign body sensation. Dr. Lee found that Petitioner suffered from left ocular surface disease after his UV exposure in his left eye one year prior. However, as Dr. Lee continued to treat Petitioner, she became less clear as to the origin of Petitioner's ongoing symptoms. On December 7, 2011, Dr. Lee found that Petitioner's stated visual limitations were not explainable by his ocular surface health, since that had improved and Petitioner's corneas looked great. In a narrative report thereafter dated December 30, 2011, Dr. Lee stated that although Petitioner's treatment for dryness would be ongoing, she could not explain his current visual impairment based on his dryness alone, as his corneas looked clear. Throughout this time period, Petitioner had also began treating, upon Dr. Lee's referral, with Dr. Robert Grohe for his bandage contact lens usage and Dr. Jeffrey Haag, upon Dr. Grohe's referral, for his reported vision loss and photophobia.

On August 10, 2012, Dr. Lee offered another narrative report, which emphasized that she had not seen Petitioner for approximately one year after his initial UV exposure in April 2010. Dr. Lee explained that UV exposure could typically cause photokeratitis in the acute phase, resulting in light sensitivity and dryness. However, she stated that since she was not involved in Petitioner's care for a year post-exposure, she did not know the severity of Petitioner's disease in the acute phase first-hand. Dr. Lee further noted that Petitioner's dryness had significantly improved since the accident and she could not otherwise explain his decreased visual acuity. Dr. Lee seemed to indicate that Petitioner's ocular disease could be secondary to his accident if his exposure injury had been severe enough; however, she made it clear that she did not know the actual severity of Petitioner's condition since she did not come to treat Petitioner until a year after the accident. In a narrative report dated September 6, 2012, Dr. Grohe also stated that since he was not involved in the initial post-accident care for Petitioner and was brought in for contact lens care over one year later, it was unreasonable for him to offer an opinion regarding the cause of Petitioner's eye conditions, which he diagnosed as photokeratitis and irregular astigmatism.

As such, both Dr. Lee and Dr. Grohe, two of Petitioner's treating doctors, were cautious to opine as to causation since they had not examined Petitioner until one year after the accident. Dr. Haag, as consistent with Dr. Lee's opinion, also expressed that he could not explain Petitioner's vision loss. Specifically, throughout his treatment of Petitioner, Dr. Haag consistently diagnosed Petitioner with functional (non-organic) decreased VA or visual loss. In a §12 addendum dated July 28, 2022, Dr. Robert Feder provided a definition for non-organic functional vision loss. Dr. Feder stated that according to the American Academy of Ophthalmology, non-organic vision loss and functional vision loss referred to the same thing. He explained that non-organic vision loss was a condition in which loss of visual acuity and/or visual field occurred with no evidence of a lesion or abnormality in the eye, the eye socket, or the brain to explain it.

Contrary to Petitioner's treating doctors who expressed hesitancy offering causal opinions, Dr. Feder, Respondent's §12 doctor, provided several opinions on the issue of causation in his reports. In his first §12 report dated May 26, 2012, Dr. Feder indicated that within days of the accident, Petitioner's UV keratitis had resolved and his symptoms of light sensitivity and blurred vision could not be explained based on the physical findings. Dr. Feder opined that Petitioner had suffered a mild chemical keratoconjunctivitis and UV keratitis that had resolved shortly after the accident. He did not believe that Petitioner's vision problems nor his severe photophobia were due to the accident. Dr. Feder also found it hard to believe that Petitioner's mild conjunctival fibrosis in both eyes was related to the accident, given the mild nature of the injury and its rapid resolution. Dr. Feder found no correlation between Petitioner's symptoms and his physical findings and noted that Petitioner's visual field showed a high degree of false negative responses, which could suggest a subject was purposely trying to confound the test. At that time, Dr. Feder opined that continued care for Petitioner's dry eyes and mild surface irritation was required but not related to the accident. He believed that Petitioner had reached MMI for any injury that might have occurred on April 27, 2010, and at that point, any limitation in Petitioner's ability to perform his work was due to his professed disability rather than any ocular surface disease.

However, it was noted that at this initial §12 evaluation, Petitioner failed to complete Dr. Feder's full examination and testing. Dr. Feder explained that at his first evaluation of Petitioner on March 13, 2012, Petitioner had left his office early secondary to a headache. When Petitioner then returned on May 1, 2012 to complete the §12 evaluation, Dr. Feder reported that Petitioner was unwilling to remove his contact lenses to allow Dr. Feder's assessment of the ocular surface. Dr. Feder was also unable to perform a dilated fundus examination or potential acuity testing. As such, Dr. Feder's first §12 report was based only on the part of Petitioner's unfinished exam that he was able to conduct.

Subsequently, on December 3, 2013, Dr. Feder was able to perform another §12 evaluation of Petitioner. In the corresponding report dated December 8, 2013, Dr. Feder opined that Petitioner's vascular pannus at the temporal limbus could be related to the chemical injury he suffered in 2010, but the older medical records had revealed that Petitioner's examination was normal in both eyes shortly after the accident. Instead, Dr. Feder suggested that the punctate staining seen on the conjunctiva could be related to Vigamox toxicity and stated that Petitioner's contact lenses may be causing conjunctival irritation as well. Dr. Feder found no disease in Petitioner's eyes that could explain his reportedly decreased visual acuity and agreed with Dr. Lee and Dr. Haag that this constituted functional vison loss. Dr. Feder did not believe that Petitioner's condition was due to ocular disease caused by the accident. He further explained that there was no neurological or ocular explanation for Petitioner's performance on visual fields and that the numerous inconsistencies in his examination and his high false negative response rate could be seen in individuals who were purposefully not responding to the test target.

Dr. Feder indicated that Petitioner's medical treatment thus far had been appropriate, but he knew of no additional treatment that could dramatically improve Petitioner's condition and placed him at MMI for the limbal scarring in his left eye. Although Dr. Feder stated that Petitioner was restricted by his reported blurred vision, light sensitivity, and eye pain, he noted that there was little to no pathology on examination to explain these symptoms.

In consideration of the above, the Commission finds that Petitioner had reached MMI for his causally related eye conditions as of the date of Dr. Feder's examination on December 3, 2013. After December 3, 2013, there is no clear or strong causation opinion linking Petitioner's continuing eye conditions to the work accident, as both Dr. Lee and Dr. Grohe expressed their hesitancy to provide a causal opinion after not seeing Petitioner for a year post-accident. Moreover, several doctors, including Dr. Haag, found that Petitioner suffered from non-organic functional vision loss.

Following the examination on December 3, 2013, Petitioner's treatment became more sporadic with significant gaps after Petitioner had been dismissed from care from Wheaton Eye Clinic in January of 2014 for failure to pay his outstanding balance and subsequently moved to Colorado. While in Colorado, Petitioner was treated by Dr. William Richheimer and Dr. Bryce Brown, both of whom indicated that Petitioner had severe ocular surface disease secondary to a chemical burn in both eyes. On September 12, 2017, Dr. Brown authored a "To Whom It May Concern" letter, indicating that Petitioner had a history of chemical burns to his eyes resulting in chronic keratoconjunctivitis sicca, corneal neovascularization, corneal ulceration, and irregular astigmatism in both eyes. He stated that this had resulted in marked visual acuity. However, the Commission finds it significant that Dr. Richheimer and Dr. Brown did not begin evaluating Petitioner until several years after the work accident, which was quite some time after Petitioner's treating doctors in Illinois expressed a lack of confidence in providing strong causation opinions after not seeing Petitioner for just one year post-accident. Additionally, Dr. Brown's opinion is contradicted by Petitioner's other treating doctors who failed to find that his decreased visual acuity was explainable by the accident.

The Commission thus finds that the condition of Petitioner's eyes ceased to be work related after he was placed at MMI by Dr. Feder on December 3, 2013. Consistent with its causal finding, the Commission further finds that Respondent is only liable for Petitioner's reasonable and necessary medical expenses up through December 3, 2013. All medical expenses incurred after the MMI date of December 3, 2013 are denied accordingly. In all other respects not specifically stated herein, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 3, 2023 is modified as stated herein. For all other issues not specifically modified herein, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner reached MMI for his causally related eye conditions as of December 3, 2013, pursuant to the §12 opinion of Dr. Feder. Accordingly, the Commission finds that Respondent shall pay all reasonable and necessary medical services for the treatment related to Petitioner's eye conditions, pursuant to the medical fee schedule, as provided in in §8(a) and §8.2 of the Illinois Workers' Compensation Act through the MMI date of December 3, 2013. All medical expenses incurred after the MMI date of December 3, 2013 are hereby denied.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 7, 2024

DLS/mek
O- 4/10/24
46

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC019726
Case Name	Steven Michalak v. Segerdahl Corporation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Martha Niles
Respondent Attorney	Nicholas Rubino

DATE FILED: 4/3/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 28, 2023 4.65%

/s/Ana Vazquez, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Steven Michalak
Employee/Petitioner

v.

Segerdahl Corporation
Employer/Respondent

Case # **11** WC **019726**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago, IL**, on **9/30/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **April 27, 2010**, 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 $**62,764.00**; the average weekly wage was $**1,207.00**.

On the date of accident, Petitioner was **40** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**24,795.25** for TTD, $**0** for TPD, $**0** for maintenance, and $**9,710.50** for medical benefits.

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

ORDER

Respondent shall pay reasonable and necessary medical services, as provided in Px9, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act, with the exception of reimbursement of the Walgreen's out-of-pocket expenses, which should be paid in full to Petitioner.

Respondent shall pay to Petitioner temporary total disability benefits in the amount of **$804.67/week** for **79 3/7 weeks**, commencing on **April 29, 2010 through May 2, 2010,** from **August 24, 2011 through April 5, 2012**, and from **July 11, 2012 through June 1, 2013**.

Respondent shall pay Petitioner permanent partial disability benefits of **$664.72/week** for **50 weeks** because the injuries sustained caused **10% loss of the person-as-a-whole**, as provided in Section 8(d)2 of the Act.

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

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

Ana Vazquez

APRIL 3, 2023

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to arbitration on June 22, 2022 before Arbitrator Ana Vazquez in Chicago, Illinois. The matter was bifurcated and proofs were closed on September 30, 2022. Transcript of Evidence on Arbitration ("Tr.") at 11-13. The issues in dispute include (1) accident, (2) notice, (3) causal connection, (4) earnings, (5) unpaid medical bills, (6) temporary total disability benefits ("TTD"), and (7) the nature and extent of the injury. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated, including that Respondent is entitled to a credit in the amount of $24,795.25 for TTD benefits paid to Petitioner by Respondent and that Respondent is entitled to a credit in the amount of $9,710.50 in medical benefits paid by Respondent.

FINDINGS OF FACT

Petitioner testified that he began working at Respondent in 2007. Tr. at 14. Petitioner testified that he was employed by Respondent on April 26, 2010 or April 27, 2010. Tr. at 14. Petitioner had been working on the second shift for about one year. Tr. at 23.

Duties

Petitioner's position at Respondent was a feeder. Tr. at 15. When asked what the feeder's position was, Petitioner responded "[t]hat company was registration of color and hanging paper – the roll of paper and basically running the back end of the press." Tr. at 15. Petitioner explained that the registration of color meant "[d]ialing in the color during a start-up on a job where you look through an eye piece and have to make movements in order to get the color aligned with the plates on the printing plate." Tr. at 15. Petitioner did not have any input into selecting the colors. Tr. at 16. The colors were made of ink and the ink was made with chemicals and soybeans. Tr. at 16-17. Petitioner testified that hanging paper involved "[u]sing a crane hoist to pick up a big roll of paper that would be inserted into the press from the back end, loading it in and then splicing it into another continuous roll that's about to end." Tr. at 17. Petitioner also watched the ink fountains at the back end of the press and that he would have to move the inks around for different formats for different companies and monitor them. Tr. at 18. There were also water pans and ink train rollers at the back end of the press. Tr. at 18. Petitioner testified that working with ink fountains involved sometimes hand feeding special colors, which involved Petitioner spooning the ink in with an ink knife while the press was running. Tr. at 19.

Accident and Notice

Petitioner testified that there was an accident on April 26, 2010 or April 27, 2010. Tr. at 19-20. Petitioner testified that when he walked in on second shift, the press was already running and he was told to get into the applicator section where the dye cutter, UV lamps, and UV liquid with two rollers oscillating against each other were. Tr. at 20. Petitioner testified that the UV liquid was dripping on the paper and that his job was to prevent that from happening while the pressman changed the pump handle, because the day shift did not put a bypass valve on the pump. Tr. at 20. Petitioner testified that "I was told to make sure that the UV liquid that were in the pans where the oscillating rollers were would stop dripping over the pan onto the paper that was running next to me underneath me through the dye cutter and through the UV rollers." Tr. at 21, 25. Petitioner had to prevent the dripping UV liquid from shutting down and crashing the entire operation that was going on. Tr. at 22. Petitioner used his hand, gloves, and rags to prevent the liquid UV from dripping. Tr. at 24-26. Petitioner testified that he was standing next to the paper where it was feeding into the applicator and into the UV lamps. Tr. at 24. The

UV lamps were in front of Petitioner and behind the UV applicator. Tr. at 24. Petitioner stood in the light of the UV lamps for 20 to 30 minutes. Tr. at 24-25. Petitioner testified that while he was preventing the UV liquid from dripping, the pressman turned the pump on without telling him. Tr. at 26. Petitioner testified that the dial still had 60 pounds of air pressure and that when the pressman turned on the pump, all of the UV liquid that he was nursing from not falling on the paper "bursted out" of the pan and went into his eyes. Tr. at 27. Petitioner testified that as soon as that occurred, he was in "extreme blindness pain," and that the pressman and another coworker grabbed him, pulled him out, and ran him over to an eye irrigation. Tr. at 28. Petitioner irrigated his eyes for half an hour. Tr. at 28. Petitioner testified that the pressman and coworker saw what happened to Petitioner, and that the foreman was also "right there" when the injury occurred. Tr. at 28, 74. The foreman's name was Steve and the pressman's name was Gerard Lavitor. Tr. at 75

Petitioner testified that after irrigating his eyes, they had him sit in the back of the press and open paper. Tr. 28-29. Petitioner testified that the accident occurred at "3:30-ish," and that he had just gotten on the shift. Tr. at 29. Petitioner opened up paper for the rest of his shift. Tr. at 29-30. Petitioner was not sent for medical treatment. Tr. at 30. Petitioner testified that at the end of the shift, he cleaned up, got dressed, and drove home. Tr. at 30. At home, Petitioner took a shower and laid in bed, and he felt like the UV liquid was still dripping in his eyes. Tr. at 30. Petitioner testified that he "thought that I had maybe not gotten all the liquid out of my hair, and I thought it was still dripping in my eyes, because my eyes just started burning really bad." Tr. at 31. Petitioner sought medical treatment hours later at Delnor Hospital. Tr. at 31.

Pre-accident medical records summary

Petitioner testified that when he was hired by Respondent, he underwent a physical examination at Respondent's request, which included an eye evaluation. Tr. at 63, 76. On July 12, 2007, Petitioner presented for a pre-placement physical examination at Holy Family Medical Center. Petitioner's Exhibit ("Px") 1. Petitioner's unaided right eye vision was noted as 20/25 and left eye vision was noted as 20/15. Petitioner's color vision was noted as 14/14. Petitioner was found to be employable.

Medical records summary

Petitioner presented at the Emergency Department of Delnor Hospital on April 28, 2010. Respondent's Exhibit ("Rx") 1. Petitioner's chief complaint was "burn to both eyes." It was noted that Petitioner worked as a printer, and that the previous night, he was at work, he was in the printing press where ultraviolet light and chemicals were used, he did not put safety goggles on, and he was exposed for some time. It was also noted that several hours after getting home, Petitioner began experiencing increasing eye pain, burning, and some tearing. Petitioner reported that it felt like there was a foreign body sensation to his eye. Petitioner also reported that he thought that he may have washed his hair and that there may have been a chemical in his hair that got into his eyes. On exam, it was noted that Petitioner had a significant amount of photophobia, his pupils reacted appropriately to light, and that there was scleral injection, and conjunctival injection, bulbar greater than palpebral. Fluorescein staining and slit-lamp examination were performed. It was noted that there were some very superficial punctate epithelial irregularities, right greater than left. There was no other evidence of any corneal injury or fluorescein uptake noted. Petitioner's assessment was acute bilateral ultraviolet keratitis. It was noted that there was a question of chemical exposure, however, given the delayed nature, ultraviolet keratitis was favored. It was noted that Petitioner's eye pH level was 7.0, however, a Morgan flush was still performed. After the Morgan flush was performed, two ribbons of Tobrex ointment were placed into each eye. Petitioner was

prescribed Anaprox, Norco, and homatropine drops. Rx1. Petitioner was referred to Dr. Anjali Hawkins for follow up. Rx1.

Petitioner and Respondent offered the records of Geneva Eye Clinic as Px3 and Rx2.[1]

Petitioner presented to Dr. Anjali Hawkins at the Geneva Eye Clinic on April 29, 2010. It was noted that Petitioner had an accident at work on April 27, 2010 while working on a printer press and got UV liquid in his eyes. It was noted that Petitioner was not wearing safety glasses, was working on the second shift, that it did not start bothering him until 3 a.m., and he went to the ER. It was noted that Petitioner was in a lot of pain. Dr. Hawkins's assessment was UV keratitis, and she noted that Petitioner was very photosensitive and in pain, but that Petitioner's exam was not consistent with the amount of pain.

Petitioner returned to Dr. Hawkins on April 30, 2010. Dr. Hawkins noted that Petitioner was "doing much better today." She also noted that Petitioner had not used the "PFATS today" and that Petitioner was still light sensitive. On exam, it was noted that Petitioner's vision was 20/20-1 and 20/30+2. Dr. Hawkins noted that Petitioner could return to work on Monday. Petitioner again saw Dr. Hawkins on May 22, 2010. Dr. Hawkins noted that Petitioner continued to be photophobic since the accident. Petitioner reported that his OS[2] was hurting and his vision was blurry. On exam, Petitioner's OD[3] vision was noted as 20/20-2 and his OS vision was noted as 20/20-2. Petitioner again saw Dr. Hawkins on June 17, 2020. It was noted that Petitioner presented for follow up of blepharitis. Petitioner reported that he was still photophobic with headaches. On exam, Petitioner's OD vision was noted as 20/25- and his OS vision was noted as 20/30.

Petitioner returned to Dr. Hawkins on April 2, 2011. Dr. Hawkins noted "since [Petitioner] had injury in April 2010 hard to open – FB sensation – Itching stinging – doesn't feel right – Light sensitive." On exam, Petitioner's OD vision was noted as 20/20 and his OS vision was noted as 20/25+2. Petitioner again saw Dr. Hawkins on April 11, 2011 for a recheck of episcleritis. Petitioner reported no change in his symptoms. On exam, Petitioner's OD vision was 20/20 and his OS vision was 20/25+1. Petitioner was referred to a cornea specialist.

Respondent offered the records of Wheaton Eye Clinic as Rx 3.[4]

On May 4, 2011, Petitioner was seen by Dr. Janet A. Lee at the Wheaton Eye Clinic. Dr. Lee authored a summary letter to Dr. Hawkins dated May 9, 2011. Rx3 at 196. It noted that Petitioner was seen on May 4, 2011 regarding his history of left ocular chemical injury one year prior. It also noted that Petitioner sustained a UV-related injury to his left eye while at work in April 2010. It further noted that Petitioner continued to have symptoms of blurry vision, photophobia, and foreign body sensation. It was noted that on exam, Petitioner's vision was uncorrected to 20/20-1 OD and 20/200+1 OS. On slit-lamp exam, the right eye was quiet and the left eye showed 1+ diffuse injection. There were small fine peripheral superficial vessels and a small micropannus inferotemporally and 2+ punctate erosions inferiorly and an overall decreased tear breakup time. The chamber was noted to be deep and quiet and Petitioner's lenses were clear. It was noted that Petitioner continued to suffer left ocular surface disease status post his left UV exposure in his left eye one year prior and that Petitioner showed signs of surface inflammation and dryness. It was noted that Petitioner would be started on Durezol in the left eye every two hours, Restasis OS, Celluvisc OS, and Refresh PM at night.

[1] The records of Geneva Eye Clinic are handwritten and are not entirely legible.
[2] The term "OS" refers to the left eye.
[3] The term "OD" refers to the right eye.
[4] The records of Wheaton Eye Clinic are handwritten and are not entirely legible.

Petitioner returned to Dr. Lee on May 18, 2011, June 1, 2011, and June 17, 2011. Rx3 at 187, 188, 195. On June 17, 2011, Dr. Lee authored a summary letter to Dr. Hawkins noting that she had seen Petitioner on June 17, 2011, and that over the past month, she had started Petitioner on Restasis OS and that she had placed a left lower three-to-six months dissolving collagen plug in mid-May, and that on May 31, she had placed a bandage contact in his left eye. Rx3 at 185. She noted that as of Petitioner's June 17, 2011 exam, Petitioner felt that the contact lens had significantly improved discomfort. She also noted that Petitioner's vision on that date was 20/30+ OD and 20/80 OS. She noted that on slit-lamp exam, Petitioner's right eye was quiet and his left eye showed white and quiet conjunctiva. His left cornea showed 1+ punctate staining inferiorly. Dr. Lee noted that Petitioner was more comfortable with a bandage contact lens and that she had changed the bandage contact lens on that date. She further noted that Petitioner would remain on Vigamox OS, Restasis OS, Celluvisc OS, and Systane Balance OS. Dr. Lee noted that she placed a left upper silicone punctal plug because Petitioner had been feeling drier with the contact lens. Petitioner was to follow up in three weeks, at which time Dr. Lee would remove the contact lens.

Petitioner again saw Dr. Lee on June 22, 2011 and July 6, 2011. Rx3 at 183, 184. On July 7, 2011, Dr. Lee authored another summary letter to Dr. Hawkins, noting that she had seen Petitioner for follow up on July 6, 2011. Rx3 at 181. She noted that the bandage contact lenses with Vigamox was continued and had given Petitioner the most relief. She also noted that Petitioner continued to use Restasis OS, Vigamox OS, Celluvisc OS, and that he had a left upper silicone plug and left lower collagen plug in place. Dr. Lee noted that while Petitioner was more comfortable with a bandage contact lens in place, the overall risk of infection, even with Vigamox, was suboptimal as a long-term solution. Dr. Lee referred Petitioner to Dr. Robert Grohe for consideration of a daily wear contact lens or a scleral contact lens fitting. Petitioner was seen by Dr. Peter T. Brazis at the Wheaton Eye Clinic on July 14, 2011, for replacement of the left bandage contact lens that had fallen out. Rx3 at 180.

Petitioner was seen by Dr. Grohe on July 15, 2011 and August 17, 2011. Rx3 at 168, 178-179. On July 15, 2011, Dr. Grohe's assessment was photokeratitis, irregular keratitis, and local neovasc. Rx3 at 179. Petitioner returned to Dr. Grohe on August 31, 2011, Rx3 at 164. Petitioner was seen for follow up by other medical professionals at Mile High Eye Center, P.C. on September 8, 2011 and September 19, 2011. Petitioner again saw Dr. Grohe on September 21, 2011. Rx3 at 145. Dr. Grohe's assessment was UV keratitis. Dr. Grohe referred Petitioner for a neurological consult with Dr. Jeffrey Haag.

Petitioner presented to Dr. Jeffrey R. Haag on October 6, 2011. Rx3 at 143-144. Dr. Haag noted Petitioner's vision as 20/200-1 and 20/400. Petitioner's history was noted as continued light sensitivity, headaches, blurry vision, and no significant improvement. Dr. Haag's impression was functional (non-organic) visual loss. Dr. Haag recommended that Petitioner try FL-41 tinted glasses for photophobia. Dr. Haag noted that he told Petitioner that he expected Petitioner's vision to return to normal.

Petitioner returned to Dr. Lee on October 27, 2011. Rx3 at 138. On October 27, 2011, Dr. Lee authored a summary letter. Rx3 at 134. Dr. Lee noted that she had been caring for Petitioner since May 2011 and had been treating Petitioner for chemical and UV keratoconjunctivitis. She noted that Petitioner continued to slowly improve with treatment, but still suffered from light sensitivity, dryness, and decreased vision. She further noted that Petitioner had been off work since August 24, 2011 and that Petitioner had felt improvement in his symptoms while refraining from exposure to the chemicals in his work environment. She noted that despite this, Petitioner continued to have significant symptoms, and that she would continue to treat him until he experienced further improvement. Dr. Lee noted that her

recommendation was that Petitioner refrain from his work environment for an additional two months, making it a total of two months from August 24, 2011, to enable Petitioner to fully heal and avoid further exposure to the chemicals in his work environment, which exacerbated his eye condition. Dr. Lee noted that Petitioner felt that the irritants and toxins in the air were throughout the building of his workplace. She noted that it would be amenable if Petitioner could be provided with a work space outside of the work building with purified air over the next couple of months until Petitioner had fully improved. Dr. Lee further noted that while Petitioner had been slowly improving, Petitioner was uncertain when he would be fully recovered and able to return to work. Dr. Lee noted that she anticipated that Petitioner's improvement would continue and that Petitioner would be evaluated on a regular basis over the next two months. She further noted that if Petitioner had not improved sufficiently to return to work at that time, Petitioner may need additional time off.

Petitioner saw Dr. Haag on October 28, 2011. Rx3 at 137.

Petitioner again saw Dr. Lee on November 16, 2011 and December 7, 2011. Rx3 at 127, 133. Dr. Lee authored another summary letter dated December 8, 2011. Rx3 at 124-125. Dr. Lee noted that she had seen Petitioner on December 7, 2011, that he was using Restasis drops in both eyes twice a day, Vigamox in both eyes four times a day, and preservative-free tears every two hours. She noted that on exam, Petitioner's uncorrected vision was 20/400 in both eyes. She also noted that Petitioner had not obtained the glasses recommended to him by Dr. Haag. She further noted that on slit-lamp, Petitioner had bandage contact lenses in place. Petitioner's cornea had very mild cystic changes secondary to the contact lenses, and his ocular surface was otherwise quiet. She noted that Petitioner had a right lower, left lower, and left upper silicone punctal plug in good position. She noted that she changed Petitioner's bandage contacts. Dr. Lee noted that Petitioner continued to demonstrate decreased vision on examination, though his ocular surface had dramatically improved since he started seeing her in May. She further noted that Petitioner's eyes continued to be sensitive to any toxins, so he should refrain from being in an environment with toxins in the air for at least another month. Dr. Lee noted that she discussed with Petitioner that his ocular surface looked very healthy with the treatment of punctal plugs and bandage contact lenses and that she was hopeful that he would have success in being fit with scleral contact lenses in the future. She further noted that Petitioner's visual limitations were not explainable by his ocular surface, as that had improved.

Petitioner returned to Dr. Lee on December 28, 2011. Rx3 at 123. On December 28, 2011, Dr. Lee authored another summary letter. Rx3 at 121. She noted that she was writing regarding Petitioner's visual impairment and inability to work. She also noted that she had seen Petitioner on December 28, 2011, at which time his bandage contact lenses were changed. She noted that Petitioner's examination was unchanged. Dr. Lee noted that Petitioner continued to be unable to work due to his vision and the toxins in the atmosphere at his workplace. She noted that Petitioner would be unable to work foreseeably through the month of January 2012. Dr. Lee noted that Petitioner's treatment for dryness was ongoing, "though I cannot explain his current visual impairment based on his dryness alone, as his corneas look clear."

Petitioner saw Dr. Haag for follow up on February 2, 2012. Rx3 at 120. Dr. Haag's impressions were non-organic (functional) visual loss OU[5], dry eyes, and photophobia. Dr. Haag recommended Petitioner continue with bandage contact lenses.

Petitioner saw Dr. Lee for follow up on February 8, 2012. Rx3 at 119.

[5] The term "OU" refers to both the right and left eyes.

Petitioner next saw Dr. Haag on March 1, 2012, at which time he noted that Petitioner's eyes felt comfortable. Dr. Haag's impressions were functional visual loss and dry eyes. Dr. Haag noted that Petitioner was unable to work due to blurred vision, light sensitivity, and dry eyes. Rx3 at 115.

Petitioner again saw Dr. Lee on March 7, 2012. Rx3 at 114. Petitioner followed up with Dr. Grohe monthly from April 2012 through September 2013.

Petitioner again saw Dr. Lee on October 15, 2013 and October 16, 2013. Rx3 at 39, 40. On October 15, 2013, Dr. Lee's diagnosis was left small k infiltrate. Rx3 at 40. On October 16, 2023, Dr. Lee noted that Petitioner presented for follow up of a left k-ulcer and discomfort. Rx3 at 38. Dr. Lee's assessment was resolved left k infiltrate.

Petitioner continued to follow up with Dr. Grohe monthly from October 2013 through February 28, 2014 for contact lens exchange. Rx3 at 23, 27, 34, 35, 36.

Petitioner was seen by Dr. Charles S. Bouchard at Loyola University Health System on October 7, 2014 for punctate keratopathy, both eyes, secondary to chemical burn 2010. Px6.

Petitioner was seen by Dr. Dlalilian at the University of Illinois Hospital & Health Sciences System on December 22, 2014. Px5.[6] Petitioner was referred by Dr. Bouchard and was seen for floppy eyelid, corneal evaluation, and severe tears.

Petitioner again saw Dr. Bouchard on August 7, 2015 for complaints of keratopathy, dry eye, eye pain, and light sensitivity. Px10. Petitioner reported that his vision was "pretty decent." Dr. Bouchard noted a history of chemical burn in both eyes in April 2010. Dr. Bouchard's impressions were (1) mild dryness OU, (2) punctate keratopathy in both eyes, secondary to chemical burn in 2010, (3) distichiasis, left lower eyelid, (4) blepharitis, both eyes, (5) cataract left eye, mild, not visually significant, and (6) cataract right eye, mild, not visually significant.

Petitioner presented at Nelson Eye Care on August 12, 2015. Px5[7] at 6. Petitioner's diagnoses were "1. s/p chemical burn corneas [illegible], sensitive corneas [illegible], 2. Dry eye syndrome, 3. [illegible]." Petitioner returned to Nelson Eye Care for follow up on August 19, 2015 and October 16, 2015 for contact lens exchange.

Petitioner returned to Dr. Bouchard on December 11, 2015. Petitioner reported that his vision was stable, his eyes were comfortable, and that he had no pain. Px10. Dr. Bouchard's impressions were unchanged.

Petitioner followed up at Nelson Eye Care on January 20, 2016, March 11, 2016, April 22, 2016, and May 18, 2016 for contact lens exchange. Px5 at 7-8. Petitioner testified that he treated at Nelson Eye Care until he moved to Colorado. Tr. at 105.

Petitioner was seen at the Mile High Eye Institute, P.C. by Dr. William Richheimer on June 13, 2016. Px8 at 13-16. Petitioner complained of red painful eye OD. Petitioner reported that he had had a rough eye exam recently that caused an ulcer. Petitioner further reported that he got UV liquid in both eyes in

[6] The records of University of Illinois Hospital & Health Sciences System are handwritten and are not entirely legible.
[7] The records of Nelson Eye Care are handwritten and are not entirely legible.

2010, had been wearing bandage contact lenses since 2010, and changed them monthly. Petitioner reported poor vision out of the left eye and that he had been using stem cell treatments and serum tears in Illinois. Dr. Richheimer's assessment was (1) corneal neovascularization OS localized, located on the left inferior conjunctiva, (2) corneal edema OS located on the left inferior cornea, (3) trichiasis OD located in the right eye, (4) conjunctivitis OS located in the left eye, (5) keratoconjunctivitis sicca OU distributed on the right central cornea and left central cornea, and (6) distichiasis OD located on the right upper lid margin. Petitioner's OS bandage contact lens was removed. On cross examination, Petitioner agreed that he sought treatment at the Mile High Institute, P.C. because of an ulcer on his cornea in 2016, and he testified that he was not informed that the ulcer was from overwearing the contacts and sleeping in them. Tr. at 109.

Petitioner returned to Dr. Richheimer on June 21, 2016, at which time Dr. Richheimer's assessments were chemical burn OU, accidental and sequela, and corneal neovascularization OS, localized. Px8 at 17-19. Dr. Richheimer noted that Petitioner's bandage contact lenses use was discussed, and that Petitioner's use of bandage contact lenses for 30 days at a time was okay for the short term, but not recommended in the long term. Dr. Richheimer noted that Petitioner was insistent on continuous bandage contact lens use. Petitioner continued to follow up monthly at the Mile High Eye Institute, P.C. through October 2016. During this time, Petitioner was again diagnosed with a central corneal ulceration located on the left inferior cornea, blepharitis of the left and right upper and lower eyelids, and keratoconjunctivitis sicca OU, and Petitioner was advised to consider alternative therapy to bandage contact lens wear. Px8 at 20-24, 27-29, 32-39. Dr. Richheimer did not support Petitioner's use of a left bandage contact lens, as it was not safe. Punctal plugs were done on Petitioner's eyes on October 24, 2016. Px8 at 36-39.

Petitioner returned to Dr. Richheimer on February 14, 2017. Px8 at 3-5. Dr. Richheimer's assessment at that time was central corneal ulceration. Dr. Richheimer noted that he discussed with Petitioner how the use of overnight soft contact lens wear was not optimal for the eyes and with the dry climate may not be comfortable and culturing OD central corneal/SCL. Petitioner's corneal ulcer was noted as resolved as of March 17, 2017. Petitioner followed up at the Mile High Eye Institute, P.C. on August 30, 2017 and November 15, 2017. Px8 at 25-26, 40-41.

Petitioner returned to the Mile High Eye Institute, P.C. on September 17, 2018, was seen by Dr. Bryce Brown, and permanent punctal occlusion was performed on Petitioner's right upper and left upper eyelids. Px8 at 30-31.

Petitioner next presented at the Mile High Eye Institute, P.C. on May 6, 2019 for a chief complaint of dry eyes. Px8 at 42-43. Petitioner reported that he had been doing a lot of hiking and that he had moved to Golden, Colorado. Petitioner was not using artificial tears or nighttime ointment. Dr. Richheimer's impression was keratoconjunctivitis sicca, and noted that Petitioner was stable.

Petitioner next presented for follow up with Dr. Madeline Graber at the Mile High Eye Institute, P.C. on December 31, 2020. Px8 at 72-73. Petitioner was instructed to increase the use of PFAT to four to eight times daily in both eyes, plan on going back on serum when Petitioner could afford it, and to begin using Restasis more consistently.

Earnings and TTD

Petitioner testified that while working at Respondent, he worked overtime every week and that the overtime was mandatory. Tr. at 67. Petitioner testified that he worked every weekend. Tr. at 67. Petitioner was paid a different pay scale depending on the printing press that he worked at. Tr. at 68.

On cross examination, Petitioner testified that he was not taken off work during the time that he was treating at the Geneva Eye Clinic with Dr. Hawkins. Tr. at 89. Petitioner then testified that Dr. Hawkins did not tell him to go back to work. Tr. at 90. On redirect examination, Petitioner testified that he was laid off by Respondent in May 2010 and that he was recalled in September 2010. Tr. at 136. Petitioner returned to work at Respondent in September 2010 and he stopped working at Respondent in August 2011. Tr. at 68-69, 90. Petitioner testified that he stopped working at Respondent in August 2011 because Dr. Grohe and Dr. Lee wrote notes for him to not be in the press room anymore. Tr. at 70. Respondent did not offer Petitioner any other position. Tr. at 71. Petitioner has not looked for work since August 2011. Tr. at 71.

Petitioner testified that he was paid TTD benefits, which commenced in September 2011 and ended in May 2012. Tr. at 97, 122. Petitioner began work at LA Fitness on April 6, 2012 and he was paid about $400 per week. Tr. at 98. Petitioner worked at LA Fitness through July 10, 2012. Tr. at 98. Petitioner testified that he sat at a desk to sell gym memberships while working at LA Fitness. Tr. at 99-100. On redirect examination, Petitioner testified that he thought that he was paid $690 per week in TTD benefits. Tr. at 122. Petitioner testified that he worked at LA Fitness for 90 days. Tr. at 123. Petitioner testified that he began working at LA Fitness in June 2012 through the end of summer. Tr. at 123. Petitioner testified that he began working at LA Fitness after receiving TTD benefits because he ran out of money, he was scrambling, and it was the only thing he could find. Tr. at 123.

Respondent offered Rx11, a check inquiry report from Fitness International, LLC. Rx11 reflects that Petitioner earned a total of $4,213.82 in gross earnings. It also reflects check dates of April 23, 2012, May 8, 2012, May 23, 2012, June 8, 2012, June 25, 2012, and July 10, 2012.

On cross examination, Petitioner was questioned about an email he sent to the Plastic and Reconstructive Institute in February 2021 requesting cancelation of an appointment because he had a cash job on the date of the appointment. Tr. 118-120. Petitioner testified that he did not tell the Plastic and Reconstructive Institute that he did part-time cash jobs and he did not recall canceling an appointment because he had a cash job that day. Tr. at 118, 120. On redirect examination, Petitioner testified that he worked occasional cash jobs for friends of his that grew marijuana, and he explained that the part-time cash job referenced in the email of February 2021 was for the day and that he was paid "[p]robably less than $100.". Tr. at 131, 133.

Medical Bills

Petitioner testified that to his knowledge, not all of his medical bills have been paid. Tr. at 71. He believed that the bills from the Wheaton Eye Clinic were not paid. Tr. at 71. Petitioner testified that he is paying out of pocket for the eye serum vials, "but Medicare covers everything else." Tr. at 72. Petitioner testified he pays approximately $600 per year out-of-pocket for eye serum vials. Tr. at 73-74.

Current Condition

Petitioner testified that prior to the event in April 2010, his vision was 20/20, "from what I remember." Tr. at 63. Petitioner did not wear glasses prior to the event in April 2010. Tr. at 63. At arbitration, Petitioner was observed wearing yellow tinted glasses. Tr. at 64. Petitioner testified that the yellow tinted glasses help with the reflection of lights when watching tv or driving at night. Tr. at 64. Petitioner testified that he was wearing the yellow tinted glasses during arbitration because of the fluorescent lighting. Tr. at 64-65. The yellow tinted glasses made his eyes feel relaxed. Tr. at 64-65. Petitioner testified that he feels pain in his corneas when he is not wearing the yellow tinted glasses. Tr. at 65.

Petitioner testified that he continues to treat with Dr. Richheimer and that Dr. Richheimer still prescribes Restasis. Tr. at 61. Dr. Richheimer also provides Petitioner with eye serum treatment. Tr. at 62. Petitioner is not seeing any other medical providers for his eyes, besides Dr. Richheimer. Tr. at 62-63. Petitioner obtains Restasis from Walgreens. Tr. at 51. Petitioner has not stopped using Restasis. Tr. at 51. Petitioner testified that no doctor has suggested that he stop using Restasis. Tr. at 51. Petitioner is not using the bandage contact lenses. Tr. at 52.

Petitioner likes doing outdoor activities, including hiking and biking, since moving to Golden, Colorado in 2019. Tr. at 109.

Narrative Report by Dr. Janet Lee

On August 10, 2012, Dr. Lee authored a narrative report. Px4; Rx2 at 87-91. In her narrative report, Dr. Lee summarized her treatment of Petitioner.

Regarding whether Petitioner's right and left eye conditions of ill-being were related to the April 26, 2010 injury, Dr. Lee noted that Petitioner sustained a UV exposure in April 2010 and that she did not see him until a year after the exposure. Dr. Lee noted that since she was not involved in Petitioner's care for the first year after his exposure, she did not know how severe his disease was in the acute-phase, first-hand. She noted that if severe enough, some of the issues could become chronic, such as the dry eye. She noted that she had addressed Petitioner's ocular surface issues with aggressive treatment and that his dryness had significantly improved since his injury, though he remained dependent on the bandage lenses for comfort. Dr. Lee noted that she was unable to explain Petitioner's decreased visual acuity.

Dr. Lee further noted that all of the treatment that had been rendered to Petitioner's right and left eye had been reasonable and necessary. She noted that Petitioner's referral to Dr. Haag was medically necessary due to Petitioner's unexplained visual decline during treatment. She also noted that Petitioner's referral to Dr. Grohe had been medically necessary because of Petitioner's dependence on bandage contact lenses.

Dr. Lee further opined that it was reasonable for Petitioner to continue Restasis, the preservative-free tears, and ointment at bedtime, and that it was reasonable to replace the punctal plugs if they fell out. She also noted that because Petitioner felt more comfortable in bandage contact lenses, it was reasonable for Petitioner to continue use of the bandage contacts, though there was a risk of infection. She noted that ideally, Petitioner would transition to a contact lens that would be removed at bedtime, and that if the exposure injury of April 2010 was severe enough, it was reasonable that Petitioner's ocular surface disease could have been secondary to that.

Regarding what job tasks and work environments were prohibited due to Petitioner's condition, Dr. Lee noted that any tasks within the environment of air impurity could exacerbate Petitioner's ocular discomfort. She noted that at that time, Petitioner's vision continued to measure in the 20/400 range in both eyes, which she could not attribute to his dry eye. She deferred to Dr. Haag to explain Petitioner's visual acuity issues.

Narrative Report by Dr. Robert Grohe

On September 6, 2012, Dr. Grohe authored a narrative report. Rx3 at 81-85. In his narrative report, Dr. Grohe noted that he was requested months after Petitioner's initial eye injury to provide tertiary care, that he did not have access to the totality of Petitioner's care records, and that his answers were restricted to his direct contact with and care for Petitioner.

Dr. Grohe noted that Petitioner reported that he began suffering from bilateral eye pain and increased light sensitivity since an April 2010 work accident while repairing a printing press. Dr. Grohe noted that "[t]he subsequent eye pain now intensifies when [Petitioner] is exposed to light in the form of any room lighting, sunlight, overhead fluorescent lights or oncoming automobiles." Dr. Grohe further noted that the pain was distracting and limited Petitioner's ability to function in normal daily activities. Dr. Grohe also noted that the eye pain was partially relieved by eye rubbing or a combination of a bandage soft contact lens, UV absorbing sunglasses and reducing room illumination to a low level and wearing a wide brimmed hat and UV absorbing sunglasses when outdoors. Dr. Grohe noted that Petitioner suffers from intermittent bouts of eye pain, left greater than right, OU photophobia (abnormal light sensitivity), left eye discomfort, OU dryness and irritation from forced air ventilation sources such as air conditioning or heating. Dr. Grohe also noted that Petitioner's diagnoses were OU photokeratitis and OU irregular astigmatism. He further noted that Petitioner's prognosis was guarded with a possible prolonged recovery.

Dr. Grohe noted that on August 24, 2011, he requested four days off and no work for Petitioner, and that on April 6, 2012, he requested an undetermined time off and no work for Petitioner. Dr. Grohe further noted that he recommended that Petitioner consider a different occupation, one specifically not in the field or any job requiring any exposure to UV radiation emitting lamps and to avoid any job requiring outdoor work in the sun.

Regarding causation, Dr. Grohe noted that since he was not involved in Petitioner's initial care and Petitioner presented for contact lens care over one year after the accident, it was unreasonable to offer an opinion regarding the cause and result of Petitioner's eye conditions. Dr. Grohe noted that the treatment rendered had been reasonable and necessary, and also noted that Petitioner had achieved a partial improvement in comfort and a limited but daily ability to function with the bandage contact lens. Dr. Grohe further noted that to avoid future office visits and minimize treatment cost, attempts had been made to train Petitioner to insert and remove the bandage contact lens, but those attempts had failed due to Petitioner's inability to see a bandage contact lens on his finger, intense photophobia, tearing and a very narrow vertical fissure opening from a pronounced eyelid blink reflex once the bandage contact lens was removed. Dr. Grohe noted that there would be an ongoing need for the monthly replacement of a bandage soft contact lens until Petitioner's symptoms of intense pain, dryness, photophobia, and poor vision in each eye improved.

Regarding Petitioner's work status, Dr. Grohe noted that Petitioner was unable to perform any activity at his previous printing job at that time until he fully recovered from his daily bouts of pain, photophobia, dryness and reduced vision in each eye. Dr. Grohe made further recommendations, including that Petitioner change occupations, contact a vocational rehabilitation counselor to assist in re-training, avoid exposure from intense UV radiation sources, and avoid driving unless in an extreme emergency.

Respondent's Section 12 Examinations

Dr. Robert S. Feder prepared an Independent Medical Examination ("IME") report on May 26, 2012, noting that he had performed an IME of Petitioner on March 13, 2012 and May 1, 2012. Rx4. Dr. Feder noted that Petitioner returned on May 1, 2012 to finish the examination, but was unable to complete the examination and left abruptly. Dr. Feder further noted that Petitioner had declined the opportunity to return to complete the examination. Dr. Feder noted that would attempt to answer the questions posed to him based on the part of the examination that was completed. Dr. Feder further noted that he had also reviewed medical records, legal documents, and other material in preparation of his report.

Dr. Feder noted that there were many inconsistencies in Petitioner's case. Petitioner drove one hour to Dr. Feder's office alone and during daylight hours, yet could not be in a dark room without sunglasses and a hat, and was making the one-hour drive home in daylight. Dr. Feder noted that Petitioner's recorded uncorrected visual acuity was 20/125 OD and 20/200 OS, which was far less than what is required for daylight driving. Petitioner claimed to be unable to see large numbers on color vision plates, but stated that he had no problem reading. Petitioner had very limited stereopsis on Titmus testing, but did not have a discernable motility problem. Petitioner's performance on color vision testing was poor, though Petitioner claimed to be able to differentiate colors. Petitioner's vision was quite good after the accident, but was much worse one year later. Dr. Feder noted that he could not find a correlation between Petitioner's symptoms and his physical exam findings, which was also the conclusion of two other ophthalmologists. Dr. Feder noted that Petitioner's visual field showed a high degree of false negative responses indicating that Petitioner failed to respond when he should, which might be the case if a subject was purposely attempting to confound the test. Dr. Feder also noted that there was no similarly high false positive responses, which one might see if an individual was signaling randomly or was guessing.

Dr. Feder opined that Petitioner suffered a mild chemical keratoconjunctivitis and UV keratitis that resolved shortly after the accident. He noted that Petitioner's vision problems were not due to the accident and neither was his severe photophobia. Dr. Feder noted that he believed that Petitioner had a mild toxic keratoconjunctivitis related to long-term use of moxifloxacin made worse by a dry eye condition. Dr. Feder also noted that he found it hard to believe that the mild conjunctival fibrosis seen in both eyes was related to the accident, given the mild nature of the injury and the rapid resolution. Dr. Feder noted that continued care of the dry eye and mild surface irritation was required, but did not believe that it was due to the accident that occurred over two years prior. Dr. Feder noted that the many inconsistencies in Petitioner's behavior and on the examination made it more difficult to make a strong case that the accident was responsible for Petitioner's disability. Dr. Feder opined that Petitioner had reached maximum medical improvement ("MMI") regarding the injury of April 27, 2010, and that at that point, any limitation in Petitioner's ability to perform his work was due to his professed disability rather than by manifest ocular surface disease.

Dr. Feder examined Petitioner again on December 3, 2013 and prepared an IME report on December 8, 2013. Rx5. Dr. Feder reviewed additional medical records, correspondence from Dr. Haag, and his May

26, 2012 report in preparation of his December 8, 2013 report. Dr. Feder noted that Petitioner's wife accompanied him to the examination. Dr. Feder noted that Petitioner explained that one month prior, he had had a corneal ulcer of the left eye, thought to be related to his contact lens. Dr. Feder also noted that Petitioner reported that he was able to drive day or night, able to read a newspaper with reading glasses, and was able to watch television. At arbitration, Petitioner agreed that he told Dr. Feder that he was able to drive and watch television, and he disagreed that he read newspapers. Tr. at 100-101. Petitioner also reported that he was studying acting and technical directing at Elgin Community College. At arbitration, Petitioner agreed that he told Dr. Feder that he was studying acting and technical directing at Elgin Community College, and he testified that he was taking acting and technical directing classes. Tr. at 101. Petitioner further reported to Dr. Feder that his vision was about the same as it was at his IME on May 1, 2012, but the discomfort was worse. Petitioner reported that he had severe pain in his eyes without his contact lenses and claimed that the pain was due to dryness.

On examination, Petitioner's visual acuity was 20/50-2 OD and 20/50-3 OS, and without his contact lenses he was 20/300 in each eye. Dr. Feder noted that Petitioner would not allow him to evert his eye lids due to discomfort. Among Petitioner's exam findings, an area of fine vascular pannus extending <1 mm onto the cornea was noted temporally between 2:30 and 5:00. The anterior segment was otherwise normal. Dr. Feder opined that the vascular pannus at the temporal limbus could be related to a chemical injury suffered in 2010, though the older medical records revealed that Petitioner's eye examination was normal in both eyes shortly after the accident. Dr. Feder also opined that the punctate staining on the conjunctiva could be related to Vigamox toxicity, as Petitioner had been using Vigamox four times daily for nearly two years. Dr. Feder noted that the FDA had approved Vigamox for use three times daily for the treatment of infectious conjunctivitis. Dr. Feder also opined that Petitioner had meibomian gland disease, which can cause punctate staining, and that the contact lenses may be causing conjunctival irritation also.

Dr. Feder noted that he found no disease in the eyes that could explain Petitioner's reportedly decreased visual acuity, and that he agreed with Dr. Lee and Dr. Haag that it was functional vision loss. Dr. Feder believed that the functional vision loss was not due to ocular disease from the accident and noted that there were many inconsistencies in Petitioner's vision examination. Dr. Feder noted that Petitioner's treatment thus far had been appropriate, though chronic use of topical antibiotics at the dosage level being used by Petitioner was not FDA approved. Dr. Feder noted that it was controversial and may be a cause of toxicity, causing eye pain. Dr. Feder noted that he did not know of any other treatment that would dramatically improve Petitioner's condition. Dr. Feder opined that the limbal scarring in the left eye had reached MMI, most likely at the time of his previous examination. Dr. Feder noted that there was little pathology noted on examination to explain Petitioner's symptoms of blurred vision, light sensitivity, and eye pain. Dr. Feder noted that he believed that Petitioner would continue to require contact lenses, since Petitioner felt that they provided him with comfort and allowed him to see.

Dr. Feder again examined Petitioner on June 6, 2016 and prepared an IME report on June 8, 2016. Rx6. Dr. Feder reviewed additional medical records in preparation of his report, which he noted revealed several key elements, which he discussed in his report. On this date, Petitioner reported that he lived in Elgin, Illinois, that he had not worked since the previous IME, that he enjoyed reading John Grisham novels, and that since the accident, he had taken classes in science and arts for general education and was able to use the computer with reading glasses. Dr. Feder noted that Petitioner used amber tinted glasses to cut down glare and that Petitioner rode his bike or drove to class, exercised regularly at Planet Fitness, and did the cooking, cleaning, and laundry at home. At arbitration, Petitioner offered inconsistent testimony as to whether he lived in Elgin, Illinois and was taking classes in science and arts

for general education at Elgin Community College at the time of the June 6, 2016 IME. Petitioner then clarified that when he saw Dr. Feder in June 2016, he was living in Denver, Colorado and that he did not tell Dr. Feder that he was taking classes at Elgin or riding his bike to classes at Elgin Community College. Tr. at 128-127. Petitioner agreed that he was doing some reading and was driving a car in 2016. Tr. at 129.

Dr. Feder performed an examination and noted his findings. After his examination and review of additional records, Dr. Feder opined that Petitioner developed peripheral corneal scarring in the left eye as a result of the work injury. Dr. Feder noted that there was the suggestion of subtle conjunctival scarring inferiorly on the bulbar surface of the left eye greater than the right eye, that there was a tiny scar in the left cornea which resulted from a corneal ulcer related to extended contact lens use, and that there was no pathological or anatomical explanation for Petitioner's reported acuity of 20/70 J5 right eye or 20/80 J5 left eye. Dr. Feder noted that a mild reduction in acuity of the left eye might be expected without the contact lens due to the scar, and that there was no anatomical basis for the visual field loss particularly in light of the normal OCT. Dr. Feder further noted that a high false negative reading was seen on the Humphrey visual field in each eye, which occurs when a patient does not respond to a significantly brighter stimulus at a location that was previously seen by the subject.

Dr. Feder further opined that Petitioner had reached MMI for his injury. He noted that Petitioner claimed to be unable to work due to alleged visual disability, but also noted that Petitioner, however, enjoys reading John Grisham novels, uses the computer with reading glasses, rides his bike and drives locally, attends classes, exercises regularly at Planet Fitness, and does cooking, cleaning, and laundry. Dr. Feder noted that "[w]hatever [Petitioner] perceives are his limitations I expect them to be permanent at this point. [Petitioner] does not feel he can be without the extended wear contact lenses due to irritation and there is a risk of repeated corneal infection." Dr. Feder, however, noted that the pathology that necessitated the need for the lenses was unclear. Dr. Feder further noted that Petitioner would require regular ophthalmologic follow up on an ongoing basis because of the persistent use of extended wear contact lenses and scarring. He noted that the use of tear supplements was reasonable and that the use of topical antibiotic twice daily was controversial, yet was a common practice in patients using long-term extended wear contact lenses.

On July 28, 2022, Dr. Feder provided an IME addendum report providing a definition for "non-organic functional vision loss." Rx7. Dr. Feder noted that according to the American Academy of Ophthalmology, non-organic vision loss and functional vision loss refer to the same entity. Non-organic vision loss refers to a condition in which loss of visual acuity and/or visual field occurs with no evidence of a lesion or abnormality in the eye, the eye socket, or the brain to explain it.

CONCLUSIONS OF LAW

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

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

Arbitrator's Credibility Assessment

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

In the case at hand, the Arbitrator observed Petitioner's behavior and conduct during the hearing. The Arbitrator notes that Petitioner was forthcoming and demonstrated a calm demeanor during his direct and redirect examinations. On cross examination, however, Petitioner was defensive and at times, evasive. Such behaviors call Petitioner's credibility into question. The Arbitrator, however, compared Petitioner's testimony with the totality of the evidence submitted and does not find that Petitioner's behavior and conduct during cross examination deem him so unreliable as to defeat his claim.

Issue C, whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

Having considered all the evidence, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he sustained an accident that arose out of and in the course of his employment by Respondent on April 27, 2010. In support of her finding, the Arbitrator relies on Petitioner's credible testimony (1) that he was working as a feeder at Respondent on April 27, 2010, (2) that on April 27, 2010, UV liquid was dripping on paper when he arrived to work on the second shift, (3) that his job was to prevent the UV liquid from dripping onto paper, while the pressman changed the pump handle, (4) that he was not wearing eye protection, (5) that the pressman turned the pump on without telling Petitioner, while the dial still had 60 pounds of air pressure, (6) that when the pressman turned on the pump, the UV liquid that was in the pan that Petitioner had been keeping from dripping onto the paper "bursted out" of the pan and went into his eyes, and (7) that he experienced immediate "extreme blindness pain." The Arbitrator also relies on the treatment records in evidence, which corroborate Petitioner's testimony. The Arbitrator notes that no contrary evidence was offered by Respondent.

Issue E, whether timely notice of the accident was given to the Respondent, the Arbitrator finds as follows:

Having considered all the evidence, the Arbitrator finds that timely notice of the accident was given to the Respondent. In support of her finding, the Arbitrator relies on Petitioner's credible testimony that the pressman and a coworker saw what happened to Petitioner, pulled him out, and ran him over to an eye irrigation. Petitioner also credibly testified that the foreman was "right there" when the injury occurred. No evidence was offered to rebut Petitioner's testimony.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v.*

Industrial Comm'n, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59 (1982).

Having considered all the evidence, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the April 27, 2010 injury. The Arbitrator relies on the following in support of her findings: (1) the medical records of Holy Family Medical Center, (2) the medical records of Delnor Hospital, (3) the medical records of Geneva Eye Clinic and Dr. Hawkins, (4) the medical records of Wheaton Eye Clinic, (5) the medical records of Mile High Eye Institute, P.C., (6) the narrative reports and opinions of Dr. Lee and Dr. Grohe, (7) the IME reports and opinions of Respondent's Section 12 examiner, Dr. Feder, (8) Petitioner's credible testimony that his vision was 20/20 prior to the April 27, 2010 injury, and (9) the fact that none of the records in evidence reflect any eye issues or treatment prior to April 27, 2010. The Arbitrator notes that the evidence demonstrates that Petitioner was able to work full duty and without restrictions immediately prior to the April 27, 2010 accident.

In resolving the issue of causation, the Arbitrator adopts the opinions of Respondent's Section 12 examiner, Dr. Feder, which are in line with those of Petitioner's treating physicians, Dr. Lee, Dr. Grohe, Dr. Haag, and Dr. Richheimer. In his December 2013 report, Dr. Feder noted that on exam, there was an area of fine vascular pannus onto the cornea of the left eye, and that this vascular pannus at the temporal limbus could be related to the injury of April 2010. At that time, Dr. Feder found no disease in the eyes that could explain Petitioner's decreased visual acuity, and Dr. Feder agreed with Dr. Lee and Dr. Haag that Petitioner was suffering from functional vision loss. Dr. Feder believed Petitioner's functional vision loss was not due to ocular disease caused by the accident. Dr. Feder further opined that the limbal scarring in Petitioner's left eye had reached MMI on May 1, 2012 and that there was little pathology to explain Petitioner's symptoms of blurred vision, light sensitivity, and eye pain. The Arbitrator notes that in preparation of his June 2016 report, Dr. Feder had the opportunity to review additional records, which he noted "revealed several key elements." At that time, Dr. Feder opined that Petitioner developed peripheral corneal scarring in the left eye as a result of the work accident. He further explained that there was the suggestion of subtle conjunctival scarring inferiorly on the bulbar surface of the left eye greater than the right eye, there was a tiny scar in the left cornea which resulted from a corneal ulcer related to extended contact lens wear, and that there was no pathological or anatomical explanation for Petitioner's decreased visual acuity. Dr. Feder noted that a mild reduction in acuity of the left eye might be expected without the contact lens due to the scar, but there was no anatomical basis for Petitioner's visual field loss, particularly in light of the normal OCT.

In adopting the opinions of Dr. Feder, the Arbitrator finds that Petitioner developed peripheral corneal scarring in the left eye as a result of the work injury and that Petitioner reached MMI on December 3, 2013, at which time Dr. Feder noted the scarring on Petitioner's left eye.

Issue G, as to what were Petitioner's earnings, the Arbitrator finds as follows:

At arbitration, Petitioner claimed that his earnings during the year preceding the injury were $57,564.00, and that his average weekly wage ("AWW"), calculated pursuant to Section 10 of the Act, was $1,207.00. Ax1. Respondent disputes Petitioner claim and Respondent claims that Petitioner's AWW was $997.52. Ax1.

The Arbitrator initially notes that Petitioner and Respondent agree that Petitioner's gross earnings for the 52-weeks that preceded the work injury was $51,867.93. At issue, is whether Petitioner's overtime earnings should be included in Petitioner's AWW calculation.

Petitioner credibly testified that he was paid at a different pay scale dependent on the printing press that he worked at. Petitioner credibly testified that he worked overtime at Respondent and that the overtime was mandatory. Petitioner's testimony was unrebutted and no contrary evidence was offered by Respondent. Additionally, Petitioner offered Px2 and Px2a, payroll records, which reflect that Petitioner's overtime was regular and consistent. Accordingly, the Arbitrator finds that Petitioner's overtime earnings are to be included in Petitioner's AWW calculation.

The Arbitrator notes that Px2 is missing some paystubs for the 52-weeks preceding the work accident and includes copies of paystubs that are incomplete. The paystubs, though, reflect that Petitioner worked 37.5 regular hours per week. The Arbitrator finds that Px2a provides a more accurate accounting of Petitioner's gross earnings and gross overtime earnings. Px2a reflects that Petitioner earned $28,478.43 in overtime for the 52-weeks that preceded the work accident. Using the straight rate of pay, Petitioner's overtime earnings are reduced to $18,985.62. The Arbitrator notes that while Petitioner's calculated AWW is $1,362.57, Petitioner is bound by its stipulation that Petitioner's AWW is $1,207.00 under *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1087-1088 (2004).

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

Consistent with the Arbitrator's prior findings regarding the issues of accident and causal connection, the Arbitrator finds that Petitioner's medical treatment has been reasonable and necessary, and that Respondent has not yet paid all appropriate charges. At arbitration, Petitioner presented Px9, which includes bills for Petitioner's treatment at Geneva Eye Clinic, Wheaton Eye Clinic, Mile High Institute, P.C., Walgreens Pharmacy (for out-of-pocket expenses paid by Petitioner), Loyola Medical Center, and a CMS lien. At arbitration, Petitioner stipulated that the CMS lien detail may contain entries that are unrelated to this matter, and that to the extent that any entries are unrelated to this matter, Petitioner is not making a claim for them.

The Arbitrator notes that in his December 2013 report, Dr. Feder opined that Petitioner would continue to require contact lenses and that the medical treatment had been appropriate, though the use of topical antibiotics at the dosage level Petitioner was using was controversial. The Arbitrator further notes that in Dr. Feder's June 2016 IME report, he indicated that Petitioner would require regular and ongoing ophthalmological follow up because of Petitioner's persistent use of extended wear contact lenses and scarring. He also found Petitioner's use of tear supplements reasonable, and while he noted that the use of topical antibiotics twice daily was controversial, it was a common practice in patients using long-term extended wear contact lenses. Accordingly, the Arbitrator finds that Petitioner's treatment following MMI on December 3, 2013 was reasonable and necessary.

As the Arbitrator has found that Petitioner's treatment has been reasonable and necessary, the Arbitrator further finds that the bills for Petitioner's treatment, as provided in Px9, are awarded and that Respondent is liable for payment of these bills, pursuant to Sections 8(a) and 8.2 of the Act, with the

exception of reimbursement of the Walgreens out-of-pocket expenses, which should be pain in full to Petitioner.

At arbitration, the issue of whether the current fee schedule outlined in the Act or the geozip calculation in effect prior to the 2011 applies to the medical bills formatting. After considering the parties' arguments, the Arbitrator finds that medical bills for treatment incurred on or after September 1, 2011 are subject to the fee schedule provisions of Section 8.2 of the Act.

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

Per the Parties' stipulation, Respondent is entitled to a credit in the amount of $9,710.50 for medical benefits paid.

Issue K, whether Petitioner is entitled to TTD, the Arbitrator finds as follows:

Petitioner claims that he is entitled to TTD benefits from April 26, 2010 through September 21, 2010 and from December 1, 2010 through June 1, 2013. See Ax1, No. 8. Respondent disputes Petitioner's claim and relied on its accident, causation, and unpaid medical disputes.

The evidence demonstrates that on April 30, 2010, Dr. Hawkins noted that Petitioner could return to work on Monday, May 3, 2010. The Arbitrator notes that Petitioner did not receive treatment for his condition after his June 17, 2010 visit with Dr. Hawkins until he returned to Dr. Hawkins on April 2, 2011. While Petitioner testified that his employment with Respondent was terminated in May 2010 and he was recalled in September 2010, Petitioner was not taken off work until August 24, 2011 by Dr. Lee. In his narrative report of September 26, 2012, Dr. Grohe noted that Petitioner was unable to perform any activity at his previous printing job at that time until he fully recovered from his daily bouts of pain, photophobia, dryness, and reduced vision in each eye.

During cross examination, Petitioner agreed that he began work at LA Fitness on April 6, 2012 and that he worked at LA Fitness through July 10, 2012. While Petitioner testified that he began working at LA Fitness in June 2012 during redirect examination, Petitioner's testimony is inconsistent with Rx11.

Accordingly, the Arbitrator finds that Petitioner is entitled to TTD benefits from April 29, 2010 to May 2, 2010 and from August 24, 2011 through April 5, 2012 and from July 11, 2012 through June 1, 2013.

Per the Parties' stipulation, Respondent is entitled to a credit in the amount of $24,795.25 in TTD benefits paid to Petitioner.

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

The evidence demonstrates that Petitioner developed peripheral corneal scarring in the left eye as a result of the work accident, which required the use of bandage contact lenses, artificial tears, topical antibiotics, as well as punctal plugs and permanent punctal occlusion on Petitioner's right and left upper eyelids.

At arbitration Petitioner testified that he has not looked for work since August 2011. And while Petitioner conceded that he worked at LA Fitness for a short period of time, Petitioner seems uninterested in returning to the work force.

The Arbitrator acknowledges that in August 2012, Dr. Lee noted that any tasks within the environment of air impurity could exacerbate Petitioner's ocular discomfort, and that in September 2012, Dr. Grohe noted that Petitioner was unable to perform any activity at his previous printing job at that time until he fully recovered from his daily bouts pain, photophobia, dryness, and reduced vision in each eye. The Arbitrator notes, however, that the evidence lacks information regarding whether Petitioner's condition has improved enough to return to work at Respondent or whether there are any permanent restrictions regarding Petitioner's ability to work. The evidence demonstrates that it is Petitioner's opinion that he cannot return to work.

At arbitration, Petitioner admitted that in 2012 he told Dr. Feder that he was able to drive, read with reading glasses, and watch television. Petitioner also admitted that in December 2013, he told Dr. Feder that he was able to drive and watch television, and that he was taking classes at Elgin Community College. Petitioner further conceded that in 2016, he was reading and driving a car, and that in June 2016, he told Dr. Feder that he loved to read and that he had recently read every John Grisham novel, that he was able to drive, and that he regularly exercised and went to the gym. Petitioner also testified that he likes doing outdoor activities, including hiking and biking. The records also reflect that on May 9, 2019, Petitioner told Dr. Richheimer that he had been doing a lot of hiking.

Petitioner was observed wearing yellow tinted glasses at arbitration, which he explained helped with the reflection of lights when watching television or driving at night. Petitioner testified that he feels pain in his corneas when he is not wearing the tinted glasses. Petitioner testified that he is no longer using bandage contact lenses.

Petitioner also testified that he continues to treat with Dr. Richheimer and that Dr. Richheimer continues to prescribe Restasis and provides Petitioner with eye serum treatment. The records offered demonstrate that Petitioner sought treatment on an almost monthly basis from May 2011 through February 2014 and again from August 2015 through August 2017. Petitioner then presented for follow up in November 2015, but then not again until almost a year later in September 2018, then eight months later in May 2019, and then not again until over a year and half later in December 2020. No records for treatment subsequent to December 2020 were offered.

Based on the record as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 10% loss of the person as a whole, pursuant to Section 8(d)2 of the Act.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

Affirm and Adopt (No Changes) No Affirm with Changes No No Reverse Reason Yes Modify	Injured Workers' Benefit Fund (§4(d)) No Rate Adjustment Fund (§8(g)) No Second Injury Fund (§8(e)18) No PTD/Fatal denied No

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC030666
Case Name	Manuel P Grande v. De-Sta-Co Manufacturing
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0270
Number of Pages of Decision	33
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Michael Casey
Respondent Attorney	James Jannisch

DATE FILED: 6/7/2024

/s/ Deborah Simpson, Commissioner

Signature

24IWCC0270

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MANUEL P. GRANDE,

Petitioner,

vs. NO: 12 WC 30666

DE-STA-CO MANUFACTURING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering all issues and being advised of the facts and law, modifies the Decision of the Arbitrator as stated herein and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

On May 29, 2012, Petitioner, an assembler, experienced an immediate onset of lumbar pain while he was at work pulling a heavy, 600-pound unit up from a table. After the accident, which occurred on a Tuesday, Petitioner continued to work the rest of his shift. Petitioner thereafter worked two more ten-hour days before being off work the following Friday, Saturday, and Sunday. On Monday, June 4, 2012, Petitioner sought initial medical treatment at Concentra, Respondent's clinic, and complained of non-radiating low back pain. Dr. Debra Nelson diagnosed Petitioner with a lumbar sprain, prescribed Flexeril and Tylenol, ordered physical therapy, and provided a modified duty work status note. Petitioner thereafter began physical therapy at Concentra on June 7, 2012 and continued to attend sessions through June 20, 2012. The physical therapist noted that Petitioner's restrictions included no lifting over 25 pounds, no bending, and no pushing or pulling over 30 pounds. During the period in which Petitioner was participating in physical therapy, he also attended regular follow-up appointments at Concentra. Throughout this time, the medical providers at Concentra continued Petitioner's medication and work restrictions.

Petitioner's last visit at Concentra was on June 27, 2012. By this visit, Petitioner had already expressed radiating symptoms and had been diagnosed with lumbar radiculopathy in addition to his lumbar strain. After continuing Petitioner's medication and work restrictions, Dr. Nelson instructed Petitioner to return after obtaining an MRI.

Upon Respondent's request, Petitioner then presented for a §12 examination with Dr. Steven Mash on July 16, 2012. The Commission acknowledges that one or more pages are missing from Dr. Mash's corresponding §12 report dated July 20, 2012, as Dr. Mash's opinion cuts off mid-sentence on page three. The parties authenticated the transcript with said page(s) missing, and as such, the Commission must base its review only on the portion of Dr. Mash's report that was admitted into evidence and authenticated by the parties in the transcript of the proceeding. In the pages that were included in evidence, Dr. Mash diagnosed Petitioner with chronic low back syndrome and noted that there was a time delay of several days between the onset of Petitioner's symptoms and the time that he first reported the injury. Nevertheless, Dr. Mash opined that Petitioner's current symptoms did relate to his work accident and explained that some patients with minor back sprains/strains were able to continue to work thereafter. Dr. Mash further stated that there were discrepancies in Petitioner's physical examination; however, it is at this point where Dr. Mash's §12 report cuts off mid-sentence prior to his explanation regarding said discrepancies. Petitioner testified that following Dr. Mash's §12 report, his TTD benefits were terminated and none of his medical bills were paid by workers' compensation.

Petitioner thereafter began treating with Dr. Antonio Cruz for his low back pain on July 24, 2012. Dr. Cruz's assessment included a lumbosacral strain and L4-L5 herniated disc. Dr. Cruz provided Petitioner with a referral to see Dr. Thomas McNally of Suburban Orthopedics, whom Petitioner presented to on July 31, 2012. Dr. McNally noted that Petitioner denied having any pre-accident back pain that necessitated treatment; however, he now had experienced almost two months of severe low back and buttock pain that radiated toward his scrotum and was consistent with neural impingement. Dr. McNally obtained lumbar X-rays that showed a decrease in disc height and spurring consistent with Petitioner's age and occupation but no instability, deformity, or fracture. He diagnosed Petitioner with a lumbar strain and radiculopathy. For this, Dr. McNally prescribed meloxicam and a Medrol Dosepak and ordered a closed lumbar MRI and EMG/NCV of the bilateral lower extremities.

The lumbar MRI was obtained on August 2, 2012, and revealed degenerative changes most prominent at L4-L5 and L3-L4 as well as to a lesser degree at L2-L3. Shortly thereafter, on August 16, 2012, Petitioner underwent the EMG/NCV, which found evidence of mixed axonal demyelinating type of polyneuropathy likely secondary from diabetes in the bilateral lower extremities along with likely lumbosacral radiculopathy bilaterally in the L4-L5 distribution.

On September 7, 2012, Dr. Mash authored a §12 addendum after reviewing both the films and report of Petitioner's lumbar MRI. Dr. Mash indicated that the MRI findings were consistent with long-standing degenerative changes in Petitioner's lumbar spine. He opined that the MRI did not support the ongoing symptoms reported by Petitioner and did not relate to the original injury in any way. He indicated that such MRI results did not change his opinions offered in his first §12 report. As previously discussed, Dr. Mash's first §12 report was missing pages in the authenticated transcript. However in referencing his prior report, Dr. Mash stated that he had previously found that Petitioner had demonstrated significant inconsistency on physical examination that had raised concerns for symptom magnification.

On September 13, 2012, Petitioner returned to Dr. McNally with reported complaints of

low back and right leg pain. Dr. McNally's assessment was now lumbar disc displacement and spinal stenosis. Dr. McNally stated that although the work accident did not cause the degenerative changes in Petitioner's lumbar spine, the L4-L5 disc herniation seen on the lumbar MRI was consistent with a history of trauma. Dr. McNally opined that Petitioner had sustained a work-related injury that had aggravated and accelerated his preexisting asymptomatic degenerative lumbar spine conditions, causing them to become symptomatic and require treatment. Dr. McNally referred Petitioner to Dr. Dmitry Novoseletsky, an interventional pain management doctor, for possible lumbar injections and recommended that Petitioner start physical therapy after his first injection. He otherwise kept Petitioner off work.

Petitioner presented to Dr. Novoseletsky, who was also at Suburban Orthopaedics, on September 21, 2012. Dr. Novoseletsky's impression was low back pain radiating to the buttocks and right leg with numbness and tingling. He noted that Petitioner's pain was most consistent with the L4-L5 disc herniation seen on his MRI. Dr. Novoseletsky prescribed gabapentin and valium, provided an LSO brace, and recommended a lumbar epidural steroid injection. Petitioner underwent the lumbar epidural steroid injection at L5-S1 on October 10, 2012. When he returned to Dr. Novoseletsky on October 24, 2012, Petitioner reported that he was able to walk with more ease following the injection, but he still woke up with the same pain the next day. Dr. Novoseletsky prescribed Norco and ordered a second lumbar epidural steroid injection, which was performed again at the L5-S1 level on October 29, 2012. At his follow-up appointment on November 14, 2012, Petitioner told Dr. Novoseletsky that he felt 20% better after the second injection, but he was still not able to sit, stand, or walk for long periods of time. In response, Dr. Novoseletsky performed a prognostic medial branch block on the right side at the medial branch of L2, L3, and L4, as well as the dorsal ramus of L5, on December 10, 2012 followed by another prognostic medal branch block on the right side at L2, L3, L4, and L5 on December 26, 2012.

On February 13, 2013, Petitioner returned to Dr. Novoseletsky and had his medication adjusted. Specifically, Dr. Novoseletsky discontinued Petitioner's Tylenol and meloxicam use and instead prescribed Norco, gabapentin, and MS Contin. Dr. Novoseletsky also ordered a new lumbar MRI, which was later obtained on February 25, 2013. The MRI revealed the interval development of an extruded left paracentral disc at L3-L4 and a broad-based central to right paracentral disc herniation at L4-L5 that had slightly increased in size. Petitioner next saw Dr. Novoseletsky on March 14, 2013, at which time Dr. Novoseletsky's recommendations included another lumbar epidural steroid injection, Norco, gabapentin, an LSO brace, and physical therapy as a future option.

On June 4, 2013, Petitioner returned to Dr. McNally and reported occasional pain down his left leg into his foot, as well as one instance of pain going down his right leg like a lightning bolt. Petitioner also noted two instances of both his legs going numb. Dr. McNally again opined that Petitioner's work accident had aggravated and accelerated his preexisting asymptomatic degenerative lumbar spine conditions, causing them to become symptomatic and require treatment. Dr. McNally ordered an updated EMG of the bilateral extremities and recommended surgery in the form of L3-L4 and L4-L5 laminectomies. The new EMG was obtained the same day, on June 4, 2013, and demonstrated evidence of left acute and chronic L3-L4 radiculopathy, bilateral S1 radiculopathy, and early sensory polyneuropathy. At his follow-up visit on August 8, 2013, Dr. McNally again recommended L3-L4 and L4-L5 laminectomies and instructed Petitioner to obtain

a closed MRI of the lumbar spine prior to the surgery.

On August 20, 2013, the lumbar MRI revealed: 1) Multi-level degenerative changes, which were greatest at the L4-L5 level where there was mild to moderate spinal canal stenosis, mild bilateral subarticular zone stenosis, moderate left neural foraminal stenosis, and mild right neural foraminal stenosis; 2) A small Schmorl's node deformity involving the superior endplate of L5 that was progressed and associated with progressive marrow endplate degenerative change within the superior aspect of the L5 vertebral body and left L5 pedicle; 3) Interval improvement in retrolisthesis of L2 on L3; and 4) Interval improvement in a superiorly migrating left paracentral disc extrusion at the L3-L4 level with improved left subarticular zone stenosis.

Petitioner presented to Dr. McNally to discuss his new MRI on September 24, 2013. At that time, Petitioner complained of numbness at the lateral side of his thighs, right worse than left, and pain in both legs radiating down to his toes. Dr. McNally continued to recommend lumbar surgery. On September 30, 2013, Petitioner underwent the lumbar surgery consisting of a L3-L4 laminectomy with bilateral partial facetectomies and foraminotomies with decompression of the neural elements as well as a L4-L5 laminectomy with bilateral partial facetectomies and foraminotomies and discectomy with decompression of the neural elements. The postoperative diagnoses included lumbar spinal stenosis, lumbar disc displacement, lumbosacral disc degeneration, and lumbosacral spondylosis. Following the surgery, Petitioner was discharged home on October 1, 2013 with numerous medications, including gabapentin and Norco.

On November 5, 2013, Petitioner presented for his first postoperative visit with Dr. McNally and reported feeling much better overall than before the surgery. Dr. McNally recommended Norco, meloxicam, omeprazole, and physical therapy. On December 17, 2013, Petitioner returned to Dr. McNally and again reported feeling significantly better overall, although he continued to have low back pain. He indicated that the pain and numbness in his legs were otherwise gone. Dr. McNally kept Petitioner on Norco and meloxicam but recommended weaning him off gabapentin and putting him on nortriptyline. Dr. also further advised Petitioner to start postoperative physical therapy with the intention of eventually progressing to work conditioning. Petitioner last treated with Dr. McNally on January 16, 2014, at which time Petitioner complained of ongoing back symptoms but reiterated that the surgery had helped with the numbness in his legs. Petitioner was again advised to resume physical therapy. Although there were no subsequent physical therapy records submitted into evidence, Petitioner testified at the hearing to participating in postoperative physical therapy.

Petitioner testified that he remained off work from the accident through his release from care by Dr. McNally on January 16, 2014. Petitioner never thereafter returned to work for Respondent, nor did he seek work at any other places. Petitioner testified that he cannot work secondary to his pain. He eventually applied for and received Social Security benefits.

Petitioner testified that at the time of the hearing, he continued to have problems with his low back. Specifically, he testified that it was difficult for him to bend and he especially noticed back pain when tying his shoes. Petitioner testified that his back pain also prevented him from standing for ten to 15 minutes. Petitioner indicated that he did not have these problems prior to his work accident. For the ongoing pain, Petitioner took two Tylenol four times a week. Although

Dr. McNally also prescribed him hydrocodone, Petitioner had not taken it since his surgery because he believed it made him feel as though he could not think clearly. Overall, Petitioner testified that his lumbar surgery had helped but did not resolve his back pain. Petitioner testified that prior to the accident date, he never had any back pain, injuries, soreness, sprains, or problems.

Lastly, Petitioner testified that after he was initially examined by Dr. Mash, none of his medical bills were paid by workers' compensation and he instead put his bills through his group insurance from Blue Cross/Blue Shield through Respondent. Petitioner testified that the group insurance carrier sent him claims indicating that they wanted reimbursement for what they had paid for his low back surgery. Petitioner testified that the premiums for his group insurance were deducted from his salary ever week and said deductions were seen on his paychecks. He indicated that the amount of the premium deduction from his salary was $99.00 a week.

Following a careful review of the entire record, the Commission affirms the Arbitrator's finding that Petitioner's current condition of ill-being is causally related to the work accident on May 29, 2012. However, the Commission again must clarify that its review of the authenticated transcript lacked Dr. Mash's complete §12 report. Given that the Commission was missing pages that explained Dr. Mash's complete opinion, the Commission finds the causal opinions of Dr. McNally to be more reliable and persuasive. The Commission further finds that the Arbitrator's causal finding is supported by a chain of events analysis, as Petitioner never had any pre-accident back symptoms but became symptomatic to the point of requiring work restrictions and extensive lumbar treatment culminating in surgery post-accident.

Pursuant to its causal finding, the Commission further affirms the Arbitrator's award of all reasonable, necessary, and causally related medical expenses for the treatment of Petitioner's low back. The Commission also affirms the Arbitrator's permanent partial disability award of 25% PAW, given Petitioner's extensive treatment that included lumbar surgery, his ongoing symptomatology, and his long period of work restrictions. Lastly, the Commission affirms the Arbitrator's denial of Respondent's claim for credit under §8(j).

However, the Commission modifies the Decision of the Arbitrator to correct a minor discrepancy regarding the start date of Petitioner's TTD benefits. In the body of the Decision, the Arbitrator awarded TTD benefits from June 4, 2012 through January 16, 2014. However, in the Order section, the Arbitrator indicated that the awarded period of TTD benefits was from June 5, 2012 through January 16, 2014. Petitioner testified that he remained off work through January 16, 2014, the date he was released from Dr. McNally's care. The treatment records corroborate that Petitioner remained under work restrictions from his treating doctors after June 4, 2012, when he was first given a modified work status by Concentra, through January 16, 2014, when he last treated with Dr. McNally. Furthermore, on the Request for Hearing form submitted at the hearing, Petitioner claimed entitlement to TTD benefits starting on June 5, 2012 through January 16, 2014. Based on the above, with emphasis given to Petitioner's stipulation made on the Request for Hearing form, the Commission finds that the record supports Petitioner's claim of entitlement to TTD benefits from June 5, 2012 through January 16, 2014. The Commission thus modifies the discrepancy in the body of the Decision of the Arbitrator located on page 21 regarding the start date of TTD benefits to reflect the proper start date of June 5, 2012.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2013 is modified as stated herein. In all other respects not specifically stated herein, the Commission affirms and adopts the Decision of the Arbitrator. The Commission further acknowledges that the authenticated transcript was missing a page or pages from Dr. Mash's §12 report dated July 20, 2012. Only those pages of Dr. Mash's §12 report that were admitted into evidence and authenticated by the parties were considered by the Commission.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner TTD benefits of $574.33 per week for 84-3/7 weeks, commencing June 5, 2012 through January 16, 2014, as provided in §8(b) of the Illinois Workers' Compensation Act. The clerical error on page 21 of the Decision of the Arbitrator that lists the start date of TTD benefits as June 4, 2012 is hereby corrected to reflect the proper start date of June 5, 2012.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 7, 2024

DLS/mek
O- 4/10/24
46

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC030666
Case Name	Manuel P Grande v. De-Sta-Co Manufacturing
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Michael Casey
Respondent Attorney	James Jannisch

DATE FILED: 4/14/2023

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

/s/ Joseph Amarilio, Arbitrator

Signature

0TATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Manuel P. Grande
Employee/Petitioner

v.

De-Sta-Co Manufacturing
Employer/Respondent

Case # **12** WC **030666**

Consolidated cases: **None**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **10/24/22 and 1/24/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **5/29/2012**, 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 $**44,798.00**; the average weekly wage was $**861.50**.

On the date of accident, Petitioner was **62** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**3,445,98** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**3,445.98**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act. Respondent's claim for credit pursuant to section 8(j) is denied.

ORDER *SEE* ATTACHED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent shall pay reasonable and necessary medical services as identified in Petitioner Exhibit 6 as provided in Sections 8(a) and 8.2 of the Act., including $61,059.80 for Blue Cross Blue Shield payments; $7,408.41 to Suburban Orthopedics; $267.64 to Concentra; $1,393.08 to 1800 McDonough Road; and, $85.40 to Oakbrook Anesthesiologists. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

Respondent shall pay Petitioner temporary total disability benefits of $574.33/week for 84-3/7 weeks, commencing 6/5/12 through 1/16/14, as provided in Section 8(b) of the Act.

Respondent shall pay petitioner $516.90 per week for 125 weeks representing permanent partial disability to the extent of 25% loss of a person as a whole pursuant to section 8(d)2 of the Act.

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

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

/s/ *Joseph D. Amarilio*

APRIL 14, 2023

Signature of Arbitrator Joseph D. Amarilio

Attachment to Arbitration Decision

MANUEL GRANDE v. DE-STA-CO MANUFACTURING
12 WC 030666

Findings of Fact and Conclusions of Law

I. Procedural History

Mr. Manuel Grande (Petitioner), by and through his attorney, filed an Application for Adjustment of Claim for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)). Petitioner alleged that he sustained an accidental injury on May 29, 2012 while employed by De-Sta-Co Manufacturing (Respondent"). Hearings were held on October 24, 2022 and January 24, 2023 on the disputed issues and proofs were closed.

The parties stipulated that on May 29, 2012, Petitioner sustained accidental injuries that arose out of any in the course of his employment and that notice of the accident was provided to Respondent within the limits stated in the Act. The parties stipulated that at the time of the injury, Petitioner was 62 years if age, married with no dependent children and had an average weekly wage in the amount $861.50. The parties further stipulated that Respondent paid $3,445.98 in temporary total disability benefits (TTD) for which it is entitled to credit. The parties mutually requested a written decision, including findings of fact and conclusions of law pursuant to the Act.

The following five (5) issues are in dispute. 1. Whether Petitioner's current condition of ill-being is causally connected to his injury. 2. Whether Respondent is liable for unpaid medical bills contained in Petitioner's Group Exhibit Six (6) ; 3. Whether Respondent is entitled to credit under Section 8(j) for medicals bills Respondent claims it paid through its group medical plain in the amount of $ 61,059.80; 4. Whether Petitioner is entitled to TTD for the period of 6/5/2012 through 1/16/2014 representing 84-3/7th weeks or six (6) weeks of TTD for the period of 6/5/2012 through 7/16/2012 as claimed by Respondent; and, 5. The nature and extent of Petitioner's injury. Arb. X 1.

II. Findings of Fact

On the date of hearing, Petitioner was 72 years old. He weighed 195 pounds and was 5'9" tall. On the accident date, he weighed 205 pounds. He worked for Respondent as an assembler building 600-pound units, manufactured by the company for 20 years.

On May 29, 2012, Petitioner was pulling up one of the units to lay it on a table. The unit weighed more than 600 pounds. He felt low back pain while a pulling the unit. He sat down thinking that the pain would go away. He took Tylenol. T 11. He never experienced pain like that before the accident. He continued to work, and he finished work that day. He did not recall whether he worked the next day. Petitioner did come back to work after the day of accident. He does not remember if he tried to do the same job when he came back to work after the day of the accident. Petitioner did

recall going to Concentra. He was sent there by Human Resources. T 12. He was feeling pain in his lumbar area. The same pain that he was feeling on the accident date, May 29, 2012. T 13-14. Over the days following the accident, the pain was getting worse. The records indicate that he was seen at Concentra on June 4, 2012. T 14.

On cross-examination Petitioner testified he injured himself on May 29, 2012. T 37. He worked all day on May 30, 2012. T 37. He did not remember if he worked on May 31, 2012. T 37. He usually worked Monday through Thursday, 10 hours a day. T 37. Petitioner did not recall if the accident happened on a Tuesday. He worked 2 more days after he was injured. T 38. He was off Friday Saturday and Sunday. T 38. He went to the clinic on Monday because he talked to his supervisor because the was feeling something wrong with his back. When he arrived at Concentra, Human Resources had already called and told them that he was coming. T 39. He does not remember if he told them he was injured on May 30, but he was complaining of his back. He did not report the injury on May 29 because he thought the pain would go away. He did not report the injury on May 30 or on May 31. T 40. He was taking Tylenol. He was aware that he was supposed to report the injury at work. T 41. He had been through the process previously when somebody kicked a chair, and he injured his chest. T 41. He was injured on May 29, 2012 while lifting a 600-pound unit using tools to pull the 600-pound unit. He does not recall much the part actually weighs. T 42. He did not seek medical treatment on May 29, 2012 for his back pain. He just took Tylenol. He sat down. When he sat down, the pain was pain was not so bad. T 43. His testimony was that he lifted, he felt pain, he sat down, and then the pain started to ease. T 43. He did not seek any medical treatment on May 31 when he came to work that day. T 43-44. He did not seek any medical treatment on June 1st , June 2nd , or June 3rd . When he went to Occupational Health June 4, 2012 the pain was 7 to 8. He does not remember what he told the people at Concentra about the level of his pain. T 45. He would agree with Concentra records if he reported his pain as 8/10. T 45. On the accident date of May 29, 2012, the pain was 8/10. Next day it was lower about 4 to 6. It went down because he was taking Tylenol. T 46. Over the weekend, he was not working. He laid down. T 46-47. The day that he was working his pain was 8/10. He did not tell his supervisor because he thought it would go away. T 47. The first time he went to Concentra, the pain was in his back. T 47-48.

Medical records of Concentra were admitted in evidence as Petitioner Exhibit 1.

The 6/4/12 Concentra/Deborah Nelson D. O. Records documented the following: 59-year-old male employee complains about his back which was injured on 5/30/12[sic.]**;** patient states at work moving/carrying heavy parts on a table, lifting it, he felt pain in the low back after this; the pain has persisted worsens with bending and lifting and twisting; not radiating; pain level is about 8/10; has not tried anything for the pain yet; he is having trouble sleeping with the pain; he has applied heat; describes the pain as dull aching and moderate; denies abdominal pain, Waddell tests are negative**. A**ssessment: lumbar strain. Plan: medications Flexeril Tylenol. RX physical therapy 3 times a week for 1 to 2 weeks. Home exercises employee. Modified activity. Diagnosis: lumbar strain. PX 1, p 13-15.

The 6/7/12 Concentra/Deborah Nelson, D. O. documented: Initial therapy evaluation. Special tests: SLR positive bilaterally; patient ambulates with antalgic gait and decreased step length.

Assessment: physical exam is consistent with medical diagnosis of lumbosacral strain. Physical therapy; electrical stimulation; hot cold packs; therapeutic exercises; electrode relay. PX 1, p 16-19.

The 6/7/12 Concentra/Deborah Nelson D. O. Records documented: Return symptoms stable; is little better; meds make him drowsy; less intensive pain overall, but he is still very stiff and sore in the low back; pain does not radiate; pain is about 7/10; he started physical therapy today; using heat. Examination: straight leg raising is negative bilaterally in the seated position and maneuver produces back pain, but no sciatic pain. Waddell signs are negative. Gait is antalgic. Plan: continue meds. Modified work activity. Return for evaluation. Continue physical therapy. PX 1, p 21-22.

The 6/11/12 Concentra/physical therapy records documented: Patient reports he has groin pain, right lower extremity pain and low back pain. Patient working modified activity**.** Physical therapy administered. PX 1, p 23-25.

The 6/13/12 Concentra/physical therapy records documented the following. Patient reports he is having minor relief with physical therapy; he has LBP and groin pain. Physical therapy performed. PX 1, p 26-29.

The 6/13/12 Concentra/ Sakthikarpagam Arigovindan, MD. records documented: Patient states that he feels 40% better; still has pain lower back radiating to his tailbone; has been working within the duty restriction; taking prescribed medications and has noted minimal improvement; had physical therapy 3 times and is slightly improved; rates pain intensity 5/10; pain is located on bilateral lumbosacral religion; pain radiated to the coccyx and scrotum; pain alleviated by resting or Tylenol; associated stiffness; denies paresthesias; no numbness; Examination: tenderness lumbar to palpation; Assessment: lumbar strain. Continue medications. RX bio freeze. Return. Work status modifications no lifting over 25 pounds no push pull over 30 pounds no bending more than 6 times per hour. PX 1, p 30-31.

The 6/14/12 Concentra/physical therapy records documented that patient reports he is continuing to slowly improve. He still has groin pain. Patient indicates that they are working modified activity. PX 1, p 32-35.

The 6/18/12 Concentra/physical therapy records documented the following: Pain in low back and around the right hip including scrotum is not getting better. Off work due to medication restrictions. Physical therapy provided. PX 1, p 36-38.

The 6/20/12 Concentra/physical therapy records documented: patient continues to have groin and back pain. PX 1, p 39-41.

The 6/20/12 Concentra/Inderjote Kathuria MD. records documented: Patient feels the pattern of symptoms is no better; working within duty restrictions**;** taking medications; had physical therapy; still having pain in the low back going around the lateral back. Continue physical therapy. Assessment: lumbar radiculopathy; lumbar strain. PX 1, p 42-45.

The 6/27/12 Concentra/Deborah Nelson, DO. Records documented: Feels the pattern of symptoms no better; has not been working because no light duty available**;** taking medications not noted any

improvement; physical therapy 6 times and does not feel better; pain is located on right lumbar region; pain intensity 7/10; pain radiated to the right side of his sacral and the coccyx; exacerbated by bending sitting or lifting; has run out of meds; the radiating pain started about 2 weeks ago; he is very concerned about this; overall he is not any better. Initial injury was 4 weeks ago. Denies abdominal pain. Assessment: lumbar radiculopathy; lumbar strain; sacral strain. Plan: medications Flexeril Tylenol apply heat. Work restrictions ordered. RX MRI return after MRI. PX 1, p 46-47.

Petitioner testified that he was sent by the insurance company to a doctor to be examined. T 17. Petitioner was examined by Stephen Mash, MD at Respondent's request on 7/16/12 pursuant to Section 12 of the Act. Dr. Mash report dated 7/20/12 was admitted in evidence as Respondent Exhibit 1. Dr. Mash obtained a history from Petitioner and performed a physical examination. Dr. Mash noted no tenderness, or spasms in Petitioner's back. The medical records Dr. Mash reviewed included the Concentra records of Dr. Nelson who diagnosed Petitioner with a lumbar sprain. Dr. Mash diagnosed Petitioner with chronic low back syndrome. The doctor related Petitioner's back sprain to the reported work injury. However, Dr. Mash also noted several discrepancies in Petitioner's physical examination. Specifically, Dr. Mash found altered straight leg raising between the seated and supine positions which suggests Petitioner may be magnifying his symptomatology because in his opinion Petitioner's subjective complaints were not supported by objective findings on examination. Dr. Mash opined Petitioner has reached maximum medical improvement from an orthopedic perspective because his has not responded to physical therapy and thus, can return to work without restrictions. He also opined Petitioner could return to work without restrictions and required no further treatment. For complaints of pain which he notes in his scrotum and testicles, Dr Mash recommended a referral to a urologist in an effort to be certain that he does not suffer a hernia or other difficulty which could be related to the lifting episode. Dr. Mash stated that he would defer further comment to a urologist in terms of those complaints and any causal connection they may have to the work episode. Based on Petitioner's history, Dr. Mash opined that Petitioner's current symptoms related to the work injury of May 29, 2012, he opined that patients with some minor back pain/strains will be able to continue to work**.** RX 1.

On September 7, 2012 Dr. Mash subsequently reviewed additional medical records including an MRI study of August 2, 2012. Dr. Mash opined that the MRI findings were consistent with long standing degenerative changes in Petitioner's spine. Dr. Mash opined that the MRI findings did not support the ongoing symptoms as offered by Petitioner and did not relate to the work injury. (R X 2)

Petitioner testified after this examination his TTD benefits were terminated by Respondent. T 17. His medical treatment at Concentra was no longer authorized. He then began treatment with Dr. Antonio B, Cruz, his primary care physician. T 17-18. Petitioner testified he told Dr. Cruz that he had low back pain, having been treated at the company clinic and that he still had the ongoing pain. Petitioner testified Dr. Cruz referred him to Dr. McNally. T 18. Petitioner testified Respondent refused to authorize MRI (ordered by Concentra, PX 1, p 46-47) and that is why he went to his primary care physician, Dr. Cruz. T 19.

The records of Antonio B. Cruz MD were admitted in evidence as Petitioner Exhibit 2.

The 7/24/12 Antonio B. Cruz, MD, records documented that on June 4, 2012 he complained of low back pain and referred to company clinic, Concentra Clinic and underwent some physical therapy after one month… Dr. Cruz noted that Petitioner complained of low back pain that radiates to his testicle. Dr. Cruz noted that Petitioner does assembly work… makes big machines. Assessment: lumbosacral strain and radiculopathy; herniated discs at L4-L5. Plan: patient to see Dr. McNally. PX 2, p8-9.

Medical records of Suburban Orthopedics/Dr. Thomas A McNally, MD, were admitted in evidence as Petitioner Exhibit 3.

The 7/31/12 Suburban Orthopedics/Thomas A. McNally MD. records document: Patient is 62 years old. Is right-hand dominant male who works as an assembler heavy labor/lifting. Day of incident 5/30/12. Last day worked 6/4/12 full duty able to work with restrictions and company does not have light duty available. Patient was pulling unit and felt a sharp pain in his low back; took Tylenol which provided some relief; was able to continue working but took Tylenol every 4 hour; following day patient was pulling units again at work and again felt sharp pain in his low back; the patient thought that it was just ordinary muscle pain so he decided to keep working. On Monday the patient returned to work and told his employer that he could not bend his waist, lift because of pain in his back; supervisor referred patient to occupational medicine; had x-rays diagnosed with a lumbar sprain/strain; given bio freeze medication referred for physical therapy; patient completed one month; states he initially feels better after PT [physical therapy] but then symptoms returned quickly; is not making progress; had a lumbar MRI ordered but was not approved by his Worker's Compensation carrier and was also evaluated by his primary care physician, referred the patient to our office for further evaluation and treatment. Patient states that he has to sit after 5-10 minutes walking; bothersome within 15 minutes of driving; pain radiating into his scrotum; pain is worse when sitting; pain to the left of midline in the lower lumbar region; sensation of swelling; denies pain numbness or tingling in his legs, except for pain radiating to his buttocks and around his rectum and extending to his scrotum. Describes the pain as pulsing. Reports the pain when putting his right leg down while walking. Currently taking Vicodin but causes sedation. Also takes Tylenol 1000 mg 1-2 times a day. Patient denies having any back or buttock pain or injury prior to the work-related injury of 5/30/12 that necessitated medical treatment. After physical examination Recommendations were: closed MRI lumbar spine; EMG/NCV bilateral lower extremities; Medrol Dosepak; meloxicam; follow-up after MRI and EMG/NCV. Diagnosis: lumbar strain; radiculopathy. Assessment: 62 years old male who has experienced almost 2 months of severe low back pain and buttock pain that radiates towards his scrotum. His symptoms are consistent with neural impingement. PX 3, p 358-365.

Petitioner testified he agreed with the history of accident in Dr. McNally's record. T 18-19.

The 8/2/12 Suburban Orthopedics records document: MRI lumbar spine, RX by Thomas McNally MD. Impression: Degenerative changes discussed above most prominent at L4-L5 and L3-4 and to a lesser degree at L2-3. L3-4 there is some mild disc bulging with ventral thecal sac indentation and superimposed left remedial disc protrusion causing focal left ventral thecal sac indentation and adjacent to/slightly above the level of the exiting left L4 nerve roots sleeve; correlate for possible left L4 radicular symptoms. At L4-5 diffuse disc bulging with marginal osteophytes formation and

superimposed broad-based midline disc herniation extending below the disc space. There is ventral thecal sac indentation asymmetric to the left with left greater than right some particular recess narrowing in the region of the exiting L5 nerve root sleeves. At L5-S1 there is no significant degenerative disease seen. PX 3, p 348-349.

The 8/4/12 Antonio B. Cruz, MD records document: patient still has low back pain radiating to right testicle; patient had seen Dr. McNally, an MRI done. Assessment: lumbosacral radiculopathy. Plan follow-up MRI. PX 2, p 10-11.

The 8/10/12, Antonio B. Cruz, MD records document: MRI L-S done 8/2/12 herniated disc. Talk to Liberty Mutual Insurance rep today. They denied responsibility because their physician diagnosed the patient for inguinal hernia. This is no inguinal hernia. Patient referred to independent orthopedic for 2nd opinion (Dr. McNally), who ordered MRI L-S and EMG lower extremity. PX 2, p 12-13.

The 8/16/22 Suburban Orthopedics medical records document: Neurological Consultation Report Anthony Stevens, MD. History of present illness: patient is 62-year-old type II diabetic who I am asked to see for low back pain radiating to the right leg. This occurred approximately 1 to 2 months ago at work and was associated with heavy lifting. He currently has pain radiating to the testicles and groin, mostly on the left side. He has weakness secondary to the pain. But no numbness and no bowel or bladder complaints. Physical exam: he has straight leg raise at the time at 15° on the right. It is marked paraspinal muscle spasm. Iliopsoas is 5/5 on the right and left. Hip abductors are 5/5 on the right and left. Quadriceps on the right is limited by pain. Tibialis anterior, extensor hallucis longus and gastrocnemius are 5/5. Sensory exam is subjectively normal to light touch and pinprick. Toes are down going. Impression/plan: possible lumbar radiculopathy. Suggestions include proceeding with EMG and nerve conduction studies including the paraspinal muscles to further try to localize the source of his pain. PX 3, p 331.

The 8/16/12 Suburban Orthopedics medical records document: EMG lower extremities. Evidence of mixed axonal demyelinating type of polyneuropathy likely secondary from diabetes and bilateral lower extremities; likely lumbosacral radiculopathy bilateral probably in the L4-L5 distribution suggest MRI correlation. PX 3, p 332.

Petitioner testified he was examined by the insurance company doctor on September 7, 2012. T 20. The Section 12 report of Stephen Mash, MD, dated 9/7/2012 was admitted in evidence as Respondent Exhibit 2. The report of Dr. Stephen Mash dated 9/7/2012, RX 2, is an Addendum note to his earlier examination and report. RX 1. Petitioner was not examined by Dr. Stephen Mash as part of the 9/7/2012, Addendum report.

The 9/7/12 Section 12 Report of Dr. Mash states the following. Addendum requested. Have reviewed films and report of MRI study performed on 8/2/12. Findings demonstrate discogenic change throughout the lumbar spine; impression is degenerative changes discussed above most prominent at L4-5 and L3-4 and to a lesser degree at L2-3. L3-4 mild disc bulging with ventral sac indentation and a left paramedian disc protrusion causing some left ventral sac indentation perhaps affecting the L4 nerve root sleeve; at L4-5 broad-based midline disc herniation seen with some ventral thecal sac indentation contact neural foramina; at L5-S1 there is no significant degenerative

disease seen. These MRI findings are consistent with long-standing degenerative changes about Mr. Grande's lumbar spine, which frankly were identified also on preoperative (sic) x-ray. The findings of the MRI did not support the ongoing symptoms as offered by Mr. Grande, in my opinion. In my opinion, the MRI findings do not relate to the original injury in any way. The MRI results do not change the opinions he offered relative to Mr. Grande in his original correspondence. RX 2. The Arbitrator notes that there is no "preoperative x-ray" as stated by Dr. Mash in this report of 9/7/12. Petitioner did not undergo surgery until 9/30/13.

The 9/10/12 Antonio D. Cruz, MD records document: patient under care of Dr. McNally for low back problem. PX 2, p 14.

The 9/13/12 Suburban Orthopedics/Thomas A. McNally MD. records document: History: patient 62-year-old right-hand dominant male who works as an assembler heavy labor/lifting. DOI 5/30/12, work-related. Last day worked 6/4/12 full duty able to work with restrictions but company does not have light duty available. Patient comes in today to discuss EMG and MRI results. He is still having pain when he is sitting down, feels pulling along his left groin when sitting. If he walks a lot, he feels pain. Still getting radiating pain into the scrotum. Pain is in the lower back; gets numbness and tingling in the hand; states the pain starts in the lower back and radiates into the right buttock and into the scrotum and groin on the right side. Takes meloxicam and Tylenol. Diagnosis: lumbar disc displacement; lumbar spinal stenosis. Recommendations: refer to Dr. Novoseletsky to evaluate and treat with possible lumbar injection; start physical therapy after first injection; remain off work; return to work per Dr. Novoseletsky depending upon response to injection and physical therapy; follow-up with spine surgery as recommended by Dr. Novoseletsky. PX 3, p 323-326.

Petitioner testified he was referred by Dr. McNally to Dr. Novoseletsky. T 20.

The 9/21/12 Suburban Orthopedics/Dmitry Novoseletsky, MD records document: referred by Dr. Thomas a McNally. Manuel Grande is 62 years old male who complains of low back bilateral hip and leg pain. Onset date on 5/30/2012 while at work, he was pulling equipment at that time. States he feels pain mostly in back and hips, especially when walking too long. Pain is fairly constant. Also feels pain in his buttock area. States he has to switch his weight around if sitting too long. States he has constant numbness on both sides of his knees and along lateral aspect of right thigh. He experiences pain radiating to his scrotum when sitting for too long as well. For pain, the patient is currently taking meloxicam, Tylenol. He completed an oral steroid pack with mild improvement. He also takes aspirin. 75% back and 25% leg pain. Right leg worse than left. After examination and review of EMG of 8/16/22 and MRI of 8/2/12 and x-rays of 7/31/12 Dr. Novoseletsky's Impression was: low back pain radiating to buttocks and right leg numbness/tingling. Differential diagnoses: lumbar disc displacement; lumbar spinal stenosis; lumbosacral spondylosis; lumbosacral disc degeneration; lumbar radiculopathy; sacroiliitis; meralgia paresthetica; diabetic neuropathy. Recommendations for the diagnostic workup. We discussed that the patient's pain is most consistent with disc herniation at L4-5 as seen on the MRI. Medications start gabapentin, Valium; discontinue NSAID'S and aspirin; continue Tylenol. Physical therapy a future option when pain is better controlled. LSO [Lumbar Sacral Orthoses] provided to patient today to help

reduce pain**.** Procedural lumbar epidural steroid injection follow-up up in 1 to 2 weeks. PX 3, p 316-319.

The 10/10/12 Suburban Orthopedics/Dmitry Novoseletsky MD records document: procedure: lumbar epidural steroid injection at L5-S1,. Postoperative diagnosis: chronic low back pain; lumbar spinal stenosis; lumbar radiculopathy; lumbar internal disc disruption. PX 3, p 304.

The 10/24/12 Suburban Orthopedics/Dmitry Novoseletsky MD records document: patient states that after the injection he felt like he was able to walk with more ease but woke up the next day with the same pain. Takes Tylenol every night in order to sleep. After examination, recommendation was for lumbar epidural steroid injection number 2 with sedation. PX 3, p 231-244.

The 10/29/12 Suburban Orthopedics/Dmitry Novoseletsky MD records document: procedure injection: lumbar epidural steroid injection at L5-S1; Postoperative diagnosis: chronic low back pain, lumbar radiculopathy, lumbar spinal stenosis. PX 3, p 213.

The 11/14/12 Suburban Orthopedics/Dmitry Novoseletsky MD records document: returns to the office following his L ESI number 2; states he feels about 20% better. He is still not able to sit, stand or walk for a long period of time. After examination Recommendation was: Continue Tylenol meloxicam Norco; continue LSO [Lumbar Sacral Orthoses, i.e., back brace]; Procedural right L2, L3, L4, L5. Follow-up in 2 weeks postop. PX 3, p 215-218.

The 12/10/12 Suburban Orthopedics/Dmitry Novoseletsky MD records document: Procedure: prognostic medial branch block, right side: L2, L3, L4, L5. Postoperative diagnosis: 1. Chronic axial back pain, right side dominant; 2. Lumbar facet arthropathy. PX 3, p 208-209.

The 12/12/12 Suburban Orthopedics/Dmitry Novoseletsky MD records document: patient returns to office follow-up after his right L2, L3, L4, L5 LMBB; states he felt about 50% pain relief, which was significant for him. He was able to move more easily with less pain following the procedure. He states that when he is brushing his teeth yesterday feels the pain coming on. Patient states he only takes Norco if his pain is severe and has not needed to take any pain medication yesterday. After examination Recommendations were: We discussed the patient's pain is most consistent with disc herniation at L4-5 as seen on the MRI; continue Norco, discontinue Tylenol discontinue meloxicam. Continue LSO; procedural right L2, L3, L4, L5 MBB #2. PX 3, p 179-182.

The 12/26/12 Suburban Orthopedics/Dmitry Novoseletsky MD records document: RECORDS: INJECTION Procedure: prognostic medial branch block, right side L2, L3, L4, L5. Postoperative Diagnosis: chronic axial back pain, right sided dominant, lumbar facet arthropathy; lumbar spondylosis. PX 3, p 174-175.

The 2/13/13 Suburban Orthopedics/Dmitry Novoseletsky MD records document: patient returns to the office to follow up after his right L2, L3, L4, L5 MBB # 2. States that this injection helped reduce his pain. And was able to bend and twist with less pain. He states that his pain gets aggravated when he bends forward. He states that he had felt stiffness and pain in his leg, to the point that he is not able to walk. He is still having pain and bilateral buttock and is severe with sitting. Patient states he only takes Norco if his pain is severe. The patient also reported having

two episodes of paralysis in both legs, lasting about 30 minutes each time, when he could not walk or move his feet at all. He states he was standing in the bathroom when this occurred, so he sat down suddenly on the toilet until the symptoms resolved and he was able to stand again. After examination recommendation was: RX Norco, gabapentin, MS Contin, RX NEW LUMBAR SPINE MRI procedural right L2, L3, L4, L5 RF sedation, follow-up after MRI and then 3 weeks and then 6 weeks post RF. PX 3, p 151-154.

The 2/25/13 Suburban MRI/Suburban Orthopedics. Document: MRI lumbar spine ordered by Dr. Dimitri Novoseletsky. Comparison: MRI of the lumbar spine August 2, 2012. Conclusion: 1. Interval development of an extruded left paracentral disc at L3-L4. Previously there was a smaller left paracentral protrusion at this level. 2. A broad-based central to the right paracentral disc herniation at L4-L5 has slightly increased in size. PX 3, p 149-150.

The 3/14/13 Suburban Orthopedics/Dmitry Novoseletsky MD records document: patient returns follow-up of the lumbar MRI has not had his RFP because he is waiting to get the results of the MRI. He continues to take Norco gabapentin. After examination recommendation was: medications Norco gabapentin, continue LSO PRN, lumbar MRI reviewed and discussed with patient today; procedural consider L ESI with sedation #3; follow-up with Dr. Thomas McNally to discuss lumbar surgery options. PX 3, p 141-144.

The 6/4/13 Suburban Orthopedics/Thomas A. McNally MD. records document: chief complaint: lower back and bilateral leg pain, right worse than left. 63-year-old right-hand dominant male who works as an assembler heavy labor/lifting; DOI 5/30/12 work related; last date worked 6/4/12 full duty, able to work with restrictions but company does not have light duty available; patient returns for follow-up on his low back and leg pain, and to discuss possible surgery. He states he is doing about the same. Continues to have some pain and is still taking the medications. He states he gets occasional pain going down his left leg to his foot. He states he has pain going down his right leg, like a lightning bolt, which has happened once. He states one night in February, he got up in the night and both legs went numb. He states it happened one other time. He has a hard time sitting for any length of time. He has been treating with Dr Novoseletsky and has had two L ESI injections at L5-S1, the first on 10/10/12 and the 2nd on 10/29/12. He also has had to right-sided medial branch blocks at L2-L5 levels. His first was on 12/10/12 and the 2nd on 12/26/12. He states the injections only helped for a short while. He was sent for another MRI on 2/25/13 he is taking hydrocodone 5/325, 3 times a day for pain. Painful to first stand up, can walk 5 to 10 minutes before pain limits him, he has to sit down frequently in the mall and rest before he can get up and walk again. After examination and review of imaging studies, Diagnosis was: lumbar disc displacement; lumbar spinal stenosis. Assessment & Plan: 63-year-old male who has experienced more than a year of severe low back and buttock pain since a work-related injury on 5/30/2012; symptoms are consistent with medical testing to date. The work-related injury 5/30/12 did not cause the degenerative changes in the patient's lumbar spine; the L4-5 disc herniation on the lumbar MRI is consistent with trauma; will reasonable degree of medical and surgical certainty, the work related injury 5/30/12 aggravated and accelerated the pre-existing previously asymptomatic degenerative lumbar spinal conditions, caused them to become symptomatic and

require treatment. Feels he has exhausted nonoperative care and is interested in his surgical options. Patient expressed understanding and agreement with the plan. PX 3, p 122-125.

The 6/4/13 Precision Diagnostic LLC. Records document: EMG evidence of left acute on chronic L3/L4 radiculopathy, bilateral SI radiculopathy, early sensory polyneuropathy. PX 3, p 128-129.

The 6/14/13 Suburban Orthopedics/Thomas A McNally MD records document: Hartford Life Insurance Company Hartford Life and Accident Insurance Company Attending Physician Statement Of Functionality. Patient's condition as result of injury that is work related. Diagnosis: lumbar disc displacement; lumbar spinal stenosis; low back pain with radiating pain down both legs. Disability date 5/30/12 expect return to work date TBD. Surgery is planned but not scheduled: L3-4 and L4-5 laminectomies. Restrictions ordered until surgery and then new restrictions will apply. Dr. Thomas A. McNally. PX 3, p 118-119.

Petitioner testified he was off work all this time at the direction of his doctors. T 23.

The 8/8/13 Suburban Orthopedics/Thomas A McNally MD records document: chief complaint: lower back and bilateral leg pain, right worse than left. After examination review of x-rays, EMG, MRI of the lumbar spine, EMG and CS bilateral lower extremities, diagnosis was: lumbar disc displacement; lumbar spinal stenosis. Recommendations: 1. Begin preparing L3-4, L4-5 laminectomies; 2. Updated closed MRI of the lumbar spine prior to surgery; 3. Follow-up for preop teaching. Assessment and Plan: 63-year-old male who has experienced more than year of severe low back and buttock pain since a work-related injury on 5/30/2012. His symptoms are consistent with the medical testing to date. The work-related injury of 5/30/12 [sic.] did not cause the degenerative changes in the patient's lumbar spine. The L4-5 disc herniation on the lumbar MRI is consistent with a history of trauma. To a reasonable degree of medical and surgical certainty, the work-related injury of 5/30/12 aggravated and accelerated the pre-existing previously asymptomatic degenerative lumbar spinal conditions, cause them to become symptomatic and require treatment. His medical testing and diagnosis were presented and reviewed. We discussed nonoperative and operative treatment options at length. We discussed the risks of nonoperative and operative treatment options in detail. He has not improved despite passage of time, activity modification, NSAID's, oral steroids, physical therapy and multiple interventional pain management treatments. He feels he has exhausted his nonoperative care and is interested in his surgical options. He opted to proceed with L3-4 and L4-5 laminectomies. RX MRI lumbar spine without contrast. PX 3, p 111-115.

The 8/9/13 Suburban Orthopedics/Dmitry Novoseletsky MD. records document: referred by Dr. Thomas A McNally. 63-year-old male follows up for low back, bilateral hip and leg pain. Onset date on 5/30/2012 while at work. He was pulling equipment at that time. History: last visit 3/14/13; patient states that he is still having lower back pain; pain in his lower back has gotten worse; worse at night; experiencing numbness and pain on the lateral side of the thigh; sometimes pain radiates all the way bilateral legs on the lateral side; pain in his legs feels like something is pulling; patient states that he is setting up for surgery with Dr. McNally. Taking Norco, gabapentin. Impression: lumbar disc displacement, lumbar spinal stenosis, lumbosacral spondylosis, lumbosacral disc degeneration, lumbar radiculopathy, sacroiliitis, meralgia paresthetica, diabetic neuropathy.

Consider lumbar epidural steroid injections with sedation #3. Follow-up with Dr. McNally to discuss lumbar surgery. PX 3, p 107-110.

The 8/20/2013 Suburban Orthopedics/Thomas A McNally MD /Suburban MRI. Records document lumbar spine MRI. Impression: Multilevel degenerative changes. Degenerative changes are greatest at the L4-5 level where there is mild-to-moderate spinal canal stenosis, mild bilateral subarticular zone stenosis, mild left neural foraminal stenosis, and mild right neural foraminal stenosis. A small Schmorl's node deformity involving the superior endplate of L5 pedicle is progressed; interval improvement in retrolisthesis of L2 on L3. Interval improvement in a superiorly migrating left paracentral disc extrusion at the L3-4 level. Left subarticular zone stenosis at that level is improved. PX 3, p 97-99.

The 9/24/13 Antonio B. Cruz, MD records document: scheduled for laminectomy on lumbar disc following an injury at work last year… PX 2, p 22.

The 9/24/13 Suburban Orthopedics/Thomas A. McNally MD. records document: here to discuss MRI report of 8/20/13. History: patient states his pain level at this time is 8/10; having numbness on the lateral side of thighs, right worse than left; feels pain on both legs radiating all the way down to toes; feels tingling in the toes; sometimes he needs to lie down and not move his legs because of the pain; feels on both sides of low back; having difficulty sitting for long period of times; cannot sit for more than 15 minutes because of discomfort in low back. Remains interested in surgery L3-4, L4-5 laminectomies. He is currently hydrocodone up to 3 per day, gabapentin once daily. MRI of lumbar spine on 8/20/13 my independent reading is basically the same as the official report. EMG/NCS of the lower extremities was performed on 6/4/13; there is evidence of left acute and chronic L3-4 radiculopathy and bilateral S1 radiculopathy. MRI of the lumbar spine performed 2/25/13 impression: 1) interval development of extruded left paracentral disc L3-L4. Previously there was a smaller left paracentral protrusion at this level. 2) Broad-based central to right paracentral disc herniation L4-5 has slightly increased in size. EMG NCS of the lower extremities on 8/16/20 likely lumbosacral radiculopathy bilateral probably in the L4-L5 distribution. MRI lumbar spine performed on 8/2/12 large disc herniation at L4-L5. Recommendations: plan for L3-4 and L4-5 laminectomies. Assessment & Plan: 63-year-old male who experienced more than a year of severe low back and buttock pain since a work-related injury on 5/30/12 [sic.]. His symptoms remain consistent the medical testing to date; the work-related injury of 5/30/12 did not cause the degenerative changes in the patient's lumbar spine; the L4-5-disc herniation on the lumbar MRI is with a history of trauma; to reasonable degree of medical and surgical certainty, the work-related injury of 5/30/12 aggravated and accelerated the pre-existing previously asymptomatic degenerative lumbar spinal conditions, caused them to become symptomatic and require treatment. His medical testing and diagnosis were presented and reviewed. He has not improved despite passage of time, activity modification, NSAID'S, oral steroids, physical therapy and multiple interventional pain management treatments. Opted to proceed with L3-4 and L4-5 laminectomies. PX 3, p 89-93.

The 9/27/13 Antonio B. Cruz, MD records document: lab test results received; patient medically okay for outpatient surgery. PX 2, p 23.

The 9/27/13 Suburban Orthopedics/Thomas A. McNally MD. records document: patient presents today for pre-operative education for L3-L4 and L4-L5 laminectomies. PX 3, p 87.

TWO LEVFL LUMBAR SURGERY The 9/30/2013 Suburban Orthopedics/Dr. Thomas McNally. Records document: Surgery performed at Alexian Brothers Medical Center by Thomas a McNally MD. Postoperative diagnosis: lumbar spinal stenosis and lumbar disc displacement; lumbosacral disc degeneration and lumbosacral spondylosis. Procedure: L3-L4 laminectomy and bilateral partial discectomy with foraminotomy with decompression of the neural elements, and L4-L5 laminectomy with bilateral partial discectomy and foraminotomy and discectomy with decompression of the neural elements. PX 3, p 65-68.

The 11/5/13 Suburban Orthopedics/Thomas A. McNally MD. records document: patient presents for his first postop visit. States he is overall much better than before surgery; legs are feeling good, just back pain primarily when getting up from sitting and when going up and down stairs. He states since surgery, he has been having pain with squeezing both of his hands, which is new. His daughter remember that we told her during the surgery we repositioned his arms several times due to monitoring changes. Recommendations: refill Norco, meloxicam, start physical therapy and progress to work conditioning follow-up in 6 weeks. PX 3, p 56-59.

The 12/7/13 Antonio B. Cruz, MD records document: had outpatient surgery on low back October 2013 by Dr. McNally; slowly improving-less numbness right leg. PX 2, p 23.

The 12/17/13 Suburban Orthopedics/Thomas A. McNally MD. records document: patient states that overall he is significantly better than before surgery; he states he continues to have low back pain; he also states he cannot bend much; pain and numbness in the legs has gone; testicular pain is gone; can walk for a while without pain and other times he may only walk a few feet and will have back pain; sitting is the same and he has to change positions a lot to be comfortable. He states he also still has some pain on the ulnar side of his forearms with pressing down with last 2 fingers of both hands, more on the right side. They also feel weak. Has not yet started physical therapy. He is waiting for insurance. Continue with Norco gabapentin meloxicam diagnosis: lumbar disc displacement; lumbar spinal stenosis. RX EMG/NCV bilateral upper extremities. RX Norco meloxicam start gentle physical therapy follow-up. RX physical therapy. PX 3, p 33-36.

The 1/7/14 Suburban Orthopedics/Alfredo M Lopez MD records document: EMG/NCV Summary: evidence of moderate bilateral carpal tunnel syndrome involving sensory and motor fibers; also, right ulnar neuropathy with chronic denervation of the first dorsal interosseous, localized in the retro epicondylar groove proximal to the medial epicondyle on the right side. Early sensory polyneuropathy. PX 3, p 21.

The 1/16/14 Suburban Orthopedics/Thomas A McNally MD. records document: Chief complaint low back pain, forearm pain. Surgery 9/30/13 L3-4 and L4-L5 laminectomies. History: 63-year-old right-hand dominant male who is an assembler (heavy lifting). History: DOI 5/30/12, work-related, last date worked 6/4/12 (full duty) able to work with restrictions but company does not have light duty available, patient states he still not working at this time and has applied for disability. Returns to discuss results of EMG continues to have some pain in his forearms when pressing down with his last 2 fingers. Back pain is still about the same; has not been walking too

much, not lifting anything; takes medications when the pain gets worse; if he starts feeling pain he will stop what he is doing; surgery did help with the numbness in his legs; has not started any physical therapy; wife recently hospitalized for bypass surgery so he held off. Diagnosis: lumbar disc displacement; lumbar spinal stenosis; carpal tunnel syndrome; cubital tunnel syndrome. Recommendations start PT when desired; refer to Dr. Howard Friedberg for evaluation and treatment of carpal and cubital tunnel syndromes. Follow-up here spine surgery as needed. Assessment and Plan. 63-year-old male who is almost 4 months out from L4-5 laminectomy on 9/30/2013; improved compared to prior to surgery; he has mostly back soreness now; his legs feel better; he also continues with some arm paresthesias bilaterally; has not yet started physical therapy. Follow-up here spine surgeon as needed. PX 3, p 18-20.

Petitioner testified he has not returned to see Dr. McNally for his low back after 1/16/14 office visit. T 26. He has seen no other doctors from 1/16/14 to the date of hearing for back pain other than his regular visits with his primary care physician.

The Arbitrator finds the on January 16, 2014, Petitioner reached maximum medical improvement.

Petitioner does complaint to his primary care doctor about back pain. T 27. He remained off work from the day of the accident up through January 16, 2014 when Dr. McNally released him. T 27-28. He never returned to work with Respondent. He did not seek work any place else after Dr. McNally released him. He applied for Social Security disability which was awarded to him. T 28.

At hearing Petitioner testified he continues to have some problems with his low back. Since the work accident Petitioner finds that it hard to bend especially when tying his shoes because due to back pain. He now lifts his foot up before he ties his shoes. He did not have such pain before the accident. T 29. When he stands for more than 10 to 15 minutes, he feels pain. He has to sit down to mitigate the back pain. T 29-30. If he carries heavier items or attempts to bend, he feels pain in his back. He takes Tylenol whenever he feels back pain. That occurs about 4 times per week. T 30. The surgery did help but he still has some pain. He has a prescription for hydrocodone but that makes him feel bad so he does not take it... T 31. He has not injured his low back in any other accidents other than his work accident. T 32. His workers' compensation benefits stopped after the Section 12 examination. He put all of his bills and medical treatment through his group insurance. T 32. He has been notified by his group insurance that they are seeking reimbursement for what they paid. T 33. That insurance is Blue Cross Blue Shield. The premium for that insurance was deducted from his salary every week by his employer, respondent. He paid $99 a week for that insurance. T 34. That covered his wife and himself. He got paid every week and the deduction was made every week from his salary check. T 35.

When he went to Concentra the pain was just in his back. He started physical therapy on June 7. He told the therapy that he was lifting a unit and heard a crack in his back. He didn't tell Concentra on June 4 about a crack because therapy asked him at that time. T 48. He did not remember what he told Concentra. When he saw Dr. Nelson at Concentra on June 7 he told her that his pain intensity had gone down and was now a 7/10 and there was no pain going into his legs. At that time, he had no pain going into his legs. T 50. After he complained of his pain, and they sent him

to Concentra he never went back to work for respondent. T 52. There were times he felt better after the therapy. T 53. Petitioner testified on cross-examination that he did not recall seeing Dr. Mash. 57. Petitioner testified he had no problems with his back, no soreness, no sprains before May 29. T 59.

Admitted in evidence as Petitioner Exhibit 5 is the claim for lien of Petitioner's group medical insurance Blue Cross Blue Shield of Illinois for treatment from 7/24/12 through 1/16/14 for the various medical providers who treated Petitioner's low back injury.

Admitted in evidence as Petitioner Exhibit 6 is a list of the unpaid bills including the claim for reimbursement of Blue Cross Blue Shield (PX 5) with a copy of the relevant bill attached.

Admitted in evidence as Respondent Exhibit 1 is the Section 12 report of Stephen Mash, MD dated 7/20/12 for an examination he performed on 7/16/12 at the request of Respondent. .

Admitted in evidence as Respondent Exhibit 2 is the Addendum Note of Dr. Mash dated 9/7/12 prepared at Respondent's request.

No witnesses were called by Respondent.

III. Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the Petitioner bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his or her claim *O'Dette v. Industrial Commission,* 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between the employment and the injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989). And, yet it also is well established that the Act is a humane law of remedial nature and is to be liberally construed to affect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954). The Act is a remedial statute which should be liberally construed to provide financial protection for injured workers. *McAllister v. IWCC*, 2020 IL 124848 ¶ 32. The Act's provisions are to be read in harmony to achieve that goal. *Vaught v. Industrial Commission,* 52 Ill.2d 158, 165 (1972). Decisions of an Arbitrator shall be based exclusively on stipulation of the parties, the evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e) The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Credibility Assessment: Petitioner testified in open hearing before the Arbitrator who had opportunity to view his demeanor under direct examination and under cross-examination. The Arbitrator considered the testimony of the Petitioner with all other evidence in the record. Although Petitioner did have some difficulty recalling past events, the Arbitrator did not find any

indication of an intent to deceive or misrepresent. The Arbitrator notes that Petitioner was 72 years old at the time of hearing. The date of accident was more than 10 years before the hearing date, which would explain lapses in memory. Petitioner answered questions in a forthright manner, without hesitation. The Arbitrator finds that, overall, Petitioner was a credible witness.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

"In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." R & D Thiel v. Illinois Workers' Compensation Comm'n, 398 Ill. App. 3d 858, 867 (2010). "'[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment.'" *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, (2011), quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36, (1982). Further, "[e]very natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780 (2005). "That other incident, whether work-related or not, may have aggravated the claimant's condition is irrelevant." *Vogel,* 354 Ill. App. 3d at 786.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205, (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.,* 93 Ill. 2d 59, 63 (1982).

In *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853-54 (1996), the Appellate Court considered the applicability of this principle to a case involving a preexisting condition and reasoned as follows: "The employer also contends that the facts of the present case do not support the Commission's 'chain of events' analysis because [the claimant] had a preexisting condition. The employer cites no authority for the proposition that a 'chain of events' analysis cannot be used to demonstrate the aggravation of a preexisting injury, nor do we see any logical reason why it should not. The rationale justifying the use of the 'chain of events' analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury." *Walquist Farm Partnership v. IWCC*, (January 11, 2021) This is a Rule 23 Illinois Appellate Court decision. However, since it was issued after January 1, 2021 the decision may be cited for its persuasiveness, but not as precedent.

Pursuant to the *Sisbro* case, it is clear that a work-related accident that aggravates or accelerates a pre-existing condition can be compensable under Illinois Workers' Compensation law. Further, based on the medical records and testimony, Petitioner had preexisting asymptomatic degenerative changes in his lumbar spine. However, the chain of events presented in this case show that the degenerative changes in his lumbar spine became symptomatic after this work accident.

Respondent did not voice any complaints about Petitioner's pre-accident work performance. No evidence was introduced that Petitioner missed time off work because of his preexisting low back issues that would explain Petitioner's current condition of ill-being, and no evidence was introduced that Petitioner requested any reasonable accommodation because of a preexisting low back condition. It is undisputed that Petitioner's long-standing 20-year employment with Respondent was physically demanding and that his injury is consistent with his work duties.

There was no evidence presented of intervening or subsequent injuries to the right low back that could explain Petitioner's injuries and current condition.

Petitioner need not prove what is the sole or proximate cause of his injuries, just that the work accident was a proximate cause of his injuries. Petitioner has met his burden for the reasons previously stated. The Arbitrator relies on Petitioner's testimony, the nature of Petitioner's job duties, as well as the medical records and medical histories of the treating physicians. The medical histories included in the record demonstrate a consistent history as to the onset of Petitioner's work injury that correlates with Petitioner's testimony.

There is no evidence in this record that, prior to the accident of May 29, 2012, Petitioner had any problem with his back that required him to seek ongoing medical treatment. The history given to all medical providers of the onset of the symptoms in his back with his lifting and pulling of a heavy unit at work was consistent with his testimony at hearing as well as his job duties.

Although there were some lapses in his memory at hearing, as stated in the Arbitrator's credibility finding, the memory lapses were not intended to deceive or intended to misrepresent or miniplate the facts. Petitioner's age of 72 and the 10-year gap between the date of the incident and the date of the hearing explains the memory gaps.

The medical records demonstrate in great detail that as time progressed, the complaints included pain going into his scrotum and into and down his legs. The Arbitrator notes that the parties stipulated that the accident happened on May 29, 2012 on the Request for Hearing; and Dr. Mash identified the date of accident as May 29, 2012 in his Section 12 reports. (RX 1, RX 2). The medical records of the treating physicians all identify the date of accident in history from Petitioner as May 30, 2012. In his testimony, and in the extensive and focused cross-examination, Petitioner credibly testified he never felt pain like that before. The evidence demonstrates he stopped working and sat down until the pain did lessen and he then finished work that day. Petitioner testified he did work after that incident but did not specifically recall whether he worked on May 30, 2012. Petitioner credibly testified that the pain was getting worse. He was taking Tylenol to help relieve the pain. Over the weekend, when he was not working, he was taking Tylenol and laying down and the pain was less. T 43. When he returned to work on June 4, 2012, he continued to have the pain, and on that date, he reported the accident to his supervisor, and he was sent by Respondent

to Concentra. T 14. Dr. Mash, in his report dated 7/20/12, noted that Petitioner admitted to him there were several days delay in mentioning the onset of the back pain. Dr. Mash noted this could be a commonplace occurrence. Dr. Mash stated that patients with minor back pain/strains will be able to continue work. Dr. Mash did find causal connection between the Petitioner's complaints and the work injury of May 29, 2012, although he diagnosed the condition as pain/strains and opined that Petitioner was magnifying his symptoms. RX 1. Petitioner testified he thought the pain would get better. Despite a weekend of rest, it did not. He promptly reported. T 40.

Although Dr. Mash opined that Petitioner was magnifying his symptoms, Concentra records document on the date of initial treatment, 6/4/12, Dr. Deborah Nelson, the company clinic physician selected by Respondent to address alleged work injuries, found that Petitioner had negative Waddell signs when Petitioner complained of pain 8/10 in his back that worsens with bending and lifting and twisting, PX 1, p 13-15. Dr. Nelson again noted negative Waddell's signs on 6/7/12. PX 1, p 21-22. None of the other treating medical providers raised any concerns of symptom magnification.

After Dr. Mash opined in his report of 7/16/12 that Petitioner was at MMI from an orthopedic perspective, all workers compensation benefits were terminated by Respondent, and Petitioner sought treatment with his primary care physician, Dr. Antonio Cruz on 7/24/12. Dr. Cruz diagnosed Petitioner has having sustained lumbosacral strain with radiculopathy and herniated discs at L4-5. Dr. Cruz referred Petitioner to orthopedic surgeon Dr. McNally. PX 2, p 8-9.

The 7/31/12 records of Dr. McNally/Suburban Orthopedics document on initial examination of that Petitioner was pulling unit, felt a sharp pain in his low back, took Tylenol which provided some relief, was able to continue working but took Tylenol every 4 hours, following day patient was pulling units again at work and again felt sharp pain in his low back that he thought was just ordinary muscle pain so he decided to keep working throughout, on Monday the patient returned to work and told his employer that he could not bend his waist, lift, because of pain in his back, supervisor referred patient to occupational medicine. PX 3, p 358-365. Dr. McNally, after review of MRI and examination of Petitioner, ordered a regimen of conservative management with referral to pain management.

The evidence reflects that lumbar epidural steroid injections administered by Dr. Novoseletsky provided temporary relief but did not resolve Petitioner's complaints of pain with radiation down into the scrotum and legs. Dr. McNally opined: patient states his pain level at this time is 8/10; having numbness on the lateral side of thighs, right worse than left; feels pain on both legs radiating all the way down to toes; feels tingling in the toes; sometimes he needs to lie down and not move his legs because of the pain; feels on both sides of low back; having difficulty sitting for long period of times; cannot sit for more than 15 minutes because of discomfort in low back. Remains interested in surgery L3-4, L4-5 laminectomies. He is currently hydrocodone up to 3 per day, gabapentin once daily. MRI of lumbar spine on 8/20/13 my independent reading is basically the same as the official report. EMG/NCS of the lower extremities was performed on 6/4/13; there is evidence of left acute and chronic L3-4 radiculopathy and bilateral S1 radiculopathy. MRI of the lumbar spine performed 2/25/13 impression: 1) interval development of extruded left paracentral disc L3-L4. Previously there was a smaller left paracentral protrusion at this level. 2) Broad-based

central to right paracentral disc herniation L4-5 has slightly increased in size. EMG NCS of the lower extremities on 8/16/20 likely lumbosacral radiculopathy bilateral probably in the L4-L5 distribution. MRI lumbar spine performed on 8/2/12 large disc herniation at L4-L5. Recommendations: plan for L3-4 and L4-5 laminectomies. Assessment & Plan: 63-year-old male who experienced more than a year of severe low back and buttock pain since a work-related injury on 5/30/12. His symptoms remain consistent the medical testing to date; the work-related injury of 5/30/12 did not cause the degenerative changes in the patient's lumbar spine; the L4-5 disc herniation on the lumbar MRI is with a history of trauma; to reasonable degree of medical and surgical certainty, the work related injury of 5/30/12 aggravated and accelerated the pre-existing previously asymptomatic degenerative lumbar spinal conditions**,** caused them to become symptomatic and require treatment. His medical testing and diagnosis were presented and reviewed. He has not improved despite passage of time, activity modification, NSAID'S, oral steroids, physical therapy and multiple interventional pain management treatments. Petitioner opted to proceed with L3-4 and L4-5 laminectomies prescribed by Dr. McNally. PX 3, p 89-93.

Dr. McNally's opinion addressed the onset of the symptoms with the accident, the course of the medical treatment, the objective testing, and the testimonial evidence in this record. Although Dr. McNally references an accident date of 5/30/12, the Arbitrator has found that arises as a result of an error by Petitioner in giving history of the accident date, being the date he returned after the initial onset of symptoms to again experience symptoms on that date, as testified by Petitioner at hearing and as reflected in the initial history note of Dr. McNally. PX 3, p 358-365. Additionally, Petitioner's PCP, Dr. Antonio Cruz, on 8/10/12 reviewed the MRI of 8/2/12 which demonstrated a herniated disc. Dr. Cruz noted that Liberty Mutual Insurance Company had Petitioner seen by a doctor who diagnosed the condition as an inguinal hernia and Dr. Cruz noted that, "this is no inguinal hernia." Dr. Cruz referred the patient to independent orthopedic surgeon for 2nd opinion (Dr. McNally) who ordered MRI L-S and EMG lower extremity. PX 2, p 12-13. When conservative management of Petitioner's symptoms did not resolve the pain and numbness in his back and leg, Dr. McNally performed a surgery on 9/30/2013 which he causally related to the work accident. That surgery was described as L3-L4 laminectomy and bilateral partial discectomy with foraminotomy with decompression of the neural elements, and L4-L5 laminectomy with bilateral partial discectomy and foraminotomy and discectomy with decompression of the neural elements. Postoperative diagnosis was as follows: lumbar spinal stenosis and lumbar disc displacement; lumbosacral disc degeneration and lumbosacral spondylosis. PX 3, p 65-68. After that surgery, Petitioner stated that overall, he was "significantly" better than before the surgery. PX 3, p 33-36.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Commission,* 99 Ill. 2nd 401, 406-07, (1984); *Hostney v. Illinois Worker's Compensation Commission,* 397 Ill. App. 3rd 665, 675 (2009); *Fickas v Industrial Commission,* 308 Ill. App. 3rd 1037, 1041 (1999). Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission,* 309 Ill. 91 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the

basis for the expert's opinion. *Gross v. Illinois Worker's Compensation Commission,* 2011 Ill. App. (4th) 100615 WC. If the basis of an expert opinion is grounded on guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.,* 339 Ill. App. 3rd 599, 607, 791 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue but may look 'behind' the opinion to examine the underlying facts. Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermaculture Co. v. Industrial Commission,* 77 Ill. 2nd 1 (1979); *ARA Services, Inc. v. Industrial Commission,* 226 Ill. App. 3rd 225 (1992).

The Arbitrator notes that Dr. Mash opined that Petitioner had reached his maximum medical improvement (MMI) as of the date of his examination. RX 1. Unlike Dr. Mash, Dr. McNally had the benefit of MRI and EMG/NCV in making his diagnosis of the Petitioner's condition. Dr. Mash did not have the benefit of reviewing either MRI or EMG when he examined Petitioner on 7/16/12 and found Petitioner to be at MMI. Dr. McNally's opinion is based upon additional objective testing and is more credible than the opinion of Dr. Mash. Additionally, Dr McNally recommended surgery only after conservative treatment failed but noting that the injections and the LSO did provide sufficient relief to be of diagnostic benefit in support for the need of surgery.

In a subsequent addendum, after reviewing MRI, Dr. Mash on 9/7/12 opined that Petitioner's current complaints were not as a result of the work accident but were result of a long-standing degenerative condition. RX 2. Dr. Mash fails to explain the absence of any complaints or need for treatment of the back prior to the work accident, and the immediate onset of symptoms with the work accident. Dr. McNally explained that Petitioner had a previous asymptomatic degenerative condition of the back, and the work accident caused that asymptomatic condition to become symptomatic on the day of the accident, continuing up to and through the period that he was treated by Dr. McNally.

The Arbitrator finds the findings and opinions of Petitioner's treating physicians to be more persuasive and consistent with the evidence than the opinions of Dr. Mash. The Arbitrator finds that Petitioner's current condition of ill-being to his back is causally related to the work injury of 5/29/12 based on the causal connection opinions of the treating physicians.

Additionally, the medical records and other evidence of record demonstrate that Petitioner had no complaints of back pain or pain radiating down his leg prior to the work accident of 5/29/12; that the onset of the complaints in his back were immediate with the incident of lifting and pulling the heavy unit at work; that the symptoms though initially in the low back began to radiate down to his leg and into the scrotum; that there were no other accidents or incidents which caused or contributed to the onset of his symptoms. Under a chain of events analysis, the Arbitrator finds Petitioner's current condition of ill-being is causally related to the work accident of 5/29/12.

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

Overall, the Arbitrator finds Petitioner's treatment rendered by Concentra, Dr. Cruz and Suburban Orthopedics to cure and relieve Petitioner's causally connected low back injury to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

The Arbitrator finds that 11 of dates of service with Dr. Cruz contained in Petitioner's Exhibit # 2 are not related to Petitioner's back injury. The following the dates of service contained in the bill are for Petitioner's wife: 8/4/12, 8/11/12, 8/17/12 and 12/17/13. In addition, the following dates of service regarding Petitioner are for unrelated conditions, including diabetes. After a review of the medical records the Arbitrator finds that the dates of service for Petitioner of 9/10/12, 9/24/12, 10/25/12, 2/16/13, 3/18/13, 8/2/13, and 12/7/13 are all unrelated to Petitioner's back condition. In total, $ 3,485.00 in charges from Dr. Cruz in Petitioner's Exhibit # 2 are unrelated to Petitioner's back condition and are therefore denied.

The Arbitrator incorporates by reference his findings and conclusions as stated above regarding causal connection. Dr. McNally opined that the treatment he rendered to Petitioner and the referrals for treatment provided by others which included the lumbar injections performed by Dr. Novoseletsky were causally related to the work accident. The Arbitrator finds Dr. McNally's opinions persuasive and consistent with the course of Petitioner's condition of ill-being as documented in the medical records. T

The Arbitrator finds that the medical treatment provided by the medical providers of record is necessary medical treatment and the charges are reasonable. There is no evidence in this record that the medical treatment was not reasonable or was not necessary.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner Exhibit 6 as provided in Sections 8(a) and 8.2 of the Act., including $61,059.80 for Blue Cross Blue Shield payments; $7,408.41 to Suburban Orthopedics; $267.64 to Concentra; $1,393.08 to 1800 McDonough Road; and, $85.40 to Oakbrook Anesthesiologists. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

Respondent is ordered to pay those medical bills as evidenced in the record and as evidenced in Petitioner Exhibit 6, pursuant to the provisions of Section 8a and 8.2 of the Act and the Illinois Worker's Compensation Act fee schedule.

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

An employee is temporary totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County Mechanical Devices v. Industrial Comm'n.,* 344. Ill. App. 3rd 752, 760 (4th District 2003). To be entitled to TTD benefits, a claimant must prove not only that he did not work but that he was unable to work. *Freeman United Coal Min. Co. v. Industrial Comm'n.,* 318 Ill. App. 3rd 170, 175 (2000).

Respondent stipulated that Petitioner was temporarily totally disabled from 6/4/2012 through 7/16/12. Arb. X 1. The credible evidence of record demonstrates that Petitioner was ordered by his treating physicians to be off work beyond the initial six weeks' time period stipulated by Respondent. The evidence supports Petitioner's entitlement to TTD thereafter through the date of his release from treatment by Dr. McNally on 1/16/2014. The Arbitrator finds Petitioner's condition stabilized and he reached MMI. Respondent is ordered to pay TTD to Petitioner from 6/4/12 through 1/16/14. Respondent is given credit for all TTD paid to date in the amount of $3, 445.98 as stipulated by the parties.

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

With regard to subsection (i) of Section 8.1b(b) of the Act, the Arbitrator notes that neither party submitted an AMA impairment rating. No weight is given to this factor.

With regard to subsection (ii) of Section 8.1b(b) of the Act, the arbitrator notes that Petitioner's occupation was as an assembler of heavy equipment which required lifting and movement of heavy equipment as demonstrated by the circumstances of his injury. The arbitrator has considered this fact or and gives this factor some weight.

With regard to subsection (iii) of Section 8.1b(b) of the Act, the arbitrator notes that Petitioner was 62 years old at the time of the injury. The impact of the injury would be more significant on his aged body, although his continued work life expectancy would be relatively low. The arbitrator has considered this factor gives this factor some weight.

With regard to subsection (iv) of Section 8.1b(b) of the Act, the arbitrator notes there is no evidence of any impairment of Petitioner's future earning capacity. The arbitrator notes that Petitioner did not seek any employment after he was released by Dr. McNally. The arbitrator has considered this factor and gives this factor little weight.

With regard to subsection (v) of Section 8.1b(b) of the Act, the arbitrator notes that Petitioner credibly testified that he continues to have pain as result of the work injury. Now when he has to bend, especially when tying his shoes, he has pain, so that he has to lift up his foot to tie his shoes. He feels increased pain after prolonged standing which causes him to sit in order to reduce the low

back pain. and he has to sit down. He takes Tylenol four times a week to relieve the pain. Petitioner's testimony is corroborated by the medical records and objective findings.

The 6/4/13 Precision Diagnostic LLC. Records document: EMG evidence of left acute on chronic L3/L4 radiculopathy, bilateral SI radiculopathy, early sensory polyneuropathy. PX 3, p 128-129.

The medical records document that he underwent a surgery to address the injury to his back, described as L3-L4 laminectomy and bilateral partial discectomy with foraminotomy with decompression of the neural elements, and L4-L5 laminectomy with bilateral partial discectomy and foraminotomy and discectomy with decompression of the neural elements. The postoperative diagnosis is lumbar spinal stenosis and lumbar disc displacement, lumbosacral disc degeneration and lumbosacral spondylosis. PX 3, p 65-68.

The records of Dr. McNally document that after the surgery, overall is significantly better than before surgery but he continues to have low back pain and numbness in the legs has gone; testicular pain is gone. He can walk for a while without pain but at other times he may only walk a few feet and will have back pain. Bending causes increased pain. He has to change positions a lot to be comfortable during prolonged sitting. PX 3, p 33-36. The Arbitrator has considered this factor and gives this factor greater weight.

Based on the above factors, Commission precedent and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 25% loss of a person as a whole, pursuant to section 8(d)2 of the Act.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Section 8(j) of the Act provides:

> In the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering nonoccupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under this Act, then such amounts so paid to the employee from such group plan as shall be consistent with, and limited to, the provisions of paragraph 2 hereof, shall be credited to or against any compensation payment for temporary total incapacity for work or any medical, surgical or hospital benefits made or to be made under this Act.

There is evidence in this record that Petitioner's medical bills for treatment of Petitioner's work injury were paid by group medical insurance. The evidence in this record demonstrates that Petitioner paid the premiums for the group medical insurance that paid the bills. T 33-35. Although it appears that Respondent may have contributed to premium payments, there is insufficient evidence in the record that Respondent contributed in whole or in part to the payment of those premiums. The only evidence was that Petitioner made payments.

Section 8(j) excludes payment for benefits that would have been owed regardless of an accidental injury There is no evidence in this record that those benefits paid by group medical insurance would not have been payable if any rights of recovery existed under the Worker's

Compensation Act. In fact, the Blue Cross Blue Shield Itemization of Benefits paid does not make a request for reimbursement or assert subrogation rights. Px 6. Additionally, the bills submitted indicate that Aetna also paid most of the medical bills of Concentra. However, the record contains nothing more. The Arbitrator finds that Respondent failed to meet its burden of proof for entitlement to a credit under section 8(j). Respondent's claim for credit under Section 8(j) is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC032515
Case Name	Ma Guadalupe Garcia aka Eliza Hernandez v. Steak N Shake Enterprises, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0271
Number of Pages of Decision	26
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Damian Flores
Respondent Attorney	George Klauke

DATE FILED: 6/10/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARIA GUADALUPE GARCIA, a/k/a/ ELIZA HERNANDEZ,

Petitioner,

vs. NO: 15 WC 32515

STEAK & SHAKE ENTERPRISES INC.,

Respondent.

DECISION AND OPINION ON REVIEW

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

Findings of Fact – Testimony

Petitioner testified through an interpreter that on October 5, 2015 she was employed by Respondent and had been for about two weeks. She worked in "preparation" and worked six hours per day. If she wasn't preparing food, she was washing dishes. She was on her feet the entire shift. Before she worked for Respondent her health was "fine" with no history of back pain, back injury, or back treatment. On that day, she arrived at work at 9:00 a.m. She was bringing dishes to the dishwasher when she slipped and fell on her buttocks. She explained "it was already grease there and something happened with the machine – the dishwasher and then the soap came out." Her head then struck "some hard plastic that was there." She felt "a lot of pain" (10/10) in her back. The accident happened at 12:00 and the ambulance arrived at 12:10. She was taken to Presence Resurrection and she was admitted until October 10, 2015.

She was treated by Dr. Yapor at the hospital and started rehab therapy there. After an MRI, Dr. Yapor referred Petitioner to Dr. Vo, whom Petitioner first saw on February 15, 2016. Dr. Vo administered an injection, which did not provide relief and Dr. Yapor recommended a Kyphoplasty, in which they were "trying to glue the fracture back together." The procedure was performed on March 16th and she had postop physical therapy from March 30, 2016 through May 16, 2016. The physical therapy caused "pain, more pain." Dr. Vo stopped the physical therapy. On May 2, 2016, Dr. Vo noted that she was graduated to ambulating with a cane; previously she was using a walker. Petitioner last saw Dr. Yapor on June 21, 2016.

Petitioner saw Dr. Zelby for a §12 medical examination. He examined Petitioner for "about 5 minutes." Thereafter, she was unable to follow up with Dr. Vo or Dr. Yapor because it was no longer approved. Respondent brought her back to work on August 17, 2016 at which time she was still ambulating with a cane. She returned to her previous job in preparation. She had to rest after about an hour. Respondent allowed her to use her cane while working. She worked less hours than she did before the accident. She experienced 7-8/10 low back pain while working. She kept working despite the pain because she needed the money.

Petitioner saw Dr. Chen for a second opinion. He recommended "many restrictions" and another injection, which was administered on October 13, 2016. She noticed some improvement after that injection. He performed another injection and Petitioner was able to increase her hours of work. She had more physical therapy from November 30, 2016 through January 27, 2017. She had another injection on May 1, 2017, which helped "a little bit." She then saw Dr. Hussain who prescribed a gel, which helped her pain. She last saw Dr. Hussain on October 21, 2017, at which time he discharged her with permanent restrictions. She continued to work for Respondent with her restrictions and using her cane. She stopped working on March 14, 2020 because "they did not have any more work for" her. They were still open for drive-thru business during the pandemic. Initially, she wanted her job back but not anymore. Respondent never offered her job back and she had not worked anywhere since March 14, 2020.

Petitioner testified that she still used a cane to walk so that she wouldn't injure herself. She uses the cane to brace herself. She took over-the-counter medication for the pain. Her pain was 7/10 without medication, and it is reduced a little (to 6/10) with the medication. It can reach 10/10 without medication. When it was very cold she walked "like bending down." Her condition had affected how she performed activities of daily living such as bathing/dressing. She had "pain, pain" bending over to dress and "pure pain" while performing household chores such as sweeping. She used to walk an hour or an hour and a half. Now she becomes tired after walking two blocks.

On cross examination, Petitioner agreed that she applied for her job with Respondent under the name Eliza Hernandez. Before she worked for Respondent, she worked through employment agencies. In preparation she was preparing the food not assembling it. Washing dishes involved pushing "a dish rack through a dishwashing machine." She reiterated all she did was prepare food and wash dishes.

At the examination with Dr. Zelby, she spoke Spanish and there was an interpreter present. He asked her to move her arms/legs, to bend over, and to squat. She was not able to perform all the maneuvers Dr. Zelby requested. She did not remember whether she saw Dr. Zelby twice, nor any recommendations he made.

Respondent would not approve treatment with Dr. Vo or Dr. Yapor. However, she went to Dr. Chen. He was recommended to her, but she didn't know by whom. She has not seen any doctor since October 21, 2017. No doctor has prescribed her over the counter medication or her cane. Petitioner denied that at the last visit with Dr. Hussain on October 21, 2017 she indicated that she was doing much better and was able to perform her job without restrictions. Dr. Hussain discharged her but with "a lot of restrictions" for her "whole life."

Petitioner agreed that at that visit she reported 4-5/10 pain. She denied that when she was laid off she was told that it was reducing workforce due to COVID. She was simply told by the manager that her job was over; "she didn't explain anything." Petitioner had not looked for work since. Petitioner also agreed that she was a part-time worker for Respondent. However, she did not remember whether she worked 14 to 23 hours a week. She worked six hours a day for five days a week. She also did not remember whether Dr. Hussain's lifting restriction was 20 pounds rather than 15 pounds. No customer was allowed in the store when it was open for drive-thru only. During that period there were no dishes to wash, but she "only did the preparation on whatever was dirty [she] would wash it."

On redirect examination, Petitioner seemed to testify that when she was washing dishes it was the dishes from her food preparation. She did not currently have health insurance or money to pay a doctor. If she had insurance she would see a doctor. She had not worked since COVID. She was surviving with the help of her children, one of whom she lived with. She agreed that when she last saw Dr. Hussain she was doing a little bit better and the gel was helping her pain and was helping her perform her job. However, she still reported 4-5/10 pain. She no longer bought the gel Dr. Hussain prescribed because she did not have the money. She received pay while [she] was sick. That's it."

On re-cross examination, Petitioner agreed that the gel was Voltaren was over the counter. She did not have money for it. She still took Aleve and Tylenol because they relieve her pain better than the gel. She was unaware of services such as Medicaid or free clinics.

Ms. Jamie Blatnik was called by Respondent for which she worked as Division President. Because of COVID, Respondent closed the dining room at which Petitioner worked and went from being a 24-hour operation to 10:00 a.m. to 11:00 pm, drive-thru only operation. "That was directed by the State of Illinois." There was a reduction in work force and work hours. "Some individuals lost significant hours" and "others lost their jobs completely." She noted that 3rd shift workers without other availability were let go because there was no longer any 3rd shift. In addition, there were no dishes to wash because they were not serving in the dining room. They sent letters explaining the situation in April of 2020.

Findings of Fact – Medical records

On October 5, 2015, an ambulance arrived and Petitioner was found sitting on a chair complaining of 10/10 pain in her low back, neck, and head. She reported slipping on water and falling backwards hitting her head and back on the floor. She denied loss of consciousness. "Excessive amounts of water surrounding the area where she fell" was noted by the EMTs. She was transported to the closest hospital ER, at Presence Resurrection Hospital.

At the ER, lumbar x-rays showed "questionable mild superior endplate compression fracture deformity at L1, indeterminant in age." The lumbar MRI was consistent with the x-ray finding of acute fracture at L1 and multilevel degenerative disc disease with only mild inferior foraminal narrowing but without evidence of canal stenosis. Head/cervical CT showed no acute pathology, though cervical spondylosis was noted. Petitioner was hospitalized for the acute fracture at L1. She was also found to have hypertension and reported at times she did not take her blood pressure medication. She was prescribed Norco, Morphine, and anti-hypertension medication.

Four days later, while still in the hospital, Petitioner was examined by FNP Koldenhaven. She noted the accident and that Dr. Yapor, a neurosurgeon, consulted and ordered a lumbar Aspen brace and physical therapy. They determined that Petitioner was not a surgical candidate. Rather, she was deemed a candidate for acute rehabilitation. Petitioner was considered medically stable but it was not safe for her to be transferred home. She was discharged to an apparently in-house acute rehabilitation facility. The rehab would include comprehensive evaluation, adaptation to disability, family/caregiver training, wheelchair fit/locomotion, energy conservation, increase of strength/endurance, gait training, skin care, bowel/bladder regulation, safety, coordination, and transfers. Prognosis/rehab potential was deemed good and the length of stay was anticipated to be 7-10 days.

On October 30, 2015, Petitioner was discharged from rehab to home in good, stable condition. It was noted that she was admitted with L1 compression fracture. Bracing and rehab were commenced and she was placed on pain management. She was found to have significant functional deficits. She was transferred to acute rehab care due to the complexity of her case and the need for coordinated therapies. She did well in therapy. She continued to complain of pain at discharge, but her functionality "improved greatly." She was discharged home at a modified independence level with functional mobility and would receive physical therapy from home health to address remaining deficits. She was to follow up with her primary care physician.

2/15/16 – Petitioner presented to Dr. Vo for constant left 8/10 low back pain; it ranged between 7-10/10 with no radiation to her legs. It started three months ago after she slipped on water at work and fell on her right buttock. She had seen Dr. Yapor who treated her conservatively with bracing, rest, physical therapy, and pain medication (she had recently been weaned off opioids). Currently, she was taking Naproxen and Xanax.

Dr. Vo noted the results of the MRI, which were consistent with an acute fracture at L1. He opined that the fracture was likely the cause of her pain. He noted that she had failed conservative treatment. He recommended a therapeutic/diagnostic ESI and if that were not beneficial, he would agree with Dr. Yapor that she could benefit from a Kyphoplasty at L1. A week later, Dr. Vo administered a paramedian interlaminar injection at L1-2 for herniated lumbar disc and compression fracture. On March 8, 2016, Petitioner returned reporting no significant relief from the injection. She was taking Percocet for "moderately severe" pain. Dr. Vo would not recommend long-term opioid treatment. He noted the most recent MRI from February 1, 2016 showed edema at L1 indicating there was still inflammation from the L-1 compression fracture. He recommended a L1 Kyphoplasty to hopefully relieve her pain. On March 14th Dr. Vo performed a CareFusion® Kyphoplasty at L1 with insertion of CareFusion® bone cement for traumatic vertebral compression with delayed healing.

On May 2, 2016, Dr. Vo noted that Petitioner had attended 18 physical therapy sessions and graduated from a walker to a cane. He inquired about a back-belt a therapist had recommended. She took Aleve every four to eight hours *prn*. Dr. Vo noted a visit on March 26th, in which Petitioner reported over 50% improvement after the Kyphoplasty. At that time he concluded that she no longer needed Percocet. Dr. Vo, indicated he did not think Petitioner was at maximum medical improvement. He encouraged her to increase activity, continued physical therapy, advised her to alternate between Tylenol and Aleve, and decided against the brace because it may weaken her back muscles. He was unsure why she still reported the degree of pain she did. He would discuss with Dr. Yapor whether additional imaging was warranted.

Petitioner returned on June 13, 2016 after a new MRI. She reported being pushed hard in physical therapy which she felt made her pain worse. Dr. Vo indicated the new MRI "noted T12-L1 disc fragment versus Previous report stated disc bulge at this level." He wondered if that disc had worsened and was then the cause of her persistent back pain. He advised Petitioner to take the imaging to Dr. Yapor for evaluation. He held physical therapy. Petitioner returned to Dr. Yapor on November 10, 2015 reporting her pain was slightly better, but still quite painful. She was off work and wearing a brace. Dr. Yapor continued use of the brace and indicated another MRI would be taken in three months. Dr. Yapor's assessment was compression fracture of L1 vertebra with routine healing. He continued use of the brace.

An MRI taken February 1, 2016, showed compression deformity at L1, which appeared relatively recent and was associated with disc degeneration and eccentric disc herniation at T12-L1. At a visit on February 9th, Dr. Yapor noted that the MRI taken at three moths showed a slight progression of the compression fracture. Petitioner reported being in a lot of pain. Dr. Yapor's plan was "pain clinic." A repeat MRI taken on June 9, 2016. showed mild reversal of normal lordosis, evidence of Kyphoplasty on the right at L1, and mild-to-moderate anterior wedge shape compression fracture of L1 vertebral body with subtle marrow edema, which was possibly chronic and related to the work related injury of October 5, 2015.

On June 21, 2016, Petitioner was referred back to Dr. Yapor for pain management. She had an ESI and Kyphoplasty, which did not help. The follow up MRI showed "the compression fracture was mostly healed. The extruded disc is smaller and very thin without any neural structures." Petitioner had no radicular pain.

Petitioner was initially evaluated by physical therapy on March 30. 2016. She exhibited "extreme difficulty performing usual work or household activities." She also had an elevated "fear avoidance." She had significant low back pain (4-10/10) with bilateral sciatic symptoms and required a walker for ambulation. Physical therapy was intended to improve lumbar stability and leg strength to allow return to prior level of functionality and to work. Her rehab potential was deemed good.

May 25, 2016 is the 19th and apparently last treatment note in the exhibit. Petitioner exhibited significant improvement in leg strength, but still complained of 6/10 pain with walking and transferring in/out of bed. She showed better tolerance for standing and better gait with a single point cane. She would benefit from additional professional physical therapy services for weakness, decreased range of motion, and pain. Her rehab potential was now deemed fair. On August 3, 2016, Petitioner was discharged from physical therapy because she did not return after her doctor visit.

On October 6, 2016, Petitioner presented to Dr. Chen for neck pain and low back pain with radiation to the left thigh and occasional numbness in her feet for over a year. She had an injection and Kyphoplasty, without significant benefit. She was initially covered by Workers' Compensation but was dropped after an §12 medical examiner found her at maximum medical improvement. MRIs showed lumbar/cervical bulging discs/spondylosis at multiple levels. Dr. Chen diagnosed low back pain, intervertebral lumbar disc degeneration and cervical/lumbar spondylosis without myelopathy/radiculopathy. He decided to perform a series of lumbar facet ESIs. A week later, Dr. Chen administered bilateral facet joint injections at L3-4, L4-5, and L5-S1 for lumbar spondylosis without myelopathy. On November 8, 2016, Petitioner reported she had moderate pain relief after the injections. Dr. Chen administered additional bilateral facet joint injections at L3-4, L4-5, and L5-S1 for lumbar spondylosis without myelopathy.

On April 3, 2017, Dr. Chen noted that Petitioner responded very well to physical therapy and the injections. Her pain level was now tolerable and was able to return to work at full duty for two hours a day with 10 minute break between hours. She was willing to increase her hours to see if she could tolerate it. He increased her allowable hours of work from two hours a day to four hours a day.

Two weeks later, Petitioner returned to Dr. Chen and reported she could not tolerate the increased hours of work and her low back pain recurred. He reduced her workhours to two per day and could consider a functional capability evaluation/work hardening after reasonable pain relief.

On May 1, 2017, Dr. Chen administered additional bilateral facet joint injections at L3-4, L4-5, and L5-S1 for lumbar spondylosis without myelopathy. He released her to work as of May 8, 2017 for two hours a day with no lifting over 20 pounds, a 10-minute break per hour, and no repetitive/forceful flexion, lateral flexion, or extension/rotation of the lumbar spine.

On June 10, 2017, Petitioner presented to Dr. Hussain for evaluation/treatment of her low back pain. She had injections and was sent back to work on August 27, 2016 with restrictions. She was doing reasonably well but her doctor moved and she has been out of medication, Flexeril. She rated her worst pain as 6-7/10. She exhibited positive single leg raises bilaterally, mild decrease in "DTRs," right worse than left, "with knee jerk of ¾." Dr. Hussain diagnosed lumbago, prescribed Voltaren, continued Flexeril, and continued physical therapy/work restrictions.

On October 21, 2017, Petitioner reported her pain was reduced significantly since she started using the Voltaren and was able to do her work without problem. Her pain was at 4-5/10 at its worst with activity. Dr. Hussain found Petitioner at maximum medical improvement, she was able to do her job under her current regimen, and released her from care *prn.*

Dr. Zelby testified by deposition on October 30, 2019. He is a board-certified neurosurgeon and Assistant Professor of Neurosurgery at Rush. He performed surgeries on the spine, peripheral nerves, and the brain. He performed §12 medical examination on Petitioner on July 27, 2016, reviewed medical records, and issued a report. She reported the accident in which she slipped on a wet floor while carrying pots which she estimated weighed three pounds. She fell, landed on her buttocks, fell backwards, and struck her head. She was taken to a hospital by ambulance and was an inpatient for three days. She was then in rehab for about another three weeks. She had injections and a Kyphoplasty, in which one injects the vertebral body with a compression fracture to stabilize the bone and sometimes to restore the height.

On examination, Petitioner had tenderness to palpitation of the upper-mid lumbar region "even with non-physiologic light touch." She had normal flexion and mildly diminished hyperextension/lateral bending. She was able to squat "almost all the way down," lying straight leg raises were positive in the back only, and sitting lying straight leg raises were negative. She brought a single-post cane but did not use it.

Leg strength was normal, sensation was normal, and reflexes were normal. Inconsistent responses included pain on superficial touching, pain on simulation, and diminished pain on distraction. The first MRI from October 5, 2015 showed mild loss of signal intensity at T2 and acute compression fracture along the superior aspect of L1 with mild loss of disc space height. He also identified some other pathology, which appeared relatively minor. He concluded that Petitioner sustained a mild L1 compression fracture from the slip and fall accident; the fracture of the MRI was "clearly acute." The other spinal pathology was not aggravated by the accident. The MRI taken July 9, 2016 showed very mild kyphosis across the T12-L1 level and an interval Kyphoplasty. The compression fracture was healed and the increased signal had resolved.

Dr. Zelby thought his diagnosis/prognosis was similar to Dr. Yapor's. Her fracture had healed, she had normal neurologic exam, no significant kyphosis across the fracture, no radicular symptoms, and no MRI findings that would cause radiculopathy. He thought her prognosis was excellent. He saw no reason why Petitioner could not safely return to work at her prior job without restriction. "She would be at no increased risk for injury with a return to her full work duty." "Although she reported complaints of pain, those complaints could not be corroborated with any objective medical findings." She needed no additional treatment for her spine, irrespective of cause.

Dr. Zelby performed a second §12 medical examination on Petitioner on February 25, 2019, reviewed subsequent records, and issued a second report. At this examination, Petitioner reported almost constant 5-7/10 pain, 8/10 with activity. She did not have pain radiating into her left buttock had numbness/tingling of both legs below her knees. That happened once or twice a week and lasted up to 30 minutes. "She rested and moved with no pain behaviors during the exam that was inconsistent with the reported level of pain, and her cane appeared to be a prop." After the first §12 medical examination she was sent back to work with a lifting restriction of 15-20 pounds and the ability to rest 15 minutes in every hour. His examination appears to be similar to the initial exam. However, this time she stated she could not squat and did not try. "There is no condition in her spine or nervous system that would have prevented her from squatting at least as well as she did in 2016."

After the 2019 examination, Dr. Zelby diagnosed healed wedge compression fracture of the L1 vertebra. The MRI from June 16th showed the fracture was healed and there was no other significant pathology. Once the fracture healed there should not be any residual pain and once it healed no additional treatment was necessary.

On cross examination, Dr. Zelby testified he performed §12 medical examinations for 15 to 20 years. He reviewed all medical records after the accident, but none from before the accident. The last record he reviewed was from Dr. Hussain dated October 21, 2017. He agreed that the last note he saw from Dr. Yapor was from June 21, 2016, at which time he kept her off work and referred her to pain management. While Dr. Yapor did not declare Petitioner to be at maximum medical improvement, "he thought there was routine healing of the compression fracture."

Dr. Zelby agreed that the job description he saw included occasional lifting up to 100 pounds, constant lifting of 15 to 20 pounds, and frequent lifting of 40 pounds. At the time of the accident, Petitioner was 52 and had a high body mass index. He agreed that as far as he knew, Petitioner did not have back complaints prior to the accident. The injury was to the L1 vertebral body, not the disc. Normally, there is pretty good healing of a compression fracture within 3-4 months, and more complete healing within six to eight months. Petitioner had at most "mild" canal stenosis (narrowing) at T12-L1." That condition can be asymptomatic and he would not expect symptoms from that degree of narrowing.

The February 1st MRI showed "progressive healing" of the compression fracture, but he did not believe the healing was complete at that time. The finding of edema showed that the healing was not complete. He agreed that the Kyphoplasty was reasonable treatment. The MRI from June of 2016 showed the fracture had healed, but otherwise it was essentially unchanged from the prior study. He disagreed with the interpretation that the new MRI showed extruded disc fragments at T12-L1. All he saw was a disc/osteophyte, which was no different from the October 2015 MRI. He put no "emphasis whatsoever, on Waddell findings." They were present so he put it down. His "opinions were based on her inconsistency of symptoms in the context of the objective findings." He did not disagree with the AMA guides notation that Waddell signs were not valid in non-Anglo cultures because their reliability was tested only on English and North American patients. He disagreed with the opinions of Dr. Vo and Dr. Yapor recommending prospective treatment and with Dr. Hussain about permanent restrictions.

On redirect examination, Dr. Zelby agreed that he put Dr. Yapor's opinions in his July 27, 2016 report. Petitioner worked for Respondent for three to four weeks prior to the accident. He had no idea what physical tasks required in the job description that she actually performed in that time period. He was a bit incredulous that she could actually lift 100 pounds, but whatever she could do prior to the accident she should be able to do currently. There were no objective findings to suggest Petitioner required any restrictions. Dr. Zelby did not know in what language they communicated, but he is fluent in Spanish.

Conclusions of Law

The Arbitrator found Petitioner proved the stipulated accident on October 5, 2015 caused a condition of ill-being of her lumbar spine but only through July 27, 2016, the date of Dr. Zelby's initial §12 medical examination report. She awarded Petitioner 45 weeks of temporary total disability benefits from October 6, 2015 through August 16, 2016, and 100 weeks of permanent partial disability benefits representing loss of the use of 20% of the person-as-a-whole. She also noted that Respondent paid all medical bills ($106,601.46) and awarded Respondent credit of $9,067.95 in paid temporary total disability benefits.

The Commission agrees with the Arbitrator on the issues of causation and medical expenses. The Arbitrator found that causation ceased as of July 27, 2016, effectively finding Petitioner had reached maximum medical improvement on that date, based on Dr. Zelby's §12 medical examination report. We agree with the Arbitrator that Dr. Zelby was persuasive about Petitioner that she had reached maximum medical improvement based on the objective findings. In addition, Petitioner's treater Dr. Vo noted on May 2, 2016, that he was not sure why Petitioner was in so much pain given the objective findings. Therefore, we also agree with the Arbitrator that medical benefits should be terminated as of July 27, 2016. Accordingly, the Commission affirms and adopts the Decision of the Arbitrator on the issues of causation, she reached maximum medical improvement as of July 27, 2017, and the Arbitrator's award of medical expenses incurred through July 27, 2017.

The Commission also agrees with the Arbitrator that Petitioner failed to prove her entitlement to temporary partial disability benefits because any loss of income was associated with lost time due to the COVID pandemic and not her disability. However, the Arbitrator awarded temporary total disability benefits through August 16, 2016, the day Petitioner actually returned to work, rather than the date of July 27, 2016, the date she could have returned to work based on the opinion of Dr. Zelby. Therefore, the Commission modifies the Decision of the Arbitrator to award temporary total permanency benefits from October 6, 2015 through July 27, 2016 for a total of 42&1/7 weeks.

In her decision, the Arbitrator noted that she found Petitioner a credible witness. Specifically, she didn't "find any material contradictions that would deem the witness unreliable." Since the Commission acts with the Arbitrator as co-finders of fact, we are cognizant that the Arbitrator actually observed the witnesses and the Commission sees no reason not to accept the Arbitrator's evaluation of Petitioner's credibility/veracity.

As noted above, the Arbitrator awarded Petitioner 100 weeks of permanent partial disability benefits. In addressing the statutory factors we are required to address when awarding permanent partial disability benefits, the Arbitrator stated that Petitioner was 53 years of age at the time of the accident and worked for Respondent part time, but did not ascribe any weight to that factor. She gave "less weight" to potential future earning loss, noting she was not employed at the time of arbitration and conceded that she had not looked for employment since her lay off due to COVID in March of 2020. In assessing the evidence of disability corroborated in the medical records, the Arbitrator briefly summarized her treatment. Thereafter, she wrote:

> "As the Arbitrator has found that Petitioner's lumbar spine condition of ill being after July 27, 2016 is unrelated to the October 5, 2015 work accident, any work restrictions that followed are also unrelated to the work accident. The Arbitrator notes, however, that Petitioner continued to work at Respondent until March 2020, and that as of October 21, 2017, Dr. Hussain noted that Petitioner was performing her job duties without restriction and without problems."

As to her current condition, Petitioner testified that she still used a cane to walk so that she won't injure herself. She uses the cane to brace herself. She took over-the-counter medication for the pain. Her pain was 7/10 without medication, and it is reduced a little (to 6/10) with the medication. It could reach 10/10 without medication. When it was very cold she walked "like bending down." Her condition had affected how she performed activities of daily living such as bathing/dressing. She had "pain, pain" bending over to dress and "pure pain" while performing household chores such as sweeping. She used to walk an hour or an hour and a half. Now she becomes tired after walking two blocks. In addition, the medical records show ongoing complaints of significant pain which supports her testimony.

In assessing the statutory factors, clearly the Arbitrator relied heavily on Dr. Zelby's opinion about Petitioner's capacity to work without restrictions and the extent of her current condition of ill-being. While we agree that Dr. Zelby is persuasive that Petitioner was at maximum medical improvement as of July 27, 2016, we do not find him as persuasive as to the extent of her current condition of ill-being. In addition, we do not completely concur with the conclusion of the Arbitrator that causation of Petitioner's condition "terminated" as of July 27, 2016, but rather that she reached maximum medical improvement as of that date. Therefore, if she had disability after July 27, 2016, any restrictions and symptoms would still be related to her work-related accident/injury.

We note that while Dr. Zelby opined that she could return to work without any restrictions, her treating doctors kept her on significant work restrictions throughout. They imposed such restrictions even though she was returning to work at a relatively light physically demanding job. In addition, Dr. Zelby totally discounted the radiologist report of a disc fragment at the level she had the Kyphoplasty. In assessing the entire record before us, the Commission finds reasonable a permanent partial disability award of 162.5 weeks of benefits, representing the loss of the use of 32.5% of the person-a-whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated June 13, 2023 is hereby modified as specified above and is otherwise affirmed and adopted, and attached hereto and made a part hereof.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical services related to the injury of October 5, 2015 accident through the date of July 27, 2016, pursuant to §8(a) and subject to the applicable medical fee schedule in §8.2, of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $201.51 per week for 42&1/7 weeks, commencing October 6, 2015 through July 27, 2016.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's request for temporary partial disability benefits is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner permanent partial disability of $201.51 per week for 162.5 weeks, because the injuries sustained caused the loss of use of 32.5% of the person-as-a-whole, as provided in §8(d)2 of the Act.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 10, 2024

DLS/dw
O-4/10/24
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/s/*Deborah L. Simpson*
Deborah L. Simpson

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC032515
Case Name	Ma Guadalupe Garcia a/k/a Eliza Hernandez v. Steak N Shake Enterprises, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Damian Flores
Respondent Attorney	George Klauke

DATE FILED: 6/13/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 13, 2023 5.15%

/s/ Ana Vazquez, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Ma Guadalupe Garcia a/k/a Eliza Hernandez
Employee/Petitioner

v.

Steak N Shake Enterprises, Inc.
Employer/Respondent

Case # **15** WC **032515**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **October 26, 2022.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 5, 2015**, 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 $***714.13*** the average weekly wage was $***201.51***.

On the date of accident, Petitioner was ***53*** years of age, ***married*** with ***-0-*** dependent children.

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

Respondent ***has*** paid all appropriate charges for reasonable and necessary medical services through 7/27/2016.

Respondent shall be given a credit of **$9,067.95** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**9,067.95**.

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

ORDER

The Arbitrator finds that Petitioner's lumbar spine condition was causally related to the October 5, 2015 accident through the date of July 27, 2016, and that the causal relationship of Petitioner's lumbar spine condition ended as of July 27, 2016.

Respondent has paid for all reasonable and necessary medical services related to the injury of October 5, 2015, pursuant to Sections 8(a) and 8.2 of the Act. Bills for medical services provided to Petitioner after July 27, 2016 are denied.

Respondent shall pay Petitioner temporary total disability benefits of **$201.51/week** for **45 weeks**, commencing **October 6, 2015** through **August 16, 2016**, as provided in Section 8(b) of the Act. Petitioner's claim for TPD benefits is denied.

Respondent shall pay Petitioner permanent partial disability benefits of **$201.51/week** for **100 weeks**, because the injuries sustained caused **20% loss of the person-as-a-whole**, as provided in Section 8(d)2 of the Act.

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

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

Ana Vazquez

JUNE 13, 2023

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to hearing on October 26, 2022 in Chicago, Illinois before Arbitrator Ana Vazquez. The issues in dispute are (1) causal connection, (2) unpaid medical bills, (3) temporary total disability ("TTD") benefits and temporary partial disability ("TPD") benefits, and (4) the nature and extent of Petitioner's claimed injuries. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated. Ax1.

FINDINGS OF FACT

Petitioner testified via a Spanish translator. Petitioner testified that on October 5, 2015, she was employed in a food preparation position and as a dishwasher at Respondent. Transcript of Proceedings on Arbitration ("Tr.") at 19-20, 53, 54. Petitioner's job duties in food preparation included cutting tomatoes, lettuce, and other foods. Tr. at 54. Petitioner testified that washing dishes consisted of moving a dish rack through a dishwashing machine. Tr. at 55-56. Petitioner testified that she was on her feet during her entire shift. Tr. at 20.

Petitioner testified that she did not have a history of back pain or back injury prior to her employment at Respondent. Tr. at 21. Petitioner testified that she had not undergone an MRI of her back or injections for her low back prior to her employment at Respondent. Tr. at 21. Petitioner testified that she never missed work due to back pain. Tr. at 21.

Accident

Petitioner testified that on October 5, 2015, while carrying dishes to the dishwasher, she slipped on grease or soap and fell backward landing on her buttocks and hitting her head on hard plastic. Tr. at 22-23. Petitioner testified that she noticed a lot of pain in her back after the fall. Tr. at Tr. at 22-24. Petitioner testified that her manager called for an ambulance after the accident. Tr. at 24.

Medical records summary

The Rosemont Fire Department reported to the scene. Petitioner's Exhibit ("Px") 1. The Rosemont Fire Department record documents a consistent accident history. Px1 at 2. Petitioner complained of low back pain, neck pain, and head pain. She reported nausea that had subsided. Petitioner was transported to Presence Resurrection Medical Center by ambulance.

The records of Presence Resurrection Medical Center reflect a consistent accident history. Px2 at 13. Petitioner was seen by Dr. Wesley Yapor. Petitioner complained of headache, nausea, neck pain, and low back pain. Px2 at 13. Petitioner underwent diagnostic imaging, including an MRI of the lumbar spine which demonstrated an L1 compression fracture. Px2 at 37-38, 58-60. Petitioner was diagnosed with a closed head injury without loss of consciousness, cervical spondylosis, and a traumatic L1 compression fracture. Px2 at 2. Petitioner was not deemed a surgical candidate, and a lumbar Aspen brace and physical therapy were ordered. Px2 at 17. Petitioner was admitted at Presence Resurrection Medical Center through October 9, 2015. Px2 at 3, 5. Petitioner was then transferred to the acute rehabilitation facility within the same hospital and was discharged on October 30, 2015. Px2 at 256-257. While at the rehabilitation facility, Petitioner tolerated three hours of therapy per day. Px2 at 257.

Petitioner followed up with Dr. Yapor at Northwestern Neurological Associates, S.C. on November 10, 2015. Px3 at 1-7. Petitioner reported ongoing back pain. Petitioner had no radicular pain complaints. Px3 at 2. Dr. Yapor's diagnosis was compression fracture of the L1 lumbar vertebra with routine healing. He recommended continued use of a back brace and a repeat MRI in three months. Petitioner was kept off work. Px3 at 17.

Petitioner underwent an MRI of the lumbar spine on February 1, 2016 at Niles Open MRI, Inc. Px3 at 23. The MRI revealed the same compression deformity at the L1 vertebral body that appeared recent and was associated with disc degeneration and disc herniation at T12-L1. Px3 at 23. Petitioner returned to Dr. Yapor on February 9, 2016, at which time Dr. Yapor noted that Petitioner had slight progression of the L1 fracture. Px3 at 8-9. Dr. Yapor referred Petitioner to pain management and kept Petitioner off work. Px8-9, 18.

Petitioner presented to Dr. Hong X. Vo, a pain management physician, at Presence Resurrection Medical Center on February 15, 2016. Px2 at 1243. Dr. Vo documented a consistent accident history and Petitioner's ongoing low back pain. Petitioner denied referred symptoms to the lower extremities. Petitioner described the pain as achy and constant. Dr. Vo's assessment was back pain. He noted that Petitioner's back pain was most likely from the L1 compression fracture after a slip and fall at work in October 2015. Dr. Vo noted that Petitioner had failed multiple conservative treatments and recommended a left paramedian L1-2 epidural steroid injection, physical therapy, and prescription medication. Px2 at 1246. Dr. Vo noted that if Petitioner had no improvement with the epidural steroid injection, he agreed with Dr. Yapor's recommendation of a L1 kyphoplasty. Petitioner was kept off work. Petitioner underwent a left paramedian L1-2 interlaminar epidural steroid injection under fluoroscopic guidance on February 23, 2016. Px2 at 1264-1265. Petitioner again saw Dr. Vo on March 8, 2016, at which time Petitioner reported no significant pain relief following the injection. Px2 at 1291. Petitioner denied referred symptoms to the lower extremity. Dr. Vo's assessment was L1 compression fracture with delayed healing. Dr. Vo did not recommend long-term opioid treatment. Dr. Vo noted that the MRI of February 1, 2016 showed edema at L1, indicating that there was still inflammation from the compression fracture causing pain at that level. Dr. Vo recommended an L1 kyphoplasty to alleviate Petitioner's symptoms Px2 at 1292. Petitioner underwent an L1 kyphoplasty with insertion of bone cement under low pressure on March 14, 2016. Px2 at 1317-1318.

Petitioner followed up with Dr. Vo on May 2, 2016. Px2 at 1381-1384. Dr. Vo noted that Petitioner had completed 18 sessions of physical therapy and had graduated from a walker to a cane. Dr. Vo noted that Petitioner's pain was in the left lower back to the buttock and left upper thigh. Dr. Vo's assessment was L1 compression fracture with delayed healing. Dr. Vo recommended Petitioner continue with physical therapy.

Petitioner participated in 19 sessions of physical therapy at Athletico from March 30, 2016 through May 26, 2016. Px4. The physical therapy record of May 26, 2016 notes that (1) Petitioner demonstrated significant improvement in lower extremity strength, but continued to present with lumbar pain with walking and transferring in and out of bed, (2) Petitioner showed improved tolerance for standing exercises and gait with a single point cane, but required frequent breaks due to increased pain, and (3) Petitioner continued to be limited in lumbar range of motion in all planes due to pain. Petitioner testified that she noticed more pain with physical therapy. Tr. at 29.

Petitioner underwent a lumbar spine MRI on June 9, 2016 at Upright MRI of Deerfield, which demonstrated (1) mild reversal of normal lumbar lordosis, (2) evidence of kyphoplasty on right side of the L1 vertebral body, (3) mild to moderate anterior wedge shape compression fracture of the L1 vertebral body with subtle marrow edema involving the posterosuperior part, with the signal change noted as possibly chronic and related to the work injury on October 5, 2015, (4) thecal sac indentation at T12-L1 due to broad based predominantly central disc bulge associated with focal central disc fragment

extrusion pointing cranio-caudally measuring approximately 5.4mm in anteroposterior and 10.8mm in craniocaudal dimensions and osteophyte, (5) small synovial cyst at L3-4 along the posterior aspect of the left facet joint, and (6) mild bilateral foraminal stenosis at L4-5 on the left side due to broad based disc bulge with osteophyte and facet joint and ligamenta flava hypertrophy. Px3 at 24-25.

Petitioner returned to Dr. Vo on June 13, 2016. Px2 at 1404-1407. Dr. Vo noted that Petitioner's pain was in the middle lower back to the buttock and bilateral upper thigh and shin and was worse when she took a step. Dr. Vo's assessment was unchanged. Dr. Vo noted that the results of the MRI of June 9, 2016 showed a T12-L1 disc fragment extrusion versus a previously reported disc bulge at that level. Dr. Vo questioned whether the T12-L1 disc had worsened and was causing Petitioner's persistent low back pain. Physical therapy was discontinued, and Petitioner was referred to Dr. Yapor for further evaluation.

Petitioner saw Dr. Yapor on June 21, 2016, at which time he noted that the kyphoplasty did not help. Px3 at 10-11. Dr. Yapor noted that Petitioner had a small, extruded disc which was not causing any neural compression, and that Petitioner's follow up MRI showed that the compression fracture had mostly healed. Dr. Yapor noted that the extruded disc was smaller and very thin without compression of any neural structures. He noted that Petitioner did not have any radicular pain. Dr. Yapor's assessment was lumbar compression fracture with routine healing. Dr. Yapor referred Petitioner to Dr. Konowitz for a second opinion and kept Petitioner off work. Px3 at 10-11, 19-20.

Petitioner testified that she had an appointment with Dr. Zelby that was set up by the insurance company on July 27, 2016, and that Dr. Zelby examined her for about five minutes. Tr. at 33-34. Petitioner testified that she did not follow up with Dr. Vo or Dr. Yapor after her appointment with Dr. Zelby because the insurance company would not approve her treatment. Tr. at 34, 58.

On October 6, 2016, Petitioner presented to Dr. Yuan Chen at Top Pain Center for complaints of ongoing low back pain radiating to the side of the left thigh and neck pain. Px5 at 1-3. Petitioner testified that she did not recall who referred her to Dr. Chen. Tr. at 59. On exam, Dr. Chen noted that Petitioner was walking in a stable gait with no significant limping. Tenderness in the cervical and lumbar paraspinal areas and restricted range of motion in both areas were noted. Dr. Chen's assessments were (1) low back pain, (2) other intervertebral disc degeneration, lumbar region, (3) spondylosis without myelopathy or radiculopathy, lumbar region, and (4) spondylosis without myelopathy or radiculopathy, cervical region. Regarding treatment, Dr. Chen noted that since Petitioner had not responded to conservative treatment, he decided to perform a series of lumbar epidural facet steroid injections in the hopes of depositing anti-inflammatory medication into the irritated area to give Petitioner adequate pain relief so that she could tolerate physical therapy and reduce medication dosage. On October 13, 2016, Petitioner underwent bilateral facet joint injections at L3-4, L4-5, and L5-S1. Px5 at 4-5. On November 11, 2016, Petitioner reported moderate pain relief following the October 13, 2016 injections and that she was able to walk without a walker at home. Px5 at 6-7. Petitioner underwent bilateral facet joint injections at L3-4, L4-5, and L5-S1 on November 11, 2016. Px5 at 6-7.

Petitioner participated in 24 sessions of physical therapy at ATI Physical Therapy from November 30, 2016 through January 27, 2017. Px7. The physical therapy record of January 27, 2017 reflects that Petitioner reported feeling better.

Petitioner returned to Dr. Chen on April 3, 2017, at which time Dr. Chen noted that Petitioner suffered from chronic low back pain due to lumbar degenerative disc disease and spondylosis aggravated by a work injury, and that she had responded well to lumbar facet joint injections and physical therapy. Px5 at 8-9. Dr. Chen's assessments were (1) low back pain, (2) other intervertebral disc degeneration, lumbar region, and (3) spondylosis without myelopathy or radiculopathy, lumbar region. Dr. Chen noted that since Petitioner had made significant progress and had been able to tolerate two hours a day of regular duty work, he recommended she increase her work status to four hours a day for the following two weeks. Petitioner was also restricted from lifting more than 20 pounds and was instructed to (1) avoid repetitive or forceful flexion, lateral flexion, extension, and rotation of the lumbar spine, (2) avoid climbing, crawling, and stooping, and (3) take a 10-minute break every hour. On April 17, 2017, Dr. Chen noted that Petitioner had returned to work for four hours a day, and that Petitioner could not tolerate the increased hours of standing and working due to the recurrence of low back pain. Px5 at 9-10. Dr. Chen's assessments were (1) low back pain, (2) other intervertebral disc degeneration, lumbar region, (3) spondylosis without myelopathy or radiculopathy, lumbar region, and (4) myalgia. Dr. Chen instructed Petitioner to reduce her working hours to two hours per day. Px5 at 18. On May 1, 2017, Petitioner followed up with Dr. Chen and underwent bilateral facet joint injections at L3-4, L4-5, and L5-S1. Px5 at 11-12. Petitioner was kept on a two hour a day work restriction, was restricted from lifting more than 20 pounds and was instructed to (1) avoid repetitive or forceful flexion, lateral flexion, extension, and rotation of the lumbar spine, (2) avoid climbing, crawling, and stooping, and (3) take a 10-minute break every hour. Px5 at 17.

Petitioner presented at Northwest Surgical Specialists, P.C. on June 10, 2017 and was seen by Dr. Yasser Hussein. Px6 at 1-2. Petitioner reported that she had been doing reasonably well, had not seen her doctor as her doctor had moved offices, and that she had been without medication. On exam, Dr. Hussein noted a normal gait, decreased range of motion in the lumbar spine with flexion and extension, tenderness to deep palpation of the lumbar spine, and positive bilateral straight leg raises at 90 degrees. Dr. Hussein's assessment was lumbago/lower back pain. Dr. Hussein recommended the use of Voltaren gel 1% and Flexeril. Petitioner's work restrictions were maintained.

Petitioner followed up with Dr. Hussein on October 21, 2017. Px6 at 3-4. Dr. Hussein noted that Petitioner continued to work with restrictions of taking a 10-to-15-minute break every hour, no lifting over 20 pounds, and no bending. He also noted that Petitioner reported that since starting use of Voltaren, the pain had improved significantly. He noted that Petitioner sill had symptoms with activity, but was doing better throughout the day and was able to do her work without any restrictions and without any problem. Petitioner reported her pain as a 4-to-5 out of 10 at its worst with activity. Dr. Hussein's assessment was lower back pain, lumbosacral radiculopathy, and lumbago. Dr. Hussein noted that Petitioner was at maximum medical improvement ("MMI") and was discharged from his care. Dr. Hussein maintained Petitioner's work restrictions. Petitioner testified that she has not seen any doctor for any purpose after October 21, 2017. Tr. at 59.

TTD benefits and TPD benefits

Petitioner testified that she had worked at Respondent for two or four weeks prior to the accident, that she worked part-time at Respondent, and that she worked six hours a day, five days a week. Tr. at 19-20, 54, 64-65. The Parties' stipulated to an average weekly wage of $201.51. Ax1 at No. 5.

Petitioner testified that she returned to work at Respondent in food preparation on August 17, 2016. Tr. at 35, 57-58. Petitioner testified that she returned to work while still using a cane. Tr. at 35. Petitioner testified that after her return to work, she would do the preparation for an hour, and would sit down after. Tr. at 35. Petitioner testified that she was working less hours. Tr. at 36. Petitioner testified that after her return to work, she noticed pain in her low back. Tr. at 36. Petitioner testified that she continued to work with restrictions after seeing Dr. Chen on October 6, 2016. Tr. at 38. Petitioner continued working at Respondent until March 14, 2020. Tr. at 45. Petitioner testified that at that time, the manager told her that they did not have work for her anymore. Tr. at 45. Petitioner agreed that after the Covid-19 pandemic, Respondent shut its dining room and was selling through the drive-thru. Tr. at 67. Petitioner testified that she contacted Respondent to request her job back, and that she was not offered her job back. Tr. at 46. Petitioner testified that she had not returned to work at any other location since March 14, 2020 and that she did not try to work. Tr. at 46. Petitioner testified that she did not look for work anywhere after being laid off by Respondent. Tr. at 62-63. Petitioner testified that at the time of arbitration, she was not working. Tr. at 63.

Petitioner's Current Condition

Petitioner testified that she did not need to lift more than 20 pounds while working at Respondent. Tr. at 67.

Petitioner testified that she still has pain in her low back and continued to use a cane. Tr. at 46-47. Petitioner testified that if she attempts to walk without a cane, she notices increased back pain. Tr. at 47. Petitioner admitted that no doctor had prescribed her a cane. Tr. at 60. Petitioner takes over-the-counter Aleve or Tylenol once or twice a day for her back, and without medication, her pain level is a 7 out of 10 daily. Tr. at 47-48, 60. Petitioner testified that the Aleve and Tylenol help more than the Voltaren gel. Tr. at 77. Petitioner testified that when it is cold, she notices that she walks "like bending down." Tr. at 50. Petitioner testified that she notices pain when bending over to get dressed. Tr. at 50. Petitioner testified that she notices "pure pain" when sweeping. Tr. at 51. Petitioner testified that she notices that she becomes tired and experiences pain when she goes for walks. Tr. at 51.

Testimony of Jamie Blatnik

Jamie Blatnik, Respondent's Division President, testified on Respondent's behalf. Tr. at 80. Ms. Blatnik testified that she had duties over Respondent's Rosemont location, where this claim originated. Tr. at 80. Ms. Blatnik testified that the Covid-19 restrictions in Illinois occurred in March or April of 2020, that Respondent's indoor dining closed on March 17, 2020, and only drive-thru and delivery services were offered. Tr. at 81. Respondent's Rosemont location went from operating 24 hours to operating only during the hours of 10 a.m. and 11 p.m., and as a result there was no longer a third shift. Tr. at 81-82. Ms. Blatnik testified that sales went down significantly at Respondent's Rosemont location, and that there was a reduction in the work force and of work hours. Tr. at 81-82. Ms. Blatnik testified that letters were sent to employees in April 2020 informing them that they had been laid off due to a lack of business. Tr. at 83. Ms. Blatnik testified that a dishwasher would have received a letter, "since everything was outside, meaning delivery or drive-thru, we didn't have dishes, we weren't serving in the dining room…" Tr. at 83.

On cross examination, Ms. Blatnik testified that food preparation was still necessary after the Covid-19 related shut down, but it went down significantly as the amount of food that was sold went down significantly. Tr. at 86. Ms. Blatnik did not know if Petitioner was provided work at Respondent post Covid-19. Tr. at 88. Ms. Blatnik testified that some employees were rehired, all laid off employees had to reapply, and that she did not know if Petitioner had reapplied. Tr. at 88.

Evidence deposition testimony of Respondent's Section 12 examiner, Dr. Andrew Zelby

Dr. Zelby testified by way of evidence deposition taken on October 30, 2019. Rx1. Dr. Zelby testified as to his education and credentials as a board-certified neurosurgeon. Rx1 at 4-5.

Dr. Zelby examined Petitioner on July 27, 2016 and authored a report after his examination. Rx1 at 6. Dr. Zelby reviewed the diagnostic exams of October 5, 2015 and testified that Petitioner sustained a mild L1 compression fracture as a result of the slip and fall on October 5, 2015. Rx1 at 12. Dr. Zelby testified that the MRI of October 5, 2015 showed that the compression fracture was acute. Rx1 at 12. Dr. Zelby testified that he also reviewed the medical records of Dr. Yapor, Dr. Biacotakis, and Dr. Vo. Rx1 at 13-14. Dr. Zelby testified that after his evaluation and review of the records and diagnostic studies, he opined that Petitioner had a wedge compression fracture of the L1 vertebra, and that it was related to the accident of October 5, 2015. Rx1 at 15. Dr. Zelby testified that based on Petitioner's objective medical findings, treatment she had received, and the time elapsed since her injury, there was no medical basis to suggest Petitioner was not safely qualified to return to all of the same job duties that she performed prior to October 5, 2015 without restrictions. Rx1 at 15. Dr. Zelby testified that at the time he examined Petitioner, her reported severity of symptoms was inconsistent with her objective medical findings and natural history of her objective medical condition. Rx1 at 16. Dr. Zelby testified that Petitioner's reported complaints of pain could not be corroborated with any objective medical finding. Rx1 at 16. Dr. Zelby testified that Petitioner required no additional diagnostic studies or further treatment for her spine. Rx1 at 16.

Dr. Zelby examined Petitioner again on February 25, 2019. Rx1 at 16. Dr. Zelby reviewed additional medical records. Rx1 at 17. Dr. Zelby testified that Petitioner's cane appeared to be a prop, as she rested and moved with no pain behaviors during the exam. Rx1 at 18. Dr. Zelby testified that at that time, Petitioner had a healed wedge compression fracture of the L1 vertebra. Rx1 at 22. Dr. Zelby testified that there was no other diagnosis that could be made based on the findings of Petitioner's diagnostic studies. Rx1 at 22. Dr. Zelby testified that Petitioner's pain complaints could not be corroborated with any objective findings, as she had an essentially normal spine exam, normal neurologic exam, a healed compression fracture of the L1, and some mild degeneration in her spine. Rx1 at 22. Dr. Zelby explained that pain from an acute fracture of L1 can be painful but once healed there is not a residual pain and no medical findings to explain Petitioner's reported persistent complaints. Rx1 at 22. Regarding Petitioner's treatment with Dr. Chen, Dr. Zelby testified that once Petitioner had a healed fracture, there was no more treatment to do based on her objective medical condition. Rx1 at 23. Dr. Zelby testified that there was no medical basis for the facet injections and that treatment was not reasonable or necessary irrespective of cause. Rx1 at 23. Dr. Zelby testified that his opinion as to Petitioner's work status was unchanged, and that at that time, Petitioner had been qualified to return to work without restrictions for three years. Rx1 at 23. Dr. Zelby testified that since 2016, there was no medical basis to pursue any

additional directed treatment irrespective of cause and that Petitioner had no condition that was amenable to further directed treatment. Rx1 at 24.

On cross examination, Dr. Zelby testified that pain is associated with a compression fracture, and that there is good healing of the fracture in three to four months and more complete healing in six to eight months. Rx1 at 31. Dr. Zelby testified that he would not expect less than mild stenosis to generate any symptoms besides minor aching and stiffness. Rx1 at 32. Dr. Zelby agreed that the kyphoplasty was reasonable and necessary. Rx1 at 33. Dr. Zelby disagreed that there were extruded disc fragments at T12-L1, and that he saw a disc/osteophyte toward the right on all the studies, and that there was no difference in the studies of June 2016 than those of October 2015. Rx1 at 34. Dr. Zelby testified that if extruded fragments were present at the T12-L1 level, symptoms resulting from that would depend on the degree of compromise from that extrusion. Rx1 at 34. Dr. Zelby disagreed with Dr. Yapor's findings and recommendations for additional treatment as of June 21, 2016. Rx1 at 39. Dr. Zelby disagreed with Dr. Vo's and Dr. Chen's recommendation for ongoing treatment and with Dr. Hussein's recommendation of permanent restrictions. Rx1 at 39.

CONCLUSIONS OF LAW

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

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

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

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

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

The Arbitrator finds that Petitioner has met her burden of proof that the October 5, 2015 accident caused an injury to the lumbar spine.

The Parties have stipulated to a compensable work accident occurring on October 5, 2015. The records document that Petitioner was transported to Resurrection Medical Center, where she underwent

diagnostic testing, and was diagnosed with and was treated for a compression fracture of the L1 vertebra. Petitioner continued to treat for a compression fracture of the L1 vertebra with Dr. Yapor and Dr. Vo through June 2016. The Arbitrator notes that while there is some indication of other pathology on MRI of the lumbar spine, the records of Dr. Yapor and Dr. Vo do not reflect the diagnosis of or the treatment for any other lumbar spine condition besides the L1 compression fracture. There was also no evidence of lumbar-related radiculopathy documented in Dr. Yapor's or Dr. Vo's records.

Dr. Zelby examined Petitioner on July 27, 2016 and February 25, 2019. He also reviewed Petitioner's treatment records and diagnostic studies in conjunction with his examinations.

Petitioner returned to her regular job duties at Respondent on August 17, 2016.

In October 2016, Petitioner sought treatment with Dr. Chen. Petitioner testified that she did not recall who referred her to Dr. Chen. Dr. Chen diagnosed Petitioner with spondylosis without myelopathy or radiculopathy in the lumbar region, a new diagnosis. Petitioner subsequently underwent multiple facet joint injections at the L3-4, L4-5, and L5-S1 levels. There is no formal causal opinion that Petitioner's delayed symptoms at other levels and treatment for same are related to the October 5, 2015 accident.

Dr. Zelby testified that the diagnostic studies of October 5, 2015 revealed a mild L1 compression fracture as a result of the work accident, and that the fracture had healed. Dr. Zelby also testified that there was no other diagnosis that could be made based on the findings of Petitioner's diagnostic studies. Dr. Zelby testified that as of July 27, 2016, Petitioner required no additional diagnostic studies or treatment. Regarding Petitioner's treatment with Dr. Chen, Dr. Zelby testified that once Petitioner had a healed fracture, no further treatment was necessary based on Petitioner's objective medical condition, and that there was no medical basis for the facet joint injections, which were not reasonable or necessary irrespective of cause. Dr. Zelby opined that Petitioner was at MMI as of July 27, 2016 and could return to work without restrictions as of July 27, 2016.

The Arbitrator finds Dr. Zelby's opinions persuasive. The Arbitrator notes that Dr. Zelby's opinions are consistent with the records of Dr. Yapor and Dr. Vo.

Having considered all the evidence, the Arbitrator finds that Petitioner proved that her lumbar spine condition (specifically, the L1 compression fracture) was related to the October 5, 2015 work accident, but failed to prove that her lumbar spine condition of ill-being and any ongoing need for treatment after July 27, 2016 was related to the October 5, 2015 accident.

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

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner's medical treatment was reasonable and necessary through July 27, 2016, and further finds that treatment after July 27, 2016 was not reasonable, necessary, or related to the October 5, 2015 accident.

Petitioner offered Px8 through Px15 at arbitration in support of her claim for unpaid medical bills. Respondent offered Rx2 in support of its dispute of Petitioner's claim. The Arbitrator notes that Px8 and Px15 are for medical services rendered prior to July 27, 2016, and that Rx2 reflects payment of the bills within Px8. Px15 reflects a balance of $0.00 suggesting the bill has been paid.

Bills within Px9 through Px14 are for medical services rendered after July 27, 2016. As the Arbitrator has found that treatment after July 27, 2016 was not reasonable, necessary, or related to the October 5, 2015 accident, Petitioner's claim for unpaid medical bills, as provided in Px9 through Px14, is denied.

Issue K, whether Petitioner is entitled to TTD benefits and TPD benefits, the Arbitrator finds as follows:

The Parties' have stipulated that Petitioner is entitled to TTD benefits from October 6, 2015 through August 16, 2016. Tr. at 10-11. Respondent, however, disputes that TTD benefits are owed to Petitioner, and claims that Petitioner was paid her full salary while off work due to the work injury. Ax1 at No. 8. Petitioner has claimed TPD benefits from August 18, 2016 through October 21, 2017. Ax1, No. 8. Respondent disputes Petitioner's claim for TPD benefits and claims Petitioner was released to full duty and worked. Ax1 at No. 8.

Petitioner offered Px19, which contains the document titled "Employee Earnings Record," or Petitioner's payroll records from Respondent from October 6, 2015 through January 23, 2017. Respondent offered the same document as Rx4 in support of its dispute of Petitioner's claim for TTD benefits. The document reflects that Petitioner received earnings for the claimed TTD benefits period.

Based on the prior findings and the record as a whole, the Arbitrator awards Petitioner TTD benefits from October 6, 2015 through August 16, 2016 and denies Petitioner's claim for TPD benefits.

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

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

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

With regard to criterion (ii) and criterion (iii), the Arbitrator notes that at the time of the accident, Petitioner was 53 years of age and was employed part time at Respondent in food preparation and as a dishwasher.

With regard to criterion (iv), the Arbitrator notes that there is no evidence of reduced earning capacity in the record. The Arbitrator notes that Dr. Zelby opined that Petitioner was capable of returning to work without restrictions as of July 27, 2016, and that Petitioner returned to work at Respondent in the same capacity on August 17, 2016. While Petitioner testified that she was not working at the time of arbitration, Petitioner conceded that she has not attempted to look for work since being laid off by Respondent in March 2020, due to the Covid-19 pandemic. The Arbitrator assigns less weight to this factor.

With regard to criterion (v), the medical records reflect that following the October 5, 2015 accident, Petitioner suffered from an acute compression fracture of the L1 vertebra, which required Petitioner be admitted at Presence Resurrection Medical Center until October 9, 2015, at which time she was transferred to the hospital's in-patient rehabilitation facility and was discharged on October 30, 2016. Petitioner subsequently underwent a left paramedian L1-2 interlaminar epidural steroid injection on February 23, 2016 and an L1 kyphoplasty on March 14, 2016. Dr. Zelby testified that Petitioner's L1 compression fracture had healed as of July 27, 2016. Petitioner returned to her regular job duties at Respondent on August 17, 2016. As the Arbitrator has found that Petitioner's lumbar spine condition of ill being after July 27, 2016 is unrelated to the October 5, 2015 work accident, any work restrictions that followed are also unrelated to the work accident. The Arbitrator notes, however, that Petitioner continued to work at Respondent until March 2020, and that as of October 21, 2017, Dr. Hussain noted that Petitioner was performing her job duties without restriction and without problems.

Upon consideration of the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of the person as a whole, pursuant to Section 8(d)2 of the Act.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC028031
Case Name	Gary Marvel v. The American Coal Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0272
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Roman Kuppart, Steven Hanagan
Respondent Attorney	Julie Webb, Kenneth Werts

DATE FILED: 6/10/2024

/s/Marc Parker, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gary Marvel,

Petitioner,

vs. NO: 17 WC 28031

The American Coal Company,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of occupational disease, causal connection, permanent partial disability, and disablement under Sections 1(e)-(f) of the Occupational Diseases Act, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 9, 2023, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $26,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 10, 2024

MP:yl
o 5/9/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC028031
Case Name	Gary Marvel v. The American Coal Company
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Steven Hanagan, Roman Kuppart
Respondent Attorney	Kenneth Werts

DATE FILED: 2/9/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 7, 2023 4.75%

/s/Maureen Pulia, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

GARY MARVEL,
Employee/Petitioner

v.

THE AMERICAN COAL COMPANY,
Employer/Respondent

Case # **17** WC **28031**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Herrin**, on **1/11/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an occupational disease occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Sections 1(d)-(f) of the Occupational Disease Act**

FINDINGS

On **2/1/16**, 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 occupational disease that arose out of and in the course of employment.

Timely notice of this occupational disease ***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 $**135,839.08**; the average weekly wage was $**2,612.29**.

On the date of accident, Petitioner was **65** years of age, ***married*** with **no** dependent children.

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

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

Respondent shall be given a credit of $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $755.22/week for 35 weeks, because the injuries sustained caused the 7% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

FEBRUARY 9, 2023

Signature of Arbitrator

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 65 year old General Mine Foreman, alleges he sustained an occupational disease that arose out of and in the course of his employment by respondent on 2/1/16. Petitioner has worked in the coal mines for 46 years, all of which was underground. Petitioner alleges that he was exposed to rock and coal dust regularly. Petitioner last worked for respondent on 2/1/16. Petitioner never smoked.

Petitioner graduated from high school. While in high school he worked at Allen Industries, as well as United Mine Workers Hospital. He testified that after graduating high school on 1968 he began working in the coal mines in 1970. He worked for Freeman Coal Company from 1970-1997. Before becoming a General Mine Operator, petitioner worked as a shuttle car operator, continuous mine operator repairman. From 1997-2003 petitioner worked for Inland Steel Consolidation Coal, as a longwall outby foreman. He testified that this job placed him away from the face of the mine, but still underground. From 2003-2016 petitioner worked for respondent as a longwall foreman before becoming the General Mine Foreman. As a longwall foreman he would beat up rock to keep the longwall going, as well as check on outby workers and workers at the face of the mine. As a General Mine Foreman he took care of the outby in order to keep everything moving. He had to make sure everything was operating correctly, and that they were making production. This involved walking bleeders and belt drives. He stated that this job was very taxing, both mentally and physically. He described some of the physical jobs he did including walking bleeders, stacking blocks, busting rock with a sledge hammer, and knocking out block stoppings. He testified that the bending, squatting and stooping needed in order to shovel and stack blocks, as well as all the walking, caused him breathing problems. He also had a torn meniscus in his right knee that was operated on, but still causes him trouble walking. Petitioner testified that he worked long hours, was on call all the time, and would work days at a time.

Petitioner testified that on 2/1/16 petitioner was exposed to, and breathed in coal dust. Petitioner first notice breathing problems in 2008 or 2009 when he was working as a long wall foreman, and there was a problem with the longwall pumps and he had to get there as fast as he could, and that is when he really noticed that he had a breathing problem. Petitioner stated that when he was working he would have to stop and take breaks due to his breathing. He testified that he was able to complete his job duties, but over time they took longer to complete, due to his breathing issues. He testified of one instance where the long wall coordinator and maintenance coordinator came looking for him because he had taken so long to get through. Petitioner stated that he was concerned at that point because he had pulled these guys off their regular jobs to check on him. He stated that this had some impact on his decision to retire.

On 9/25/17 petitioner filed his Application for Adjustment of Claim alleging his date of occupational disease as 2/1/16. He stated that his occupational disease was the result of inhalation of coal mine dust

including, but not limited to coal dust, rock dust, fumes and vapors for a period in excess of 46 years. He alleged injuries to his lungs and/or heart, with shortness of breath and exercise intolerance.

On 3/19/18 petitioner underwent a pulmonary function test at Methodist Hospital performed by Dr. Selby. The interpretation was normal diffusion capacity. It was noted that petitioner showed a very good effort.

Respondent offered into evidence the records of Logan Primary Care from 1/26/00 through 4/9/13. During this period, all examinations noted lungs clear to auscultation bilaterally with no wheezes, rhonchi or rales. His heart was noted as regular rate and rhythm; normal S1, S2; no murmur; and, no clicks, rubs or JVD. On 1/26/00 petitioner denied tobacco use and review of his symptoms respiratory was positive for shortness of breath and chronic cough, tuberculosis and dust/fume exposure. His lungs were clear to auscultation and percussion bilaterally with no adventitious sounds. On 4/23/07 petitioner was seen for upper respiratory symptoms including congestion, discharge, and coughing with the production of sputum. His lungs were clear to auscultation and percussion bilaterally. He was diagnosed with chronic sinusitis. In August of 2007 petitioner had chest pain. On 8/6/07 petitioner reported chest pain and shortness of breath. An EKG revealed sinus bradycardia. Also noted was the report from NIOSH regarding a chest x-ray taken of petitioner that showed no definite evidence of pneumoconiosis. On 8/10/07 petitioner underwent a myocardial spect stress test. The impression was normal rest and stress myocardial perfusion, no evidence of reversible ischemia, normal left ventricular size and normal left ventricular contractility with a visual estimated ejection fraction of 50-55%. On 8/20/07 petitioner was assessed with cardiac stress. On 4/23/08 petitioner had a lot of drainage down his throat. He was assessed with chronic sinusitis. On 10/8/08 petitioner was diagnosed with acute sinusitis. On 3/30/11 petitioner complained of upper respiratory symptoms, and diagnosed with acute sinusitis and otitis media. On 10/11/11 petitioner was again diagnosed with acute sinusitis and a cough. On 8/2/12 petitioner was diagnosed with acute sinusitis, pharyngitis, cough and sore throat.

Respondent offered into medical evidence from Harrisburg Medical Center. All examinations of the lungs showed that they were clear to auscultation bilaterally with no wheezes, rhonchi or rales. His heart examinations were noted as regular rate and rhythm; normal S1, S2; and, no murmur. On 1/10/03 petitioner underwent a chest x-ray that showed clear lungs, normal heart size and pulmonary vessels, no plural fluid, and no pneumothorax. The impression was negative chest, and category classification of 0/0. On 6/11/14 petitioner underwent a chest x-ray that showed no active cardiopulmonary disease, shallow inspiratory effort with mild bibasilar subsegmental atelectasis; and, mild to moderate thoracic spondylosis. On 6/24/14 petitioner underwent a Pulmonary Spirometry test that Leslie Curry, FNP, showed no obstructive defect, and normal flow volume loop. Petitioner had dyspnea with exercise and a persistent cough. On 9/1/14 and 11/7/14 petitioner underwent a sleep study for his history of severe obstructive sleep apnea. On 12/18/17 petitioner underwent a Department

of Labor Ventilation Study and Pulmonary Spirometry. His diagnosis was pneumoconiosis. However, the physician's interpretation on the Department of Labor – Ventilation Study was a normal study. On a Pre-Procedure Evaluation for Anesthesia on 4/5/18, the Anesthesiologist noted under the pulmonary evaluation section identified OSA, CPAP, and mild black lung.

Respondent offered into evidence the medical records of Galatia Primary Care. Most examinations of the lungs showed that they were clear to auscultation bilaterally with no wheezes, rhonchi or rales. His heart examinations were noted as regular rate and rhythm; normal S1, S2; and, no murmur. On 7/26/13 and 2/20/14 petitioner presented with sinus complaints. He was assessed with acute sinusitis on both occasions, and also a cough on 7/26/13. On 6/11/14 petitioner underwent a chest x-ray for shortness of breath. It revealed no active cardiopulmonary disease; shallow inspiratory effort with mild bibasilar subsegmental atelectasis, and mild to moderate thoracic spondylosis. An EKG was ordered due to shortness of breath and slow heart rate. On 8/29/14 petitioner complained of sinus pressure, drainage, runny nose, and slight sore throat. He was assessed with sinusitis. A CT of the abdomen on 11/4/14 showed lungs that were negative for mass, pleural fluid or active infiltrate; small bands of atelectasis versus scarring at both lung bases; no pericardial effusion or retrocrural lymphadenopathy; and, heart size within normal limits. On 2/25/15 petitioner complained of a cough, sinus pressure, drainage, and wheezing for about an hour when he first gets up. He stated that he was coughing more than more when this happens. An examination of the chest revealed wheezing, faint and scattered. He was assessed with acute sinusitis and bronchitis. On 9/24/15 petitioner complained of nasal congestion, nasal discharge, sinus pressure, headache, and mild sore throat for about 2 days. He reported that his sore throat is mainly in the mornings and typically resolves throughout the day. He had a non-productive cough, more prominent in the evenings. He denied shortness of breath, dyspnea, or chest pain. He was assessed with an acute upper respiratory infection. On 2/3/16, at his annual physical, petitioner reported that he "feels better than he has in a long time." On 11/5/18 petitioner's pulmonary exam revealed dyspnea during exertion. On 9/23/19 petitioner reported occasional shortness of breath with exertion. He was noted to have never been a smoker.

Respondent offered into evidence medical records from HMC Clinic at Harrisburg for 1/17/22 and 4/11/22. On both occasions the lungs showed normal breath sounds/voice sounds, and no wheezing. The heat rate and rhythm were normal, and no murmurs were heard.

The medical records respondent offered into evidence for petitioner showed extensive histories of sleep apnea and kidney stones. Petitioner also had orthopedic problems with his wrist, shoulder and knee.

On 9/1/17 Dr. Henry Smith, B-Reader, and AOBR Board Certified Radiologist, drafted a letter to petitioner's attorney after reviewing petitioner's chest x-ray dated 8/23/17. His impression was simple coal worker' pneumoconiosis with small opacities, primary p, secondary p, with all lung zones involved bilaterally,

and a profusion 1/1. Dr. Smith noted interstitial fibrosis of classification of p/p in all lung zones bilaterally. He noted no chest wall plaques or calcifications.

On 12/18/17 petitioner was examined by Dr. Suhail Istanbouly at Southern Illinois respiratory Disease Consultants, at the request of his attorney. Petitioner provided a history of his work in the coal mines for 46 years underground, and specifically what he did in the last year before he retired on 2/1/16. He noted that petitioner was not a smoker, and was not diagnosed with asthma as a child or in early childhood. Petitioner complained of mild chronic and intermittent cough for the past several years. He noted that the cough was mild in intensity and aggravated by postnasal drip. He noted that he used fluticasone nasal spray frequently when he was working in the coal mine, but currently does not need as often. Petitioner reported that the cough was occasionally productive of mild green sputum, less than 1 teaspoon full in size per day. Petitioner also reported that he was diagnosed with obstructive sleep apnea in 2014, and since then uses a CPAP. Petitioner complained of dyspnea, where he gets short of breath by walking 1-2 blocks. He stated that this has been his baseline capacity for the past 6 months. Petitioner reported a runny nose with postnasal drip frequently, especially with meals, that is much better than what it was when he was exposed to coal dust in the mine.

Dr. Istanbouly noted that petitioner's spirometry tests was within normal range with FEV1 of 3.87 liters, 111% predicted; FCV 5.32 liters, 114% predicted; and FEV1/FVC at 73%. These findings showed no restriction or obstruction. Dr. Istanbouly also reviewed the chest x-ray performed on 8/23/17, which revealed mild interstitial changes bilaterally involving all lung zones with a profusion of 1/1 per the B-reader, Dr. Harry Smith. Dr. Istanbouly examined petitioner and assessed simple coal workers' pneumoconiosis, mild in intensity, related to long term coal dust inhalation. He was of the opinion that long term coal dust inhalation seemed to be a significant contributor to petitioner's chronic respiratory symptoms (mild intermittent cough with sputum production in addition to exertional dyspnea), as well as the chest x-ray abnormality. He advised petitioner to avoid any further coal dust exposure to prevent the progression of his lung disease.

On 12/18/17 petitioner underwent a Department of Labor Ventilation Study and Pulmonary Spirometry. His diagnosis was pneumoconiosis.

On 3/17/18 Dr. Glen Baker, NIOSH B-Reader, Certified in Pulmonary Disease read a chest x-ray of petitioner's dated 12/18/17. He was of the opinion that it showed coal workers' pneumoconiosis with small opacities, primary t, secondary t, with the lower zones involved bilaterally, of a profusion 1/0. Dr. Baker noted no chest wall plaques, calcifications or large opacities. He rated the film quality as a 1. He noted both hemidiaphragms appeared normal.

On 2/27/18 Dr. Christopher Meyer, a B-Reader, interpreted a chest x-ray of petitioner's from Ferrell Hospital on 8/23/17, at the request of the respondent. He rated the Quality at 2, due to quantum mottle. He testified that mottle makes the film look grainy, and mottle can simulate small opacities. He noted that the lungs were clear; there were no small rounded, small irregular, or large opacities; there was atherosclerotic calcification in the thoracic aorta; and, the mediastinum cardiac silhouette, bones and soft tissues were unremarkable. Dr. Meyers impression was no radiographic findings of coal workers' pneumoconiosis. He was of the opinion that the lungs were clear.

Dr. Meyer noted that he also reviewed the narrative summary and B-reading form provided by Dr. Henry Smith, DO. Dr. Meyer was of the opinion that the exam quality was 2 for mottle, not 1 as indicated by Dr. Smith. Dr. Meyer also disagreed with Dr. Smith's reported findings of small opacities of size "p" with profusion of 1/1. He was of the opinion the lungs were clear and that the x-ray of 8/23/17 was a normal examination with no findings of coal workers' pneumoconiosis.

On 8/2/18 Dr. David Rosenberg drafted a letter regarding whether or not petitioner developed any respiratory disorder as a result of his work in the coal mine industry. Dr. Rosenberg reviewed the medical records from Southern Illinois Healthcare Logan Primary Services, Harrisburg Medical Center Records, Records of Dr. Alexander, Galatia Primary Care Records, B-Reading of Chest x-ray dated 8/23/17 by Dr. Smith, Evaluation by Dr. Istanbouly from 12/18/17, B-Reading of Chest x-ray dated 8/23/17 by Dr. Meyer, Methodist Hospital Records, and B-Reading of Chest x-ray of 8/23/17 by him where he found it to be a quality of 2 and somewhat light. He considered the study to be 0/0.

In summary Dr. Rosenberg was of the opinion that petitioner has obesity and obstructive sleep apnea for which he is being treated. He was also of the opinion that petitioner had received therapy for intermittent respiratory tract infections and sinusitis, and that his chest x-rays were negative or normal, without evidence of parenchymal changes related to past coal mine dust exposure. Dr. Meyer was of the opinion that petitioner had normal lung function, and had no restriction or obstruction with normal diffusing capacity measurements. Dr. Meyer noted that petitioner's oxygen percent saturations had been normal, and there was no evidence of any respiratory impairment or structural changes radiographically related to past coal mine dust exposure. He was of the opinion that petitioner had intermittent sinusitis and respiratory infections, which are disorders of the general public. Dr. Meyer opined that petitioner does not have pneumoconiosis, or any type of lung is disease related to his employment in the coal mines.

On 5/20/19 the evidence deposition of Dr. Suhail Istanbouly, was taken on behalf of the petitioner. Dr. Istanbouly specializes in pulmonary critical care and sleep medicine. He testified that when he worked in Southern Illinois 30-40% of his patients that he saw for 16 years were black lung cases. Currently, he is only in

Southern Illinois once a month, and that is the only time he deals with black lung cases. Dr. Istanbouly performed black lung examinations for the US Department of Labor. He was also the medial director of the Pulmonary Department at Herrin Hospital from 2005 until March of 2019. Dr. Istanbouly is not an A or B-Reader.

Dr. Istanbouly was of the opinion that when a person has radiographic simple coal workers' pneumoconiosis, he would have chronic respiratory symptoms, including daily cough, sputum production, and shortness of breath, chest tightness and wheezing. He also agreed that someone with a positive chest x-ray for simple coal workers' pneumoconiosis can be asymptomatic, especially in the early cases. Dr. Istanbouly was of the opinion that a person with simple coal workers' pneumoconiosis could have pulmonary function that shows obstructive, restrictive or normal findings. He noted that pulmonary function studies within the normal range could mean that any damage is not yet severe enough to be recognized on the study. He was further of the opinion that a person with a normal pulmonary function study can have shortness of breath and daily cough. He was of the opinion that a person with mild coal workers' pneumoconiosis can have a normal diffusing capacity and a normal pulse oximetry on room air. Dr. Istanbouly opined that petitioner's coal workers' pneumoconiosis was caused by long term coal dust inhalation; that petitioner has clinically significant pulmonary impairment based on his cough, sputum production and exertional dyspnea caused by his long term coal dust inhalation; and, that petitioner cannot have additional exposure to coal dust without endangering his life.

Dr. Istanbouly testified that petitioner reported no history of respiratory disease, but did complain of intermittent cough that was occasionally productive. He agreed that exertional dyspnea could be related to other conditions other than pulmonary disease, such as heart disease and deconditioning. Dr. Istanbouly testified that he did not review any of petitioner's treating records. He testified that petitioner was not taking any breathing medications at the time of his exam, and had not done so in the past.

On 9/10/19 the evidence deposition of Dr. David Rosenberg, was taken on behalf of respondent. Dr. Rosenberg is board certified in internal medicine, occupational medicine, and pulmonary disease, did a pulmonary fellowship at NIH. Dr. Rosenberg is also a B-Reader and obtained a Master's of public health. Dr. Rosenberg is on the pulmonary staff at University Hospitals. Currently, he directs the UH Ahuja Center at UH Ahuja Medical Center. Dr. Rosenberg performs black lung evaluations in KY and TN. He has done black lung evaluations for attorneys and insurance companies, and has done them also for the Department of Labor in Cleveland. Dr. Rosenberg is also a medical specialist for the Social Security Administration and Industrial Commission of the State of Ohio. He has also been a member of the Occupational Lung Disease Committee, and has taught various pulmonary courses over the years, and has lectured, including lectures on interstitial lung disease, chronic obstructive lung disease, pulmonary stress testing, pulmonary function testing, exercise testing,

and occupational lung disease. He has also been published in the American Review of Respiratory Disease and the Journal of Respiratory Diseases.

Based on his reading of various medical records sent to him by respondent Dr. Rosenberg was of the opinion that petitioner does not suffer any obstruction or restriction in pulmonary function. He was of the opinion that petitioner's diffusion capacity was normal. He was of the opinion that petitioner was capable of heavy manual labor from a respiratory standpoint. Dr. Rosenberg was further of the opinion that the 8/23/17 chest x-ray of petitioner's that he reviewed showed no opacities on the film consistent with pneumoconiosis. Dr. Rosenberg was of the opinion that it is possible that for simple pneumoconiosis to progress once the exposure ceases, but is unlikely.

Dr. Rosenberg was of the opinion that one can develop and have types of manifestations related to coal dust other than pneumoconiosis, that include chronic bronchitis, COPD, and other such conditions. Dr. Rosenberg agreed that a person can have coal workers' pneumoconiosis without having chest x-ray evidence of the disease. He further agreed that pulmonary function testing will tell the type of abnormality and its severity, but it will not tell you the etiology. Dr. Rosenberg was of the opinion that a person can have normal pulmonary function studies and have coal workers pneumoconiosis. He was further of the opinion that it is not unusual for someone with simple coal workers' pneumoconiosis to have normal pulmonary function. In fact, he testified that most would have normal pulmonary function. He added that a person can lose a significant amount of their lung structure, and not be impaired on pulmonary function tests. Dr. Rosenberg opined that a person who has simple coal miners' pneumoconiosis would not have symptoms, in general. Dr. Rosenberg testified that he does from 5-20 B-readings a week.

On 10/31/18, the evidence deposition of Dr. Christopher Meyer, was taken on behalf of the respondent. Dr. Meyer is a radiologist and B-reader. He has been certified in radiology since 1992. Dr. Meyer failed the B-Reader test the first time he took it, and became a B-Reader in 1999. Dr. Meyer was Chief of Thoracic Imaging at Madigan Army Medical Center in Tacoma, Washington. There, he was in charge of training the Army residents in thoracic imaging and preparing them for their boards. In 1986 he became an assistant professor of radiology at University of Maryland Medical System, again in the thoracic imaging division, where he again interpreted chest x-rays and CTs, and worked in interventional chest radiology. Dr. Meyer was also a manuscript reviewer at University of Maryland Medical System for several journals, including the American Journal of Roentgenology. In 1998 Dr. Meyer became an associate professor of radiology at University Hospital in Cincinnati, OH. His area of subspecialization was thoracic imaging, and he taught the same things as he did at University of Maryland Medical System. In 2000, Dr. Meyer became an associate of radiology at Indiana University Hospital in Indianapolis, IN. There, he taught the same subjects.

In 2003, Dr. Meyer returned back to Cincinnati in private practice, before returning to the University Hospital in Cincinnati. In 2010 he took a position of Vice Chair of Finance and Business Development and professor of Diagnostic Radiology at University of Wisconsin Hospital and Clinics in Madison, WI. In 2018 he stepped down as Vice Chair, and remained a professor at the university. Currently, Dr. Meyers spends 60% of his time in clinical. He reads between 200-250 chest x-rays, and 40-50 chest CT scans a week. A B-Reader reads films for the presence of pneumoconiosis. He also interprets scans for silicosis and asbestosis. In 2017, as a member of the ACR Pneumoconiosis Task Force, he helped complete a new syllabus for the course, as well as a test that was delivered to NIOSH in 2017. In May of 2000, Dr. Meyer also served as a board examiner for the American Board of Radiology, and has done so a couple times since then. Dr. Meyer has also served on several educational and scientific program committees, and has done research on occupational lung disease.

Dr. Meyer testified that he prefers to look at patients radiographs without reviewing the patient's treatment records, unless there were findings on the examination that could be explained by treatment. He referred to the radiograph as objective, and treatment records as a subjective bias. Dr. Meyer does 30-40 B-readings a week for medicolegal, and another 30-100 B-readings a week for University of Wisconsin clinical surveillance programs. He was of the opinion that coal workers pneumoconiosis can result in some lung fibrosis, most commonly in the upper zones, that when it becomes more severe, its diffuse and involves all lung zones. Dr. Meyer was of the opinion that if petitioner's film came through on a regular clinical workday, he would read it as no acute cardiopulmonary disease, without any additional findings. Dr. Meyer agreed that a negative film for coal worker's pneumoconiosis does not necessarily rule out the disease. He further agreed that on an autopsy or biopsy many coal workers' that had negative chest x-rays for coal workers' pneumoconiosis that was not seen on x-ray, actually had it pathologically. Dr. Meyer opined that he did not find anything related to coal workers' pneumoconiosis on petitioner's x-ray dated 8/23/17. However, he agreed that his negative reading of petitioner's chest x-ray does not necessarily rule out that petitioner could have coal worker's pneumoconiosis pathologically.

Dr. Meyer was of the opinion that simple pneumoconiosis typically does not progress once exposure ceases. He was of the opinion that petitioner did not have progressive massive fibrosis or cor pulmonale, or evidence of bulla or hyperinflation. Dr. Meyer was of the opinion that the classic feature of coal workers' pneumoconiosis are nodular opacities predominantly in the upper lung zones on chest x-ray.

On 10/21/20 the evidence deposition of Dr. Henry Smith D.O., was taken on behalf of petitioner. Dr. Smith is a diagnostic radiologist, certified in 1973, and a B-Reader since 1987. Dr. Smith worked for various hospitals in Pennsylvania until 1988 when he opened Smith Radiology. In 2016 he closed his practice, and since then has been doing consulting work in the field, including a lot of B-reads. Dr. Smith is also the medical

director of a portable x-ray company called PMX. Dr. Smith testified that somewhere around 1999 he failed the B-Reader recertification twice, back to back within three months. He attributed this to his need for glasses. Once he got new glasses, and rescheduled the test, he was still was not used to the glasses and that was his second fail. He testified that he failed due to overreading, or finding more disease than was on the standard film. He believed this may have been around 1999. After that, he regrouped, retook it and passed. He has had no problems passing since then.

Dr. Smith holds a medical license in five states, but not Illinois. Dr. Smith is affiliated, or has radiology privileges at multiple hospitals/clinics, and is also a consulting radiologist and B-Reader for multiple occupational medical clinics. Dr. Smith testified that he and his associate read 100-125 x-rays/CTs a day. He further testified that if the x-ray is underexposed the disease might look a little more like there is much more there than there really is, and in the alternative, if the x-ray is overexposed you lose the ability to see small opacities. Dr. Smith was of the opinion that the opacities in coal workers usually occur predominantly in the upper to mid lung zones, and opacities with asbestos or other diseases usually occur predominantly in the mid to lower lung zones.

Dr. Smith testified that over the years he has interpreted chest x-rays for black lung for over 20 law firms. He stated that 80% of those firms represent claimants.

Dr. Smith opined that based on petitioner's 8/23/17 chest x-ray, petitioner has coal workers' pneumoconiosis, and he has damage to his lungs as a result of that coal workers' pneumoconiosis. Dr. Smith saw no mottle on the film and rated its Quality as a 1.

Dr. Smith testified that he was rejected by 5 medical schools in Pennsylvania after he graduated from Lebanon Valley. Thereafter, he was placed on the waitlist for the Kirksville College of Osteopathic Medicine. Dr. Smith testified that his radiology residency was a D.O. residency, not a medical residency. Dr. Smith testified that he left Community General Osteopathic Hospital in Harrisburg, PA, it was due to a conflict with two associates, who asked him to leave. He stated that it was because he worked hard and was committed to service, and they wanted someone in so they did not have to work so hard and dilute the practice. He testified that he was in a contract with these two associates, where two could vote a third out, and that is what they did to him in 1987. Dr. Smith testified that he was a clinical assistant professor for Philadelphia College of Osteopathic Medicine, New England School of Medicine, and New York. Dr. Smith testified that he has not sat on any committees with NIOSH; has not held office in any capacity with the College of Osteopathic Medicine or the Osteopathic Board of Radiology; and, has not published anything on pulmonary disease; has not served as a manuscript reviewer for any treatise or journal.

Dr. Smith testified that the syllabus that he uses to study for the B-reader exam he takes as gospel. He also stated that the leaders in the field have been chose to put the syllabus together, and Dr. Meyer was one of those leaders. Dr. Smith agreed with the current B-reading syllabus that small opacities associated with silica and coal dust are usually rounded, and involve the upper lungs first, and as the dust exposure continues, all of the lung zones may become involved.

Dr. Smith did not know if the monitors he uses for interpreting chest x-rays were in compliance with the guidelines set forth in the Code of Federal Regulations, or the equipment complied with the DICOM Standard that is set forth in the Code of Federal Regulations.

Petitioner testified that he left his job with respondent because he planned to retire on a certain date. He further testified that breathing partially had to do with his decision to retire, as well as the fact that his workload and demand got to be too much. He stated that it became harder to walk. He cited an incident where he was walking the bleeder and it took longer than usual for him to get through, and they came looking for him. He testified that it took longer because he had to stop to breath, and the walk was difficult. Petitioner reported the need to stop and take breaks due to his breathing while working. Petitioner testified that he never did anything other than manual labor his entire career. He stated that over time he was always able to complete his job duties, albeit at a slower pace due to his breathing problems. Petitioner stated that he does not think he could do his regular mining job today because he cannot breathe like he used to, and he could not do the walking.

Currently, petitioner can walk 2-3 blocks on even ground before he experiences difficulty breathing. He testified that his breathing is worse since he left the mine. With respect to activities of daily living, petitioner testified that he can do them, only slower. He also reported breathing issues when weed whacking and doing yardwork. He testified that he needs to take breaks with these activities. He also reported difficulty breathing when he had to crawl under his pontoon boat to clean it.

In addition to his pulmonary problems, petitioner identified some orthopedic issues, including his right knee. Petitioner had a torn meniscus that was surgically repaired. Despite this, petitioner still has trouble walking due to problems with his right knee.

Petitioner maintains the law on his 300 x 90 foot property. He also goes fishing on the lake once every two weeks. Petitioner and his wife also go driving around the lake on their pontoon. Petitioner takes care of his property and is enjoying life with his wife. Petitioner testified that he also makes bird houses, just for fun.

C. DID AN OCCUPATIONAL DISEASE OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?
F. PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner underwent an x-ray of his chest for pneumoconiosis on 8/23/17. This x-ray was interpreted by Drs. Smith and Istanbouly for the petitioner, and Drs. Meyer and Rosenberg for the respondent. Drs. Smith, Meyers and Rosenberg are B-Readers. Dr. Istanbouly is not a B-Reader.

Dr. Smith's impression was simple coal worker' pneumoconiosis with small opacities, primary p, secondary p, with all lung zones involved bilaterally, and a profusion 1/1. Dr. Smith noted interstitial fibrosis of classification of p/p in all lung zones bilaterally. He noted no chest wall plaques or calcifications.

On 12/18/17 petitioner was examined by Dr. Istanbouly. Petitioner reported that he worked in the coal mines for 46 years underground, and specifically what he did in the last year before he retired on 2/1/16. He noted that petitioner was not a smoker, and was not diagnosed with asthma as a child or in early childhood. Petitioner complained of mild chronic and intermittent cough for the past several years. He noted that the cough was mild in intensity and aggravated by postnasal drip. He noted that he used fluticasone nasal spray frequently when he was working in the coal mine, but currently does not need as often. Petitioner reported that the cough is occasionally productive of mild green sputum, less than 1 teaspoon full in size per day. Petitioner complained of dyspnea, where he gets short of breath by walking 1-2 blocks. He stated that this has been his baseline capacity for the past 6 months. Petitioner reported a runny nose with postnasal drip frequently, especially with meals, that his much better than what it was when he was exposed to coal dust in the mine.

Dr. Istanbouly noted that petitioner's spirometry tests was within normal range with FEV1 of 3.87 liters, 111% predicted; FCV 5.32 liters, 114% predicted; and FEV1/FVC at 73%. These findings showed no restriction or obstruction. Dr. Istanbouly reviewed the chest x-ray performed on 8/23/17. Based on his examination, petitioner's history and his review of the chest x-ray of 8/23/17, Dr. Istanbouly assessed simple coal workers' pneumoconiosis, mild in intensity, related to long term coal dust inhalation. He was of the opinion that long term coal dust inhalation seemed to be a significant contributor to petitioner's chronic respiratory symptoms (mild intermittent cough with sputum production in addition to exertional dyspnea), as well as the chest x-ray abnormality.

Dr. Christopher Meyer, a B-Reader, interpreted the chest x-ray of 8/23/17. He rated the Quality at 2, due to quantum mottle. He testified that mottle makes the film look grainy, and mottle can simulate small opacities. He noted that the lungs were clear; there were no small rounded, small irregular, or large opacities; there was atherosclerotic calcification in the thoracic aorta; and, the mediastinum cardiac silhouette, bones and soft tissues

were unremarkable. Dr. Meyers impression was no radiographic findings of coal workers' pneumoconiosis. He was of the opinion that the lungs were clear.

Dr. Meyer noted that he also reviewed the narrative summary and B-reading form provided by Dr. Henry Smith, DO. Dr. Meyer was of the opinion that the exam quality was 2 for mottle, not 1 as indicated by Dr. Smith. Dr. Meyer also disagreed with Dr. Smith's reported findings of small opacities of size "p" with profusion of 1/1. He was of the opinion the lungs were clear and that the x-ray of 8/23/17 was a normal examination with no findings of coal workers' pneumoconiosis.

Dr. Rosenberg reviewed medical records from Southern Illinois Healthcare Logan Primary Services, Harrisburg Medical Center Records, Records of Dr. Alexander, Galatia Primary Care Records, B-Reading of Chest x-ray dated 8/23/17 by Dr. Smith, Evaluation by Dr. Istanbouly from 12/18/17, B-Reading of Chest x-ray dated 8/23/17 by Dr. Meyer, Methodist Hospital Records, and B-Reading of Chest x-ray of 8/23/17 by him where he found it to be a quality of 2 and somewhat light. He considered the study to be 0/0.

Dr. Rosenberg was of the opinion that petitioner had received therapy for intermittent respiratory tract infections and sinusitis, and that his chest x-rays were negative or normal, without evidence of parenchymal changes related to past coal mine dust exposure. Dr. Meyer was of the opinion that petitioner had normal lung function, and had no restriction or obstruction with normal diffusing capacity measurements. Dr. Meyer noted that petitioner's oxygen percent saturations had been normal, and there was no evidence of any respiratory impairment or structural changes radiographically related to past coal mine dust exposure. He was of the opinion that petitioner had intermittent sinusitis and respiratory infections, which are disorders of the general public. Dr. Meyer opined that petitioner does not have pneumoconiosis, or any type of lung is disease related to his employment in the coal mines.

Dr. Baker, a B-Reader, read a chest x-ray of petitioner's dated 12/18/17. He was of the opinion that it showed coal workers' pneumoconiosis with small opacities, primary t, secondary t, with the lower zones involved bilaterally, of a profusion 1/0. Dr. Baker noted no chest wall plaques, calcifications or large opacities. He rated the film quality as a 1. He noted both hemidiaphragms appeared normal. The arbitrator gives less weight to Dr. Baker's assessment given that the small round opacities of pneumoconiosis usually involve the upper lungs first, and as the dust exposure continues all lung zones may be involved.

The arbitrator finds it significant that the only person to examine petitioner was Dr. Istanbouly, and that petitioner complained of mild chronic and intermittent cough for the past several year; a cough that was mild in intensity and aggravated by postnasal drip; the use of fluticasone nasal spray frequently when he was working in the coal mine; a cough that was occasionally productive of mild green sputum; dyspnea, where he gets short

of breath by walking 1-2 blocks; and, a runny nose with postnasal drip frequently, especially with meals, that was much better than what it was when he was exposed to coal dust in the mine. The arbitrator also finds these complaints consistent with those petitioner regularly noted in his medical records from 2000 to early 2022.

With respect to the B-Reader assessment of petitioner's chest x-ray of 8/23/17, the arbitrator notes the respondent's experts Drs. Meyer and Rosenberg found no evidence of pneumoconiosis, and petitioner's expert Dr. Smith found evidence of pneumoconiosis. Based on Dr. Smith's reading of the x-ray, petitioner's history, his examination, and pulmonary testing, Dr. Istanbouly also assessed petitioner with mild pneumoconiosis.

The arbitrator finds Drs. Smith, Meyer, and Rosenberg, as B-Readers, have all passed the B-Reader test, which lends credibility to their interpretation, even though these interpretations differ. All experts agreed that different experts can come to different conclusions when reading the same x-ray for pneumoconiosis. It is no surprise to this arbitrator that petitioner put forth experts that found pneumoconiosis on the x-ray, and respondent's experts did not. Drs. Meyer and Rosenberg noted the quality of the film as a 2, and Dr. Smith noted the quality of the film as a 1. As a result, Dr. Smith noted small opacities, that Drs. Meyer and Rosenberg believed to be mottle on the chest film due to the quality of the film being a 2.

The arbitrator finds it significant that all experts agreed that a negative chest x-ray would not rule out that petitioner could have coal worker's pneumoconiosis, and that a person can have shortness of breath despite a normal pulmonary function. In fact, there was further testimony that a negative chest x-ray would not rule out that petitioner had coal worker's pneumoconiosis pathologically.

Based on the totality of the credible medical evidence, the arbitrator finds the presence of respiratory issues throughout his medical records from 2000 to early 2022; the complaints petitioner made to Dr. Istanbouly; the petitioner's testimony regarding the onset, and worsening of his dyspnea; the fact that petitioner never smoked; the fact that petitioner worked underground in the mines for 46 years; that fact that Dr. Rosenberg agreed that a person could have shortness of breath despite a normal pulmonary function; the finding of pneumoconiosis by Drs. Smith and Istanbouly; and, the fact that both Dr. Meyer and Dr. Rosenberg opined that a negative chest x-ray would not rule out that petitioner had coal worker's pneumoconiosis, all support a finding that petitioner suffers from mild pneumoconiosis and other respiratory conditions that arose out of and in the course of his employment by respondent and that his current condition of ill being is causally related to his occupational exposure while working for respondent. Therefore, the arbitrator finds the petitioner suffers from an occupational disease that arose out of and in the course of his employment by respondent and that his current condition of ill being is causally related to his occupational exposure while working for respondent.

O. WHETHER PETITIONER PROVED TIMELY DISABLEMENT PURSUANT TO SECTIONS 1(e) and 1(f) OF THE OCCUPATION DISEASE ACT:

Petitioner testified that on 2/1/16 he was exposed to, and breathed in coal dust. Petitioner first notice breathing problems in 2008 or 2009 when he was working as a long wall foreman, and there was a problem with the longwall pumps and he had to get there as fast as he could, and that is when he really noticed that he had a breathing problem. Petitioner stated that when he was working he would have to stop and take breaks due to his breathing. He testified that he was able to complete his job duties, but over time they took longer to complete, due to his breathing issues. He testified to one instance where he the long wall coordinator and maintenance coordinator came looking for him because he had taken so long to get through. Petitioner stated that he was concerned at that point because he had pulled these guys off their regular jobs to check on him. He stated that this had some impact on his decision to retire on 2/1/16.

Petitioner testified, and reported to Dr. Istanbouly that his breathing becomes labored after walking a couple blocks. Although no doctor every restricted petitioner from work as a result of his breathing and respiratory problems, the arbitrator finds it significant that from 2000 to early 2022 petitioner had repeated complaints of breathing problems and respiratory issues and infections documented in his medical records, as well as documentation of his breathing problems worsening since he left the mine on 2/1/16. Although Dr. Istanbouly admitted that there are other causes for exertional dyspnea other than pulmonary disease, he opined, based on his examination, testing, and patient history that petitioner's exertional dyspnea was related to his pulmonary disease of mild pneumoconiosis.

Based on the above, as well as the credible evidence the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that he suffered a timely disablement as described in Sections 1(e) and 1(f) of the Occupational Disease Act.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

The nature and extent of petitioner's injury, consistent with 820 ILCS 305/8.1b, permanent partial disability, shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. Id.

Neither party submitted an AMA rating pursuant to Section 8.1b of the Act into evidence. For this reason, the arbitrator gives no weight to this factor.

With respect to factor (ii), the occupation of the injured employee, the petitioner was a General Mine Foreman, and had worked in the mines for 46 years. All of petitioner's work was underground. Petitioner has not worked since his retirement. For these reasons, the arbitrator gives greater weight to this factor.

With respect to factor (iii), the age of the employee. Petitioner was 65 years old on the date of injury, and had retired as of 2/1/16. For these reasons, the Arbitrator gives lesser weight to this factor.

With respect to factor (iv), the future earnings of the petitioner, no testimony or evidence was offered with respect to this issue. For this reason, the arbitrator gives no weight to this factor.

With respect to factor (v), evidence of disability corroborated by the treating medical records, the Arbitrator found the petitioner sustained an occupational disease that arose out of and in the course of his employment by respondent. Petitioner's medical records from 2000 through early 2022 support petitioner's complaints of breathing and respiratory problems.

When petitioner was examined by Dr. Istanbouly on 12/18/17 petitioner complained of mild chronic and intermittent cough for the past several years. He noted that the cough was mild in intensity and aggravated by postnasal drip. He noted that he used fluticasone nasal spray frequently when he was working in the coal mine, but currently does not need as often. Petitioner reported that the cough is occasionally productive of mild green sputum, less than 1 teaspoon full in size per day. Petitioner complained of dyspnea, where he gets short of breath by walking 1-2 blocks. He stated that this has been his baseline capacity for the past 6 months. Petitioner reported a runny nose with postnasal drip frequently, that was much better than what it was when he was exposed to coal dust in the mine.

Currently, petitioner can walk 2-3 blocks on even ground before he experiences difficulty breathing. He testified that his breathing is worse since he left the mine. With respect to activities of daily living, petitioner testified that he can do them, only slower. He also reported breathing issues when weed whacking and doing yardwork. He testified that he needs to take breaks with these activities. He also reported difficulty breathing when he had to crawl under his pontoon boat to clean it.

For these reasons, the Arbitrator gives greater weight to this factor.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 7% loss of use of his person as a whole pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC003865
Case Name	Alexia Kern (Widow of James Kern) v. United Airlines, Inc
Consolidated Cases	
Proceeding Type	***Remand from Circuit Court of Cook County***
Decision Type	Commission Decision
Commission Decision Number	24IWCC0273
Number of Pages of Decision	33
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Karen Coon

DATE FILED: 6/11/2024

/s/Carolyn Doherty, Commissioner

Signature

24IWCC0273 [23IWCC0394]

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALEXIA KERN, WIDOW OF
JAMES KERN,

Petitioner,

vs. NO: 14 WC 003865
23 IWCC 0394

UNITED AIR LINES, INC.,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County. In accordance with the opinion of the circuit court filed on February 22, 2024, the Commission considers the issues of accident, notice, causal connection, medical expenses, prospective medical care, temporary total disability, permanent partial disability, death benefits, penalties and fees, and the statute of limitations, and being advised of the facts and law, affirms the Decision of the Arbitrator and concludes that neither Decedent James Kern nor Petitioner, his widow, is entitled to benefits pursuant to the Illinois Workers' Compensation Act for the reasons stated below.

I. PROCEDURAL BACKGROUND

Petitioner's claim was the subject of an arbitration hearing held on December 16, 2021. In a decision filed on June 17, 2022, the arbitrator found that Decedent James Kern did not sustain an accident that arose out of and in the course of his employment with Respondent.

Petitioner sought a review by the Commission, which issued a Decision and Opinion on Review on August 31, 2023, which reversed the decision of the arbitrator solely on the grounds that: the original Application filed by Decedent in 2009 and dismissed for want of prosecution in 2012 was never properly reinstated pursuant to Commission Rule 9020.90; Decedent's February 5, 2014 refiled Application and Petitioner's August 14, 2015 amended Application were nullities;

and Petitioner's Application filed on February 25, 2020 first alleging a fatal matter was barred by the statute of limitations under Section 6(d) of the Act. Accordingly, the Commission reversed the Arbitrator and dismissed Petitioner's case as untimely and barred by the statute of limitations.

Petitioner sought judicial review of the Commission's decision in the Circuit Court of Cook County. On February 22, 2024, the circuit court entered an order reversing the Commission's decision. The court ruled that the Commission lacked the statutory authority to dismiss Decedent's refiled Application and Petitioner's August 14, 2015 amended Application based upon Decedent's failure to timely file a petition to reinstate his original claim, because to do so would shorten the statute of limitations, which per the Circuit Court had not run, and give *res judicata* effect to a dismissal for want of prosecution.

The circuit court also wrote, "Finally, as to Alexia's February 25, 2020 amendment to designate the Claim as a 'fatal case', the Court reverses the Commission's Decision finding it to be time barred as a stand-alone claim. Because the Commission incorrectly found that both James' Refiled Claim and Alexia's amendment to substitute herself as a widow were nullities, the Commission failed to consider whether the amendment to designate the matter as a 'fatal case' would relate back to the earlier filings." Accordingly, the circuit court reversed the Commission's decision and remanded with instructions to "…review the decision of the Arbitrator on the merits and to re-consider its decision dismissing Alexia's claim for death benefits as time-barred in light of this Court's decision."

II. FINDINGS OF FACT

The Commission hereby incorporates by reference the "Findings of Facts" and findings included in the "Conclusions of Law" contained in the arbitration decision filed on June 17, 2022, attached hereto and made a part hereof, to the extent it does not conflict with the Circuit Court of Cook County's order filed on February 22, 2024. The Commission also incorporates by reference the February 22, 2024, circuit court opinion, attached hereto and made a part hereof. Any additional findings of fact in this Decision and Order on Remand will be specifically identified in the discussion below.

III. CONCLUSIONS OF LAW

The Circuit Court of Cook County has ordered the Commission to review the Arbitrator's decision on the merits and reconsider whether Petitioner's February 25, 2020 claim for death benefits is time-barred, per the Circuit Court's order. The Commission turns to address these issues in order.

A. Decedent's Merits Claim

On July 17, 2008, Decedent, a pilot for Respondent, fell and suffered a seizure while deplaning following a flight to London. Thereafter, Decedent's treating physicians rendered various diagnoses. On November 3, 2009, Decedent was diagnosed with partial seizure disorder and secondary generalization. In February 2010, Decedent received a letter from Respondent's Acting Medical Director, recommending that he be permanently grounded as a pilot, but not for

reasons involving alcoholism, drug use or self-inflicted injury. Petitioner testified that an FAA letter formally grounding Decedent came somewhat later. Petitioner also testified that within six months, Decedent became a functioning alcoholic who suffered grand mal seizures, including when he attempted to stop drinking. In 2013, a psychologist assessed Decedent with alcohol dependence and major depressive disorder. On May 21, 2015, while still receiving benefits from Respondent, Decedent drowned in a koi pond. Although the drowning was unwitnessed, the death certificate listed a seizure disorder as a secondary cause of death. The manner of death is listed as accidental. A letter from the coroner's office reflects that that alcohol and drug abuse were contributing factors to the death.

After a trial on the merits on December 16, 2021, the Arbitrator concluded that Petitioner failed to prove that Decedent suffered a compensable accident on July 17, 2008. On review, with regard to the cockpit incident on July 17, 2008, Petitioner argues that the Arbitrator failed to consider that Decedent, a pilot, was a traveling employee and the claim should be treated differently based on that status. Petitioner also argues in the alternative that Decedent suffered an accident arising out of and in the course of employment under the traditional principles of the Workers' Compensation Act. Petitioner further argues that Decedent was subjected to work-related risk based not only on the configuration of the flightdeck of Respondent's airplane, but also on work demands that increased his risk of injury in the airplane and his risk of suffering seizures.

"The general rule is that an injury incurred by an employee in going to or returning from the place of employment does not arise out of or in the course of the employment and, hence, is not compensable." *Venture-Newberg-Perini v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728, ¶ 16 (quoting *Commonwealth Edison Co. v. Industrial Comm'n*, 86 Ill. 2d 534, 537 (1981). An exception applies, however, when the employee is a "traveling employee." *Id*. ¶ 17. "[C]ourts generally regard employees whose duties require them to travel away from their employer's premises (traveling employees) differently from other employees when considering whether an injury arose out of and in the course of employment." *Id*. (quoting *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 68 (1975)); see *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199 (1985). "*If a traveling employee is injured*, the court then considers whether the employee's activity was compensable." (Emphasis added.) *Id*. ¶ 18 (citing *Wright*, 62 Ill. 2d at 69). In this context, our supreme court has found that injuries arising from three categories of acts are compensable: (1) acts the employer instructs the employee to perform; (2) acts which the employee has a common law or statutory duty to perform while performing duties for his employer; (3) acts which the employee might be reasonably expected to perform incident to his assigned duties. *Id*. Regarding the third category, we consider the reasonableness of the act and whether it might have reasonably been foreseen by the employer. See *id*.

The Commission concludes that Decedent was a traveling employee because his duties as a pilot for Respondent required him to travel away from Respondent's premises. However, the Commission agrees with the Arbitrator that, as a question of fact, Petitioner failed to prove by a preponderance of the credible evidence that Decedent suffered the injury alleged in this case.

Petitioner alleges that on July 17, 2008, after a flight to London, Decedent was retrieving his flight bag when he tripped and fell, striking his head on the center cockpit console. Decedent

then allegedly rose in extreme agony before swaying side to side, falling forward in the first-class cabin and losing consciousness. These allegations are not supported by the statement Petitioner submitted by Federal Air Marshal Simons, who only saw Decedent "scream as he fell towards the floor with his arms locked and outstretched, as if he were knocked unconscious." According to the statement, Decedent hit the wall, then the deck, as he lay in the aisle with his feet in the flight deck and his body towards the first-class galley. The statement indicates that Decedent's arms were outstretched and locked, as well as his legs, his body was convulsing, and foam was exiting his mouth. PX9.

On the same day, Decedent presented by ambulance at Hillingdon Hospital in England. The initial note indicates that Decedent apparently collapsed and had a witnessed fit for approximately 30 seconds. Decedent reported that he passed out as he had not eaten for two days and had recent problems with his right ear. A clinical note states that Decedent was collecting bags from the cockpit and collapsed. A history taken by Dr. A. Desilva noted that Decedent was not feeling well on the plane, was exhausted and weak, had a runny nose, and did not eat on the flight because the meal was burnt. The doctor noted that after the landing, Decedent got up to get his bags and collapsed. The phrase "pre-syncopal symptoms" is noted. However, Decedent did not report an initial fall in which he struck his head on the console. The hospital notes refer to a single fall on the airplane. An unsigned chart note dated both July 17 and 18, 2008, indicates that Decedent had a laceration on his right arm and the right back of his head, but Decedent was observed falling into the cabin and was witnessed to have a tonic-clonic seizure while entering the hospital. The hospital records do not contain a diagnosis of concussion or head trauma. RX3.

On July 18, 2008, Decedent presented at Inova Fair Oaks Hospital in Fairfax, Virginia. Decedent complained of a head injury. The triage note indicates: "Thursday morning London time, he was loading luggage on a airport [sic] (he is a pilot) and was found on the cabin floor of the aircraft with what looked by a seizure. He is not sure if he fell and hit his head then had a seizure." Despite Decedent's uncertain report, Decedent was diagnosed with a head injury with concussion, unknown loss of consciousness, and seizure. RX11.

On July 19, 2008, Decedent underwent a neurological consultation by Dr. Shabih Hasan and Dr. Cyril Joseph. Decedent reported that he flew into London, but "[a]t the cockpit, he was taking out his baggage, he suddenly became stiffened and started shaking. He then passed out and had some concussion." Dr. Hasan's impression was of a fall, convulsion, and possible seizure. Dr. Hasan recommended an EEG, but Decedent wanted to return to Pennsylvania for further evaluation. RX11.

On July 30, 2008, Decedent underwent a neurologic evaluation by Dr. Roy Jackel at the Epilepsy Center of Bucks/Montgomery County. Decedent reported that when he landed in London, he had been up and had not gotten a lot of sleep. Decedent also reported that as he was getting out of the cockpit, he thought he may have slipped or tripped when he was reaching for a bag. He stated that he fell and hit the back of his head behind his right ear. As he exited the cockpit, he reportedly collapsed. Decedent denied having a seizure. Dr. Jackel reviewed the discharge summary from Hillingdon and the records from Inova. Based on these reports, Dr. Jackel's impression was of head trauma, though there was some confusion about whether Decedent had a seizure. Dr. Jackel told Decedent that the records did not correspond with his history of the

accident but noted that Decedent seemed very reasonable and recalled the events well. Dr. Jackel opined that even if Decedent had fallen and hit his head initially and then had his seizure, it could be considered a post-traumatic seizure which would not necessarily suggest he had a high risk for future seizures. Dr. Jackel noted that it did not sound as if he had a seizure, but significant head trauma with a little bit of confusion consistent with a post-concussive syndrome. Dr. Jackel ordered a 24-hour ambulatory EEG, opining that if the results were unremarkable, the matter would not need to be pursued. The doctor also asked Decedent to try to get a statement from the air marshals to ensure they did not report any evidence of seizures. PX3.

Petitioner also submitted an unsigned, typed report purportedly authored by Decedent describing his injury. The report states that when Decedent's flight landed at Heathrow on July 17, 2008, he was the last pilot to get his flight bag out of the cockpit. Decedent wrote that when entering the cockpit, the last thing he remembered was tripping and then falling. He stated that he struck his head behind the right ear on the corner of the center cockpit console. He also stated that he got up in "extreme agony" and exited the cockpit. According to the report, a federal air marshal onboard heard a loud scream and rushed to the front of the plane. Decedent wrote that he swayed side to side and fell forward in the first-class cabin and was being attended to by both marshals onboard when he regained consciousness. According to Decedent's statement, emergency personnel arrived and he was taken to an ambulance on the tarmac. Decedent wrote that he was awake but vomited in transit. He wrote that he was admitted with hospital personnel stating that he tripped and struck his head and would have to stay overnight. Although undated, the statement refers to Decedent seeing a neurologist in Pennsylvania and to an EEG scheduled for August 8, 2008, from which it may be inferred that the statement was prepared in proximity to Decedent's consultation with Dr. Jackel. PX4.

In sum, Decedent's account of striking his head on the center cockpit console before rising and falling a second time into the first-class compartment is not supported by the statement from the air marshal. Decedent also claimed that the marshal heard his scream and rushed to the front of the plane, but the marshal stated that he was sitting in seat 2A in first class, looked up towards the flight deck, and saw Decedent scream. The marshal was close to the incident and did not observe Decedent arise in extreme agony after allegedly falling and striking his head on the cockpit console. Decedent did not report striking his head on the console during his initial treatment at Hillingdon Hospital. Decedent was not diagnosed with a concussion or head trauma at Hillingdon Hospital. Decedent left Hillingdon and promptly sought treatment at Inova Fair Oaks Hospital in Virginia, where he reported that he was *not sure* whether he struck his head before suffering a seizure. Moreover, Decedent did not specifically report striking his head on the console or anywhere else in the cockpit. In his subsequent July 19, 2008, neurological consultation, Decedent reported stiffening and shaking *before* losing consciousness and suffering some concussion, which contradicts the claim that Decedent struck his head *before* the seizure-like symptoms. On July 30, 2008, almost two weeks after the incident, Decedent told Dr. Jackel, who was at least his fourth treating physician, that he thought he *may* have slipped or tripped when he was reaching for a bag, fell and hit the back of his head behind his right ear, before exiting the cockpit and collapsing. At this juncture, Decedent also denied having a seizure, though such is well-documented in Decedent's earlier treatment records. This change in Decedent's reported history was so significant that Dr. Jackel noted it and discussed it with Decedent.

Given this record, the Commission agrees with the Arbitrator's conclusion that the claim that Decedent tripped and fell and struck his head, thereby resulting in the seizure, is not supported by the evidence submitted in this case. See Decision, p. 20. The Commission also agrees with the Arbitrator's conclusion that Decedent's unsigned, undated description of the incident is not credible and not in accordance with any of the original accident descriptions given to his medical providers or by the air marshal. See *id*. Absent this injury, Petitioner has failed to prove that Decedent suffered an accident arising out of his employment, regardless of whether Decedent is considered a traveling employee.

Petitioner also argues that Decedent was at increased risk due to not only the configuration of the flightdeck, but also Respondent's work demands, such as sleep disruption, a heavy flight schedule, exhaustion, and deprivation of sufficient food and water. The Commission observes that Petitioner acknowledged in her Statement of Exceptions that the Commission must consider the full accident sequence. The evidence submitted by Petitioner establishes that the alleged accident necessarily rests on Decedent falling and striking his head on the center cockpit console. Dr. Jeffrey Coe, one of Petitioner's records reviewers, accepted that Decedent tripped and fell, striking his right rear head, but was able to stand and then collapsed as he walked out of the cockpit, and opined that the accident at work on July 17, 2008 resulted in a head injury with post-concussion syndrome and traumatic seizures. PX2, Ex2(570-573). Likewise, Dr. Gene Neri, Petitioner's other records reviewer, opined that, *assuming* Decedent fell and struck his head before he walked into first class, the head injury was the most likely explanation for the seizure witnessed by the air marshal. Dr. Neri also opined that factors such as sleep deprivation, an upper respiratory tract infection, exhaustion, or lack of food, lower one's seizure threshold, and "may well be a reason why he had a presyncopal episode leading to the fall, striking his head and the eventual seizure described above." Dr. Neri was also asked whether "if he actually had a syncopal episode which led to his fall," would these other factors make Decedent more susceptible to having a syncopal episode while he was going to retrieve his flight bag?" Dr. Neri answered: "Absolutely yes." Dr. Neri was additionally asked if, in the alternative, Decedent tripped over the carpet and hit the console because he was clumsy, would the head strike be a likely cause for seizures?" Dr. Neri opined that it would. PX1, Ex2(342-346). During his deposition, Dr. Neri was asked whether Decedent's workload was "something that plays into the susceptibility of having seizures after hitting his head in London," and he ultimately opined that it was a factor. PX1(70-72). Accordingly, proof of this claim requires proving the initial fall and head injury.

The entirety of the record establishes that Decedent's claim is based on Decedent allegedly falling and striking his head on the cockpit console in the first instance, with other factors making Decedent more susceptible to a syncopal episode leading to Decedent striking his head on the cockpit console, or to seizures after striking his head on the cockpit console. However, in this case, Petitioner failed to prove by a preponderance of evidence that Decedent fell and struck his head on the cockpit console. Accordingly, the presence of other factors which may have led to such a fall or magnified its consequences are not persuasive in this case, as there is insufficient evidence of the alleged initial fall and no expert opinion that additional factors were a sufficient cause in themselves of Decedent's seizure on the airplane. To the contrary, Dr. Kessler, Respondent's records reviewer, testified that the assertion that Decedent passed out from lack of food and cold symptoms was "ridiculous medically." She also testified that if someone did not eat or sleep for days it can cause a seizure, but stated that plenty of people go 8 or 12 hours without

eating or sleeping. RX1(64, 71).

Dr. Kessler further opined that alcohol withdrawal was the most likely explanation for Decedent's seizures. The Arbitrator found this theory to be persuasive. Decision, p. 19. The Commission disagrees. The record amply documents Decedent's issues with alcohol in the years after he was grounded as a pilot, including withdrawal episodes which on the surface seem similar to the seizure Decedent suffered on the airplane. However, the Commission does not find the treatment records from Hillingdon Hospital or the later references to conditions such as a fatty liver sufficient to conclude that alcohol withdrawal was a cause of Decedent's incident on the airplane, given the lack of evidence of alcohol issues prior to that incident. Based on the record, the Commission views Decedent's seizures and subsequent fall on the airplane as unexplained and will not speculate on their cause. It is sufficient in this case that Petitioner failed to prove the initial fall and head injury involving the cockpit console which allegedly caused the seizures and the events which transpired thereafter. The Commission therefore concludes that Petitioner failed to prove that Decedent suffered an accident arising out of his employment on July 17, 2008.

B. Petitioner's "Fatal" Claim

The circuit court additionally directed the Commission to consider whether Petitioner's February 25, 2020 claim for death benefits is time-barred or whether it relates back to Decedent's refiled claim, as amended by both Decedent and Petitioner and which was found to be proper and timely by the Circuit Court. The applicable rules for an application for adjustment of claim are even less formal than the rules for pleadings. See *Caterpillar Tractor Co. v. Industrial Comm'n*, 215 Ill. App. 3d 229, 238 (1991) (and cases cited therein). Petitioner relies on *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 157 (2000), in which the appellate court found a mere misnomer when the claimant filed on behalf of her husband and not as a widow. Misnomer can be corrected at any time, even after the statute of limitations has run. See *id*. at 156. Respondent replies that in *Illinois Institute of Technology Research Institute*, the husband was killed by a stray bullet and that the application was always for death benefits, whereas this case involves the separate and distinct claims of Decedent and Petitioner in her capacity as a survivor. See, *e.g.*, *A.O. Smith Corp. v. Industrial Comm'n*, 109 Ill. 2d 52, 57 (1985).

In this case, per the Circuit Court's order, Petitioner's August 14, 2015 amendment of the application, substituting herself as Decedent's widow, was proper and timely. At that juncture, as in *Illinois Institute of Technology Research Institute*, Respondent was aware of Decedent, Petitioner, Petitioner's actual identity and capacity, as well as the nature of the litigation. Indeed, the August 14, 2015 substitution of Petitioner would have put Respondent on notice that Petitioner may be seeking death benefits, as the widow's initial filing did in *Illinois Institute of Technology Research Institute.* Accordingly, the liberal pleading requirements of the Commission permit Petitioner's February 25, 2020 application to relate back to her prior amended application. See *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 160. However, Petitioner's claim fails on the merits for the same reasons that Decedent's claim fails on the merits as discussed above.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner failed to prove that Decedent sustained a compensable accident on July 17, 2008.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner failed to prove that Decedent's condition of ill-being and death were causally connected to the accident alleged in this case.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on June 17, 2022 is hereby affirmed and adopted with the changes stated herein.

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.

June 11, 2024

d: 4/25/24
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

SPECIAL CONCURENCE

Petitioner's claim is separate and apart from that of the decedent. *A.O. Smith Corp. v. Industrial Comm'n*, 109 Ill. 2d 52, 57 (1985). As the Petitioner's August 14, 2015 filing after the decedent's death was timely, her February 25, 2020 amendment of that filing is not barred by statute of limitations. See *Lake State Engineering Co. v. Industrial Comm'n*, 31 Ill. 2d 440, 445-446 (1964); *Freeman United Coal Mining Co. v. Industrial Comm'n (Smith)*, 297 Ill. App. 3d 662 (amendments to applications resulting from the same injury on the same date of accident may be amended even after the statute of limitations have elapsed). Notwithstanding, I agree with the majority's analysis of the facts in this case and its ultimate finding of non-compensability.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC003865
Case Name	KERN, ALEXIA WIDOW OF JAMES KERN v. UNITED AIRLINES, INC.,
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Karen Coon

DATE FILED: 6/17/2022

THE INTEREST RATE FOR THE WEEK OF JUNE 14, 2022 2.16%

/s/Nina Mariano; Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kern, Alexia Widow of James Kern
Employee/Petitioner

v.

United Airlines, Inc.
Employer/Respondent

Case # **14 WC 03865**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **December 16, 2021**. 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 **Statute of Limitations, Objection to Second Amended Complaint, Death Benefits beginning 5/22/15; hold harmless for PDI disability payments.**

FINDINGS

On **7/17/08**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between decedent James Kern 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 $**N/A**; the average weekly wage was **$N/A.**

On the date of accident, Petitioner was 43 years of age, ***married*** with **2** dependent children.

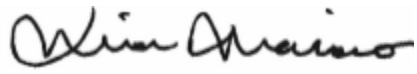
TTD benefits are not in dispute.

ORDER

Because the accident did not arise out of employment, 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

JUNE 17, 2022

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ALEXIA KERN, WIDOW OF JAMES KERN,	)	
	)	
PETITIONER,	)	
	)	
v.	)	
	)	CASE NO. 14 WC 003865
UNITED AIRLINES, INC.,	)	
	)	
	)	
RESPONDENT.	)	

FINDINGS OF FACT

This matter proceeded to hearing on December 16, 2021 in Chicago, Illinois before Arbitrator Nina Mariano. Issues in dispute include accident, causal connection, earnings, nature and extent, penalties, death benefits starting on 5/22/15, hold harmless for PDI disability payments, objection to second amendment of Application and statute of limitations. Arbitrator's Exhibit "Ax" 1.

James J. Kern ("Mr. Kern") was a 43 year old pilot with United Airlines as of July 17, 2008. Mr. Kern alleges accidental injuries sustained on July 17, 2008. On that date, Mr. Kern alleges injuries including a fall and seizure while exiting the cockpit after working a flight. Mr. Kern was medically retired due to a seizure disorder on January 26, 2009. Mr. Kern passed away on May 21, 2015 when he drowned in a pond behind his house. At the time of the injury, Mr. Kern was married to Alexia Kern ("Ms. Kern") and they had two children, James Kern, Jr. and Douglas Kern. Ms. Kern is seeking death benefits under Section 7 of the Act.

James. J. Kern, originally filed an Application for Adjustment of Claim for benefits, Case 09 WC 46675, with the Illinois Workers' Compensation Commission on November 12, 2009. (Rx. 6) On October 18, 2012, Arbitrator Carlson dismissed the case 09W WC 46675 for want of prosecution. (Rx. 6) Mr. Kern filed a second Application for Adjustment of Claim on February 5, 2014, also alleging injuries for the same alleged accident on July 17, 2008 in the instant case 14 WC 03865. (Rx. 5) Following Mr. Kern's death on May 21, 2015, the Application for Adjustment of Claim was amended on August 14, 2015, to name Mr. Kern's widow, Ms. Kern, as Petitioner. (Rx. 5) The current Petitioner, Ms. Kern, subsequently amended the Application for Adjustment of Claim again on February 25, 2020 to change the matter to a fatal case with a date of death of May 21, 2015. (Rx. 5)

There is a dispute regarding the original accident in 2008 and the causation of Mr. Kern's death in 2015. Respondent also raises an objection to the second amendment of the 14 WC 03865 Application for adjustment of Claim and whether the claim is barred by the statute of limitations.

Petitioner seeks a hold harmless for medical bills and PDI disability payments which would be inapplicable herein as these are benefits which would be related to a claim by the estate for benefits accrued prior to Mr. Kern's death, rather than to an action for death benefits.

With respect to the issue of accident, occurring on July 17, 2008, Petitioner introduced an unsigned, typed report (Px. 4) which, purportedly, is authored by Mr. Kern regarding the accident. The report indicates that when they landed at Heathrow on July 17 2008, he was the last pilot to get his flight bag out of the cockpit. He suggests that when entering the cockpit, the last thing he remembered was tripping and then falling. He struck his head behind the right ear on the corner of the center cockpit console. When he got up, he was in "extreme agony", and exited the cockpit. The federal air marshal ("FAM") onboard heard a loud scream and rushed to the front of the plane. Mr. Kern indicates he swayed side to side and fell forward in the first class cabin. When he came to, he realized he was being attended to by both FAM's onboard. Emergency personnel arrived and he was taken to an ambulance on the tarmac. On the way to the hospital, he was awake but vomited. He was admitted as medical personnel indicated he struck his head when he fell and as a precaution, should stay overnight. His wife was told he had had a convulsion so they prescribed a CT scan as a precaution and took spinal fluid. His wife arrived and described the hospital as "something akin to a substandard mental institution." She decided to take him home against medical advice. When they got home, his wife took him to Ivona Hospital, where they admitted him for observation and various tests. He was released the next day and went home to Pennsylvania, where he underwent an EEG and saw a neurologist. He was scheduled for a 24-hour EEG on August 8th. (Px. 4)

Also submitted into evidence by the Petitioner is a typed statement from one of the air marshals on the July 17, 2008 flight. (Px 9) The July 30, 2008 letter of Dr. Jackal suggests that the doctor requested Mr. Kern obtain this statement from the air marshals to clarify what happened at the time of the initial occurrence. (Px 3) The document indicates Flight UA918 landed at London Heathrow International and was deplaning passengers. As the Federal Air Marshals were awaiting the arrival of customs to download weapons, a loud scream was heard from the direction of the flight deck. Air Marshal Simons, who was sitting in seat 2A in first class, "looked up towards the flight deck and saw First Officer James Kern scream as he fell towards the floor with his arms locked and outstretched, as if he were knocked unconscious. Kern hit the wall, then the deck, as he lay in the aisle with his feet in the flight deck and his body in the aisle towards the first class galley. Kern's arms were outstretched and locked, as well as his legs, and his body was convulsing and foam was exiting his mouth. Simons took immediate control of Kern's head, stabilized his spine to prevent any further damage to Kern's spine, and positioned Kern's head to open and maintain a patent airway so Kern could breathe." (Px 9) The air marshals alerted emergency paramedics and a medical team arrived at the aircraft to assist Kern. It was noted that while waiting, FAM Simons stabilized Kern, and held Kern's arms from flying around, as Kern continued to convulse for approximately two minutes. When Kern began to open his eyes and regain consciousness, Simons began to ask him questions to assess Kern's condition. Kern's speech was slurred and his actions were very infant-like and aggressive. He knew his last name, but did not know he was on a plane or just flew a plane. Heathrow EMS arrived and Kern was becoming more conscious, so oxygen was placed on Kern by Heathrow EMS and further assistance was taken over by them.

The first medical attention that Mr. Kern received occurred at Hillingdon Hospital in England. (Rx. 3) The accident and emergency department form indicates that the patient presented by ambulance after he apparently collapsed and had a witnessed fit for approximately 30 seconds. The notes indicate the patient claims that he just passed out as he had not eaten for two days and had recent problems with his right ear. It was noted that he was a pilot from a flight from Washington, and when he was collecting bags from the cock pit, he collapsed. He indicated that he felt nauseous in the emergency department and vomited once. He further indicated that there was no headache. The primary medical problem/diagnosis was listed as seizure.

A further history was taken by a physician, Dr. Desilva, which indicated Petitioner was a 43 year old male who was a United States pilot. (Rx. 3, pg. 14) The history indicates that he was on a flight from Washington to London Heathrow Airport. Petitioner was not feeling well on the plane, was exhausted and weak, and had a runny nose. After the landing, petitioner got up to get his bags in the plane and collapsed. The notes indicate there was a question regarding loss of consciousness and no pre-syncopal symptoms. According to the report, the seizure was witnessed, which included no jerking of the limbs, no incontinence, and no tongue biting. Petitioner denied a headache. Additionally, he recovered within seconds, and reported he had no post activity drowsiness. Petitioner was transported to the hospital by ambulance and vomited once in the ambulance. He was then walking when he suddenly fell to the ground and was witnessed to have a tonic-clonic seizure lasting approximately one minute. He recovered within minutes and was not drowsy presently. The history on the next page indicates that he had exhausted himself over the past few days doing heavy work and gardening in the USA. Additionally, he had a runny nose for approximately one week, with clear mucous, and denied a cough, headache or fevers. He also felt that his right ear was slightly blocked.

The social history was taken that the patient was a pilot for United Airlines, who does not smoke, and drinks two glasses of wine per day. The differential diagnosis was that the history was not suggestive of primary epileptic disorder. Probably vasovagal and tonic-clonic movements were noted. It was further noted he was exhausted with no sleep, had nasal symptoms, no food, and there is an indication of 'ETOH' (alcohol). (Rx 3) The management plan was to have petitioner eat/drink and admit him for 24 hour observation. A head CT was ordered to exclude any structural pathology. If okay, he would return to U.S. as a passenger. He would need to see a neurologist in the USA prior to returning to work, and he was advised to decrease his alcohol intake.

There is another history from Dr. Barnes at Hillingdon, who notes the history was reviewed, and Petitioner denied any prior episodes of fits/faints and seizures. The patient indicated he was feeling better after rest. It was noted that if he was okay tomorrow, he could follow up and return to the United States. Shortly thereafter, there is a chart note indicating that Petitioner was returned from a CT and suffered a tonic-clonic fit, which lasted approximately two minutes. The CT of the brain was noted to be normal.

There is a reference to a blood alcohol test, but the handwritten notes are difficult to read. Additionally, the same handwriting indicates the patient was discharged against medical advice. It was noted that the CT was normal, however, there were some concerns from nursing and junior medical staff that Petitioner may have been withdrawing from alcohol overnight. (Px. 3) The diagnosis was seizures, which could be related to sleep deprivation, and could be related to alcohol withdrawal. It was indicated that he clearly should not drive a car or fly a plane until further investigation.

Another chart note labeled daily assessment and plan of care indicates the patient came in to the hospital with seizures, as well as a laceration on his right arm and the right back of his head. The patient's wife was now present. The patient had a seizure one time, medication was given, and the patient settled after the seizure. It was noted he did not sleep, and it was explained that he must stay on bed rest. On July 18, 2008, Mr. Kern was discharged at his own request and against medical advice. Additionally, it indicates that he takes full responsibility for what may occur as a result of his action.

On July 18, 2008, Petitioner was seen at Inova Fair Oaks Hospital. (Rx 11) Mr. Kern presented for an evaluation for a head injury. The intake assessment indicates, "he was loading luggage on a airport (he is a pilot) and was found on the cabin floor of the aircraft with what looked by a seizure. He is not sure if he fell and hit his head then had a seizure. EMS was called and he was taken to a hospital. He and wife were concerned he was not getting good care and he was checked out AMA and came to the US. He arrives here straight from Dulles." *Id.* Labs were run including a routine chemistry, toxicology, routine coagulation and urinalysis, which were normal.

The medical records also contain handwritten nurse notes dated July 19, 2008 which indicate that Petitioner was neurologically intact and denied the seizure episode. (Rx 11) It was noted that he had a half-inch long partially healed laceration noted behind his right ear and a superficial abrasion at the right elbow.

A CT scan of the head taken on July 18, 2008 found no evidence of any acute intracranial injury. A CT of the chest was technically limited but there were no central pulmonary emboli identified. The study showed hepatic steatosis (fatty liver disease). An MRI of the brain showed no evidence of acute intercranial injury.

A consultation was performed by Dr. Shabih Hasan from neurosurgery on July 19, 2008. (Rx 11) It was noted that the patient is a 43-year-old pilot who was brought in after he had two episodes of convulsions. It was noted that the history was obtained through the patient, his wife, as well as the emergency room and from the ER doctor. The patient reported that he was healthy and flew into London. "At the cockpit, he was taking out his baggage, he suddenly became stiffened and started shaking." It was noted that he passed out, had some concussion and confusion and was helped by some air marshals. He also had a later milder episode accompanied by some stiffening and frothing, but he did not bite his tongue or have incontinence. He was taken to a hospital in London where he had a workup including a CT scan and spinal tap. There was no previous history of seizures or confusion. In the London hospital, the patient may have had an episode where he fell off the bed and was noted to have a thumping by another patient, but no witnessed seizure. It was noted that the patient had some agitation earlier after he spoke with his employer. The patient did not report any headaches, confusion, staring spells, focal paralysis, tingling, or seizures. There is no report of passing out or syncopal episodes in the past. The patient reported that he may be a little clumsy and that may have caused him to fall as he has noticed that a year ago on his flight as well. He did not lose consciousness and denied any head injuries.

Dr. Hasan noted the patient reported there was no tobacco or alcohol abuse. A urine toxicology screen was negative for any drugs. In a review of the systems, petitioner currently feels slightly anxious but no headaches, no neck stiffness, fever or chills. There was no confusion, dizziness, double vision or ataxia. There is no report of muscle pain or stiffness. Dr. Hasan noted an MRI

was reviewed and was normal. Liver enzymes were slightly elevated, ALT, AST, D-dimer is 1207, and troponin was less than 0.01.

Dr. Hasan's impression/recommendation was that the patient had a recent history of fall, convulsion, and possible seizure. He did not report any prior history of seizures. The neurologic exam was non-focal and MRI was normal. Dr. Hasan recommended an electroencephalogram. The patient wanted to go back to Pennsylvania for further evaluation and treatment. They discussed seizure precautions and Dr. Hasan noted there would be no driving or flying until the patient was cleared by his neurologist with further workup.

Mr. Kern was next seen by Dr. Roy Jackel at The Epilepsy Center of Bucks/Montgomery County on July 30, 2008 for an evaluation regarding an episode of head trauma. (Px. 3) The history given was that on July 17, he landed at Heathrow Airport. He had been up and had not gotten a lot of sleep. The history from Mr. Kern indicated that as he was getting out of the cockpit, he thinks he may have slipped or tripped when he was reaching for a bag. He fell and hit the back of his head behind his right ear. As he exited the cockpit, he reportedly collapsed. The petitioner suggested that he did not think he actually lost consciousness, but noted he may have been a little bit confused. Mr. Kern denied having a seizure when he fell or when he collapsed in first class, but did concede he did have some issues with nausea and vomiting.

Dr. Jackel reviewed the discharge summary from the Hillingdon Hospital in England. It indicates he had a presyncopal episode while at the airport with no witnessed seizure activity. However, in the hospital, he had two tonic-clonic seizures with tongue biting that lasted for two minutes and then self-terminated. He reportedly was post-ictal. In looking at the records from Inova Health System from Virginia, he was seen by a neurosurgeon. In this report, there was a notation that the patient reports he was healthy and flew to London. He then reported he was taking baggage out of the cockpit and he suddenly "stiffened and started shaking." It was then noted he passed out and had some concussion. He reportedly was confused. The neurosurgeon notes he had a milder episode where he had some stiffening and frothing, but did not bite his tongue.

Dr. Jackel's impression was head trauma, however, he noted the details of this were somewhat vague. The doctor noted that in the records, there was some confusion about whether or not the patient had a seizure or not. He did have an EEG at Grandview Hospital which was reported to be unremarkable. Dr. Jackal noted that he told Mr. Kern at this point the records did not correspond with his history of the accident, although he noted Mr. Kern seemed very reasonable and recalled the events well. Dr. Jackal attempted to reassure Mr. Kern and indicated even if the patient had fallen and hit his head initially and then had his seizure initially when he got to first class, one could consider this as a post-traumatic seizure and it would not necessarily suggest he had a high risk for seizures in the future. Dr. Jackal noted it did not sound as if he had any type of seizure, but just more significant head trauma with a little bit of confusion after the head trauma consistent with a post-concussive syndrome. Because of the confusion, they were going to do a 24-hour ambulatory EEG to try to get more prolonged recording to make sure there was no clear evidence of underlying irritable activity. Dr. Jackel also asked Mr. Kern to try to get a statement from the marshals that witnessed the event to make sure they did not report any clear evidence of seizures. If this came back unremarkable, Dr. Jackel believes they do not need to pursue things any further. Dr. Jackel did not start Petitioner on any type of anti-seizure medication.

The Ambulatory EEG report of August 8, 2008 was normal.

Mr. Kern next saw Dr. Jackal at The Epilepsy Center of Bucks/Montgomery County on September 30, 2008. His regular EEG and ambulatory EEG were both normal. He had not had any recurrent events (seizures). The blood work indicated petitioner had some elevated liver function tests initially but these were coming down.

Dr. Jackel's impression was once again an episode of head trauma with what may have been a post-concussive syndrome. It remained unclear if he did or did not have a post-traumatic seizure as the reports varied. At this point, Dr. Jackel did not have anything to suggest that he had a predisposition for epilepsy, and would hold off prescribing any epilepsy medication. Dr. Jackel recommended following Petitioner clinically. No restrictions were imposed although the doctor noted he still may have to work out issues with his flying. Mr. Kern would see Dr. Jackel on an as-needed basis. The letter further indicates Mr. Kern had been unable to obtain a report from the Air Marshals and it does not appear Mr. Kern ever provided Dr. Jackal with the Air Marshal's report indicating the accident and seizure activity. (Px. 3)

On March 24, 2009, Mr. Kern presented to the emergency department at Grandview Hospital in Sellersville, Pennsylvania status post generalized seizure that evening. The emergency room physician documentation form indicates he presented to the Grandview Hospital Emergency Department after witnessed grand mal tonic-clonic seizure at the local post office. Petitioner reported he did not feel well throughout the day today. He stated he was just not hungry. While at the post office, he denied any prodrome of symptoms but suddenly became unresponsive. He reported intermittent fever over the last several days with nausea without vomiting. It was noted Petitioner had a seizure after a head injury approximately one and a half years ago. Petitioner was accepted for admission and contact was made with Petitioner's treating neurologist, Dr. Jackel.

It was noted that Mr. Kern was previously diagnosed with a seizure disorder and started on Keppra. He had stopped taking this medication several weeks ago. (Rx 9) The history and physical included a history of three days of flu-like symptoms, subjective fever, increased somnolence, and generalized weakness. (Rx 9) The patient went to the post office the day of admission and was witnessed to have an episode of seizure, which is why the patient was brought to the emergency room. In the emergency room, the patient had an episode of tonic-clonic seizure lasting about one to two minutes. He had recently traveled to Paris in January. The patient was alert and oriented but with some confusion. He was to be admitted and started on Keppra. He had elevated glucose levels probably related to the seizure. It was noted that he had elevated liver function tests and they ordered a right upper quadrant ultrasound. An addendum note indicated the petitioner had another seizure prior to getting his medication and going home.

Petitioner underwent a CT of the head without contrast on March 23, 2009 which was interpreted as within normal limits. On March 24, 2009, an ultrasound of his abdomen showed a marked enlargement of the liver with fatty infiltration. A March 24, 2009, a chest X-ray suggested a questionable nodule at the left base, and a CT of the chest was recommended. An EEG performed on March 24, 2009 was unremarkable. Petitioner also underwent a venous duplex on March 24, 2009 which no evidence of deep venous thrombosis in the left lower extremity. Finally, on March 24, 2009, petitioner underwent a CT with IV contrast which was normal but again showed fatty infiltration in the liver.

On March 24, 2009, a neurological consult was conducted by Dr. Jackel. (Rx 9) The patient had what appeared to have a viral gastroenteritis since five days prior. He was having issues with

nausea and vomiting and was not eating. On Monday, he tried to fix a fence outside and exhausted himself. He then decided to go to the post office before they closed. When he was there, he began to have an episode where his right hand started shaking. He stated that things then got dim and he apparently went out for perhaps a minute. He reportedly had a generalized tonic-clonic seizure and was brought to the emergency room. The patient was getting ready to be discharged but had a second seizure in the emergency room and because of that, he was admitted. He was given some IV Keppra and was started on Keppra 500 milligrams twice a day.

Upon physical examination, neurological exam revealed his mental status to be intact. Dr. Jackel's impression was two generalized tonic-clonic seizures, one of them starting with the right hand shaking suggesting it would have been a partial seizure with secondary generalization. Since there was no other clear metabolic cause for his current events, it appeared the patient needed to be on medication. The plan was to keep Petitioner on Keppra 500 milligrams twice a day. Mr. Kern needed to be seizure free for six months before he was allowed to drive and he would not be able to fly at this point.

Petitioner was discharged from Grandview Hospital on March 25, 2009. (Rx. 9) The diagnosis at discharge was episode of seizure times two, seizure disorder, mild rhabdomyolysis and transaminitis. He presented to Grandview Hospital with an episode of a seizure just prior to coming to the hospital and an episode of a witnessed seizure in the emergency room. He was to follow up with his primary care physician and Dr. Jackel. The relevant paperwork regarding the driving license authority indicating Petitioner was not to drive until he was six months seizure free was also sent.

On November 3, 2009, Dr. Jackel issued a letter to Dr. Robert Davis pertaining to a follow up office visit. (Px. 3) Mr. Kern denied any additional seizures since March 24, 2009. He was still on Keppra 500 milligrams twice a day. Examination revealed a minimal postural tremor. Dr. Jackel's impression was partial seizure disorder with secondary generalization. Dr. Jackel felt they could discontinue the medication. Petitioner was noted to be also working on the job situation and Dr. Jackel asked Petitioner to get in touch with the Epilepsy Foundation of Eastern Pennsylvania. At this point, Dr. Jackel planned on seeing Petitioner back in six months just to check his progress.

No additional treating medical records were introduced into evidence.

Mr. Kern died on May 21, 2015 due to drowning per the death certificate. (Px 8) The secondary cause of death is listed as seizure disorder. (Px. 8) The toxicology report and coroner's report from the County of Bucks Office of the Coroner were introduced by the Respondent. (Rx. 4) The coroner's report reflects that Mr. Kern was found lying on the ground by a small fish pond on May 21, 2015. By the time the coroner arrived, there was life-saving equipment around him, his clothing was wet and had been mostly cut off. Rigor was just starting and lividity was fixed and disturbed. He had a postmortem laceration on his forehead over the nose and above the eyebrows. The cause of death is listed as drowning, with the manner of death being accidental due to a seizure disorder.

It was noted that the Petitioner had just been released the other day from a week of detox. His wife described her husband as totally doped up at approximately 6:00 p.m. on May 20, 2015. She did not know if this was due to his medications or 'something else he got into'. He was last known to be alive at approximately 9:00 a.m. on May 21, 2015. He was found by his son upon his return

from school at 2:30 p.m. on May 21, 2015. He was found face down in the fish pond and 911 was called with CPR going on for an hour.

The report reflects that the Petitioner was a Navy veteran pilot who had injured his back and had been battling drugs and alcohol abuse along with a seizure disorder. Other than the postmortem laceration of the forehead, there were no obvious signs of trauma or foul play.

The toxicology report reflects that Mr. Kern's blood alcohol concentration (bac) at the time of examination following his death was 0.135. This is well over the above the legal limit of .08. In addition, he tested positive for caffeine and Lidocaine. It was also noted that he also had Chlordiazepoxide, Cyclobenzaprine, Benzodiazepine and Nordiazepam in his system.

Dr. Coe

Petitioner obtained a records review report from Dr. Jeffrey Coe. Dr. Coe opined that based on his review of the medical records, the accident at work on July 17, 2008 resulted in a head injury with post-concussion syndrome and traumatic seizures. Because of these work-related conditions, he was disqualified from returning to work as a commercial pilot. In Dr. Coe's opinion, the traumatic seizures suffered as a result of work and his associated loss of pilot licensing contributed to Mr. Kern's death on May 21, 2015. Dr. Coe's opinions assume that Petitioner struck his head on July 17, 2008 prior to having a seizure.

Dr. Coe testified that he is an occupational medicine physician who performs employment-related evaluations and assesses people who may be exposed to hazards in the workplace. He did acknowledge that he is not an FAA examiner nor a neurologist. He testified consistent with his report that the Petitioner fell, struck his head, had a seizure with subsequent seizure activity, lost his pilot's license, became depressed and an alcoholic and drowned in 2015. It was his opinion that all of these developments, including Petitioner's drowning, were traceable to the work accident in 2008.

Dr. Coe was asked about the fatty liver, elevated MCV, and abnormal LFTs mentioned in the London records. (PX2 p.37) Dr. Coe indicated that those tests could be consistent with alcoholism but there were also other possible metabolic explanations for the findings. (PX2 p.37) Dr. Coe indicated that if the seizure was related to alcohol, fatigue or another non-occupational cause, then Mr. Kern's ensuing depression and death would not be work related. (PX2 p.40)

With regard to whether or not the seizure Mr. Kern suffered was related to alcohol withdrawal, Dr. Coe said it was a possibility, but there is no way to test if a seizure is caused by alcohol withdrawal after the fact unless there is a clear pattern or you see it on a repeated basis. (PX 2 p. 38)

Dr. Neri

Petitioner also obtained a records review report from a neurologist, Dr. Gene Neri. Dr. Neri opined that the accident on July 17, 2008 represented a syncopal episode with head trauma, such as mild to moderate concussion, which would be consistent with striking one's head against the console as described by Mr. Kern. Dr. Neri understood that Kern went to the flightdeck to get his bag, and either got dizzy and passed out or tripped, striking his head against the console. (PX1 p.15) Kern then pitched forward in first-class where he had a seizure. (PX1 p.15) So the sequence was head trauma prior to the seizure and him falling into first-class. (PX1 p.15) Dr. Neri does not discuss

the fact that early records do not substantiate that Mr. Kern hit his head prior to having a seizure on the plane.

Dr. Neri discusses that the Hillingdon Hospital records indicate that Petitioner was exhausted after doing four days of heavy work and gardening in the USA. This followed four to seven days of significant sleep deprivation with a mild upper respiratory infection, compounded by Petitioner's not eating for two days. These factors, Dr. Neri opined, made it more likely for the Petitioner to have a syncopal episode and a seizure. He noted that sleep deprivation was the number one cause of exacerbating epilepsy or causing seizures following a concussion. He also indicated because he had not eaten for two days, the likelihood of him having hypoglycemia could lead to the development of seizures.

Part of Dr. Neri's training was at Cook County Hospital and Hines VA hospital, where he encountered a lot of chronic alcoholism and alcoholic seizures. (PX1 p.25) Dr. Neri did not think the fall in the plane in London was caused by an alcoholic withdrawal seizure. (PX1 p.25) Dr. Neri explained that to have one of those seizures, Kern had to have been taking heavy amounts of alcohol for a long period of time, suppressing the brain activity, and then suddenly stopping the alcohol use. (PX1 p.26) Seizures might result when a heavy drinker suddenly stopped drinking, as could agitation, confusion, disorientation and often tremors. (PX1 p.27) These patients often had a whole syndrome rather than an isolated seizure. (PX1 p.27) Dr. Neri explained that Mr. Kern could not have been drinking with his heavy schedule the week or ten days before the accident. (PX1 p.28) Kern simply did not have time to do heavy drinking before the flight to London. (PX1 p.28)

He stated it was more likely than not a post-concussive seizure occurring in a patient with sleep deprivation, potential hypoglycemia and an upper respiratory infection which may or may not have had at least a low grade fever associated with that illness. Dr. Neri indicates that there were occasional mentions throughout the Hillingdon records of alcohol consumption. He suggests that Mr. Kern's agitation could be circumstantial, rather than being part of a withdrawal syndrome.

Dr. Neri concludes the following: Mr. Kern began his demise with a fall leading to a concussion on July 17, 2008; which led to post-concussive seizures post-traumatic seizures; which led to his not being able to work; which led to an advanced degree of drinking, depression, anxiety and self-medicating with alcohol: and led to his eventual drowning death.

The deposition of Dr. Neri was completed on July 17, 2020. (Px 1) The doctor testified consistent with his report that Mr. Kern's condition of being sleep deprived, not eating, and having an upper respiratory infection could be factors increasing the likelihood of a seizure. He disagreed with Dr. Kessler's theory that Mr. Kern had an alcohol withdrawal seizure, as he did not believe that the Petitioner had time in the days prior to the accident to have been drinking heavily. In the week before the work incident, he suggested Mr. Kern completed a return leg of a Washington/Kuwait trip. He then had two days of military duty with his Naval Reserve unit which consisted of preparing reports and inspections. The following day, he flew a three-day trip Washington to Paris. After that, he had a day off and started a Washington to London trip when the incident occurred. He advised that his alcohol use during that period consisted of one or two glasses of wine with dinner in Paris.

Dr. Neri went on to testify that it was his belief that the Petitioner's retirement from flying was due to seizures, which led the petitioner to become depressed and caused him to turn to alcohol to self-medicate which led to his untimely death.

Dr. Kessler

Dr. Elizabeth Kessler performed a records review at the request of Respondent. (Rx 1). Dr. Kessler is a physician with subspecialties in neurology and behavioral medicine. (RX1 p.4) She is board certified in neurology and clinical neurophysiology, which is EEGs and evoked potentials. (RX1 p.5) Those tests are used to detect seizures and to get information about metabolic abnormalities or brain function if someone has been anoxic. (RX1 p.5) She trained at Rush in the neurology department, evaluated seizure patients, and did EEG recordings during epilepsy surgery. (RX1 p.6) She started a solo practice and joined the faculty at Rosalind Franklin University of Medicine and Science, and worked as an attending physician at what was then called North Chicago VA. (RX1 p.6) She closed the private practice in 2003 to increase her work at the VA and teach there. (RX1 p.7) She sees patients throughout the hospital with potential neurological or psychiatric symptoms or diseases. (RX1 p.7) She is also on the traumatic brain injury team. (RX1 p.7) She sees all kinds of neurological conditions including seizures, and a lot of people with alcohol intoxication and alcohol withdrawal. (RX1 p.8)

Dr. Kessler believes the medical records support that the Petitioner may have been going through alcohol withdrawal at the time of the original accident in 2008. The doctor suspected that alcohol withdrawal is what likely caused him to convulse or have a seizure and hit his head on the airplane. Dr. Kessler asserts that the records do not support Dr. Coe's conclusion that the Petitioner sustained a head injury leading to seizures, the loss of his job and contributing to his death. Instead, the records are consistent with him having alcohol withdrawal seizures starting on July 17, 2008, causing incidental head injury without evidence of a brain injury, including any brain injury that could have caused subsequent seizures. She also notes that alcohol overuse would also account for the blood work abnormalities which are ongoing throughout the records and the fatty liver on imaging studies, which are not accounted for or even addressed in Dr. Coe's conclusion that the seizures were post-traumatic in origin. Dr. Kessler finds that the repeated seizures were not due to any brain injury sustained by hitting his head in the plane, and he sustained no work injury contributing to his death.

An addendum report was prepared by Dr. Kessler on July 13, 2020. (Rx. 2) This addressed new records produced by the Petitioner including the report of Dr. Neri (Px. 1) and the narrative from Mr. Kern (Px. 4). Dr. Kessler noted that Mr. Kern's description of events was inconsistent with what was reported by the Federal Air Marshal. (Px. 9)

Dr. Kessler also reviewed the April 14, 2020 report of Dr. Neri. Dr. Neri did not address the description of events as indicated by the Federal Air Marshal and did not take into account the statements of the Hillingdon Hospital records regarding the Petitioner's seizures potentially being related to alcohol withdrawal in addition to potential other factors such as sleep deprivation and fasting for two days. Dr. Neri also did not address the recommendation in the Hillingdon Hospital records that Mr. Kern reduce his alcohol intake.

Dr. Kessler finds that the medical records do not support Dr. Neri's contention that blunt head trauma sustained in a fall in the airplane caused his seizures. The Federal Air Marshal instead

described Mr. Kern beginning to have a seizure while standing which caused him to fall. In addition, blunt head trauma alone, without a moderate or severe brain injury, would not cause a seizure disorder. Dr. Kessler stated that multiple seizures within a 12-hour period followed by a chronic seizure disorder would more likely than not, not result from a concussion. Dr. Kessler clarified that she did not believe alcohol withdrawal would be the only explanation for the Petitioner's seizures; however, a concussion and subsequent seizures would not account for the blood work abnormalities that were consistent with excessive alcohol use. Sleep deprivation and fasting could provoke a more generalized convulsion but would not cause repeated convulsions as occurred on the day of the incident and would not cause subsequent seizures.

Dr. Kessler also addressed Dr. Neri's theory that the liver function abnormalities were related to Tylenol. She points out that Tylenol use was not mentioned in any of the medical records, nor was there evidence that Mr. Kern was taking an excessive amount of Tylenol. Tylenol would also not account for the elevated MCV, low platelet count and fatty liver seen multiple times on imaging.

Dr. Kessler did not agree with Dr. Neri that alcohol withdrawal seizures would be accompanied by other symptoms of alcohol withdrawal including symptoms consistent with the DTs. Alcohol withdrawal seizures typically occur before DTs and are not part of the DTs. An individual may have multiple seizures on one day from alcohol withdrawal, without any nightmares, tremors, sweating, elevated blood pressure, pulse and temperature, respiratory ankylosis and low amplitude EEG as stated by Dr. Neri.

Dr. Kessler also did not agree with Dr. Neri or Dr. Coe's speculation that because he suffered a concussion and a fall on July 17, 2008, that he had post-traumatic seizures that led to his drinking and death. In the medical records, Dr. Kessler finds no evidence that he had post-concussion symptoms, or even that he sustained a concussion from a fall and there was no indication of other symptoms that could be ascribed to a brain injury. All of the Mr. Kern's symptoms on the plane were found to be consistent with him having a seizure causing him to fall, becoming postictal and having other convulsions and postictal period unrelated to any head trauma. Dr. Kessler opined it would be more likely than not that an individual would not develop a chronic seizure disorder due to a concussion, and Mr. Kern was never even diagnosed with that.

Dr. Kessler does concede that there is a slight increased risk of seizures with concussion, but the types of brain injuries which would be associated with the development of a seizure disorder would include penetrating head injuries and brain contusions with hemorrhages; which was not the case with Mr. Kern. Dr. Kessler indicates that while alcohol withdrawal was not the only potential explanation for his seizures on July 17, 2008, alcohol withdrawal would be an explanation that would account for the repeated convulsions on that date with no other neurologic abnormalities and could account for the blood work abnormalities. She further indicates that sleep deprivation or fasting could cause a generalized convulsion, but not a seizure disorder with repeated seizures.

Dr. Kessler indicates that it was noteworthy that in the psychiatry records, the Petitioner reported that he had detoxed himself twice and had seizures as a result. In addition, the time course of his convulsions in the morning following an all-night flight would be consistent with the time course of alcohol withdrawal seizures. In conclusion, Dr. Kessler affirmed her opinion that Mr. Kern did not develop a seizure disorder due to a fall that prevented him from working, caused alcohol dependence or led to his demise.

Testimony of James Michael Kern (JMK)

JMK is a member of the US Navy Reserves, currently stationed at Villanova while he completes a chemical engineering degree with a minor in biomedial engineering and naval science. (T.14) He has experience with aircraft and flying and will begin flight school in May. (T.14) JMK was familiar with Boeing 777 aircraft. (T.16) Passengers are not allowed access to the flightdeck. (T.16) But he and the family would get to visit the flightdeck of 777s after a flight as the crew often knew his father from military patrol squadrons. (T.16-17) JMK produced three photos showing the layout of the flightdeck for 777s. (T.17-18) PX13A was a photo of the overhead flight controls which the Captain and First Officer would access. (T.18) These pilots worked in a cramped space as the flightdeck did not afford much room to move around. (T.18)

JMK verified that the layout of the 777 flightdeck was the same between the models. (T.19) The passenger cabin would be changed between the models but not the flightdeck. (T.19) PX13A was not a photo of the exact aircraft Kern flew to London on 7/17/08. (T.20) But the photo accurately represented what the interior of the cockpit looked like in Kern's aircraft. (T.20) PX13B showed the view from the engineer's seat looking forward. (T.23) The engineer's seat was at the bottom of the photo, and the distance between that seat and the center console was 8 inches to a foot at most. (T.25) The back of the pilot seats were made from stamped steel. (T.25) PX13C showed the storage area next to the door to the flightdeck, with the back of the Captain's seat on the right side and the engineers seat on the bottom left. (T.25; PX13C) Bright yellow coats were hanging in the storage closet and crewmembers would stow their flightbags and other equipment in a tray below the coats. (T.25-26) Kern stowed his flightbag there. (T.26-27)

To retrieve a flightbag from that location, the pilot would face the closet and grab the bag. (T.27) If the pilot became unbalanced while doing that, he was likely to fall backwards towards the middle console. (T.29-30) JMK explained that the person would be angled away from the cabin door and directly toward the console. (T.30) If the person fell towards the Captain's chair, they would slide across the seatback towards the middle console. (T.31-32) JMK estimated the distance between the closet and engineers seat was a couple of feet. (T.32) The space was really confined and not meant to provide comfort. (T.33) Each seat was secured to the floor with steel and the metal console was also constructed of stamped steel. (T.35)

JMK remembered Kern having a very busy flight schedule in addition to his work with the naval reserves. (T.38) Kern was posted at Willow Grove Naval Reserve as an operations officer in charge of 80 enlisted men and other officers. (T.38) Kern would be busy preparing flight schedules, planning for maintainers on the ground and receiving and deploying patrol squadrons. (T.38) JMK became familiar with this work during his summer training with Patrol Squadron 16 at Jacksonville and by visiting his dad at the base. (T.39) JMK discussed the randomized drug testing protocol for enlisted men and officers. (T.40-41) The testing was random and everyone was subjected to it. (T.41)

On the date of Kern's flight to London, JMK remembered that his dad was working with concrete in the back yard. (T.42) Kern did not have time to relax before getting ready in his uniform, getting into the car and off to work. (T.42) Kern was based out of Dulles Airport in Washington DC, a four hour drive from their house. (T.44) JMK did not believe that his dad drank any alcohol before

leaving for the London flight, noting that he normally did not drink as he was the family planner. (T.46) JMK never saw his dad have a seizure or just pass out before the accident. (T.47-48) He recalled Kern having a seizure in 2009 on a trip where they were heading to Hawaii with another family. (T.48-49) They could tell when Kern was not feeling well as he would get very pale. (T.48) The family had to abandon that trip because of the seizure. (T.48) His dad was effectively grounded at that point although official grounding had not yet occurred. (T.48)

Kern's official grounding came around February of 2010 and that is when Kern's attitude and actions started to change. (T.50) After receiving the grounding recommendation letter from Respondent, Kern started to drink into the spring and summer, usually Gilbey's brand vodka. (T.51) The drinking escalated toward the end of the year. (T.52) JMK thought Kern was a functioning drunk by 2011. (T.53) As 2015 came along, JMK could tell that his dad was trying to stop and try to make up to his family for his problem. (T.53) Kern bought him a hunting shotgun at age 11 and a car in 2014 or 2015 when he thought JMK was graduating from high school. (T.53) But JMK was only starting high school at that point and could not drive. (T.53-54) JMK could tell that his dad was trying to fight against drinking but it was just too much for him. (T.54) At that late stage, Kern would have seizures when he stopped drinking. (T.54)

His sister drove JMK home from school on his 15th birthday, on 5/21/15. (T.55) The dog was waiting for them in the driveway. His sister followed the dog to the backyard and yelled for JMK to come over. (T.56) They found Kern lying face down in the koi pond he had built years earlier. (T.56) She went to get help from neighbors and JMK went into the water to pull Kern's body out. (T.56) JMK tried chest compressions as did one of the neighbors and a neighbor nurse came over to perform proper CPR. (T.56)

On cross examination, JMK thought Kern left the house for London around 4:00 pm, when you consider he flew from Dulles at 10:12pm, he would have had an hour of preflight planning and a four hour commute to get to Dulles. (T.60) JMK thought that military and commercial aircraft both normally had wool covered seats for the crew. (T.63) Kern's flightbag would weigh between 40 and 50 lbs. (T.64) Respondent asked him whether it would be more likely that Kern fell forward when lifting his flightbag from the tray. (T.64) JMK said it would be just the opposite, explaining it from his perspective as a weightlifter. (T.65) You would have backward momentum when lifting something off the ground like that. (T.65) JMK was not present on the day Mr. Kern had a seizure on the airplane.

Testimony of Douglas Kern

Douglas Ann Kern (DAK) is an ensign and a pilot in the US Navy. (T.70) She had been on the flightdecks of 777s when flying internationally, as her dad usually bumped into someone he knew. (T.72) The photos in PX13 accurately represented what the 777 cockpit looked like when her dad was flying 777s. (T.72) The back of the console where the engineer sat was metal with sharp corners. (T.75) There were no safety bumpers on these consoles. (T.76) DAK noted that designers did not build the plane around the pilot; pilots had to learn to operate in that environment. (T.76)

DAK compiled a printout of all the medals and commendations her father had been awarded throughout his career and testified to his numerous accolades. (T.77)

DAK interpreted Kern's flightlog for the trip to London. (T.83) The log excerpt identified his crew, the 777 he was flying, his departure from Dulles at 10:12 pm, and landing in London at 04:57 am London time. (T.85-86) She recalled her dad and mom working in the backyard before Kern left for London. (T.87) DAK never saw Kern drinking before the accident. (T.87) DAK was certain that Kern was not drinking any alcohol before he left for Dulles for the London flight. (T.88) She remembers him being really sweaty, having concrete on him and rushing to get ready for his flight. (T.88) He packed a bag quickly and appeared to be flustered. (T.88)

DAK had never seen her dad have a seizure or pass out before the London accident. (T.89) He did start having seizures when he returned from London. (T.89) She recalled his seizure at the post office. (T.90) She remembered that because he had come to her school earlier that day to make a presentation for career day. (T.90) That was the first time she remembered him having a seizure. (T.90) Kern received news that he would be permanently grounded in 2010 and he started drinking a lot. (T.90-91) That was the first time she had seen him drink like that and he had seizures when he stopped drinking. (T.91) His whole demeanor changed after he received the bad news about being grounded. (T.91) His career as an aviator was gone. (T.91) He progressively drank over the next five years. (T.92)

On 5/21/15, DAK drove her brother home and found her dog sitting in the driveway, which struck her as odd. (T.92-93) She parked in the driveway, followed the dog to the back yard and the gate was open. (T.93) The dog took her to the backyard to where Kern was lying in the pond. (T.93) She called the paramedics while her brother tried to pull Kern out of the pond. (T.93) She ran to the neighbors' houses for help. (T.94) By the time she returned to the pond, a neighbor had flipped Kern over but Kern was blue. (T.94)

DAK testified that she knew Kern suffered from a chronic hamstring issue from a college injury. (T.94) Kern remained very active after that, but it caused him pain. (T.95) Kern took aspirin or ibuprofen or Tylenol to deal with it. (T.95)

DAK described the flightbag her dad would have been using. (T.96) The flightbag was the same for military and commercial pilots. (T.96) The bag contained publications, charts and other stuff. (T.97) Her own flightbag was about 30 lbs but Kern's was way heavier. (T.97) He had to take that bag with him as a condition of his employment. (T.98)

DAK testified to the rule that prohibited pilots from flying with alcohol in their system 12 hours before the flight. (T.99) This "bottle to throttle" rule also meant the pilot could not have hangover symptoms 12 hours before a flight. (T.99) Crews got together before a flight to plan out the flight. (T.100) The pilot performs a self-check to make sure they are good to fly and their fellow crew members also cross-checked each other to make sure they were okay for the flight. (T.100) The airline industry provided many different protective measures to try to detect and prevent pilots flying with alcohol in their systems. (T.100)

Testimony of Alexia Kern (Alex)

Alex was married to Kern in 1987. (T.104) DAK and JMK are their children. (T.105) Alex and Kern got married the year after they met. (T.106) Kern graduated first in his class and got to select the aircraft he wanted to fly. (T.106) Kern chose a land based craft so he could spend more time with Alex rather than being stationed on a carrier. (T.106) Alex's father was also a pilot and told Kern to develop career plans in the event the airline went BK. (T.107) So Kern got a law degree while also working as an active duty reservist. (T.107) He also obtained an engineering degree in college. (T.108) Kern had been recruited to play football in college and chose to go to the Naval Academy. (T.180-9) He injured his hamstring while playing and ended up with a lifelong problem with his hamstring. (T.109) They were very active together, but sometimes the hamstring laid Kern up. (T.109) He treated the hamstring on his own with Tylenol and always kept a bottle in his bag. (T.110) He regularly took the Tylenol. (T.110) The hamstring did not prevent him from flying, but it was a continuing issue which he addressed with Tylenol. (T.111)

Kern would always put in the maximum number of hours he could get with Respondent and he was working his way up to the Captain's chair. (T.112) She recounted his schedule for the week before the accident, including their plan to spend several days in the back yard putting in an elaborate set of stairs to the pool. (T.113) Alex saw Kern drink no alcohol the week before the London flight. (T.116) They were both in the yard doing the construction when he received a call from Respondent asking him to join the London flight. (T.117-118) Alex motioned for him to decline the flight, but Kern agreed to take the flight as he would not strand the other crewmembers who planned on working that flight. (T.118-9) Kern told the caller he was going to be late, he ran inside to get ready and he left for the airport. (T.119) He did not have time to eat before he left. (T.120) Kern would have gotten to the airport around 8:00 pm and would have spent an hour or two with his crew at the airport before the flight. (T.121-122) Kern was not originally scheduled for this flight to London. (T.121)

The following morning, Alex received a call from a woman in Respondent's operations department, who was concerned about Kern being left at a facility in London. (T.124-125) Alex had multiple conversations with this person. (T.127) She gave Alex the contact number for the place Kern had been taken to and Alex called the facility in London. (T.127-128) Alex spoke with Kern about coming over to get him out of that facility. (T.132) The operations woman arranged for Alex to fly over to London to get Kern. (T.132)

A driver took her to Hillingdon and walked her into the facility to make sure she was safe. (T.133-134) It appeared that construction had started on the building at some point and was then abandoned. (T.133-134) The taxi driver walked her through the abandoned part into the facility where Kern was being held. (T.134) The smell was so overwhelming that Alex could not get her bearings. (T.135) An elderly lady was in a bed yelling that she was dying. (T.134-5) Another patient in the corner appeared to be close to death. (T.135) A little cot was lying on the floor with blood on the pillow and the sheets. (T.135) A third woman with her husband told her that Kern was using that little cot. (T.135) Kern had fallen out of a bed which had no bedrails. (T.136) Kern returned to the room from showering and he had a wild animal look of fear. (T.136) He was bloody and had the shunt hanging out of his arm. (T.138) A female worker dragging a large bag of trash across the floor told Alex she could not take him out of the facility. (T.138) The woman complained that Kern would not cooperate and he kept saying he was going home. (T.137-138) The facility reminded Alex of Bedlam, the notorious London insane asylum. (T.138) The patient

with the husband told Alex she needed to get Kern out of there. (T.139) Alex did take Kern home and took him to Inova where he spent the night and received testing. (T.139-140)

Alex confirmed that Kern had not drank any alcohol the week before the accident. (T.141) When he was at home, he stayed close to the family. (T.141) Kern would occasionally have a glass of wine at dinner if Alex prepared a great meal. (T.142) But they had not had time to prepare a meal before he left for London. (T.142) She saw him every day after his accident in London as he was no longer flying. (T.143) Kern did not drink any alcohol for about 9 or 10 months after the London trip as he was busy getting tested and jumping through hoops to get his certification back. (T.144) His first drink after London came when they took a vacation to Hawaii in 2009. (T.145-146) That trip was rescheduled after Kern's seizure at LaGuardia derailed their first attempt to go to Hawaii. (T.146-148)

Alex was present when Kern received the letter from Respondent's Acting Medical Director, Dr. Korpman. (T.149-150; PX5) Dr. Korpman recommended that Kern be permanently grounded, but not for reasons involving alcoholism, drug use or self-inflicted injury. (T.150-151) Kern looked like he had been punched in the gut after reading that letter, he was demoralized. (T.151) Kern had been doing everything he could to get back to flying up to that point. (T.151) Flying is what Kern loved. (T.152) To her surprise, Kern went and grabbed himself a gin and tonic after reading the letter. (T.153) That is the first drink he had taken since Hawaii. (T.153) Alex explained that Kern became a functioning drunk after that point. (T.153) He started having a couple of drinks each night after he received the letter. (T.153-154) He still went in for flight physicals and tried to regain his certification. (T.154)

Back in 2008, Alex recalled Respondent sending Kern down to Talbott's Recovery Center for an assessment of why he was having seizures. (T.154-155) If Talbott's concluded he was an alcoholic, Kern would have to enter the program for two weeks of treatment. (T.155) But Kern was released after three days when the assessing psychiatrist concluded that Kern was not an alcoholic. (T.156) If Talbott's would have concluded otherwise and Kern just left after three days, Respondent would have fired him. (T.156) Alex noted that Kern's personality changed after London even before he started drinking. (T.159) He seemed like someone who had the onset of early dementia, he had hallucinations and he became more aggressive after London. (T.158) The depression set in when he received the letter from Dr. Korpman and Kern declined very quickly after that. (T.159)

He became a functioning drunk very quickly after that letter. (T.160) Over the period before his death, Kern's drinking worsened, he was ashamed of what he had become and tried to quit drinking. (T.161) He just couldn't accept a world where he would be on disability for the rest of his life without being able to return to the job he loved. (T.161) During the last two years of his life, Kern often drank a full liter of alcohol and he started to experience alcohol withdrawal seizures. (T.161) Alex got a breathalyzer device and could use it to predict seizures coming on based on a reduction in his alcohol levels. (T.161-162) His seizures would always manifest as two grand mal seizures. (T.162) Kern later also developed delirium tremens. (T.162) As the seizure would set in, he would scream out and his face would contort like he was in tremendous pain. (T.163) She would turn him on his side and then he would have the second seizure. (T.163)

She was not home when Kern died in the pond. (T.164) They were not able to make bills with the payments he was receiving so she went to work. (T.164) DAK called her at work to tell her that Kern was dead. (T.164) Alex's boss drove her home. (T.165) The pilot disability benefits stopped at that point and she ended up selling the house. (T.165)

Alex verified that Kern was under a 12 hour bottle to throttle rule while flying for Respondent. (T.170) Kern had never seized or passed out before the London flight. (T.171) She and Kern were avid runners before he started drinking. (T.171) Alex verified that his meal on the plane had to be the food that was burned as they had not prepared a meal before he left for London. (T.172)

On cross-examination, Alex confirmed that Kern attempted to rehabilitate himself and went to a couple of places for inpatient treatment. (T.183-186) The first place was in 2011 but the facility was focused on kids with heroin addiction. (T.188) The next place he went for treatment was in 2013. (T.188) And then one week before he died, he was also admitted to Grandview Hospital for a week after a seizure. (T.186) Alex went and picked him up and brought him home about a week before his death. (T.186) Kern was never treated for liver failure; he was fine except for the seizures. (T.188)

CONCLUSIONS OF LAW

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

The first issue that must be addressed before proceeding with any of the others is Respondent's Motion to Dismiss Petitioner's claim due to untimely filing in violation of the statute of limitations. The Arbitrator denied Respondent's Motion at trial and trial on all issues proceeded. Respondent's Motion was marked as Arbitrator's Exhibit 2 and Petitioner's Response was marked as Arbitrator's Exhibit 3.

Petitioner bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Indus. Comm'n*, 223 Ill App. 3d 706, 714 (5th Dist. 1992). "Liability under the Workmen's Compensation Act may not be based on imagination, speculation, or conjecture, but must have a foundation of facts established by a preponderance of the evidence…" *Shell Petroleum Corp. v. Indus. Comm'n*, 366 Ill. 642, 650 (1937). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Revere Paint & Varnish Corp. v. Indus. Comm'n*, 41 Ill.2d. 59, 63 (1968). Preponderance of the evidence means greater weight of the evidence in merit and worth that which has more evidence for it than against it. *Spankroy v. Alesky*, 45 Ill. App.3d 432, 436 (1st Dis. 1977).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility,

evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

As to (C) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? And (F) Is Petitioner's current condition of ill-being causally related to the injury? The Arbitrator finds as follows:

An employee seeking benefits under the Act has the burden of proving all elements of his or her claim. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449, 657 N.E.2d 1196, 212 Ill. Dec. 851 (1995). Among other things, the employee must establish a causal connection between the employment and the injury for which he or she seeks benefits. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860, 826 N.E.2d 493, 292 Ill. Dec. 352 (2005).

The Arbitrator finds that, based on the preponderance of the evidence, Petitioner failed to prove accidental injuries arising out of the decedent's employment. The Petitioner's arguments rely primarily on speculation. There is insufficient evidence to establish that Petitioner's seizure and hospitalization in 2008 were causally related to his employment. There is also insufficient evidence to establish that Petitioner's drowning in 2015 was related to his employment.

The weight of the evidence introduced supports that Petitioner had a seizure or a syncopal event as he exited the cockpit on July 17, 2008. This caused him to fall and strike his head and elbow. This is supported by a statement of the air marshals, as well as of the medical records from the emergency department at Hillingdon hospital, and the neurosurgeon Dr. Hasan at Inova Fair Oaks. The air marshal's statement indicates that FAM Simons was in seat 2A, which is directly outside of the cockpit and "looked up towards the flight deck and saw First Officer James Kern scream as he fell towards the floor with his arms locked and outstretched, as if he were knocked unconscious." He also had foam exiting his mouth. The initial history given by Mr. Kern when he arrived at Hillingdon the same day was that he passed out as he had not eaten for two days and had recent problems with his right ear.

Upon arriving at Ivona on July 18, 2008, Mr. Kern specifically reported that he was not sure if he fell and hit his head and then had a seizure. On July 19, 2008, Dr. Hasan's initial report indicates that Mr. Kern reported that he went to collect his bags from the cockpit when he stiffened and collapsed. Dr. Hasan's report further indicates that the patient was not feeling well on the plane, he was exhausted and weak, had a runny nose and didn't eat. The Petitioner noted he had been exhausting himself over the past four days doing heavy work and gardening in the USA and he had a runny nose for approximately one week with clear mucus. He also felt his right ear was slightly blocked on the plane.

Based on the initial medical evidence, initial history reported to medical providers by Mr. Kern and the witness statement of the incident, all of which the Arbitrator finds very persuasive and credible, it is more probable than not that Petitioner had a syncopal event which resulted in a witnessed fall where he subsequently hit his head. It is unclear from the record whether Petitioner was ever diagnosed with a seizure condition that was evidenced by any objective diagnostic findings. Petitioner did not prove that the cause of the seizure arose out of his employment by a preponderance of the evidence, and therefore, the incident that occurred on the plane on July 17, 2008 is not a compensable accident under the Worker's Compensation Act.

There is evidence in the record regarding alternative theories as to what happened to Mr. Kern on July 17, 2008, which may have been exacerbated by Petitioner's being overtired and exhausted from gardening and/or lack of sleep, having not eaten, and having a cold.

Respondent suggests that Petitioner's seizure may have been induced by alcohol withdrawal, causing him to fall and hit his head. This theory is supported by Respondent's expert, Dr. Kessler, who is board certified in neurology and sees many patients with alcohol withdrawal seizures. In the initial Hillingdon Hospital medical records, there were concerns noted by nursing and junior medical staff that the Petitioner may have been withdrawing from alcohol overnight. The records indicate sleep deprivation or possible alcohol withdrawal as potential causes for the seizures. An issue with alcohol is supported by his elevated liver enzymes and the fatty liver seen on all of his labs in Hillingdon, Grandview and Inova records. Dr. Kessler testified regarding the Petitioner's lab results and a fatty liver diagnosis. Dr. Coe also testified that alcohol use could be the cause of Petitioner's abnormal lab results and indicated an alcohol withdrawal seizure on July 17, 2008 was a possibility. Dr. Kessler testified that the timing of the alcohol withdrawal cycle would have been consistent with Petitioner's timeline of when he left for the flight and when the initial seizure and subsequent seizures occurred. The Arbitrator finds this theory to be persuasive as there are no other reasons to explain the elevated liver enzymes documented in the medical records and the timing of the incident is persuasive.

Petitioner's expert, Dr. Neri, provided the opinion that it was unlikely that Petitioner had an alcohol withdrawal induced seizure. The Arbitrator does not find Dr. Neri's opinion credible as he relies heavily on the fact that Mr. Kern would not have had enough time to consume a large amount of alcohol prior to leaving for the trip to London because Petitioner had a busy schedule. Dr. Neri's opinion regarding those facts have nothing to do with his medical expertise. If Mr. Kern was gardening for several days prior to this trip as the record indicates, he could have also been consuming alcohol, without anyone else's knowledge. Further, Dr. Neri's opinion assumes Petitioner hit his head prior to having the seizures, which was not established in the initial medical records or FAM statement, which he did not even review.

Dr. Coe testified that the only way to know if a seizure is a result of an alcohol withdrawal is a pattern of seeing it on a repeated basis. Mr. Kern's wife and two children all testified that Petitioner would have seizures when detoxing himself from alcohol after the accident occurred. Ms. Kern

testified to multiple seizures occurring within a short time period while he was withdrawing from alcohol. Ms. Kern even testified to screams that would come from her husband when he was seizing when going through alcohol withdrawal which is what the FAM testified to hearing when Mr. Kern seized on the airplane. Dr. Kessler testified that the "scream" referred to when someone is having a seizure is not an actual scream, but a noise the airway makes when one is seizing. The family's testimony supports a pattern of how Mr. Kern's seizures were triggered.

Dr. Neri testified to a host of factors that would be present if Mr. Kern had suffered an alcohol induced seizure. The medical records and statements from Ms. Kern in the record indicate that Petitioner's behavior after his initial seizures was that of agitation, anxiety, confusion, disorientation and erraticism, which would also support that he had an alcohol withdrawal induced seizure, according to both Dr. Neri and Dr. Kessler. The Arbitrator does not find testimony from Mr. Kern's children who were much younger at the time of the accident than when they testified credible regarding their father's drinking habits prior to the incident on July 17, 2008. Both the children and Ms. Kern testified that Mr. Kern rarely drank when the initial medical records state that Mr. Kern reported he drinks 2 glasses of wine per day with reports minimized in other later records. The medical staff at Hillingdon advised Mr. Kern to decrease his alcohol intake. Further, Ms. Kern testified that Mr. Kern did not begin to drink regularly until he received the grounding letter dated February 19, 2010 when an ultrasound of Mr. Kern's abdomen in March of 2009, about a year prior, indicated a marked enlargement of the liver with no documented reason or evidence of treatment for this condition in the records. Dr. Kessler testified that the abnormal liver tests would be caused by excessive alcohol consumption. For this reason, Arbitrator does not find Ms. Kern's testimony regarding her husband's drinking habits credible. A seizure due to alcohol withdrawal would be a cause unrelated to the Petitioner's employment.

Petitioner suggests that Petitioner tripped and fell and struck his head thereby resulting in the seizure. Such an inference is not supported by the initial facts and evidence. The unsigned and undated statement of Mr. Kern suggested that when entering the cockpit the last thing he remembered was tripping and then falling and Mr. Kern's later report to Dr. Jackal was that he may have tripped or slipped when he was pulling his bag out of the cockpit is suspect. Dr. Jackal noted that this was inconsistent with the histories in the medical records. Dr. Jackal requested a statement from the air marshals from Mr. Kern, and while it was obtained, it was never provided to him. This subsequent description of the accident is self-serving and not credible and it is not in accordance with any of the original accident descriptions given to his medical providers or by the air marshals. Further, none of the initial medical providers documented a bump on his head or diagnosed him with a concussion. Overall, this history appears to be an attempt by Mr. Kern to avoid being diagnosed with a seizure and avoid medical grounding. Finally, Dr. Coe's opinions regarding causal connection rely on Mr. Kern hitting his head prior to having a seizure which renders his opinions irrelevant based on the Arbitrator's finding that the seizure occurred prior to the fall.

In conclusion, Arbitrator finds that the Petitioner has failed to substantiate that Mr. Kern's injuries on July 17, 2008 were the result of his employment for the reasons outlined above. There is further insufficient evidence that his drowning death in 2015 was related to that occurrence. Arbitrator notes that the Petitioner had not been seen for any medical treatment since 2009. While Mr. Kern's family members testified that he seemed depressed and had increased his alcohol intake in the years subsequent to 2008, there is no medical evidence to support a diagnosis of alcoholism or depression. Further, it would be pure speculation to conclude that any depression or alcoholism is causally related to the alleged work injury. The opinions of Dr. Coe and Dr. Neri are speculative in this regard.

As the Petitioner has failed to meet their burden by a preponderance of the evidence to establish accident and causation, all other issues are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC026151
Case Name	Cameron Jenkins v. Cargill Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0274
Number of Pages of Decision	15
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Matthew McCue
Respondent Attorney	Kenneth Bima

DATE FILED: 6/11/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cameron Jenkins,

Petitioner,

vs. NO: 21 WC 26151

Cargill, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses and permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 10, 2023, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $40,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 11, 2024

o5/22/24

DLS/rm

046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC026151
Case Name	Cameron Jenkins v. Cargill Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Matthew McCue
Respondent Attorney	Kenneth Bima

DATE FILED: 3/10/2023

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

/s/Bradley Gillespie, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MCLEAN)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

CAMERON JENKINS
Employee/Petitioner

v.

CARGILL INC.
Respondent

Case # **21** WC **026151**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **BRADLEY GILESPIE**, Arbitrator of the Commission, in the city of **BLOOMINGTON, ILLINOIS**, on **9/26/2021**. 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, **08/27/2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**57,200.00**; the average weekly wage was $**1,100.00.**

On the date of accident, Petitioner was **35** years of age, ***married*** with **4** dependent children.

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

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

Respondent is entitled to a credit under Section 8(j) of the Act to be determined at a future hearing.

ORDER

The total medical award is $248.00 to Central Illinois Orthopedic Surgery for related left shoulder treatment.

Petitioner is prospectively awarded the proposed left shoulder arthroscopy recommended by Dr. Keller.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Bradley D. Gillespie **MARCH 10, 2023**

Signature of Arbitrator

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CAMERON JENKINS,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 21WC026151**
	)	
CARGILL INC.,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

This matter was tried on September 26, 2022, pursuant to §19(b)/8(a), on the issues of causal connection, unpaid medical bills, and prospective medical treatment pursuant to Section 8(a) for a recommended arthroscopic left shoulder surgery. (Arb. Ex. 2) This case was consolidated and tried with case 21 WC 026134, with the same parties in connection to a right shoulder injury. (Arb. Ex. 1 & Arb. Ex. 2)The following issues were in dispute at arbitration:

- Causal Connection
- Medical Bills
- Prospective Medical Care

FINDINGS OF FACT

Petitioner testified that he was 36 years old and began working at Cargill in Bloomington, Illinois in approximately mid-April 2016. (Tr. p. 11) He testified that he has worked full time since his hire date in various positions including general laborer, process operator, extraction operator, and first operator. (Tr. pp. 11-12) Petitioner recounted his job activities in these positions, which involved manual labor and transitioned into a combination of monitoring screens and manual adjustments of valves and machinery. (Tr. p. 13) He testified that the first operator position is mostly an oversight position, but also involved hands-on work if necessary. (Tr. p. 14)

On the date of injury to his right shoulder, Petitioner testified that he was working overtime in an extraction operator role, which involved overseeing the steam lines in the facility and making sure that they are opened and closed as necessary. (Tr. pp. 12, 14-15) Petitioner testified that this is combination of manual and electronic remote processes. (Tr. p. 15)

On November 17, 2020, while working as an extraction operator, he testified that he was warming up a DT vessel, a process the previous operator had started but had not finished. (Tr. p. 15) Petitioner observed that a steam line was open, he went to the first floor of the facility to visually confirm. Petitioner testified that he climbed up onto a small

platform to close the valve, which required him to reach out his right arm to close it. He testified that he was having trouble getting the steam line valve to turn with his arm outstretched, and he put his right arm and shoulder into it. (Tr. p. 16) He was able to loosen the line but felt a pop in his shoulder. He switched to his left shoulder and finished closing the valve. Once the valve was closed, he left the platform, went up a step ladder, and went to close another valve with both hands. It was also stuck, and he turned it to left, and felt more pain and irritation in his right shoulder. Petitioner testified that he felt burning pains down to his elbow and throbbing on the top of the shoulder. (Tr. p. 17) Petitioner testified that he closed the valve, returned to his office to make sure everything was running smoothly, and reported the injury to his supervisor within an hour. (Tr. pp. 16-17) He testified that his supervisor drove him to OSF Occupational health that day. (Tr. p. 17)

Petitioner was evaluated by Dr. Mary Yee-Chow at OSF Occupational Health in Bloomington on the date of accident. (PX #3 pp. 2-5) The records indicate that Petitioner reported twisting a valve with his right hand when he heard a pop in his shoulder, causing a burning pain. Dr. Chow conducted a physical exam and found positive tenderness with forced internal rotation, decreased range of motion, positive Hawkins and Neers signs, painful arc with the right shoulder, and positive tenderness to the posterior aspect of his right shoulder. (PX #3 p. 4) Dr. Yee-Chow ordered x-rays and released Petitioner to work full duty with a follow-up appointment scheduled.

Petitioner followed-up with Dr. Yee-Chow on December 3, 2020. (PX #3 pp. 7-9) Dr. Yee-Chow examined Petitioner and took a history, noting pain and popping with activities of daily living. She ordered an MRI arthrogram of the right upper extremity, which was completed on December 18, 2020, at Fort Jesse Imaging Center. (PX #3 pp. 10-11) Petitioner testified that he was told by Dr. Yee-Chow that he would be referred to an orthopedic doctor for evaluation and treatment. (Tr. p. 19)

Petitioner testified that his next visit was with Dr. Lawrence Li. (Tr. p. 19) Petitioner testified that his supervisor, Scott Bruemmer, told him that he was sending him to Dr. Li for treatment. (Tr. pp. 19-20) Petitioner testified that Dr. Li conducted a physical exam and took a verbal history. (Tr. p. 20) Petitioner testified that he was not given a mileage check by Respondent or given any report from Dr. Li or the Respondent. Petitioner recalled meeting with Dr. Li one more time, but not being offered any treatment. Petitioner testified that he was not aware that this was a Section Twelve examination pursuant to the Workers' Compensation Act. (Tr. pp. 21-22)

Respondent introduced Dr. Li's two reports at trial with no hearsay objection. (Tr. pp. 8-9) According to the report dated February 18, 2021, Petitioner was seen by Dr. Li at his office on that date. (RX # 4 pp. 6-8) Dr. Li reviewed the first report of injury, Occupational health notes, the x-ray report taken by occupational health, and the MRI arthrogram, as well as a twenty second video of Petitioner using the valve involved in the accident. Dr. Li conducted a physical exam and took a history and indicated that he believed Petitioner suffered a partial tear and opined that the work injury was related to the current diagnosis. Dr. Li recommended injections, anti-inflammatories, and physical therapy.

Petitioner testified that he did not get any more treatment for his right shoulder injury before his second injury date in August of 2021, nor was any treatment authorized by Respondent. (Tr. p. 22) Petitioner did not have any formal work restrictions but was instructed by his supervisors Brad Williams, Scott Bruemmer, and Carl Sayer not to do heavy lifting with his right arm, avoid anything involving shoulder strength, no shoveling, no opening lids on rail cards, and no turning any heavy-duty steam or water valves. (Tr. pp. 22-23) Petitioner testified that the first operator position does not involve these tasks primarily, and he was able to do most of his job without difficulty and was able to request one of his supervisors complete more strenuous tasks.

Petitioner testified that he had a second work injury on August 27, 2021. (Tr. p. 23) He was instructed to open up different vessel in extraction to deal with a hexane leak. He testified that he was not allowed to use bower tools because it could cause a spark and explosion. This operation required Petitioner to manually tighten nuts and bolts on the large doors with brass wrenches. Petitioner testified that he was instructed to tighten them down as tight as he could to avoid future leaks. (Tr. p. 24) He was holding the nut with his right hand and tightening with his left, putting his weight into the motion, when he felt a pop in his left shoulder. He testified that he felt a burn and asked his co-worker first operator Ryan Bunner what to do and was advised to report the injury to a supervisor. He testified that he filed the report and was driven by a supervisor to OSF Occupational Health. (Tr. pp. 24-25)

Petitioner saw Dr. Mary Yee-Chow at OSF Occupational Health in Bloomington on August 27, 2021, for his left shoulder. (Tr. p. 25; PX #3 pp. 14-17) Petitioner gave a history of the injury and described the mechanism of tightening bolts on a vessel door when his shoulder popped. Dr. Yee-Chow examined Petitioner and found popping with the movement of the left shoulder, active range of motion to 180 degrees, tenderness with forced external/internal rotation, and positive Hawkins sign. She took an x-ray and recommended a follow-up appointment.

Petitioner followed-up with Occupational Health on September 16, 2021, at which time Dr. Yee-Chow noted a consistent history and exam and recommended an MRI. (PX #3 pp. 19-21). The MRI was completed on October 7, 2021. *Id*. at 22. Petitioner followed up with Dr. Yee-Chow on October 12, 2021. *Id*. at 25-27. At that time, Petitioner was referred to Dr. Brent Keller at Central Illinois Orthopedic Surgery.

Petitioner saw Dr. Keller at Central Illinois Orthopedic Surgery on November 4, 2021, for his left shoulder injury. (PX #2 pp. 1-3). Petitioner's history was recorded and was consistent with his report of injury and testimony at trial. Dr. Keller conducted a physical exam, noting no tenderness at the AC joint, loss of range of motion of the left shoulder, and a positive impingement sign. Dr. Keller diagnosed the claimant with left shoulder impingement, AC joint osteoarthritis, and a partial thickness rotator cuff tear. He recommended physical therapy and an injection. Dr. Keller's notes indicate that he performed an injection, though Petitioner testified that he had no memory of receiving a left shoulder steroid injection. (Tr. pp. 27-28). Dr. Keller recommended therapy and a follow up in four weeks.

Petitioner testified that he did his physical therapy at Central Illinois Orthopedic Surgery until his follow up visit on December 2, 2021. (Tr. p. 28; PX #2 pp. 5-8). During that follow up visit, Dr. Keller recommended more physical therapy. Petitioner followed up again on January 4, 2022, at which time Dr. Keller recommended a left shoulder arthroscopic surgery for a possible rotator cuff repair. (PX #2 pp. 9-11)

Prior to Petitioner's January 4, 2022, visit to Dr. Keller, Respondent sent an IME addendum request to Dr. Li, which was included in Respondent's exhibits and is dated December 31, 2021. (RX #4 pp. 1-2). Dr. Li was presented with additional records, which included an EMG/NCV report dated August 18, 2020, and its accompanying order, Dr. Matthew Rossi's notes from August 8, 2020 - September 16, 2020, and two MRI reports from January 7, 2015. Dr. Li reviewed the treatment from 2020, noting that his opinion had changed in that he now believed Petitioner had a pre-existing condition which was aggravated by his work injury. He indicated that Petitioner did not note this prior treatment and that the December 18, 2020, MRI findings could be a progression of the 2015 right shoulder tendinosis. Dr. Li still indicated that his causation opinion remained the same. Dr. Li was not asked to give any opinion in reference to the left shoulder injury of August 27, 2021.

Petitioner was given authorization to treat for his right shoulder and began treating again on March 8, 2022, the first time since December of 2020. (Tr. p. 29) Petitioner was seen by Dr. Keller at Central Illinois Orthopedic Surgery, who conducted a physical examination and took a history. (PX #2 pp. 13-16) Dr. Keller noted a positive impingement sign as well as tenderness anteriorly along with a reduced range of motion. Dr. Keller diagnosed Petitioner with right shoulder impingement and a possible tear. Although the treatment notes indicate that Dr. Keller recommended a second MRI, Petitioner testified that he did not receive a second MRI. (Tr. p. 30)

Petitioner followed up with Dr. Keller on March 17, 2022. (PX #2 pp. 17-20) Dr. Keller noted no change in the physical examination and diagnosed Petitioner with impingement syndrome of the right shoulder, right AC joint arthritis, and a partial thickness supraspinatus tear. Dr. Keller performed a steroid injection and recommended physical therapy.

Petitioner's last follow-up with Dr. Keller for his right shoulder was on April 19, 2022, at which time he recommended a right shoulder arthroscopy. (PX #2 pp. 21-23) Petitioner testified that this is still the recommended treatment from Dr. Keller, but he has had no follow-ups with Dr. Keller since this visit for either shoulder. (Tr. p. 30)

At trial, Petitioner testified that he had previously had a work injury in 2015 with a previous employer. (Tr. p. 31) The employer wanted him to get his right shoulder examined, and Petitioner went to Dr. Matt Rossi. Dr. Rossi ordered an MRI which showed mild tendinitis, and Petitioner was cleared for work the next day. (Tr. pp. 31-32) Petitioner testified that he had no right shoulder issues before 2015, and no issue with his right shoulder between the MRI and the August 27, 2022, accident at Cargill. (Tr. pp. 32-33)

Petitioner testified that he had also experienced prior issues with his left arm and saw Dr. Rossi in August 2020 for numbness in the left shoulder. (Tr. p. 33) Petitioner testified that he was worried about his heart since his father had just died from a heart attack, and he wanted to make sure that the arm numbness wasn't related to a cardiac condition. Petitioner testified that he had numbness in his left arm down to his pinky and ring finger. Petitioner testified that he was referred to Dr. Edward Trudeau for an EMG test and that Dr. Rossi diagnosed him with thoracic outlet syndrome. (Tr. pp. 33-34) Petitioner testified that he was offered some stretches and ibuprofen and his symptoms resolved in a couple weeks. (Tr. p. 34) Petitioner testified that at the time of his November 17, 2020, injury, he wasn't having left or right shoulder problems, and that he did not consider his numbness of the left arm to be a shoulder injury. (Tr. p. 32-34)

On cross examination, Petitioner testified that he has not been taken off work or been given restrictions for either shoulder, by any doctor since his November 17, 2020, injury. Petitioner testified that contrary to Dr. Rossi's notes, his numbness was localized to his left shoulder, not bilaterally. (Tr. p. 37) Petitioner testified that Dr. Trudeau's testing also showed bilateral cubital tunnel syndrome, which could explain his bilateral arm numbness. (Tr. p. 38) Petitioner testified that he didn't think Dr. Li needed to know about these diagnoses at his IME appointment because he didn't view it as a shoulder issue and he didn't have shoulder pain, and that the numbness was not at all comparable to the burning pain from the injury. (Tr. pp. 38-39, 48) Petitioner was asked about Cargill's group disability plan and indicated that he believes it pays 60 percent of salary but was not sure and did not pursue that option because he believes this is a work-comp matter. (Tr. pp. 39-41) Petitioner indicated that he was choosing to exercise his right to a trial as opposed to treating on his own insurance or seeing a provider other than Dr. Keller for another opinion. (Tr. pp. 41-42) Petitioner testified that work comp cut off his treatment after his IME visit with Dr. Cohen. (Tr. p. 43)

Petitioner testified that he lifted weights around 2016, but when he started with Cargill, he had trouble continuing this due to his family obligations and work routine. (Tr. p. 44) Petitioner testified that he had not lifted since 2016. Petitioner was asked why Dr. Rossi would indicate that his complaints were related to lifting weights, and Petitioner testified that he had just started a two-week process on trying to get back into lifting weights, and Dr. Rossi thought that might be responsible for his symptomology and numbness. (Tr. pp 44-45) Petitioner clarified that he stopped consistently lifting weights in 2016, but he still occasionally lifted and was lifting in the two weeks prior to his Dr. Rossi visit. (Tr. p.p. 45-46)

Petitioner testified that he is a volunteer firefighter but hasn't attended meetings for the last year. (Tr. p. 46) Petitioner testified that 90 percent of their calls are EMT calls for which he is not qualified. He has not been on a structure fire call either. Petitioner testified that he did attend a car fire, where he ran the pump at the truck. (Tr. p. 47)

Petitioner testified that he cannot enjoy his hobbies to the fullest since the injuries (Tr. p. 47) Petitioner testified that he liked to golf, with a pre-injury average of 10-15 times a year. Post injury, he testified that he golfed once or twice in 2021, and not at all in 2022.

Brad Williams, representative of Cargill, was present but did not testify.

Evidence Deposition of Dr. Brett Keller

Dr. Brett Keller was deposed by the parties on July 14. 2022. (PX #1) Dr. Keller is a board-certified general orthopedic surgeon with a practice focused on treatment of shoulders and knees. (PX #1 pp. 3-4) Dr. Keller primarily performs surgeries and office consultations, very rarely does IMEs and records reviews, and gives depositions as part of his legal-medical work. *Id*. at 4.

Dr. Keller testified that he first met Petitioner on November 4, 2021. (PX #1 p. 5). Dr, Keller testified that he started treating Petitioner for his left shoulder injury only and recounted his three visits with Petitioner for that injury. *Id*. at 5-10. He testified that he recommended a left shoulder arthroscopy, subacromial decompression, distal clavicle excision, and a possible rotator cuff repair. *Id*. at 10.

Dr. Keller also testified concerning his three visits with Petitioner for his right shoulder injury. (PX #1 pp. 10-16) Dr. Keller confirmed that he had no record of a March 8, 2022, MRI of the right shoulder in his records. *Id*. at 14. He testified that he recommended a right shoulder arthroscopy, subacromial decompression, distal clavicle excision, and a possible rotator cuff repair. *Id*. at 16.

Dr. Keller testified about his understanding of the mechanism of Petitioner's right shoulder injury which was consistent with Petitioner's trial testimony. He opined that the accident caused and/or aggravated Petitioner's current condition and need for surgery. (PX #1 pp. 16-17) Dr. Keller provided his understanding of the mechanism of Petitioner's left shoulder injury which was consistent with Petitioner's trial testimony. He opined that the mechanism of injury caused and/or aggravated Petitioner's current condition and need for surgery. *Id*. at 18-19.

On cross-examination, Dr. Keller stated that his opinions were based on the belief that Petitioner was asymptomatic prior to either work injury. (PX #1 p. 19) Dr. Keller confirmed that his opinions were based in reliance on Petitioner's given history as well as the MRI films and his examination. *Id*. at 19-23. Dr. Keller opined that the recommended surgery was likely to help the Petitioner's pain and strength because the sources of pain were likely impingement and rotator cuff tearing. *Id*. at 23-24.

Dr. Keller was asked about Dr. Cohen's IME findings, and he noted that Dr. Cohen's physical examination was inconsistent with his own clinical findings. (PX #1 pp. 24-27) Dr. Keller reiterated his surgical recommendation and noted that he did not believe that Petitioner's exam was essentially normal. *Id*. at 28-29.

On re-direct examination, Dr. Keller was given the records of Petitioner's 2015 right shoulder MRI and visit, as well as his August 2020 thoracic outlet syndrome diagnostic testing and treatment notes from Dr. Rossi. (PX #1 pp. 29-31, Dep. Ex. 4) Dr. Keller opined that after reviewing those records, he only notes some mild rotator cuff

tendinosis of the right shoulder, and that the records did not change his causation opinion. *Id*. at 31.

On re-cross examination, Dr. Keller stated that he did not think the right shoulder tendinosis in 2015 was indicative of a natural progression of Petitioner's condition because it was significantly different than the nature of the tear shown on the 2020 MRI. (PX #1 pp. 32-33) Dr. Keller noted that he only reviewed the 2015 MRI report, not films. *Id*. at 33.

Evidence Deposition of Dr. Michael Cohen

Dr. Michael Cohen was deposed by the parties on July 27, 2022. (RX #2) Dr. Cohen is a board-certified orthopedic surgeon specializing in treatment of the upper extremities. (RX #2 pp. 4-5) He practices in Joliet and sees approximately 100 patients a week, performs 400 surgeries a year, and performs three independent medical examinations a year. *Id*. at 5.

Dr. Cohen testified that he conducted an independent medical examination of Petitioner on March 23. 2022 at the request of Respondent's attorney. (RX #2 pp. 5-6) Dr. Cohen took a history, conducted an examination, and produced a report of his findings. *Id*. at 6-7. Dr. Cohen reviewed the medical history. *Id*. at 7-11. He recounted his physical examination findings. *Id*. at 11-13. Notably, Dr. Cohen did not note a loss of range of motion, did not note any impingement, assessed Petitioner's rotator cuff strength as full on both sides, and found no provocative signs for a labral tear or instability on either side, noted no AC joint tenderness, no biceps tenderness, effusion, ecchymosis, or swelling bilaterally. *Id*. at 11-12. Dr. Cohen testified that he believed Petitioner suffered sprains or strains of both shoulders on their respective accident dates and related them to the work injuries. *Id*. at 13. Dr. Cohen stated he believed Petitioner had reached maximum medical improvement. *Id*. at 13-14. He stated that Petitioner did not need any work restrictions. *Id*. at 14.

On cross examination, Dr. Cohen confirmed that he did not review any treatment records for Petitioner from January 8, 2015, to August 7, 2020, and had no record of Petitioner having trouble or difficulty working during that time period. (RX #2 pp. 15-16) Dr. Cohen testified that he would not consider thoracic outlet syndrome to be a shoulder injury. *Id*. at 16. Dr. Cohen stated that he did not see anything in Dr. Yee-Chow or Dr. Keller's notes indicating thoracic outlet syndrome. *Id*. at 16-17. Dr. Cohen agreed that Dr. Yee-Chow's visit noted decreased range of motion, tenderness with forced internal rotation, positive Hawkins and Neer signs, and a painful range of motion of the shoulder with tenderness, all findings that were significantly different than his examination in March of 2022. *Id*. at 17. Dr. Cohen noted that he did not believe he reviewed the MRI films of the right shoulder *Id*. at 18.

Dr. Cohen testified that he reviewed Dr. Li's IME report and noted that Dr. Li's examination showed positive Neer and Hawkins signs. (RX #2 pp. 19-20) He agreed that

Dr. Li recommended right shoulder treatment which was not offered and for which Dr. Cohen did not review any of the treatment notes. *Id*. at 20-21.

Dr. Cohen testified that he believed that there might have been pre-existing left shoulder treatment but noted that he did not review any records showing a prior left shoulder MRI and that the description taken by Dr. Yee-Chow was very similar to the MRI conducted on the right shoulder in 2015. (RX #2 pp. 21-22)

Dr. Cohen testified that there was no evidence of rotator cuff tears on either side. (RX #2 pp. 22-23) When asked whether the MRI report from December 2020 represented evidence of rotator cuff symptomology, Dr. Cohen testified that the MRI had no bearing on symptomology but stated it was an objective image finding of a rotator cuff tear. *Id*. at 23-24. Dr. Cohen also indicated that he did not review the films of the left shoulder MRI or have any opinion of Dr. Keller's finding of a left shoulder partial thickness rotator cuff tear. *Id*. at 24.

On re-direct and re-cross examination, Dr. Cohen clarified that he reviewed the images for the January 2015 right shoulder MRI but only reviewed reports for the December 2020 right shoulder MRI and the October 2021 left shoulder MRI. (RX #2 pp. 26-27)

CONCLUSIONS OF LAW

In Support of the Arbitrator's Decision regarding (F) Is Petitioner's current condition of ill-being causally related to the injury, and (K) Prospective Medical Care, the Arbitrator notes as follows:

The Arbitrator incorporates by reference the Findings of Fact set forth in the preceding paragraphs. The Arbitrator finds and concludes that Petitioner's current condition of ill-being to his left shoulder is causally connected to his August 27, 2021, work injury. The Arbitrator also finds that Petitioner's work accident aggravated his condition to the point where surgical intervention is required and finds that the proposed left shoulder arthroscopy recommended by Dr. Keller is causally related to the August 27, 2021, accident. The foregoing findings are based on Petitioner's credible testimony, a review of the medical records and the overall medical testimony.

Petitioner testified that while tightening bolts on a vessel by hand with his left arm, he felt immediate pain in his left shoulder. Petitioner was using his left shoulder because of his prior right shoulder work injury. He reported it immediately and sought treatment. He was offered treatment at OSF Occupational Health, and his MRI demonstrated evidence of a possible tear. Petitioner was sent to Dr. Keller who offered treatment, physical therapy, and recommended surgery.

The Arbitrator finds Dr. Keller's testimony on causation and his treatment recommendation to be the most persuasive. Dr. Keller's exam findings are consistent with Dr. Lee Chow's findings and are indictive of some degree of tearing and

impingement in Petitioner's left shoulder. Dr. Keller offered conservative treatment in the form of physical therapy which was unsuccessful in alleviating of Petitioner's condition. Dr. Keller's exam findings were consistent throughout his 2021 and 2022 treatment notes.

On the other hand, Dr. Cohen's exam, conducted just a week after Dr. Keller's first visit with Petitioner, shows a completely different set of examination findings which are inconsistent with those of Dr. Keller or Dr. Lee Chow. The Arbitrator does not find Dr. Cohen's opinion that Petitioner is at maximum medical improvement and requires no treatment to be persuasive and his opinions and examination findings are less credible than Dr. Keller and Dr. Lee Chow. The Arbitrator notes that Respondent did not send Petitioner back to Dr. Li for an opinion, which reduces the credibility of their second examiner as they had an opportunity to use a consistent IME opinion and instead chose to find another IME doctor in order to obtain a more favorable opinion.

Therefore, the Arbitrator finds and concludes that Petitioner's current condition, diagnosed by Dr. Keller as a left shoulder rotator cuff tear and impingement, is causally related to the work injury on August 27, 2021.

Furthermore, the Arbitrator finds and concludes that Petitioner's August 27, 2021, work accident necessitated the proposed left shoulder arthroscopy, subacromial decompression, distal clavicle excision, and rotator cuff repair recommended by Dr. Keller. Dr. Cohen disagrees with this recommendation, but the Arbitrator notes that Dr. Keller is in the best position as Petitioner's treating physician to decide whether his treatment recommendations are reasonable and necessary. Dr. Li did not examine the Petitioner in regard to this case and provided no opinion.

Having Petitioner's current condition to be causally related to his work injury, the Arbitrator prospectively awards the proposed left shoulder arthroscopy.

In support of the Arbitrator's Award as to (J) Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator notes as follows:

The Arbitrator incorporates by reference, the Findings of Fact and Conclusions of Law as set forth above. The Arbitrator, having found a causal relationship between the work injury and Petitioner's current condition of ill-being, awards the reasonable and necessary medical expenses. Petitioner's Exhibit 4 is a compilation of outstanding medical bills submitted for related medical treatment. The Arbitrator therefore awards these outstanding medical bills to the Petitioner. Per stipulation by the parties, any other bills related to Petitioner's left shoulder condition are awarded, and this award does not preclude the payment of further bills not included in Petitioner's Exhibit 4. The Respondent will be entitled to a 8(j) credit for all bills already paid, per stipulation.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC026273
Case Name	Rickey Wilkins v. Lifeline Ambulance
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0275
Number of Pages of Decision	14
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Donna Zadeikis
Respondent Attorney	Peter Sink

DATE FILED: 6/11/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rickey Wilkins,

Petitioner,

vs. NO: 22 WC 26273

Lifeline Ambulance,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

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

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $50,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 11, 2024

o6/5/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC026273
Case Name	Rickey Wilkins v. Lifeline Ambulance
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Donna Zadeikis
Respondent Attorney	Peter Sink

DATE FILED: 11/6/2023

/s/William McLaughlin, Arbitrator

Signature

INTEREST RATE WEEK OF OCTOBER 31,2023 5.32%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 19 B

Rickey Wilkins
Employee/Petitioner

v.

Lifeline Ambulance
Employer/Respondent

Case # 22 WC **26273**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **10/6/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and during 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 **09/29/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**17.00 hr**; the average weekly wage was $**680.00**.

On the date of accident, Petitioner was **61** 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 $**4,080.00** 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 $ under Section 8(j) of the Act.

ORDER

Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent.

Arbitrator finds the current condition of Petitioner's right shoulder and lumbar spine causally related to the injury.

Arbitrator finds that Respondent shall pay to Petitioner the fee scheduled amount of the bills incurred by Petitioner contained in Petitioner's ex. 1-8 with a pre fee scheduled total of $27,578.87 and orders Respondent to pay for the prescribed right shoulder arthroscopy and lumbar injections.

Arbitrator finds that Petitioner is entitled to TTD from 9/30/2022 through 11/9/2022 representing 6 weeks of compensation. Respondent is entitled to a credit for the advance of TTD in the amount of $4,080.00.

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

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

Signature of Arbitrator

November 6, 2023

STATE OF ILLINOIS)ss
COUNTY OF COOK)

ILLINOIS WORKERS COMPENSATION COMMISSION

Rickey Wilkins	)	
	)	
Petitioner,	)	
	)	
vs.	)	NO.: 22WC26273
	)	
Lifeline Ambulance	)	
	)	
Respondent,	)	

FINDINGS OF FACTS

Petitioner testified that on September 29, 2022, he was employed by Respondent, Lifeline Ambulance and had been so employed for 10 ½ years prior to the date of accident. Petitioner testified that he was the first employee to ever be hired by Respondent. Petitioner's job title was driver for an ambulance and medical service. Petitioner's job duties were to transport patients back and forth from medical facilities.

Petitioner used a "transit van" to transport the customers. Petitioner testified that he gets his assignments via "tablet" wherein he is provided with the patient's name and information regarding the facility at which they are to be picked up and the facility wherein they are to be dropped off.

Petitioner testified that on September 29, 2022, he finished his shift at around 2:00 p.m. in the afternoon. Once he dropped off his last passenger, he drove the van to the Respondent's garage located at 2200 W. 39th Street, Pershing Road. Petitioner testified that in addition to transporting patients, his job duties required him to put fuel into the van on the way back to Pershing Street and to make sure that the vehicle is clean, inside, and out.

Petitioner testified that on the day of the accident, he recalled returning to the Pershing home base and pulling the van into the garage. He stated that he inspected the exterior of the vehicle and found that it was clean on the outside and that it just needed some cleaning on the inside.

When he arrived back to Pershing, the only two people that were present was Petitioner and a janitor named Carl Crosby.

Petitioner testified that he wiped down the interior of his van and at that point, his workday was basically concluding.

At that point, Carl Crosby approached Petitioner and told him that he, Petitioner, could not wash his personal vehicle inside of the Respondent's garage. Petitioner testified that when Mr. Crosby approached him, he was not washing his personal vehicle. Petitioner waived Mr. Crosby away and turned around. As Petitioner was turning around, he saw an object in Mr. Crosby's hand and the next thing Petitioner knew, he had been struck by Mr. Crosby with the object that had been in his hand and had lost consciousness.

Petitioner clarified that when he "waived Mr. Crosby away", the motion would be like "shoo shoo get away". It was not a threating gesture like a fist in the air. Petitioner testified that he never physically threatened Mr. Crosby.

Petitioner testified that when he regained consciousness, he was bleeding from his chin. He recalls landing on the entire right side of his body, and he noticed that his work clothes were dirty on the right side including the area of the right shoulder. Petitioner testified that Mr. Crosby handed him a towel. Respondent introduced into evidence Respondents Ex.3 which was a video of Petitioner being assaulted on the job by Mr. Crosby. Respondent played the video for the court. The Arbitrator notes that the video clearly shows Mr. Crosby striking Petitioner in the head with an object, knocking him to the ground. The video also specially shows that Petitioner made no threatening gestures toward Mr. Crosby prior to the assault. The video had no audio.

CARL CROSBY TESTIMONY REGARDING THE ASSAULT

Respondent called Carl Crosby to testify. Mr. Crosby testified that his job title was “custodian” and his job duties were keeping the garage clean, making sure that the ambulance had supplies etc.

Mr. Crosby testified that he first saw Petitioner on the day of the accident as Mr. Crosby was coming back from putting towels into a washer. Mr. Crosby testified that Petitioner had backed his personal vehicle into the garage.

Mr. Crosby then started discussing company policies regarding washing personal vehicles on the job.

Mr. Crosby testified that he said that employees are supposed to wash the work vehicles before washing their personal vehicles.

Mr. Crosby testified that allegedly, Petitioner became upset, started yelling and began running towards Mr. Crosby. Mr. Crosby claimed that Petitioner was screaming at him and that “Petitioner touched him”.

Mr. Crosby testified that Petitioner “got into his personal space” and he felt threated and therefore punched him.

The Arbitrator has had the opportunity to view Respondents Ex. 3. a video of the interaction.

PETITIONER’S MEDICAL CARE

Petitioner testified that Mr. Crosby handed Petitioner a towel as he was dripping blood from his face and chin. Petitioner testified that in addition to his face and chin, his right side of his body hurt, and he could not raise his right arm. Petitioner testified that the Respondent did not arrange for medical care and accordingly, Petitioner sought medical care on his own at Provident Hospital.

Petitioner stated that he advised the emergency room staff about losing consciousness and testified that he received 5 stiches at the emergency room and that there was a CT scan preformed of his head. Petitioner testified that he was discharged from the emergency room with instructions to follow up for further medical care.

Petitioner testified that he followed up for further medical care on October 7, 2022, with Dr. Barnabas, complaining of his neck, back, shoulder and head. Petitioner testified that Dr. Barnabas examined him and made a recommendation for physical therapy, lidocaine patches, and MRI and recommended that Petitioner be off work. Petitioner had the recommended MRIs of the right shoulder, neck and back on October 31, 2022.

Upon receipt of the MRI results, Petitioner testified that Dr. Barnabas recommended a consultation with a pain doctor and referred Petitioner to Parkview Orthopedic Group wherein he was first seen on November 10, 2022.

Petitioner testified that the physical therapy he had helped his shoulder but It failed to resolve or fix the problem. It only gave him some temporary relief. Petitioner testified that the physical therapy did not even temporarily relieve the spine. Petitioner testified that ultimately, Parkview Orthopedics recommended right shoulder surgery and Petitioner was released to return to work on November 10, 2022, pending the right shoulder surgery.

Petitioner testified that upon receipt of the release to return to return to work, he found himself a light duty job. Petitioner testified that he wants to have the right shoulder surgery which was recommended to him and wants to have injections to the lower back.

Petitioner admits to having a motor vehicle collision on October 21, 2022, wherein he complained of his neck and back but not his shoulder.

MEDICAL EVIDENCE

Petitioner's Ex.1 are the subpoenaed records and bills of Provident Hospital of Cook County.

The records of Provident Hospital describe a history of being hit in the face by an object while working causing loss of consciousness along with bleeding, left sided jaw pain and headache.

Petitioner was examined and his wounds were stitched. A CT scan of the head was read as being normal.

Petitioner was next seen by Ravi Barnabas MD.

Dr. Barnabas first saw Petitioner on 11/7/2022 wherein MRIs of the right shoulder, neck and lower back were ordered along with lidocaine patches, physical therapy, and a pain medicine consultation.

The MRI of the right shoulder taken on October 31, 2022, revealed a full thickness tear of the supraspinatus and infraspinatus tendons with 4.1-centimeter tendon retraction and tearing and medial dislocation of the bicep tendon.

Dr. Barnabas gave Petitioner written disability slips and referred him to pain medicine along with an orthopedic consultation for his shoulder. The pain medicine consultation was for complaints relative to the lower back and the aforesaid MRIs were performed at Nella Diagnostic.

The lower back was addressed by the Pain Center of Illinois during a visit on December 14, 2022, and lumbar medial brand blocks at L3, L4 and L5 were recommended.

With reference to the right shoulder injuries, the records of Parkview Orthopedics Group are contained in Petitioner's Ex.4.

Parkview Orthopedics was provided with the results of the October 31, 2022, MRI results. On November 10, 2022, Dr. Shaw of Parkview recommended that Petitioner stop physical therapy to the right shoulder and proceed with right shoulder arthroscopic, rotator cuff repair.

Petitioner desires to proceed with the right shoulder arthroscopy recommended by Parkview however, to date, this procedure has not been approved by Respondent.

MEDICAL DOCUMENTATION PROVIDED BY RESPONDENT

Respondent did not present a section 12 examination report, nor did they request that Petitioner present himself for a Section 12 examination.

Respondent introduced into evidence, a record from Roseland Community Hospital documenting a rear end motor vehicle collision which took place on October 21, 2022, alleging a lower back injury.

CONCLUSIONS OF LAW

C. whether the accident occurred and arose out of Petitioners employment with the Respondent?

Petitioner testified that the assault by coworker Crosby took place toward the end of the workday. The testimony of Crosby confirms the fact that the encounter between Petitioner and Crosby began when Crosby approached Petitioner and Crosby initiated a conversation regarding company policy relative to the washing of the employer's vehicles and the employee's personal vehicles at the Pershing garage.

Petitioner states that he did not want to engage in a debate with Mr. Crosby and waived him away. Mr. Crosby testified that allegedly, Petitioner became upset starting yelling and "started running" towards him. Crosby testified that Petitioner "touched me". (Tr. 66). Crosby testified that when Petitioner got into his personal space, he punched him Arbitrator concludes that Petitioners credible testimony taken with the video of the incident, and the incredible testimony of Crosby that the attack on the Petitioner was completely unprovoked, therefore. Arbitrator finds the accident arose out of employment with the Respondent.

In support of the arbitrator findings Arbitrator considered Bassgar, Inc v Illinois Workers Compensation Commission 394 I11. App. 3d 1079 (I11.App. Ct. 2009) a case which involved a disagreement between Bassgar and a coworker regarding the discharge of claimant for failure to complete an entire route. The claimant in Bassgar, like Petitioner Rickey Wilkins, "waived off" the coworker and turned to walk to his truck when, in the corner of his eye Bassgar observed a coworker coming at him at full speed, grabbing him from behind and falling onto a table. Bassgar stands for the proposition that an injury resulting from a fight between two employees involving a work-related issue is considered a risk incidental to the employment and is therefor compensable. Further, the principal known as the" aggressor defense" provides that even if a

fight is work related, an injury to the aggressor is not compensable. Clearly, the last conversation which Petitioner and Crosby had herein was with reference to company policy regarding the washing of personal vehicles at the Pershing garage. Furthermore, it is clear Crosby was the aggressor who struck Petitioner in the head with an object when Petitioner waived him away, not wanting to engage in a conversation.

Accordingly, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent.

F. Whether Petitioners current condition of ill-being is casually related to the injury?
J. Medical services.

Petitioner is seeking approval for a prospective right shoulder surgery and lumbar injections.

The Arbitrator notes that Petitioner complained of right shoulder pain immediately at the scene of the occurrence. The Arbitrator notes that Dr. Barnabas referred Petitioner to Dr. Shah at Parkview Orthopedics and based upon the positive MRI result of October 31, 2022, it was recommended by Dr. Shah that Petitioner discontinue physical therapy to the shoulder and instead proceed with right shoulder arthroscopy. The arbitrator notes that Respondent presented no medical evidence whatsoever to contradict or question Dr. Shah's recommendation for right shoulder arthroscopy because of the assault at work on September 29, 2022.

With reference to the injuries to Petitioner's lumbar spine and the lumbar injections recommended by the Pain Center of Illinois, the Arbitrator notes that Respondent introduces into evidence the records of Roseland Community Hospital wherein apparently Petitioner sought treatment for lower back pain because of a motor vehicle collision which took place on October 21, 2022.

Arbitrator notes that there was no evidence introduced connecting the car accident with the injury at hand.

Accordingly, the Arbitrator finds that Petitioner's current condition of ill being with reference to the right shoulder and low back is casually related to the accident of September 29, 2022.

And as such Arbitrator finds that Respondent is responsible for the medical bills incurred by Petitioner contained in Petitioner's exb 1-8 with a pre fee scheduled total of $27,578.87 and orders Respondent to pay for the prescribed right shoulder arthroscopy and lumbar injections and to pay to Petitioner the fee scheduled sum of the medical bills incurred to date.

K. TTD

Based upon the aforesaid and the notes of Dr. Barnabas, the Arbitrator finds that Petitioner is entitled to TTD from 9/30/2022 through 11/9/2022 representing 6 weeks of compensation. Respondent is entitled to a credit for the advance of TTD in the amount of $4,080.00.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC030904
Case Name	Thomas De Met v. Mannheim School District 83 – Westdale Elementary School
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0276
Number of Pages of Decision	14
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Janna Miller Midura

DATE FILED: 6/11/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas De Met,
Petitioner,

vs. NO: 22 WC 30904

Mannheim School District 83-Westdate Elementary,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and 8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 11, 2023, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision

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

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

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

June 11, 2024

o6/5/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC030904
Case Name	Thomas De Met, v. Mannheim School District 83- Westdale Elementary School
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Janna Miller Midura

DATE FILED: 10/11/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 11, 2023 5.32%

/s/ Antara Nath Rivera, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b) & 8(a)

THOMAS DE MET,
Employee/Petitioner

v.

MANNHEIM SCHOOL DISTRICT 83-WESTDALE ELEMENTARY,
Employer/Respondent

Case # **22** WC **030904**

Consolidated cases: **None**

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 **Antara Nath Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **August 9, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **January 31, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**55,434.08**; the average weekly wage was $**1,066.04**.

On the date of accident, Petitioner was **34** years of age, ***single*** with **0** dependent children.

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

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

ORDER

Medical Benefits

Respondent shall pay all reasonable and necessary medical services, incurred, pursuant to the medical fee schedule and as outlined in PX 3 as provided in Sections 8(a) and 8.2 of the Act.

Prospective Medical

Respondent shall approve and pay for the surgery to his left arm, as recommended by Dr. Shah, as provided in Section 8(a) and 8.2 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

OCTOBER 11, 2023

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas De Met,	)	
	)	
Petitioner,	)	
	)	Case No. 22WC030904
v.	)	
	)	
Mannheim School District 83-Westdale Elementary,	)	
	)	
Respondent.	)	

This matter proceeded to hearing on August 9, 2023, in Chicago, Illinois before Arbitrator Antara Nath Rivera on Petitioner's Request for Hearing. Issues in dispute include causal connection, medical bills, and prospective medical. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Thomas De Met ("Petitioner") testified that he was employed by Mannheim School District 83-Westdale Elementary ("Respondent") as a physical education teacher. (Transcript "T." 11-12) Petitioner testified that he began working for Respondent August 2021 and was employed with Respondent in January 2022. (T. 12-13) Petitioner testified that prior to working with Respondent he worked in other schools as a physical education teacher. *Id*. Petitioner testified that his job duties included setting up equipment for lessons he was teaching, taking the lessons apart, switching lessons for different grade levels, instructing classes, demonstrating, teaching, and reflecting on what was taught (T. 13) Petitioner testified that each class was 30 minutes, but only five minutes of that time for demonstration was physically intensive. *Id*.

Prior Medical Condition

Petitioner testified that he experienced pain in left arm or left elbow in the past, on or about September 14, 2020. (T. 18; Respondent's Exhibit "RX" 2 at 16, 22, 25, 30, 33) Petitioner testified that he noticed pain around his elbow and swelling around his left elbow. *Id*. Petitioner testified that right hand dominant. *Id*. Petitioner testified that this was not a result of an accident or injury and that it was just "an onset of pain." (T. 18-19) Petitioner testified that he sought medical treatment with his primary doctor, Dr. Georgios Karanastasis, M.D.. (T. 19) Petitioner testified that he recommended that Petitioner consult with an orthopedic doctor. (T. 19-20) Petitioner testified that he went to see Dr. James Leonard M.D., at Midwest Orthopedic Consultants. (T. 20-21)

On October 19, 2020, Petitioner presented to Dr. Leonard. (T. 21) Petitioner testified that Dr. Leonard recommended ice, at home exercises, and medication. *Id*. Petitioner testified that when he went back to Dr. Leonard on November 2, 2020, he was slightly better. (T. 22) Dr. Leonard diagnosed Petitioner with "left olecranon bursitis and distal triceps tendinitis with possible underlying gout, showing improvements" and continued to recommend ice, Naproxen, increasing his activities as tolerated, rest, elevation and an at-home exercise program. (T. 63; RX 2 at 17) Petitioner testified that he was working in a normal capacity throughout treatment full duty with no limits. (T. 22-23)

Petitioner testified that, on March 22, 2021, he went back to Dr. Leonard because his pain increased in left elbow. (T. 23-25, 64; RX 2 at 22-24) Dr. Leonard diagnosed him with left distal triceps tendonitis and recommended that Petitioner start physical therapy (RX 2 at 23-24) Petitioner testified that he went to physical therapy for his arm for three weeks at Midwest Orthopaedics. (T. 57-58, RX 2 at 25)

Petitioner testified that returned to Dr. Leonard on May 5, 2021. (T. 25) Medical records indicated that Petitioner reported pain, tenderness and significant swelling in his left elbow and his elbow extension strength had decreased (T. 64-65, 67; RX 2 at 25-26) Dr. Leonard ordered an MRI because Petitioner's elbow was not getting better (T. 26, 70, 74; RX 2 at 27) The MRI, performed on May 25, 2021, revealed "[d]istal triceps tendinopathy, tendinitis and possible intrasubstance tear at its attachment to the olecranon" (RX 2 at 55-57)

On May 27, 2021, Petitioner returned to see Dr. Leonard with complaints of continued pain. (T. 27, 75; RX 2 at 30-32) Dr. Leonard's medical records from that date indicate that Petitioner's diagnostic test findings indicated "[l] Elbow-distal triceps tendinopathy with partial thickness triceps tear." (RX 2 at 31)

Petitioner testified that he did not see any doctors for his left elbow and continued his job full duty no restrictions until the January 31, 2022, accident. (T. 28) Petitioner testified that Dr. Leonard never recommended injections or surgery. (T. 28-29) Petitioner testified that he had no symptoms or pain during that time. (T. 25) Petitioner further testified that his strength was 5/5. *Id*.

Accident

Petitioner testified that he was working his regular shift and sustained a work injury at around 8:10 a.m.. (T. 14) Petitioner testified that he was attempting to transfer a balance board, which weighed 50 pounds, from the storage rack to a wheeled cart. (T. 15-17) He testified that when he attempted to lift and transfer the aforementioned balance board using both arms, he felt a pop in his left elbow area. *Id.* Petitioner testified that he felt immediate pain in his left arm and left elbow. *Id*. Petitioner testified that he was holding one portion of balance board with right hand and other with left arm. *Id*.

He testified that he was able to finish his shift that day, but did so in pain. (T. 17) He testified that when he woke up the following day, his symptoms were worse and that he informed his assistant principal Andy Petroline, that he needed medical attention. (T. 30) He testified that he was sent to Concentra by his employer for treatment. (T. 30-31)

Summary of Medical Records

On February 1, 2022, Petitioner presented to Concentra. (Petitioner's Exhibit "PX" 1) Petitioner reported that he injured his left arm while attempting to lift a balance board weighing 45-50 pounds. (PX 1 at 66) Petitioner complained of left upper extremity pain, which is constant with movement of the arm in all positions. *Id*. He also complained of swelling and weakness. *Id*. Physical examination revealed, reduced strength of his left triceps, reduced tendon reflexes, and super posterior forearm tenderness. (PX 1 at 68) Dr. Nancy Cotton, D.O., diagnosed Petitioner with left triceps strain and left forearm strain. (PX 44; 70) Petitioner was prescribed topical muscle cream, Naproxen, was placed in a sling, and was referred to physical therapy. (PX 1 at 65-70) He was also placed on light duty with no use of the left arm, which Respondent accommodated. (T. 31-32; PX 1 at 66-70)

On February 3, 2022, Petitioner returned for follow-up and complained of a lot of pain when he moved his left arm and when lay down. (PX 1 at 15-17) Dr. Eric Griffin, M.D., diagnosed Petitioner with left triceps strain and left forearm strain, gave Petitioner an elbow sleeve, recommended physical therapy, and continued modified work activities. *Id*.

On February 10, 2022, Petitioner returned for another follow-up at Concentra, with continued complaints of left elbow pain, forearm pain, and weakness. (PX 1 at 25) The record noted tenderness in the dorsal and distal areas of the triceps, tenderness in the olecranon bursa and medial epicondyle of the left elbow, and decreased bilateral deep tendon reflexes in the elbow. (PX 1 at 26) The record indicated that Petitioner was now only 25% of the way to meeting the physical requirements of his job, compared to 50% the previous visit. showing signs of regression. *Id*. He was prescribed naproxen, kept on light duty and was placed in an elastic elbow strap. *Id.*

Petitioner testified that he went to Impact physical therapy. (T. 83) Impact Physical Therapy records, dated March 14, 2022, indicated that Petitioner was working full time and full duty, with no restrictions (T. 83, PX 4 at 45) Petitioner stated he set personal restrictions because he knew how to limit his arm use. (T. 83)

On February 24, 2022, Petitioner presented to Concentra with complaints of pain. (PX 1 at 1-5) The record noted that the pain radiated to the distal triceps and forearm area. *Id*. Petitioner was instructed to continue physical therapy and was kept on light duty, which was modified to occasional lifting up to 20 pounds and occasional pushing/pulling up to 20 pounds. *Id.* Petitioner testified that Respondent continued to accommodate with that.

On May 17, 2022, Petitioner returned to Concentra and reported that that his symptoms were worse. (PX 1 at 52) Petitioner testified that his symptoms worsened because of setting up equipment at school for Field Day. (T. 37) Petitioner was instructed to stop taking Meloxicam, was prescribed Flexeril and heat packs, and was kept on the same light duty restriction, pending orthopedic consult. *Id*.

On October 28, 2022, Petitioner presented to Chicago Ridge Medical Imaging for an MRI of the left elbow without contrast. (PX 2 at 63-64) The MRI revealed significant partial tearing of the triceps tendon with triceps insertion 50% or greater, moderate radio capitellar and humeroulnar joint effusion, acute left biceps brachii and brachioradialis grade 1 myogenic strain, and acute posteriorly oriented subcutaneous edema. (PX 2 at 2, 64)

On October 31, 2022, Petitioner presented to orthopedic surgeon Dr. Nirav Shah, M.D., at Parkview Orthopaedic Group, for an initial evaluation. (PX 2 at 2-6) The record noted a history of the work injury and noted Petitioner's complaints of significant pain and weakness in his left arm and elbow. (PX 2 at 4) The record also indicated that following his last visit with Concentra, Petitioner was off work for the summer so he was able to limit his activities and had minimal pain as a result. *Id*. The record further noted that once school started again and he returned to work, carrying out his duties caused significant pain and weakness in the left arm and elbow. *Id*. Dr. Shah reviewed the MRI and diagnosed Petitioner with "partial thickness tear with significant partial thickness tearing of the triceps tendon with the triceps insertion." (PX 2 at 2) Dr. Shah recommended an "open triceps tendon debridement and repair." *Id.* The records indicated that Petitioner wanted to proceed with the surgery. *Id*. Petitioner testified that he did not get the surgery because the surgery was not approved by his employer. (T. 41)

On December 5, 2022, Petitioner went to Section 12 examination with David Saper, M.D., for an independent medical examination ("IME") at the request of his employer. (RX 4) Petitioner brought with him to the examination the disc containing the MRI of the right elbow ordered by Dr. Shah dated October 27, 2022. (T. 40-43, 46, RX 4) Dr. Saper noted that Petitioner's had pre-existing conditions, including partial tear of the triceps, which was the likely cause of his pain. *Id*. Dr. Saper opined that Petitioner's pain was attributable to his 2020 injury not the January 31, 2021, injury. *Id*. Dr. Saper opined that surgery was indicated and reasonable for Petitioner, given his condition but opined that it was not related to the January 31, 2022, injury. (RX 4 at 4) Petitioner testified that he was there for about two hours but face to face less than five minutes.

Dr. Saper prepared an addendum report dated July 31, 2023. (RX 5) The report noted, "[h]is alleged work-related exposure did not accelerate the natural history or permanently alter his course. I am in agreement with his treating provider that surgery should be considered, however, in my opinion it is not related to his work-related exposure and is related to his pre-existing disease based on imaging. ….Thus, my opinion based on review of the records and imaging are unchanged." (RX 5)

On December 14, 2022, Petitioner returned to Dr. Shah. (PX 2 at 1)The record indicated that Dr. Shah recommended proceeding with the surgery. *Id*. Petitioner testified that as of the time of hearing, his symptoms have not improved. (T. 47-48) He also testified that since being seen by Dr. Shah on December 14, 2022, he has not re-injured his left arm or left elbow in any way. (T. 48)

Petitioner presented evidence at trial of unpaid medical bills in the amount of $300.00. (PX 3)

CONCLUSIONS OF LAW

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

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

Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

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

WITH RESPECT TO ISSUE (F), IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CASUALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Causation between the work-related accident and condition of ill-being can be established by showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator finds Petitioner's current condition of ill-being is causally related to his work injury of January 31, 2022. The Arbitrator notes that Petitioner had a pre-existing left elbow pain and diagnosis of partial thickness triceps tear. (RX 2 at 31) The Arbitrator notes that based on the evidence presented, Petitioner physically healed from that condition as Petitioner worked full duty with no restrictions and did not return to the doctor for several months. (T. 28) The Arbitrator notes that based on the medical evidence presented, while Petitioner's current diagnosis of partial thickness triceps tear was related to the January 31, 2022, work related injury, his condition may have also been aggravated.

The Arbitrator notes that when Petitioner attempted to transfer a balance board, from the storage rack to a wheeled cart, he sustained an injury when he felt a pop in his left elbow area. (T. 15-17) Petitioner testified that he felt immediate pain in his left arm and left elbow. *Id*.

The Arbitrator notes that Dr. Cotton diagnosed Petitioner with left triceps strain and left forearm strain. (PX 44; 70) The Arbitrator notes that Dr. Griffin diagnosed Petitioner with left triceps strain and left forearm strain. (PX 1 at 15-17) The Arbitrator notes that, based on the MRI, Dr. Shah diagnosed Petitioner with "partial thickness tear with significant partial thickness tearing of the triceps tendon with the triceps insertion." (PX 2 at 2) The Arbitrator notes that Dr. Shah recommended an "open triceps tendon debridement and repair." *Id.* The Arbitrator notes that Petitioner testified that as of the time of hearing, his symptoms have not improved. (T. 47-48)

The Arbitrator further notes that Dr. Saper noted that Petitioner's had pre-existing conditions, including partial tear of the triceps, which was the likely cause of his pain. (RX 4) The Arbitrator notes that Dr. Saper opined that Petitioner's pain was attributable to his 2020 injury not the January 31, 2021, injury.

Thus, based on Petitioner's testimony and the medical records presented, the Arbitrator finds the diagnosis of Dr. Cotton, Dr. Griffin, and Dr. Shah to be more persuasive and finds that Petitioner's current condition of ill-being, with respect to his left arm, is causally related to the accident of January 31, 2022.

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

Section 8(a) of the Act states a Respondent is responsible "…for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. *See Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

As the Arbitrator found that Petitioner's current condition of ill-being was causally connected to the work-related accident, the Arbitrator finds that the medical treatment and services Petitioner received were reasonable and necessary. (PX 1, PX 2, PX 4, and PX 5) The Arbitrator notes that Petitioner incurred a total of $300.00 in charges, from Parkview Orthopedics, for treatment received. (PX 3)

Thus, the Arbitrator finds that Respondent shall pay all reasonable and necessary medical services, incurred, pursuant to the medical fee schedule and as outlined in PX 3 as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHETHER PETITIONER IS ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

As the Arbitrator found that Petitioner's current condition of ill-being, with respect to his left arm, was causally related to the injuries sustained on January 31, 2022, and that medical services provided, thus far, were reasonable and necessary, the Arbitrator finds that the Petitioner is entitled to the surgery, specifically, an "open triceps tendon debridement and repair" as recommended by Dr. Shah. (PX 2)

As such, the Arbitrator finds that Respondent shall approve and pay for the surgery to his left arm, as recommended by Dr. Shah, as provided in Section 8(a) and 8.2 of the Act.

It is so ordered:

Arbitrator Antara Nath Rivera

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002196
Case Name	Giuseppe Caputo v. County of Cook
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0277
Number of Pages of Decision	24
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Rocco Motto
Respondent Attorney	Jason Stetz

DATE FILED: 6/11/2024

/s/Christopher Harris, Commissioner

Signature

DISSENT: /s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GIUSEPPE CAPUTO,

Petitioner,

vs. NO: 20 WC 2196

COUNTY OF COOK,

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 notice, causal connection, medical expenses, temporary total disability (TTD) benefits and permanent partial disability (PPD) benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's Decision finding that Petitioner proved that he sustained an accidental injury on October 18, 2019 that arose out of and in the course of his employment by Respondent but reverses the Arbitrator's Decision regarding notice. Pursuant to Section 6(c) of the Act, notice of the accident shall be given to the employer no later than 45 days after the accident and may be given orally or in writing. Here, the Commission finds credible Petitioner's testimony that he gave oral notice of his work injury to his supervisor, Theresa O'Donnell, within the 45-day deadline as required under the Act.[1] Ms. O'Donnell did not provide testimony in this claim to corroborate Petitioner. Nevertheless, the Commission, in its province to weigh the evidence and draw reasonable inferences therefrom, finds that the preponderance of the evidence supports Petitioner's claim regarding timely notice. *Niles Police Dep't v. Indus. Comm'n*, 83 Ill. 2d 528, 533-34 (1981).

Bridget Price, Respondent's witness and manager of custodian services, testified that it would have been appropriate for Petitioner to report his work injury to Ms. O'Donnell because she

[1] Petitioner similarly testified to giving Ms. O'Donnell oral notice of his work injury during a pre-disciplinary hearing held by Respondent on July 29, 2020. (Resp. Ex. 1).

was a supervisor. The Commission also notes that although the follow-through after Petitioner provided notice to his supervisor was not immediate, or per Respondent's procedures for handling work injuries, and, not within 45 days after the accident, Petitioner had testified that this was the first time he had to report a work injury in the 22 years he had worked for Respondent. Medical evidence additionally revealed that Petitioner, whose primary language was Italian, required assistance due to the language barrier and confusion. Petitioner was not functionally illiterate but the Commission makes the reasonable inference that he may not have understood precisely Respondent's entire protocol for addressing work accidents. He knew enough, however, to complete the first step, which according to Ms. Price, was to notify his supervisor. The Commission therefore finds that Petitioner provided timely notice of his work accident to Respondent as required under the Act.

The Commission next addresses the issue of causal connection. The Arbitrator discussed this issue even though he denied Petitioner's claim based on lack of notice. The Arbitrator stated that Petitioner's condition of ill-being in his right shoulder was causally related to the October 18, 2019 work accident and that Respondent offered no evidence rebutting causation. The Commission agrees.

Petitioner denied having any injuries, limitations or treatment related to his right shoulder prior to October 18, 2019. On that date, he was emptying trash at work and felt a blow or crack in his right shoulder as he lifted a garbage bag about shoulder height. Petitioner testified that his right shoulder hurt immediately after the accident with subsequent increasing, sharp pain. He sought treatment for his right shoulder on October 21, 2019. The visit note documented that Petitioner had right shoulder pain that had worsened in the past few days, he had limited range of motion and was not able to raise his arm. The medical records thereafter documented Petitioner's injury while throwing away garbage and his continued complaints in his right arm and shoulder. He underwent a steroid injection and physical therapy.

On January 22, 2020, Petitioner began treating with Dr. Adam Meisel, a board-certified orthopedic surgeon, who noted that conservative treatment had not improved Petitioner's right shoulder condition. Petitioner reported joint pain and stiffness and physical examination revealed significant external rotation lag, weakness with Hornblower's test, positive drop arm and a pseudoparalytic-type exam with forward flexion and abduction. Dr. Meisel reviewed the December 16, 2019 MRI of the right shoulder and stated that it demonstrated a 5-cm complete tear of the supraspinatus and infraspinatus that was retracted with atrophy. The subscapularis was intact and Petitioner had glenohumeral joint arthritis. He diagnosed Petitioner with a right shoulder massive rotator cuff tear with pseudoparalytic exam and glenohumeral degenerative joint disease. Dr. Meisel recommended reverse total shoulder arthroplasty given the amount of arthritis, the massive retracted tear, Petitioner's age and evidence of atrophy. Petitioner proceeded with the surgery on October 8, 2020. His post-operative diagnosis was right rotator cuff tear arthropathy.

Dr. Meisel testified that was he not aware of any history as it related to Petitioner's right shoulder condition prior to October 2019. He also confirmed that what he observed intra-operatively was consistent with the MRI findings. Dr. Meisel opined that Petitioner sustained an exacerbation or worsening of a chronic rotator cuff tear. He explained that Petitioner had some atrophy on the MRI to indicate chronicity of portions of the tear, but there was also some muscle

that did not appear chronically torn. "He had acute change in his subjective function of being able to do overhead activities and work as a custodian or janitor to having a pseudoparalytic exam, which is a dramatic change." (Pet. Ex. 6, pgs. 24-25).

The Commission finds that the preponderance of the evidence supports a finding that Petitioner's current condition of ill-being in his right shoulder is causally related to the October 18, 2019 work accident. The Commission finds no other evidence to the contrary as previously noted. Based on this, the Commission finds that Petitioner is entitled to workers' compensation benefits.

The Arbitrator had considered the issues of medical expenses and TTD benefits moot but still provided discussion on these issues. The Arbitrator stated that the medical services provided to Petitioner were reasonable and necessary as were the fees and charges related to those services. Respondent offered no evidence rebutting the reasonableness and necessity of medical care and on the Request for Hearing form, Respondent marked that it disputed the bills based on no liability. Having found that Petitioner established accident, proper notice and causal connection for his right shoulder condition, the Commission agrees with the Arbitrator's analysis related to medical bills and awards the reasonable, necessary and related expenses detailed in Petitioner's Exhibit 7.

With respect to TTD benefits, Dr. Meisel provided Petitioner with a work status form on January 22, 2020 which stated that Petitioner should be excused from work until further notice. Dr. Meisel testified at his deposition, on March 30, 2021, that he had not yet released Petitioner to work and stated that Petitioner was not at maximum medical improvement (MMI). By the Request for Hearing form, Petitioner requested TTD benefits from the accident date through October 20, 2021, the last date Petitioner saw Dr. Meisel. At arbitration, Petitioner confirmed that he did not have any future appointments with Dr. Meisel for his right shoulder. Respondent disputed Petitioner's entitlement to TTD benefits based on no liability. The Commission, having previously determined a compensable work accident, further awards Petitioner TTD benefits from January 22, 2020 through October 20, 2021. This TTD period conforms with the proofs and the Arbitrator's Decision is modified accordingly.

Finally, the Commission modifies the Arbitrator's Decision related to PPD benefits as the Arbitrator had also rendered this issue moot. The Commission weighs the five factors under Section 8.1b of the Act as follows:

(i) Impairment Rating: The parties did not offer any impairment rating into evidence. The Commission gives this factor no weight.

(ii) Occupation of Injured Employee: Prior to his work-related accident on October 18, 2019, Petitioner had worked for 22 years as a janitor for Respondent. Although Dr. Meisel had not yet released Petitioner to return to work as of his deposition on March 30, 2021, he indicated that he would recommend permanent restrictions with occasional lifting overhead or away from the body of 10 to 15 pounds given that Petitioner was 77 years old and had undergone a shoulder arthroplasty. He also did not believe Petitioner could return to his former work as a custodian. Petitioner testified that he retired from working in February 2021. The Commission gives this factor moderate weight.

(iii) Petitioner's Age: Petitioner was 75 years old on the accident date; neither party submitted evidence into the record which would indicate the impact of the Petitioner's age on any permanent disability resulting from the work accident. The Commission gives this factor no weight.

(iv) Petitioner's Future Earning Capacity: There is no evidence in the record as to reduced earning capacity. The Commission gives this factor no weight.

(v) Evidence of Disability: Evidence of Petitioner's disability is corroborated by the treating medical records. Following the October 18, 2019 work accident, Petitioner was diagnosed with a right shoulder massive rotator cuff tear that necessitated a steroid injection, physical therapy and a right reverse total shoulder arthroplasty. His post-operative diagnosis was right rotator cuff tear arthropathy. Petitioner testified that his pain level fluctuated and depended on the weather but that it was always there. He sometimes took two Tylenols a day for the pain.

Petitioner confirmed that he did not have any future appointments with Dr. Meisel for his right shoulder and his pain level was a three out of 10 as of the arbitration date. He testified that he had difficulty when raising his shoulder, with shaving, lifting more than three or four pounds and his arm would shake when drinking coffee. Petitioner's wife also helped with some household chores. The Commission gives this factor significant weight.

In light of the foregoing, with no single enumerated factor being the sole determinant of disability, the Commission finds that Petitioner is entitled to twenty-percent (20%) loss of the person as a whole pursuant to Section 8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 21, 2023 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable, necessary, and related medical bills consistent with this Decision, and as detailed in Petitioner's Exhibit 7, pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $616.50 per week for 91 1/7 weeks, from January 22, 2020 through October 20, 2021, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $554.85 per week for 100 weeks because the injuries sustained caused twenty-percent (20%) loss of the person as a whole as provided in Section 8(d)2 of the Act.

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

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

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

June 11, 2024

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

CAH/pm
O: 5/23/24
052

/s/ *Marc Parker*
Marc Parker

DISSENT

I respectfully dissent from the Majority Decision and would instead affirm the Arbitrator's Decision on the basis that Respondent's evidence, by way of witness testimony and documentation, was more persuasive and materially outweighed Petitioner's lone, uncorroborated testimony on the issue of notice.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002196
Case Name	Giuseppe Caputo v. County of Cook
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Rocco Motto
Respondent Attorney	Jason Stetz

DATE FILED: 7/21/2023

/s/Steven Fruth, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEEK OF JULY 18, 2023 5.25%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

GIUSEPPE CAPUTO
Employee/Petitioner

v.

COUNTY OF COOK
Employer/Respondent

Case # **20 WC 2196**

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 **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **November 30, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

O. ☐ Other _____

FINDINGS

On **October 18, 2019**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident ***was*** **not** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**48,087.00**; the average weekly wage was $**924.75**.

On the date of accident, Petitioner was **76** years of age, ***married*** with **0** dependent children.

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

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

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

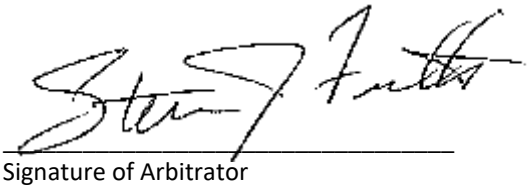
Respondent is entitled to a credit of $**0** under §8(j) of the Act.

ORDER

The Arbitrator has found that Petitioner failed to give timely notice of his claim accidental injury within the period prescribed by §6(c) of the Act. Therefore, Petitioner's Application for Benefits is denied.

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

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



Signature of Arbitrator

July 21, 2023

Giuseppe Caputo v. County of Cook
20 WC 2196

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to 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? TTD; ***L:*** What is the nature and extent of the injury?

Petitioner claims TTD benefits from October 18, 2019 through October 20, 2021, 104 & 5/7 weeks, which Respondent disputes.

Respondent's oral motion to continue trial was denied for failure to identify the proposed witness or what evidence the witness would give and for failure to exercise diligence in determining what the evidence would be and in securing the appearance of the witness.

Petitioner testified through an Italian translator.

FINDINGS OF FACT

Petitioner Giuseppe Caputo was born on March 8, 1944. He completed the 3rd grade in Italy. Petitioner testified he does not have any special skills or certifications. Petitioner testified that he had never sustained an injury to his right shoulder with any past employers prior to working for Respondent County of Cook.

Petitioner began working for Respondent on February 3, 1997 as a janitor/custodian. He worked the 3:00 p.m. to 11:00 p.m. shift. He maintained this position through October 18, 2019. As a janitor/custodian, he mopped floors, threw out garbage, and cleaned everything. He testified he had to empty bags of garbage from small garbage cans and place them in a bigger container. When all small garbage cans were empty, he would then have to take the bigger container and dump it into an even bigger container. Petitioner testified the bigger container would be between 20 to 40 pounds. He testified that prior to October 18, 2019 he did not have any physical restrictions, limitations, and was not under medical care for his right shoulder.

Petitioner testified that while performing his normal job duties on October 18, 2019, roughly between 6:00 p.m. to 7:00 p.m., he was emptying small trash bags and putting them into a bigger bag. When he attempted to lift the bigger bag, he felt "a blow in my shoulder, a crack." He would normally lift the big bag from the ground to shoulder height. Immediately after the injury, Petitioner had sharp pain in his right shoulder, a pain that he had never experienced before. He went on and finished his shift.

Petitioner testified that he and his immediate supervisor, Theresa, worked different shifts and that his immediate supervisor was not present at the time of injury. He testified that he notified his supervisor of his injury on October 22, 2019. Petitioner further testified that he told his supervisor that he hurt his shoulder when lifting the garbage. His supervisor then told him to write a paper, but he did not know what his supervisor was referring to. This was the first time Petitioner ever had to report a work injury.

Petitioner sought treatment at Advocate Medical Group on October 21, 2019. Typically, Petitioner's daughter would accompany him to his medical appointments to act as his translator. However, she was not able to attend this appointment. The medical chart note states that the patient presents with right shoulder pain which increased Friday night and could not lift (PX #2).

Petitioner returned to Advocate Medical Group on October 31, 2019, and was seen by his primary care physician, Dr. Andrew Macri. Petitioner was seen for pre-operative clearance for a non-work related left total knee replacement scheduled for on November 14, 2019. The medical chart note documented Petitioner's complaints of right shoulder pain when lifting garbage (PX #2). history of trauma while lifting garbage. Petitioner testified that Dr. Macri recommended a right shoulder MRI and referred him to an orthopedic surgeon.

Petitioner testified he presented to MidAmerica Orthopaedics on November 7, 2019, and was seen by Dr. Beverlee Brisbin. The medical chart noted documented his history of lifting to put garbage in a container and he felt acute pain in his right shoulder. Petitioner testified that he told the doctor he was lifting garbage at work on October 18, 2019. Dr. Brisbin gave him a steroid injection and recommended physical therapy. Petitioner testified that the injection and physical therapy did not provide relief. Dr. Brisbin referred him to Dr. Adam Meisel, also with MidAmerica Orthopedics.

Petitioner testified that he understood the MRI showed a full thickness rear of his right rotator cuff.

Petitioner testified that Dr. Meisel took over his care on January 22, 2020. Dr. Meisel performed a total shoulder replacement on October 8, 2020. Petitioner explained the delay was due to the pandemic. Petitioner testified that his post-operative care was broken up due to his COVID infection and issues with his knee replacement. He changed therapists. He testified that he still had constant shoulder pain after surgery.

Petitioner testified that he was supposed to return to work in February but had to be hospitalized for 4 days to "open" his knee and give him antibiotics.

Petitioner testified that he still has shoulder pain. He takes Tylenol for relief. He testified he was forced to retire. He planned to work another 2 years. Petitioner testified that because of his continuing pain he "couldn't do anything." He can't shave or eat. He can't lift more than 3 or 4 pounds.

Bridget Price testified at trial on behalf of Respondent. She is employed by the Cook County Department Facilities Management as the manager of custodian services. As part of her duties, she oversees the janitorial services for all courthouses and warehouses that fall under Department Facilities Management. The standard operating procedure when an employee is injured is for the employee to notify his or her supervisor and a written report is immediately completed. The accident is also immediately reported to Ms. Price. Ms. Price testified that employees are familiar with this policy and that each employee upon hiring and yearly thereafter is informed about the particular forms and procedure in the event of a workplace injury. Ms. Price testified Petitioner would report his injury to either Joseph Drop or Theresa O'Donnell.

Ms. Price testified that Petitioner did not give immediate notice of a claimed injury on October 18, 2019. There was a pre-disciplinary hearing which noted in the Summary of the Hearing (RX #1) that management stated, and the employee confirmed, that the employee had not informed management of the injury.

On cross-examination, Ms. Price expanded on how employees are informed what to do when a work injury takes place. Yearly huddles are conducted and slip and fall modules are located in employee areas indicating what an employee should do in the case of an accident. Additionally, supervisors and teammates are available in addition to the written literature to advise workers. For employees who do not read or speak English, Ms. Price testified that this is not an unusual occurrence. Employees know to reach out and pair themselves with a coworker to assist them. She testified that in her experience no one has asked for an interpreter.

Ms. Price also explained the proper procedure for an employee who has suffered a work accident. She testified that the paperwork for reporting injuries is readily accessible, but she did not know if it was in languages other than English. After an injury is reported to a supervisor, the supervisor would report to Ms. Price and an initial email is sent to the payroll department along with paperwork with a copy to Ms. Price.

Ms. Price testified that it was impossible that Theresa never reported the work injury. She testified that she was very confident that Theresa would not have failed to report the incident. Theresa was very good with her paperwork and did not "miss a beat". Theresa copied Ms. Price on everything. Weekly meetings were held at that time during COVID. During this period, Theresa never said anything to Ms. Price regarding an accident by Petitioner. In the event of a work injury, everything is to be put into writing as failing to report an injury is grounds for discipline.

Respondent's Exhibit #1 contains records of Respondent's disciplinary action against Petitioner. There was a pre-disciplinary hearing on July 29, 2020 for an unapproved absence before Hearing Officer Viviana Martinez, Special Assistant for Legal Affairs (RX #1). Petitioner was represented by his children Antonio Caputo and Rosa Arrendondo, as well as his union representative Carmen Notwitzki. Petitioner presented a physician's letter dated January 22, 2020 requesting that he be excused from work until further notice due to an injury from October 18, 2019. It was noted in the Summary of the Hearing that management stated, and the employee confirmed, that the employee had not informed management of the injury.

RX #1 contained Petitioner's Request For Family & Medical Leave dated November 2, 2019, to start November 13. The reason for the request was redacted. The unredacted version of the Request For Family & Medical Leave was RX #4, which showed the reason for the request was having knee surgery.

Dr. Adam Meisel testified by evidence deposition on March 30, 2021 (PX #6). Dr. Meisel is board-certified in orthopedic surgery (PX 6). Dr. Meisel testified that Petitioner's daughter served as a translator during his care. Petitioner gave a history of right shoulder pain when he was throwing a bag of garbage away at work. He testified that due to the severity of Petitioner's problems a reverse shoulder replacement was necessary.

Dr. Meisel testified Petitioner's right shoulder was aggravated or caused by the work injury on October 18, 2019. He stated:

"I do believe that it was exacerbation or worsening with the way

> he described it as a chronic rotator cuff tear. He had some atrophy on the MRI to indicate chronicity of portions of the tear, but there was also some muscle that did not appear chronically torn. He had acute change in his subjective function of being able to do overhead activities and work as a custodian or janitor to having a pseudoparalytic exam, which is a dramatic change. So I do believe that this was causally related to the incident described, assuming he portrayed it accurately to me."

Dr. Meisel further testified that the total shoulder replacement surgery was necessary to treat Petitioner's shoulder injury. He recommended that Petitioner remain off work or return in a light duty capacity that did not involve any overhead lifting or any lifting greater than a pound or two. Furthermore, Dr. Meisel opined that once Petitioner reached MMI, he would implement permanent restrictions of no greater than 10 pounds of occasional overhead lifting.

Bridget Price testified on behalf of Respondent. She is employed by the Cook County Department Facilities Management as the manager of custodian services. As part of her duties, she oversees the janitorial services for all courthouses and warehouses that fall under Department Facilities Management. The standard operating procedure when an employee is injured is for the employee to notify his or her supervisor and a written report is immediately completed. The accident is also immediately reported to Ms. Price. Ms. Price testified that employees are familiar with this policy and that each employee upon hiring and yearly thereafter is informed about the particular forms and procedure in the event of a workplace injury. Ms. Price testified Petitioner would report his injury to either Joseph Drop or Theresa O'Donnell.

Ms. Price testified that Petitioner did not give immediate notice of a claimed injury on October 18, 2019. She reviewed Respondent's Exhibit #1. She testified Petitioner was subject to a pre-disciplinary hearing for an unapproved absence. It was noted that Petitioner presented a physician's letter dated January 22, 2020 requesting that he be excused from work until further notice due to an injury from October 18, 2019. It was also noted that management stated, and the employee confirmed, that the employee had not informed management of the injury.

On cross-examination, Ms. Price expanded on how employees are informed what to do when a work injury takes place. Yearly huddles are conducted and slip and fall modules are located in employee areas indicating what an employee should do in the case of an accident. Additionally, supervisors and teammates are available in addition to the written literature to advise workers. For employees who do not read or speak English, Ms. Price testified that this is not an unusual occurrence. Employees know to

reach out and pair themselves with a coworker to assist them. She testified that in her experience no one has asked for an interpreter.

Ms. Price also explained the proper procedure for an employee who has suffered a work accident. She testified that the paperwork for reporting injuries is readily accessible, but she did not know if it was in languages other than English. After an injury is reported to a supervisor, the supervisor would report to Ms. Price and an initial email is sent to the payroll department along with paperwork with a copy to Ms. Price.

Ms. Price testified that it was impossible that Theresa never reported the work injury. She testified that she was very confident that Theresa would not have failed to report the incident. Theresa was very good with her paperwork and did not "miss a beat". She testified Theresa copied her on everything. Weekly meetings were held during COVID. During this period, Theresa never said anything to Ms. Price regarding an accident by Petitioner. In the event of a work injury, everything is to be put into writing because failing to report an injury is grounds for discipline.

MEDICAL HISTORY

On October 21, 2019, Petitioner was seen at Advocate Medical Group and complained of cough and right shoulder pain (PX #2). Petitioner testified that his daughter did not accompany him as a translator as she normally did. He reported he had injured his shoulder when lifting garbage "last Friday." He complained his shoulder pain had worsened over the past few days and denied any known injuries. On examination the shoulder was tender with limited range of motion. He was unable to raise his arm. There was a negative Hawkins sign. X-rays were taken of the shoulder, but the results were not incorporated in PX #2. Petitioner was referred for physical therapy. There were no notes regarding work status.

Petitioner consulted Dr. Sarkis Bedikian of MidAmerica Orthopaedics for his bilateral knee complaints on October 22, 2019 (PX #3). His daughter accompanied him. The doctor recommended knee surgery and noted that Petitioner would not be ambulatory afterward. There were no documented complaints of right shoulder pain or an assessment of the right shoulder. There were no notes regarding work status.

On October 31, 2019, Petitioner presented to Advocate Medical Group for a pre-op examination for the pending left knee total replacement scheduled for November 14, 2019. Petitioner reported right shoulder pain and difficulty lifting the arm secondary to lifting garbage. He reported he had injured his shoulder when lifting garbage "last Friday." At another pre-op visit on November 5, 2019, Petitioner again complained of shoulder pain.

Petitioner presented to Dr. Beverlee Brisbin of MidAmerica Orthopedics on November 7, 2019, with complaints of right shoulder pain and weakness (PX #3). He was accompanied by his daughter. He reported pain for approximately one month, however "a couple of weeks ago" Petitioner was lifting garbage in a container when he felt acute pain and was unable to raise his arm above his chest. Petitioner denied any problems with his right shoulder before then.

On examination Dr. Brisbin noted a "Popeye" sign but noted the proximal biceps tendon was not clearly palpable. Active range of shoulder motion was diminished but passive motion was full. Petitioner had profound weakness with resisted abduction and external rotation. The doctor diagnosed a probable large rotator cuff tear. Dr. Brisbin discussed surgery and injected the shoulder with triamcinolone (a corticosteroid). The doctor thought physical therapy would be helpful. Petitioner was to return after his knee surgery to evaluate the response to the injection and begin physical therapy for the shoulder. There were no notes regarding work status regarding the shoulder.

Dr. Sarkis Bedikian performed the total left knee arthroplasty on November 14, 219 at Advocate Medical Group (PX #2).

On November 25, 2019, Petitioner was seen by Dr. Andrew Macri at Advocate Medical Group on November 25, 2019 in a hospital follow up visit. He complained of bilateral shoulder pain which "started yesterday." He was previously referred to orthopedics who provided a cortisone injection and some exercises. However, his pain had improved since his last visit. Petitioner was also complaining of left knee pain. He was unable to raise his right shoulder on examination. A right shoulder MRI was ordered, and Petitioner was referred to physical therapy.

Petitioner received physical therapy for his left knee and right shoulder at Physical Therapy And Sports Injury Rehabilitation ("PTSIR") from December 5, 2019 through January 30, 2020 (PX #4).

On December 16, 2019, Petitioner underwent an MRI of the right shoulder at Advocate Medical Group (PX# 2). The MRI demonstrated a 5 cm full-thickness tear of the supraspinatus and infraspinatus, retracted medially to the AC joint. There was moderate atrophy of the supraspinatus and mild to moderate atrophy to the infraspinatus. There was moderate tendinosis of the subscapularis and mild tendinosis in the teres minor. There was also moderate tendinosis of the intraarticular longhead biceps tendon with mild biceps tenosynovitis. In addition, there was also extensive degeneration of the superior labrum.

On January 3, 2020, Petitioner consulted Dr. Beverlee Brisbin of MidAmerica Orthopaedics on January 3, 2020 for follow-up and review of the MRI (PX #3 & RX #2). Petitioner's daughter accompanied him. Petitioner reported that physical therapy was helping his shoulder. Dr. Brisbin noted active range of motion of the shoulder was diminished compared to passive motion. Dr. Brisbin noted the MRI of December 6, 2019 demonstrated a large, retracted tear of the supraspinatus as well as a full thickness tear of the infraspinatus. In addition, the biceps tendon appeared to be subluxed but was otherwise intact. Also, there were moderate degenerative changes in the AC joint. The doctor's assessment was a nontraumatic right shoulder rotator cuff tear.

Petitioner consulted Dr. Bedikian for post-operative status of his total left knee arthroplasty on January 4, 2020 at MidAmerica Orthopaedics (RX #2).

Petitioner saw Dr. Adam Meisel of MidAmerica Orthopaedics on January 22, 2020 (PX #3). Petitioner reported right shoulder soreness that began in October of 2019 but still had maintained his strength and function. He reported on November 18, 2019 that he was throwing a heavy bag of garbage overhead when he felt a pop and tear in his shoulder. He was then unable to raise his arm. Petitioner had seen doctor Brisbin, had an MRI, physical therapy, and cortisone injection, which did not help.

On examination Dr. Meisel noted intact belly press, but a significant external rotation lag sign and weakness with Hornblower's. He has a drop arm and a pseudoparalytic type of exam with forward flexion and abduction. The doctor noted the MRI demonstrated a 5 cm complete terror of the supra and infraspinatus which was retracted with atrophy. Glenohumeral joint arthritis was noted. Dr. Meisel diagnosed a right shoulder massive rotator cuff tear with pseudoparalytic exam and right shoulder glenohumeral DJD. The doctor did not recommend a rotator cuff repair and instead discussed a reverse total shoulder arthroplasty.

Dr. Meisel wrote an off-work note without an end date on January 22 (RX #1).

On February 12, 2020, Petitioner returned to Dr. Meisel for follow-up regarding his right shoulder. The doctor noted a history of pain, weakness, and dysfunction after throwing a bag of garbage at work on November 18, 2019. A reverse total shoulder arthroplasty was recommended once medical clearance was obtained, and Petitioner wished to proceed. Petitioner had another follow-up with Dr. Meisel on August 10, 2020. There were no significant changes. Dr. Meisel noted Petitioner was unable to work due to his shoulder dysfunction.

Dr. Meisel performed the right reverse total shoulder arthroplasty on October 8, 2020 (PX 3). The pre-operative and post-operative diagnoses were right rotator cuff tear arthropathy.

Post-operative physical therapy was ordered by PA-C Jon Schwermer on October 21, 2020 (PX #3).

Petitioner started post-operative physical therapy for his shoulder at PTSIR on October 28, 2020 (PX #4). Therapy continued through December 17, 2020.

Petitioner presented to Dr. Meisel on November 25, 2020 for post-surgery follow-up status. Routine healing was noted, and that Petitioner was progressing in physical therapy.

On December 18, 2020, Petitioner presented to MidAmerica Orthopaedics complaining of left knee pain and swelling after kicking his car door closed the prior day (PX #3).

Petitioner presented saw PA-C Schwermer February 12, 2021 for follow-up regarding his right shoulder (PX #3). Petitioner's son reported that he was hospitalized in December with a septic left knee. At that same time, he was also diagnosed with COVID-19 and had not been doing any specialized therapy for his right arm for over 2 months. Petitioner denied any pain with his shoulder while at rest but continued to experience weakness and decreased range of motion within the shoulder. Dr. Meisel recommended resuming physical therapy.

Petitioner returned to PTSIR for therapy on March 2, 2021 (PX #4). Petitioner received physical therapy for both his right shoulder and his left knee through April 6, 2021. Petitioner's daughter reported that he need another operation for an infection in his left knee. Petitioner was discharged on May 6.

On March 26, 2021, Petitioner presented for follow-up with Dr. Meisel for his right shoulder. Routine healing was noted. However, other medical issues had delayed rehab. The doctor opined that Petitioner would be able to rehab and continue to progress through this without any lasting deficits. There were no notes regarding work status for the shoulder.

Petitioner was seen by PA-C Andrea Bevolo of MidAmerica Orthopaedics on April 28, 2021 for continuing issues with his left knee (PX #3).

Petitioner saw Dr. Meisel in follow up for his shoulder on June 2, 2021. The doctor noted prolonged weakness and recommended continued physical therapy.

Petitioner saw PA-C Schwerner for follow up for his right shoulder on July 14, 2021 (PX #3). Petitioner presented a PTSIR therapist note indicating petitioners condition was regressing. Petitioner denied any increase in pain although he reported he had tripped and fallen onto his right shoulder on June 24. Dr. Meisel recommended continued physical therapy but with Impact Physical Therapy. Petitioner also saw PA-C Michael Szypulinski, for Dr. Bedikian, for follow up for his left total knee replacement and infection on July 14.

Petitioner began physical therapy for his right shoulder at Impact Physical Therapy on July 19, 2021 (PX #5). Therapy continued through October 21, 2021 when it was noted that Petitioner had plateaued, and that the EMG indicated cervical radiculopathy involvement.

Petitioner had to another follow-up with Dr. Meisel August 18, 2021. Petitioner could get his hand to his ear and his mouth and was able to walk his fingers up to the top of his head. The doctor noted Petitioner was making good progress with his new therapist. Petitioner saw Dr. Meisel on September 29, 2021, complaining of continued right shoulder weakness. The doctor recommended an EMG to evaluate for a cervical neurologic origin for his weaker than expected shoulder exam.

Dr. Robert Metzler of MidAmerica Orthopaedics performed a bilateral upper extremity EMG on October 7, 2021 (PX #3). The abnormal study indicated C4 or C6 acute radiculopathy.

Petitioner saw Dr. Meisel on October 20,2021 for follow-up regarding his right arm and review of the EMG. The doctor noted routine healing but significant weakness. He also noted the EMG may indicate C4-C6 acute radiculopathy. Dr. Meisel recommended a cervical MRI and follow-up with Dr. Pannu after the MRI as the EMG test results point to a likely source of Petitioner's issues emanating from the cervical spine.

Petitioner saw Dr. Gurpal Pannu for evaluation on November 1, 2021 (PX #3). The doctor noted the EMG demonstrated possible cervical radiculopathy. The examination revealed diffuse paraspinal tenderness to palpation of the cervical spine. There was mildly decreased range of motion in all planes. Examination of the upper extremities revealed 5/5 strength from C5-T1 with the exception of weak right shoulder abduction and flexion. Sensation to light touch over C5-T1 was intact and there was a

negative Hoffman's sign. Dr. Pannu reviewed of the cervical MRI and noted severe right neural foraminal stenosis at C5-6, as well as moderate right lateral recess stenosis secondary to a disc bulge. The doctor discussed with Petitioner and his daughter there was a possibility that cervical spine was contributing to the symptoms and while surgery was adamantly declined, Petitioner could consider an epidural steroid injection.

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner proved that he sustained an accidental injury that arose out of and in the course of his employment by respondent.

Petitioner testified that while lifting a bag of garbage at work on October 18, 2019 he sustained a right shoulder injury. There were no apparent witnesses to that occurrence. Petitioner presented for emergent medical care at Advocate Medical Group on October 21, 2019. He reported that he had injured his shoulder when lifting garbage quote "last Friday." As Petitioner sought subsequent medical care he consistently reported that he had injured his shoulder at work on October 18, 2019.

However, Petitioner consulted Dr. Sarkis Bedikian on October 22, 2019 for complaints with his knees. Dr. Bedikian did not note any complaints about the right shoulder or of an accident on October 18th at work. Further, Dr. Bedikian did not assess petitioners right shoulder. In addition, Dr. Meisel charted the petitioner was injured at work on November 18, 2019.

The Arbitrator does not give weight to the described chart notes of Drs. Bedikian and Meisel. First, Dr. Meisel explained that his chart note was likely a scriveners error. Second, the evidence showed that Petitioner's knees were severely arthritic, and which led to a total right knee replacement on November 14, 2019. The Arbitrator finds that it was understandable and excusable human nature for Petitioner to focus on knees that would eventually require surgery within a month rather than his shoulder condition on that particular day he saw Dr. Bedikian.

When taking the evidence as a whole the Arbitrator finds Petitioner consistently reported to his healthcare providers that he had sustained a right shoulder injury at work on October 18, 2019.

E: *Was timely notice of the accident given to Respondent?*

The Arbitrator finds that Petitioner failed to approve that he gave timely notice of his accident to Respondent. The primary basis for this conclusion was Petitioner's questionable credibility.

Petitioner testified at trial that he orally reported is accident to his supervisor, Teresa O'Donnell, on October 22, 2019. She further testified further testified that Ms. O'Donnell was an exemplary supervisor who would always follow policy and procedures. Ms. Price testified that County employees are regularly informed of the requirement to immediately report workplace injuries.

Petitioner had been employed by Respondent since 1997. The Arbitrator did not find him credible when he denied knowledge of policy and procedure for report reporting workplace accidents, particularly the requirement of preparing a written report. The arbitrator did not find petitioner credible When he testified that he utilized coworkers as translators when needed. This did not same consistent With the understanding that Petitioner generally worked alone and away from others.

Further, Petitioner attempted to create the impression that he was functionally illiterate in English, despite living and working in the United States since 1997. While petitioners medical records consistently noted that petitioner was accompanied by one of his children who acted as translator, petitioners conduct at trial belied his attempt to imply is lack of English literacy. At trial Petitioner regularly and consistently began answering questions in English before the Italian translation, despite repeated admonishments from the Arbitrator to wait for the translation.

Finally, Respondent's Exhibit #1 was records pertaining to the pre-disciplinary hearing which took place on July 29, 2020. While there was no record of an Italian translator used for Petitioner's benefit, it was noted he was represented by 2 of his children and a union representative. In the hearing officer's Summary of the Hearing, she noted that in reference to Petitioners claimed injury on October 18, 2019 that, "Management stated and Employee confirmed that Employee had not informed Management of this injury previously." RX #1 was admitted in evidence without objection. Petitioner offered no rebuttal or explanation to RX #1. The Arbitrator finds it significant that Petitioner did not rebut or attempt to explain this clear admission against interest.

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

The Arbitrator has previously found that Petitioner failed to give timely notice of his claimed accident to Respondent within the 45-day period prescribed by §6(c) of the Act. Therefore, this issue is mooted.

Notwithstanding the foregoing, the evidence it's clear that Petitioners condition of ill-being in his right shoulder was causally related to is workplace accident on October 18, 2019. Respondent offered no evidence rebutting causation.

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 has previously found that Petitioner failed to give timely notice of his claimed accident to Respondent within the 45-day period prescribed by §6(c) of the Act. Therefore, this issue is mooted.

Notwithstanding the foregoing, the evidence is clear that the medical services provided to Petitioner were reasonable and necessary, as were the fees and charges relating to those services. Respondent offered no evidence rebutting the reasonableness and necessity of medical care.

K: *What temporary benefits are in dispute? TTD*

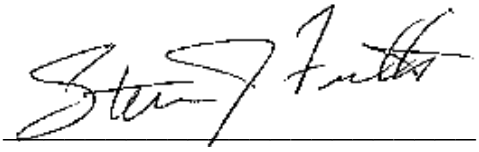
The Arbitrator has previously found that Petitioner failed to give timely notice of his claimed accident to Respondent within the 45-day period prescribed by §6(c) of the Act. Therefore, this issue is mooted.

Notwithstanding the foregoing, the evidence demonstrated that Petitioner did not give notice to Respondent of a physician's direction to restrict work activities or remain off work until January 22, 2020, Dr. Meisel 's note. It is not clear from the evidence whether Dr. Meisel ever released Petitioner to return to work in any capacity after the shoulder replacement surgery. What is clear, is Petitioner's concurrent but unrelated medical issues and disability relating to his knee replacement surgery and subsequent infections which required extensive medical intervention. In addition, the Arbitrator notes that Petitioner withheld information in his trial testimony regarding his knee problems that were clearly disabling.

The combination of these factors would lead to a finding that Petitioner failed to prove that he was entitled to TTD benefits.

L: *What is the nature and extent of the injury?*

The Arbitrator has previously found that Petitioner failed to give timely notice of his claimed accident to Respondent within the 45-day period prescribed by §6(c) of the Act. Therefore, this issue is mooted.



Steven J. Fruth, Arbitrator

July 21, 2023

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003130
Case Name	Julie Bulow v. AIM National Lease
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0278
Number of Pages of Decision	39
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Lindsey Strom
Respondent Attorney	Daniel Egan

DATE FILED: 6/12/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JULIE BULOW,

Petitioner,

vs. NO: 20 WC 03130

AIM NATIONAL LEASE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b)/8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of the propriety of the Arbitrator's pre-trial involvement in Respondent's attempt to obtain a repeat §12 examination in June 2020, the admissibility of Respondent's Exhibits 7 and 41, whether Petitioner's current condition is causally related to the undisputed August 13, 2019 work injury, whether Petitioner exceeded her choice of physicians, and entitlement to incurred medical expenses as well as prospective medical care, and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below, but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

PROLOGUE

The Commission observes Petitioner's personal identity information was unredacted from Petitioner's Exhibits 1, 3, and 5, as well as Respondent's Exhibit 4. The Commission cautions Counsel to adhere to Supreme Court Rule 138. *Ill. S. Ct. R. 138* (eff. Jan. 1, 2018).

The Commission corrects the fourth sentence of the first full paragraph on Page 24 to read as follows: "Unlike Dr. Vora, and like the treating physicians, the Arbitrator does not find Petitioner is faking her injuries and would undergo a DRG implant in her spine for secondary gain."

CONCLUSIONS OF LAW

I. The Arbitrator's Pre-Trial Involvement in Respondent's Attempt to Obtain §12 Examination

Respondent argues the Arbitrator improperly "inject[ed] himself into the issue of Petitioner's attendance at an IME." Respondent's Statement of Exceptions, p. 14. Respondent notes it scheduled a second §12 examination with Dr. Kenneth Candido for June 23, 2020, which Petitioner refused to attend. Respondent then asserts, "Without a full hearing, the Arbitrator held a pre trial conference, and without taking evidence, advised his opinion that Petitioner did not have to attend the IME." Respondent's Statement of Exceptions, p. 14. Respondent argues this was an improper interlocutory hearing and the Arbitrator's ruling "directly compromised the Respondent's right under Section 12," and therefore no medical benefits should be awarded for the period from June 23, 2020 until April 27, 2021, when the repeat §12 examination by Dr. Candido ultimately occurred. The Commission disagrees.

The Commission first emphasizes the Arbitrator did not unilaterally insert himself into the issue but instead was specifically invited by Respondent to provide guidance. To be clear, on June 9, 2020, Respondent's Counsel sent the following email to the Arbitrator:

> The above matter is assigned to you and will appear on your call on July 7, 2020. Atty Lindsey Strom and I have an issue with an IME that is set for June 23, 2020. May we ask for a moment of your time in the next couple days to address this issue or should I motion it for trial on your July call? I'd really like to have a discussion in the next couple days so that I can keep my appointment date if that is what you decide. RX34 (Emphasis added).

The Arbitrator met with the parties the next day and apparently opined the §12 examination should not proceed. The Commission observes, however, there is no transcript from the pre-trial. The only information in the record is Respondent's Counsel's June 10, 2020 email summary, but we note the Arbitrator's response to that email reflects he "[does] not agree with the accuracy of the summary." RX34 (Emphasis added). As such, the Commission has no way to evaluate what happened. Given that Respondent's Counsel expressly sought the Arbitrator's involvement but no transcript was taken of the arguments, the Commission finds no error with respect to the Arbitrator providing a recommendation.

II. Evidentiary Rulings

Respondent argues the Arbitrator improperly rejected two of its exhibits: Pledge the Pink records (RX7) and the April 28, 2020 Adco Billing Solutions HCFA (RX41). As to the Pledge the Pink records, Respondent quotes a portion of §16 and argues that since the records were received in response to subpoena, there is a rebuttable presumption they are true and correct. As to the Adco HCFA, Respondent claims it contains contrary information as to how Petitioner potentially came to see the physicians at Midwest Anesthesia and Pain Specialists ("MAPS") and should have been admitted. The Commission disagrees.

The Commission first observes the Pledge the Pink records are not treating records and are therefore not subject to the rebuttable presumption in §16. Moreover, there is no dispute that

Petitioner was referred for pain management on multiple occasions. Therefore, whether the HCFA form was mistyped, as Dr. Pontinen testified is known to happen in the billing office (PX10, p. 88-89), or Petitioner's Attorney recommended MAPS is of little probative value. The Commission finds the exhibits were properly rejected.

III. Medical Expenses

Petitioner offered into evidence treating records from Working Well, Bone & Joint Institute, Midwest Orthopaedics at Rush, Loyola University Medical Center, MAPS, Rush University Medical Center, Rush Pain Center, Athletico, and ATI. Petitioner additionally offered into evidence charges incurred for the treatment at Working Well (PX1), Bone & Joint Institute (PX2), Midwest Orthopaedics at Rush (PX3), MAPS (PX5), Rush Pain Center (PX7), Athletico (PX8), and ATI (PX9), as well as ancillary costs for prescriptions and equipment ordered through MAPS (PX13, PX14), and a BC/BS lien statement (PX12). The Commission finds the treatment provided to Petitioner was reasonable, necessary and causally related to the undisputed work accident. However, we further note there are several billing and payment entries that have no corresponding treatment report in the record. Specifically, there are no treating records to substantiate the following charges or BC/BS payments:

Midwest Orthopaedics at Rush (PX3)

Date of Service	Provider	Charge
September 27, 2021	Leda Ghannad	$422.00
December 8, 2021	Leda Ghannad	$245.00
December 14, 2021	Leda Ghannad	$2,288.00
December 15, 2021	Daniel Bohl	$559.00
December 20, 2021	Leda Ghannad	$616.00
December 30, 2021	Daniel Bohl	$2,327.00
January 13, 2022	Daniel Bohl	$245.00

MAPS (PX5)

Date of Service	Provider	Charge
March 30, 2021	Thomas Pontinen	$625.00

BC/BS (PX12)

Date of Service	Provider	Charge	BC/BS Benefit
December 7, 2021	Dermio Dermatology	$129.36	$14.54
September 30, 2022	Franciscan St. Margaret	$428.00	$428.00
October 4, 2022	Franciscan St. Margaret	$3,340.00	$3,340.00

The Commission finds Respondent is not liable for the above listed charges.

The Commission finds Respondent is liable for the expenses detailed in PX1, PX2, PX3, PX5, PX7, PX8, PX9, PX12, PX13, and PX14, with the exception of the charges identified above. Respondent shall have credit for expenses previously paid.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 23, 2023, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses detailed in Petitioner's Exhibits 1, 2, 3, 5, 7, 8, 9, 12, 13, and 14, with the exception of the charges identified above, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for treatment as recommended by Dr. Matthew Jaycox and Dr. William Landphair, including but not limited to maintenance of Petitioner's DRG stimulator and prescription Lyrica, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's petition for penalties and attorney's fees is denied.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $37,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court

June 12, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 5/8/24

/s/ *Stephen J. Mathis*

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/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003130
Case Name	Julie Bulow v. AIM National Lease
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision – 8(A)
Commission Decision Number	
Number of Pages of Decision	34
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Lindsey Strom
Respondent Attorney	Daniel Egan

DATE FILED: 5/23/2023

THE INTEREST RATE FOR THE WEEK OF MAY 23, 2023 5.17%

/s/ Joseph Amarilio, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION - 8(A)

Julie Bulow
Employee/Petitioner

v.

AIM National Lease
Employer/Respondent

Case # **20** WC **003130**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph D. Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **November 21, 2022** and **April 19, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **August 13, 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 to the left foot, left ankle and shin ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**38,646,92**; the average weekly wage was $**743.21**.

On the date of accident, Petitioner was **28** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**0**, for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**. Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay all reasonable and necessary medical services incurred relative to the left foot, ankle and shin injuries, including Bone & Joint Institute, Midwest Orthopedics at Rush, Midwest Anesthesia & Pain Specialist , Rush Medical Center, Rush Pain Centers, Athletico, ATI, ADCO and Electronic Wave Lab as provided in Section 8(a) and 8.2 of the Act. Respondent is entitled to credit for amounts previously paid.

Petitioner is entitled to prospective medical for DRG maintenance and prescribed Lyrica. Respondent is liable for any and all outstanding medical charges to be incurred for this prospective medical treatment and all related treatment pursuant to the fee schedule as provided in Section 8(a) and 8.2 of the Act.

Petitioner is not awarded penalties and attorney fees under Section 19(k), Section 19(l), or Section 16 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional number of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

/s/ *Joseph D. Amarilio*

MAY 23, 2023

Signature of Arbitrator JOSEPH D. AMARILIO

ICArbDec19(b)

THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ATTACHMENT TO ARBITRATION DECISION

JULIE BULOW,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case Number: **20 WC 003130**
	)	
AIM NATIONAL LEASE,	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Ms. Julie Bulow (Petitioner), by and through her attorney, filed an Application for Adjustment of Claim for benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)). Petitioner alleged that she sustained an accidental injury on August 13, 2019 while employed by AM National Lease (Respondent).

This matter was heard on November 21, 2022 and April 19, 2023 before the Arbitrator in the City of Chicago and County of Cook. Petitioner testified in support of her claim for benefits. Petitioner's treating physicians, Dr. Thomas Pontinen and Dr. Kamran Hamid, were called to testify at Petitioner's request by evidence deposition.

Ms. Carli Kuntze, Respondent's Vice President of Human Resources attended the hearing and was called to testify by Respondent. Mr. Paul Rybicki, an investigator who conducted surveillance of Petitioner at Respondent's request was also called to testify. Respondent's Section 12 examining physicians, Dr. Kenneth D. Candido and Dr. Anand M. Vora, testified by evidence deposition on behalf of Respondent.

The submitted exhibits, consisting of two bankers boxes of documents, and the trial transcript of the testimony were examined by the Arbitrator in reaching the Arbitration Decision. The parties proceeded to hearing on the following four disputed issues: (1) Whether Petitioner's current claimed condition of ill-being

is causally connected to the work accident; (2) Whether Respondent is liable for certain medical treatment and medical bills incurred; (3) Whether Petitioner is entitled to prospective medical treatment; and (4) Whether Petitioner is entitled to penalties and attorney fees under §19(k), § 19(l) and §16 of the Act. The parties requested a written decision, including findings of fact and conclusions of law, pursuant to Section 19(b) of the Act.

II. FINDINGS OF FACT

Petitioner testified that on August 13, 2019, she was working in a full duty capacity for AIM National Lease (hereinafter "AIM") as a rental representative. (Tr. p. 15). Her job duties included performing "360's" where she would inspect the trucks inside and out, check the milage, record any damage that she saw, take photos of the damage and report this to AIM. (Tr. p. 16). She also had to go over rental contracts with customers and discuss any damage to the trucks. (Tr. p. 17). Petitioner testified that she would have to climb in and out of the trucks which ranged from 16 to 28 feet, as well as 48-53 feet trailers. (Id.).

Petitioner testified that a driver came in looking for a truck on August 13, 2019, so she went to the yard to do the 360 inspection. (Tr. p. 23). As she walked around the truck and approached the passenger side, she tripped over a commercial parking block with her left foot, which was sticking out in the aisle. (Tr. pp. 23-24). Petitioner fell to the ground, her palms on both hands were bloody, and she scratched her elbow, right knee and left shin. (Tr. p. 24). She testified that her left lower extremity was throbbing and extremely painful post fall. (Tr. pp. 24-25). Her left foot was throbbing and as she tried to walk into the office, she would get shooting pain from her left heel to the great toe and second toe. (Tr. p. 25).

Petitioner completed an incident report with her supervisor, Tony Morris. (Tr. p. 26). Mr. Morris did not offer her any medical treatment and in fact, discouraged her from obtaining any medical care. (Tr. p. 27). Petitioner testified that she was embarrassed and did not want to make a big deal out of her fall, thinking that she would improve and feel better with time. (Tr. pp. 26-27). She completed her shift while in pain, then went home and cleaned her wounds, iced and elevated her left lower extremity. (Tr. pp. 27-28).

Petitioner was sent to Working Well, Respondent's occupational health provider, at the direction of Mark Mitchum from Respondent's corporate office. (Tr. p. 28). The nurse case manager assigned by Respondent, Terrie Smith, scheduled an appointment for Petitioner with Dr. Hong of Bone & Joint

Specialists. (Tr. pp. 28-29). Petitioner testified that Ms. Smith chose Dr. Hong for her and made the appointment. (Tr. p. 29). Dr. Hong ordered physical therapy, which Petitioner participated in, but only had minimal pain relief. (Id.). Dr. Hong also administered a cortisone injection to the left heel, but Petitioner had no relief and felt worse as a result. She was then prescribed Gabapentin, which minimally alleviated her left foot and ankle pain. (Tr. pp. 29-30).

Petitioner was sent to Dr. Kamran Hamid, an orthopaedic surgeon, for an examination pursuant to Section 12 of the Act at the request of Respondent. (Tr. p. 30, PX 3, pp. 19-25). Dr Hamid opined that she had Complex Regional Pain Syndrome ("CRPS"), amongst other issues, but noted that there was no MRI performed on the left lower extremity, so she required a further diagnostic workup. (PX 3, p. 24). Dr. Hamid opined that the medical treatment to date was reasonable and necessary, that she could not return to full duty work but could continue with light duty and was not at Maximum Medical Improvement ("MMI"). (Id.).

Petitioner was then sent by Respondent to Dr. Candido, for a second Section 12 examination on January 28, 2020. (Tr. p. 31, RX 26). Dr. Candido opined that Petitioner did not require any work restrictions and could return to full duty. (Id.). Petitioner testified that upon receipt of his report, she was "really upset and crying" because she did not feel that it was physically possible for her to do the job duties required of her position. (Tr. p. 31). She felt that it would be unsafe and did not want to further injure herself, because her left foot and ankle remained weak and unstable. (Id.).

Petitioner testified regarding her third Section 12 examination with Dr. Anand M. Vora which was performed at Respondent's request. She noted that she was in the examination room for less than 10 minutes, his demeanor was cold and dismissive, and it felt like he was not listening to her. (Tr. p. 35).

With Respondent's consent, Petitioner began treating with Dr. Hamid on March 12, 2020. (Tr. p. 32, PX 3, p. 11). Dr. Hamid noted that Petitioner had a purple/red color change to her left leg along with mild swelling. The record states that Petitioner had this issue often, along with difficulty sleeping and burning pain in her left foot, as well as a pins and needles sensation. (Id.). Petitioner reported ankle instability with apprehension and a sensation of giving way. (Id.). Dr. Hamid recommended pain management. (Tr. p. 32, PX pp. 12-13).

Petitioner testified that the injections she received at MAPS provided her with significant relief of her pain for several weeks before her pain returned. (Tr.

p. 34). Eventually, a spinal cord stimulator was recommended as a last resort, but Petitioner was hesitant to proceed. (Tr. p. 36). Dr. Jaycox had offered the alternative option of a DRG stimulator, which Petitioner was more comfortable with, and elected to proceed. (Tr. pp. 36-37). Petitioner testified that prior to the DRG trial, she had pain from her toes in the left foot which traveled up her leg. (Tr. p. 38). The pain varied with activity, but she had pain even when she was just sitting on her couch. (Tr. pp. 38-39). She said that her left foot felt like it was on fire, or it would be flaming red, and she would experience a burning sensation. (Tr. p. 39, PX 15). At other times, her foot would feel cold, and she would wrap blankets around it until the feeling subsided. Petitioner testified that this was very difficult to live with, and from the accident date up until the DRG was implanted, she had an antalgic gait. (Tr. p. 40). Any weight-bearing increased her leg pain and made her feel unstable. (Tr. pp. 40-41). She testified that activities of daily living were difficult for her, including cooking, cleaning, etc. (Tr. p. 47).

Petitioner testified that after the DRG was inserted, she could weight-bear immediately, and walk without a limp. (Tr. pp. 51-52). She did not experience this type of pain relief from any other treatment modalities throughout the course of her medical care. (Tr. p. 52). Therefore, Petitioner choose to proceed with the permanent implant. (Tr. p. 53). While she still has pain, she feels much better, and can walk normally for longer distances than she could prior to the implantation. Petitioner feels as though she can enjoy time with her family again and engage in some of the activities she enjoyed prior to the work-related injury. (Tr. p. 58).

Petitioner testified that she attended a breast cancer walk two months after her work-related accident in North Carolina. (Tr. p. 18) and one week after undergoing breast cancer surgery. She noted that her employer, as well as her doctor, were aware that she would be in attendance. (Tr. p. 19). Petitioner testified that this walk is over the course of three days, and that 10 miles are allotted for each day, resulting in a total of 30 miles. (Id.). She did not walk 30 miles, but acknowledged that she did try to walk, but spent most of the time on a golf cart. (Tr. pp. 20-22). Petitioner explained that it was a very painful weekend for her, but it was important for her to be there after she was diagnosed with breast cancer and underwent a lumpectomy and *had* her lymph nodes removed. (Tr. pp. 19-23).

MEDICAL HISTORY

Petitioner was initially sent to Working Well Occupational Health by her employer for medical care. The medical record from August 20, 2019, noted that she tripped and fell last week at work over cement barrier, subsequently twisting left foot and ankle, sustaining a contusion to her lower tibial region as well as a contusion to her right elbow. (PX 1, pp. 6-7). She complained of pain to the left lower leg, left ankle, right elbow, and bilateral wrists. Discomfort remained moderate at her left ankle region with noted bruising. The distal tibial contusion wound was healing slowly and there was noted erythema. A review of systems revealed bleeding and bruising, closed wound had opened, redness, swelling and warmth. (PX 1, p. 7). Petitioner complained of radiating pain and on physical examination, there was edema located over lateral malleolus, lateral aspect of the left ankle and proximal ankle/foot. There was tenderness to palpation over lateral malleolus. She was diagnosed with contusions and left foot and ankle sprains. (PX 1, p. 16). Further diagnostic workup was recommended in the form of x-rays. She was given light duty work restrictions. (PX 1, p. 8, 17).

Petitioner returned to Working Well two days later on August 22, 2019. (PX 1, p. 19). X-rays were negative for fractures. (PX 1, p. 13-15). She continued to have joint pain in the left foot and ankle, swelling and pain with weight-bearing. Physical examination revealed antalgic gait, edema, and ecchymosis over medial malleolus with tenderness to palpation over metatarsal bones. The same work restrictions remained in place and Petitioner was referred to physical therapy. (PX 1, p. 19-21). Petitioner attended physical therapy at Athletico. (PX 8).

Petitioner denied receiving treatment from Dr. Galante for her left foot and ankle. (T. p. 74) Petitioner denied that Dr. Galante made any diagnosis regarding her left foot and ankle. (T. p. 75) The record of the visit reflects that the main purpose related to a yearly checkup and the focus was addressing her non-work-related health issues. Petitioner did not recall if Dr. Galante made any recommendations to her with regard to her ankle. (T. p. 76) Dr. Galante's diagnosis of "sprain of the left ankle, unspecified ligament, subsequent encounter - suggest she see an orthopedic surgeon as she still is in a lot of pain" was the last issue medical issue addressed by Dr. Galante and appeared to be a side issue and clearly not the focus of the visit. (Rx 3, p. 48)

The nurse case manager, Terri Smith, sent Petitioner to Dr. James Hong, DPM, with Bone & Joint Specialists. (PX 2). Petitioner was seen for an initial evaluation on September 5, 2019. (PX 2, p. 4). Petitioner complained of pain that

ranged from 6-8/10 and discomfort in the entire left ankle and foot depending on her activity level. Dr. Hong noted swelling of the medial and lateral aspects of the left ankle and significant pain of the lateral collateral ligament, ATFL and CFL area as well as medial ankle. Pain with ROM of left ankle. Significant amount of numbness, tingling and pain from the left shin down to the foot. (PX 2, p. 5). Additional physical therapy was ordered and work restrictions were provided.

Petitioner returned to Dr. Hong on September 19, 2019. (PX 2, p. 10). She complained of sharp, shooting pain, but felt that she was doing better overall. Dr. Hong noted left ankle swelling and pain with range of motion testing on physical exam. (PX 2, p. 11). She still had a lot of numbness and tingling associated with her shin down to her foot. Dr. Hong diagnosed a left ankle sprain and neuritis of the lower extremity. Petitioner followed up with Dr. Hong on October 3, 2019. (PX 2, p. 13). At that time, she was taking Gabapentin 300 mg, and felt that she was doing significantly better while on this medication. However, she still had "a lot of nerve pain" per Dr. Hong's report. (Id.). An injection was administered to the left heel at this visit. (PX 2, pp. 14-15). She was to continue physical therapy and working with restrictions.

On October 21, 2019, Petitioner returned to Dr. Hong, noting that the Gabapentin was helping her, but she still had left ankle and heel pain. (PX 2, p. 15). Petitioner was also taking Norco at that time because she had just been diagnosed with breast cancer and had surgery. (PX 2, p. 16). She continued to have numbness and tingling pain which Dr. Hong described as "neuritis-type" pain and he recommended continuing with PT and Gabapentin 300 mg, three times per day. (PX 2, p. 17). She followed up on November 21, 2019, noting that she still had the numbness, tingling and shooting pains associated with her left lower extremity from the ankle to the toes. (PX 2, p. 19). Petitioner complained of difficulty with work activities such as climbing or standing. Petitioner expressed that she did not feel that she was getting better so MRIs of the left foot and ankle were ordered. (PX 2, p. 20).

The MRIs were reviewed at the December 19, 2019 visit, with Dr. Hong noting that the MRIs were of poor quality. (PX 2, p. 22). Petitioner continued to have the same pain complaints and advised that the injection increased her pain significantly for the first three days, then subsided a bit, but she continued to have discomfort in the left forefoot, anterolateral aspect of the leg, plantar arch and central arch areas. Physical examination revealed positive Tinel and Valleix testing in the tarsal tunnel. (PX 2, p. 23). She had pain in the medial calcaneal tuberosity of the left heel down to the central plantar arch, pain in the first

interspace of the forefoot and generalized pain over the left foot and ankle. Dr. Hong opined that her nerve pain was the main issue and there were early signs of Complex Regional Pain Syndrome (CRPS). Another injection was administered to the left heel. (PX 2, p. 24). Dr. Hong recommended obtaining better quality MRIs of the left foot and ankle and referred her to pain management, pointing out that she may require Dorsal Root Ganglion (DRG) treatments. Petitioner was to continue PT and remain on restricted duty.

On January 6, 2020, Dr. Hong opined that Petitioner had early signs of CRPS in the left lower extremity. (PX 2, p. 26). He continued to recommend pain management and possible DRG evaluation since the Gabapentin was not providing much pain relief, the MRIs were unremarkable, and she was exhibiting significant nerve pain. (PX 2, p. 27). When she returned to Dr. Hong on February 27, 2020, she complained of sharper, shooting pain and numbness with burning pain from the heel to the toes dorsally and plantarly. (PX 2, pp. 29-30). Petitioner advised that the pain management IME doctor said that she had "circulation issues" which she had never experienced prior to the accident. (PX 2, p. 30). Dr. Hong opined that this is more of an inflammatory response secondary to trauma and did not believe that she had a circulation issue. He stated that regardless, his opinions had not changed and continued to recommend pain management as there was nothing more that he could offer her. (Id.).

Petitioner saw Dr. Kamran Hamid at Respondent's request for an examination in accordance with Section 12 of the Act on December 18, 2019. (PX 3, p. 12, 19-24). He reported that Petitioner injured her left lower leg, right knee, right elbow and bilateral hands as a result of a work-related injury on August 13, 2019. She had pain which caused difficulty with ambulation, which he hoped would improve on its own, so she did not seek immediate treatment. Approximately one week later she continued to have severe pain in the left lower extremity, swelling in the left ankle, and ecchymosis in the left ankle and foot. She also had hypersensitivity to light touch throughout the lower leg. She localized her maximum pain to her left heel, but also had pain in the anterior and lateral aspects of the left ankle on the exam date. Her pain was exacerbated by weight bearing and activity including climbing stairs. She endorsed shooting pain in the left foot. At that time, she was taking Gabapentin 200 mg three times per day which provided little relief. (Id.)

Physical examination revealed 5/5 strength, some pain with resisted inversion and mild pain with resisted plantarflexion. (PX 3, pp. 21-22). Dr. Hamid noted ecchymosis from prior anteromedial distal one third injury over left shin. Petitioner was tender to palpation over ATFL, CFL, anterior ankle, Achilles

tendon insertion and the origin of the plantar fascia. (PX 3, p. 22). Dr. Hamid observed mild laxity of the left ankle with anterior drawer test and mild ankle instability with varus stress test as compared to contralateral side. There was pain in the left heel upon standing. Upon ambulation in clinic, she had antalgic gait with a pronounced limp on the left side. Dr. Hamid agreed with Dr. Hong's assessment of the MRI quality, stating that the MRIs demonstrate limited value secondary to poor quality." (PX 3, p. 23)

Dr. Hamid's diagnosis was left lower leg contusion as well as subjective and objective findings of the left lateral ankle instability secondary to an occupational related injury sustained on August 13, 2019. (PX 3, p. 23). He opined that based on exam, there appeared to be signs and symptoms consistent with a lateral ankle sprain. She did not have typical findings of a high ankle sprain/syndesmotic injury on today's visit; however, she did not have an MRI scan of her ankle or tibia/fibula available to review that could confirm or refute syndesmotic involvement. She had not had any pre-existing ankle or heel pain in the left lower extremity prior to this work-related injury. Dr. Hamid said that objective findings of an increased anterior drawer test as well as varus tilt test on the left side as compared to the contralateral side supported her subjective complaints of left lateral ankle apprehension and subjective instability. She had objective findings of bruising at the site of the anteromedial left lower leg hematoma which was not resolved and she continued to have some pain throughout the lower leg. He believed that her heel pain was objectively consistent with her subjective complaints in this region.

Dr. Hamid went on to say that Petitioner's treatment up to that point had been reasonable and necessary for the injuries sustained. (PX 3, p. 24). Based on her description of her injury and symptoms following the injury, Dr. Hamid agreed with Dr. Hong that she may have had CRPS or sympathetic mediated nerve pain at some point in time; however, it was difficult to assess this as she was still taking Gabapentin at the time of the IME. For her lateral ankle instability and lower leg contusions, he felt that it was appropriate to immobilize her with the boot and eventually perform PT. He recommended attempting an ankle brace to aid with instability. As far as treatment recommendations, she required further diagnostic workup before progressing with the further PT or work conditioning. Dr. Hamid opined that Petitioner could not return to full duty. He imposed restrictions limiting the amount of time she could spend standing/walking at 2 to 4 hours per day with no climbing. Dr. Hamid said that Petitioner had not reached MMI and that without a complete diagnostic workup or definitive treatment, it was premature to discuss whether she may have any permanent disability or restrictions. (PX 3, p. 24).

Petitioner wanted an orthopaedic surgeon opinion and therefore, requested to see Dr. Hamid in clinic with Respondent's approval; this appointment was approved, and she was seen on March 12, 2020. (PX 3, p. 12). Dr. Hamid documented that Petitioner underwent a Section 12 examination with Dr. Candido who felt that she had tarsal tunnel syndrome in the left foot and ankle. Dr. Hamid noted that upon inspection, she has purple/red color change to her left leg which she reported having often, along with mild swelling. She reported difficulty sleeping and burning pain located plantarly. She endorsed pins and needles pain, believed she had some hypersensitivity, ankle instability with apprehension and difficulty with uneven surfaces. Dr. Hamid noted that Petitioner had symptoms of left lower extremity CRPS versus sympathetic mediated nerve pain and would require a consultation to a pain clinic. (PX 3, p. 13). He wrote a referral for pain management, which Respondent refused to approve. (PX 3, p. 8).

Petitioner returned to Dr. Hamid on April 15, 2020. (PX 3, p. 6). Petitioner reported that her symptoms worsened since the last visit and her nerve pain persisted. (PX 3, p. 8). Her pain was now radiating up to the left hip and she was taking 900 mg of Gabapentin three times per day. Dr. Hamid reviewed the January 9, 2020 MRI scans and interpreted them to reveal a syndesmotic injury with ATFL tear, as well as a mild deltoid strain and posterior ankle effusion. (PX 3, p. 9). Dr. Hamid recommended a left ankle lateral reconstruction and syndesmotic stabilization because Petitioner had exhausted conservative measures and the MRI supported her subjective complaints. However, Dr. Hamid clarified that Petitioner required a pain management consult prior to proceeding with any orthopaedic surgery, because it was expected that her CRPS would be exacerbated with an open repair procedure. (Id.).

On May 8, 2020, Petitioner saw Dr. Anand Vora for a Section 12 examination at Respondent's request. (RX 25). Dr. Vora opined that physical examination revealed nonorganic breakaway pain with limited motion of approximately 5° in each direction on the left foot. Per his report, "claimant states further motion causes severe limitation." Dr. Vora found no evidence of instability. Dr. Vora also claimed to observe a nonorganic pain pattern with gait, walking with a circumducted antalgic gait pattern, and states Petitioner was unable to perform toe-toe or heel-heel gait because of discomfort. Mid-calf, perimalleolar, and midfoot measurements were symmetric bilaterally according to Dr. Vora. He concluded that the only objective abnormality was a contusion with pain subjectively reproduced with palpation on the anterior shin of the tibia. Dr. Vora felt that there was no evidence of CRPS signs clinically. Dr. Vora admitted that he did not review the left ankle

MRI, however, he said that the report confirmed no evidence of an ankle ligament injury. He felt that the only objective orthopedic foot and ankle injury of the left leg, foot, and ankle was a left leg contusion, which had resolved, and that there were no other objective findings. As a result, he opined that she did not require any further medical care and returned to full duty work without restrictions at MMI. Further, Dr. Vora stated that the use of Gabapentin was not reasonable or necessary because there was no orthopedic objective abnormality that would require the medication.

Petitioner followed Dr. Hamid to Loyola from Midwest Orthopaedics at Rush and saw him again on November 18, 2020. (PX 4, p. 4). He noted that Petitioner had received seven lumbar sympathetic nerve blocks at Midwest Anesthesia & Pain Specialists under the care of Dr. Pontinen. He noted that Petitioner reported improvement of her symptoms including burning, color changes and nocturnal nerve pain but that this would only last approximately four to five weeks. She continued to endorse left ankle pain that was aching and burning in nature with associated instability. Wearing the ankle brace worsened her pain. She remained in physical therapy. Physical examination revealed tenderness to palpation over the ATFL/CFL. (PX 4, p. 5). Dr. Hamid's CRPS diagnosis remained unchanged. Therefore, he did not recommend proceeding with surgical intervention until her nerve pain was controlled. Dr. Hamid recommended a second opinion for CRPS and referred Petitioner to Dr. Jaycox or Dr. Young with Rush University Pain Center. (PX 4, p. 6). He provided sedentary work restrictions and advised that Petitioner may follow up with him on an as-needed basis.

Petitioner treated at Midwest Anesthesia & Pain Specialists (MAPS) from April 28, 2020 through June 8, 2021. (PX 5, pp. 6-106). When Petitioner first saw Dr. Pontinen, pain management specialist, on April 28, 2020, she complained of pain to the left ankle and foot, with tenderness to touch, temperature changes in her foot, weakness, difficulty with ambulation, weight-bearing and range of motion. (PX 5, p. 6). Dr. Pontinen reviewed Dr. Candido's January 28, 2020 Section 12 report and disagreed with his diagnosis of Tarsal Tunnel Syndrome (TTS). (PX 5, p. 8). Dr. Pontinen noted that Tarsal tunnel is the compression of the posterior tibial nerve as it passes around the medial malleolus and to the foot. This nerve supplies sensory innervation mainly to the bottom of the foot, meaning that patients with TTS generally have symptoms in the bottom of the foot. Petitioner exhibited symptoms comprising of the entire foot and not only in the distribution of the posterior tibial nerve. Further, Dr. Pontinen stated that she did not exhibit physical exam findings consistent with TTS. Dr. Candido found hypesthesia in the tibial nerve distribution (in contrast

to the other nerve distributions), which Dr. Pontinen did not find. Furthermore, there was no difference in sensation in either the tibial nerve distribution from Petitioner's left to right leg tibial nerve distributions nor her left tibial nerve vs other nerves in the left foot.

Dr. Pontinen pointed out that Dr. Candido noted 5/5 strength in both her left great toe and ankle dorsiflexion. However, per Dr. Pontinen's examination, Petitioner could barely move her left toes at all and certainly did not have 5/5 strength in either of these two categories, in stark contrast to her right foot/ankle, which was 5/5. Dr. Pontinen agreed with Dr. Hamid and felt that Petitioner had CRPS of the left lower leg/foot. Per the Budapest Criteria (how one diagnoses CRPS), she reported allodynia, skin color and temperature changes, swelling, and weakness (all four criteria required) and on exam she exhibited edema, weakness, and color changes (physical exam criteria). (PX 5, pp. 8-9). Therefore, Dr. Pontinen opined that the CRPS diagnosis was appropriate.

Dr. Pontinen pointed out that Dr. Candido's January 28, 2020 examination noted small temperature changes in the left vs right foot, which is also consistent with CRPS. (PX 5, pp. 8-9). Furthermore, Petitioner has had two steroid injections to her medial ankle, neither of which provided any relief. Dr. Pontinen stated that if her symptoms were primarily TTS, some relief would have been expected from these injections, but the lack of improvement weakens the theory of TTS as Dr. Candido opined.

Petitioner returned to Dr. Pontinen on May 26, 2020 after undergoing a left lumbar sympathetic block on May 13, 2020. (PX 5, p. 15). After the procedure, the burning pain in her left ankle/foot was almost completely gone away (about 90% improvement). The color changes in her foot also improved and the movement in her left ankle and toes improved slightly (about 20%). Dr. Pontinen opined that Petitioner's improvement with both pain and function following this procedure further strengthened the diagnosis of CRPS and weakens that of TTS. (PX 5, p. 17). She would not have noticed any improvement in her stocking-like pain distribution with a sympathetic block if her pain only stemmed from TTS according to Dr. Pontinen. Temperature changes before and after procedure was 4 degrees Fahrenheit. The temperature difference between her right leg and left leg after block was also 3.8-4 degrees indicating a successful block. (PX 5, pp. 17-19).

Dr. Candido wrote a second report on August 15, 2020 after receiving updated medical records. (Rx 26, Ex 3) Dr. Candido again concluded there was no evidence of CRPS. He noted the surveillance as well. Dr. Candido testified

that his opinions on CRPS had not changed. He opined that Petitioner had sustained a neuropraxia of the posterior tibial nerve. Rx 26, Ex 3)

Petitioner followed up with Dr. Pontinen on August 25, 2020 after one month following her fourth lumbar sympathetic block, done on July 28, 2020. (PX 5, p. 45). She reported an almost complete resolution of her burning pain for 3.5 weeks, again, following the injection and the pain had just started to return within the few days prior to the exam. Dr. Pontinen documented that she also regained about 40% mobility in her foot and toes after the injection. The color change in her foot has also improved. She has also started PT, which has helped her strength and range of motion for both her left ankle and toes. The patches, cream, and tramadol were helping significantly with Petitioner's pain. She did not need Tramadol after the most recent injection. Walking caused her severe pain, and she could not put full pressure on the left foot once the effect from the injection wears off.

Dr. Pontinen challenged Dr. Candido's opinions, noting that he only saw her once, in contrast to the many times Dr. Pontinen examined her, noting the improvement firsthand to treatment including the sympathetic blocks. Dr. Pontinen noted that Petitioner's left foot and ankle condition was worsening prior to seeing Dr. Candido and continued to worsen between his IME and Petitioner's first visit with Dr. Pontinen. (PX 5, p. 48).

Petitioner was seen Dr. Candido for an updated Section 12 examination on April 27, 2021. (Rx 28) Dr. Candido examined Petitioner. He studied her updated records including surveillance. He maintained his opinions that there was no CRPS. He did not believe Petitioner required any further medical treatment or work restrictions. (Rx 28)

Petitioner continued to undergo lumbar sympathetic blocks throughout 2020 and 2021, and eventually a spinal cord stimulator was recommended on April 27, 2021. (PX 5, p. 92). Petitioner was not interested in this procedure and ultimately sought out her second line of pain management treatment with Dr. Jaycox as recommended by Dr. Hamid. Petitioner presented to Dr. Jaycox on January 3, 2022. Dr. Jaycox noted that Petitioner had undergone extensive conservative treatment modalities. (PX 7, p. 24). He also noted that Petitioner saw Dr. Daniel Bohl at Midwest Orthopaedics at Rush who confirmed the presence of an ATFL tear, but that he also would be unable to operate due to her CRPS.

Dr. Jaycox noted that there were temperature changes between the right and left lower extremity, 3-8 degrees F. (PX 7, p. 25). Spinal cord stimulator vs

DRG stimulator options were discussed, and Dr. Jaycox felt that the DRG would be a better option. Dr. Jaycox referred Petitioner to Dr. Landphair in the same practice to discuss implantation of the DRG. (PX 7, p. 22). Petitioner agreed to proceed after her appointment with Dr. Landphair on January 6, 2022 and underwent the DRG implant trial on March 10, 2022. Petitioner returned to Dr. Landphair on March 15, 2022. (PX 7, p. 16). Petitioner reported greater than 80% relief of her pain and was able to walk and participate in activities of daily living without pain. Dr. Landphair reported that Petitioner was very happy and looking forward to the permanent placement of the DRG. This procedure was performed on March 23, 2022. (PX 7, p. 14).

Petitioner followed up with Dr. Landphair on April 7, 2022, reporting decreased allodynia, hyperalgesia, pain and swelling. (PX 7, p. 12). When she returned to Dr. Landphair on May 12, 2022, she reported greater than 90% relief of her symptoms. (PX 7, p. 8). There was no swelling, no color or temperature changes, and no allodynia or hyperalgesia at this visit. (PX 7, p. 9). Petitioner saw Dr. Jaycox on August 29, 2022. (PX 7, p. 10). Her pain was down to a 0-2/10, described mostly as a cramping sensation. She continued to report significant improvement since the DRG stimulator was implanted.

Petitioner saw Dr. Jaycox on August 29, 2022. This is the last medical in evidence. Petitioner reported being active walking and swimming. She was looking to increase her activity levels. She was to follow up in three months. (PX 6, pp. 10 – 11)

EVIDENCE DEPOSITIONS

A. Deposition testimony of Dr. Thomas Pontinen

Dr. Pontinen testified that he is board-certified in pain management and anesthesiology. (PX 10, p. 5). All of his opinions were provided within a reasonable degree of medical certainty. (PX 10, p. 58). He sees approximately 20 to 25 patients per day if he is not performing any procedures, and approximately 15 to 20 when he does have procedures scheduled, such as injections. (PX 10, p. 7). Dr. Pontinen treats patients with CRPS, formerly known as “RSD.” He had reviewed the medical records from Working Well, Midwest Orthopaedics at Rush, the IMEs from Dr. Candido and the IMEs from Dr. Vora prior to the deposition. (PX 10, pp. 9-10).

Dr. Pontinen began treating Petitioner on April 28, 2020. (PX 5, p. 6, PX 10, p. 11). He testified that Petitioner complained of pain to the left ankle and foot, with tenderness to touch, temperature changes in her foot, weakness, difficulty with ambulation, weight-bearing and range of motion. (PX 5, p. 6, PX 10, pp. 11-12). Petitioner advised that she did not have any prior injuries to her left foot and ankle but acknowledged that she had Raynaud's Syndrome. However, she had never had heat intolerance in her feet, and Dr. Pontinen testified that poor tolerance to temperature changes in general is not a symptom of Raynaud's. (PX 10, p. 13).

Dr. Pontinen testified that there is no MRI or EMG that can tell a doctor that CRPS is present; the Budapest Criteria is the standard used to determine the presence of CRPS. (PX 10, pp. 23-24). Dr. Pontinen confirmed that Petitioner met the Budapest Criteria for CRPS and he disagreed with Dr. Candido's diagnosis of Tarsal Tunnel Syndrome (TTS). (PX 10, pp. 23-25). Dr. Pontinen could not corroborate the diagnosis of TTS on physical examination, or with the injections performed, nor did he agree with Dr. Candido's alleged objective findings, such as strength testing. (PX 10, pp. 28-31). Dr. Pontinen also testified that with CRPS patients, the temperature changes can wax and wane. (PX 10, p. 30).

Dr. Pontinen explained that with Petitioner's improvement after each lumbar sympathetic block, this strengthened the argument that she suffered from CRPS. (PX 10, p. 34). He opined that Petitioner's CRPS was causally connected to her work-related injury and that all of her medical care as it pertained to her left lower extremity was necessitated by the injury. (PX 10, p. 58). He testified that Petitioner was clearly not at MMI and could not return to regular work duties. (PX 10, pp. 56-57). He further testified that all of the medical treatment rendered to date was reasonable and medically necessary. (PX 10, p. 57).

B. <u>Deposition testimony of Dr. Kenneth Candido, Respondent's Section 12 Examiner</u>

Dr. Kenneth Candido testified on August 20, 2020 and October 1, 2020. Dr. Candido is a board-certified pain management doctor who performs Section 12 examinations at the request of Respondents, 95% of the time. (RX 26, p. 52). Dr. Candido testified that Section 12 examinations make up 15-20% of his practice. The doctor admitted to performing about 200 Section 12 examinations per year. (RX 27, p. 117). He performs approximately 30 to 40 record reviews per year, 95% of those are also at Respondents requests. (RX 27, p. 118).

He testified that he did not have an independent recollection of Petitioner and that he only saw her one time for a Section 12 examination at Respondent's request. (RX 26, p. 53). [Dr. Candido subsequently authored another report on April 27, 2021. RX 28] He did not have a complete set of medical records to review prior to rendering his opinions contained within his initial Section 12 report and subsequent addendums. Dr. Candido relied upon his reports in answering the questions posed at his deposition. (RX 26, pp. 53-54). Dr. Candido admitted to leaving out certain portions of the medical notes, either claiming that these findings were irrelevant or that he just looks for what the pain compliant is, what the potential mechanism of injury is, etc. based upon his training, experience, certifications, and ability to parse through copious amounts of medical records. (RX 26, pp. 56-57). Throughout cross-examination, Dr. Candido acknowledged that he left out portions of the treating providers medical notes, because he "already established" her diagnosis. (RX 26, p. 61). Dr. Candido's first report of January 28, 2020 was 61 pages total, and he testified that he tries to be as thorough as possible, and he does not "know of anybody who creates the type of document that I do when completing an independent examination of anybody." (RX 27, p. 100). This is the reason why he included the cover letter sent to him in his report, per his testimony. He did not review any surveillance as part of his original Section 12 and addendum, but he testified that he could give opinions on it based upon what was reported by someone else. (RX 27, pp. 116-117).

Dr. Candido testified that Petitioner could return to full duty work without restrictions, however, he had not reviewed a job description. (RX 27, p. 101-104). He opined that Petitioner would reach MMI within six months of the date of his January 28, 2020 section 12 examination. (RX 27, p. 109).

C. Deposition testimony of Dr. Anand Vora, Respondent's Section 12 Examiner

On September 14, 2020, Dr. Anand Vora , a board- certified foot and ankle orthopedic surgeon , testified that he did not have an independent recollection of Petitioner and that he only saw her one time for an IME at Respondent's request. (RX 25, pp. 15, 27-28). He also admitted that he did not have the full and complete records for review at the time he authored his report. (RX 25, p. 31). Specifically, Dr. Vora did not review any of the Working Well records, and out of the voluminous MAPS records, he reviewed only one, dated May 5, 2020. (RX 25, p. 42). Dr. Vora also acknowledged that he only reviewed MRI reports from December 14, 2019 and did not personally review the scans.

(RX 25, p. 44). The doctor contradicted himself regarding a radiologist's interpretation of the report, initially stating that he does not rely upon the radiologist's reading, and later stating that he does not rely "*exclusively*" on the radiologist interpretation. (RX 25, p. 45, emphasis added).

Dr. Vora was subpoenaed to produce all of the records, medical or otherwise, that he received in connection with Respondent's Section 12 request. However, he failed to tender anything or respond to the subpoena. (RX 25, pp. 31-31). When questioned on this subject, Dr. Vora stated that he did not have to send anything to Petitioner's counsel because this was an IME. (RX 23, pp. 32-33). Dr. Vora admitted on questioning that Petitioner did not have any prior left foot or ankle complaints. He testified that he does not treat CRPS, but that he can recognize the signs and symptoms, and that he knows the Budapest Criteria but not as well as pain management specialists. (RX 25, p. 48). Dr. Vora testified that his opinions were relating to any orthopedic foot and ankle condition and not from a pain management standpoint. (RX 25, pp. 55-58). He testified, "And all I can say about that is that I am opining that I do not see evidence of CRPS but I'm also saying that I'm not an expert in CRPS." (RX 25, p. 56)

Dr. Vora testified that Petitioner was "faking it" and that there was "no pathology with the disproportionate amount of pain that's not reproduced by any exam or objective parameter." (RX 25, p. 28). Dr. Vora opined that Petitioner was malingering and exhibited secondary gain-type behaviors. When questioned about the surveillance he reviewed, he acknowledged that Petitioner exhibited antalgic gait while walking into his office for the IME. (RX 25, p. 51). The doctor testified that he did not review a job description in rendering opinions regarding Petitioner's ability to work. (RX 25, pp. 53-54)

D. <u>Deposition of Dr. Kamran Hamid</u>

Dr. Hamid is a board-certified orthopedic surgeon specializing in the foot and ankle. (PX 11, p. 7). He testified that he sees about 30 to 45 patients in clinic per day on average, and about 2-6 surgeries per day. Dr. Hamid testified that he treats a lot of occupational injuries, including those with CRPS. (PX 11, p. 8) When he initially saw Petitioner for a Section 12 examination at Respondent's request, he noted that she exhibited ankle instability, as well as tenderness over the lateral aspect of her ankle. (PX 11, p. 13) It was his opinion that her subjective complaints lined up with his objective findings, and that there was an organic reason for her pain. (PX 11, p. 14) Dr. Hamid testified that if he had felt that Petitioner was malingering, he would have documented this in his Section 12 report. He said that her history of accident lined up with her findings on physical

examination. (PX 11, pp. 15, 19) He opined that she had some pain over the anterior ankle which can be consistent with a syndesmotic injury. (PX 11, p. 17)

Dr. Hamid opined that Petitioner may have had CRPS or sympathetic nerve pain at some point in time, but because she was taking Gabapentin and had received a Medrol Dosepak, she was not complaining of nerve pain at that time of his Section 12 examination. (PX 11, pp. 19, 22). Dr. Hamid testified that nerve pain can ebb and flow and may manifest itself differently at different times. (PX 11, p. 19). Dr. Hamid did not find that she had reached maximum medical improvement and advised that she would require work restrictions. (PX 11, pp. 23-24, PX 3)

Dr. Hamid noted that when he saw her in clinic on March 12, 2020, approximately 4 months later, she had antalgic gait and there were indications of nerve pain, as well as color changes to the left lower extremity. (PX 11, p. 25). Dr. Hamid testified that he did not agree with Dr. Vora's opinions, and that he would stand by his opinions that there was a ligamentous, syndesmotic injury, ankle instability and a clear nerve condition. (PX 11, pp. 38-39). Dr. Hamid testified that there was a causal connection between Petitioner's work injury and her current condition of ill-being. (PX 11, pp. 45-46)

E. Video Surveillance

Regarding the video surveillance, the Arbitrator does not place much weight on them for several reasons. First, the Arbitrator notes that that Petitioner does not claim entitlement to temporary partial disability benefits. (Arb. X 1)

Second, Petitioner was not medically restricted from performing any of the depicted activities and the videos were taken while Petitioner was receiving treatment to provide relief of pain and improvement of symptoms. Petitioner testified that she did have relief of pain, albeit temporary.

Third, the amount of activity depicted in the surveillance was relatively insignificant in comparison to the total time the investigators spent observing her. The Arbitrator notes that of the multiple days of surveillance from April 19, 2020 through January 21, 2021, Respondent produced just a minutes of video surveillance that depicted the Petitioner and all of which failed to depict Petitioner performing any significant activities; no smoking gun was shown. The video shows Petitioner driving to a pharmacy, physical therapy and to Respondent's Section 12 examiner. The videos do not show the Petitioner standing for more than a few minutes, nor walking briskly, nor walking more

than short distances, nor driving more than short distances, nor getting in and out of her vehicle in a manner inconsistent with her left foot injury.

Fourth, the Arbitrator notes the fact that Petitioner was depicted performing these activities does not mean she was not having left foot pain. The video surveillance does not bear witness in support of Respondent's allegations. Rather the video surveillance corroborates Petitioner's testimony. A blow-by-blow commentary of the video surveillance is not necessary as the video surveillance does not show anything of significance. Although, the Arbitrator notes that at 7:44 AM on May 8, 2020, the video surveillance reveals Petitioner walking with a more pronounced left foot limp, the video surveillance on multiple other days generally depicts Petitioner walking with a mild limp; a limp favoring left injured foot. The Arbitrator finds that the video surveillance did not depict anything that contradicted Petitioner's complaints and objective findings. For the above reasons and the record as a whole, the Arbitrator places little weight on the surveillance videos, the investigator surveillance reports and Dr. Candido and Dr. Vora's opinions regarding the video surveillance. Dr. Vora's opinion as to the surveillance video is contrary to the evidence as a whole. (RX 36-39)

F. Breast Cancer Charity Walk of October 24-28, 2019

Petitioner's participation in a 30 Mile Pledge the Pink Breast Cancer Walk two months after her work accident and one week after breast cancer surgery is not in dispute. What is in dispute is the nature and extent of Petitioner's participation. Respondent and Respondent's Section 12 experts apparently believe that Petitioner walked 30 miles but have no direct evidence that Petitioner in fact walked 30 miles. Petitioner admits to participating in the walk but denies walking more than a very limited amount. The following testimony was elicited from Petitioner by Petitioner's attorney:

Q. Okay. Before we get further into the accident, let's just talk about this breast cancer walk. So prior to going on the record, we had talked about some exhibits, and there was a discussion about a 30-mile breast cancer walk that you attended. Can you tell the judge a little bit about that event.

A. Yes. My sister's childhood best friend had died that year, early in the year. So we had planned to do the walk. I had been training for it all year. It was no secret with my employer, with my doctors. However, I did not, you know, plan on falling before doing the walk. So I fell in August. I was then

diagnosed with breast cancer myself in September. So not only was it that it meant a lot to me to attend the walk for my sister's childhood best friend, but then now it meant something for myself. So I had a lumpectomy a week before the walk. My surgeon said it was most likely that I was not going to be able to attend that walk because I would be in pain from the lumpectomy, plus I had lymph nodes removed. However, for me, I thought, you know, I could go and not -- I could no longer fully participate in the walk, but I could share the experience with fellow walkers and basically, you know, get inspiration from them as being a survivor. So I did go to the walk. Did I walk 30 miles? Absolutely not. I had -- you get four hours max for those that do the walk. So it's ten miles each day, Friday, Saturday and Sunday, ten miles per day.
It is the only thing that Pledge the Pink does. It is a once-a-year, you know, huge fund raiser. So I don't know how much I walked, physically walked, but I did do some walking. I spent a lot of the weekend on a golf cart. It was on Fripp Island, which is --
THE REPORTER: What Island?
THE WITNESS: I'm sorry. Fripp, F-r-i-p-p,
Fripp Island.
THE REPORTER: Thank you.
BY THE WITNESS:
A. It is very golf cart friendly. You go there, you park your car, you drive around all weekend on a golf cart. That is something I could do. I actually sat in the back and had my leg propped up where there was some metal bar. And, again, they had shortcuts. So, yes, I'm not disputing I was there. I am disputing that I walked 30 miles because I did not. It was a very painful weekend. I had two good-sized incisions that I was dealing with, but I was there; and then I ended up when I -- well, I'm going too far ahead.

BY MS. STROM:
Q. That's okay. Okay. So when you were there -- you said that it's ten miles per day over three days. So no one is walking 30 miles in one day, regardless?
A. *No.*
Q. Okay. So when you were there, you decided to go because it meant a lot to you; and obviously – ….

BY MS. STROM:
Q. So you went to the walk and tell us if you can about how much do you think you actually physically walked, if you know.
A. *I honestly do not know because I was doing shortcuts; and, again, for me, it was more the golf cart riding around that we did. So --….*
BY MS. STROM:

Q. Were you in the golf cart more than actually on your feet*?*
A. Yes.
Q. Okay.
A. Once you walk, once you do your walking the four hours that is actually, you know, with Pledge the Pink, you are free to go hang out and do whatever on the island, do whatever you want. So they have activities within the walk that you could participate in or you just hang out at the house that you rented with the people that you're with.
Q. Okay. So at no point did you actually walk 30 miles?
A. No.
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Q. Okay. Were you in pain while you were there?
A. Tremendously.

(TR pp. 18-23)

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the Petitioner bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his or her claim *O'Dette v. Industrial Commission,* 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between the employment and the injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989). And, yet it also is well established that the Act is a humane law of remedial nature and is to be liberally construed to affect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954). The Act is a remedial statute which should be liberally construed to provide financial protection for injured workers. *McAllister v. IWCC*, 2020 IL 124848 ¶ 32. The Act's provisions are to be read in harmony to achieve that goal. *Vaught v. Industrial Commission,* 52 Ill.2d 158, 165 (1972). Workers are entitled to "prompt, sure, and definite compensation, together with a quick and efficient remedy" with industry bearing

the "costs of such injuries" rather than the injured worker. *O'Brien v. Rautenbush*, 10 Ill.2d 167, 174 (1956). Decisions of an Arbitrator shall be based exclusively on stipulation of the parties, the evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

Credibility Assessment: The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47

The Arbitrator viewed Petitioner's demeanor under direct examination and under cross-examination. The Arbitrator considered the testimony of Petitioner with the other evidence in the record. Petitioner's testimony is found to be credible.

Ms. Carli Kuntze, Respondent's Vice President of Human Resources, attended the hearing and testified. Ms. Kuntze was present during Petitioner's direct and cross examination. The Arbitrator considered the testimony of Ms. Kuntze with the other evidence in the record., including Petitioner's testimony, and found to her to be credible. However, other than not materially contradicting Petitioner's testimony, the Arbitrator does not find her testimony necessary to discuss herein on the issues in dispute.

Mr. Paul Rybicki was called to testify by Respondent. Mr. Rybicki is the investigator who conducted the video surveillance of the Petitioner and was the author of three reports. The Arbitrator considered the testimony of Mr. Rybicki with the other evidence in the record., including Petitioner's testimony, and found to him to be credible. However, other than not materially contradicting Petitioner's testimony, the Arbitrator does not find his testimony necessary to discuss herein.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

A workers' compensation claimant bears the burden of showing by a preponderance of credible evidence that his or her current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386. The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his or her condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839 (1994). Causal connection between work duties and an injured condition may be established by a chain of events including claimant's ability to perform duties before the date of an accident and inability to perform same duties following date of accident. *Darling v. Industrial Commission*, 176 Ill.App.3d 186(1st Dist. 1988). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000). Further, the accident need not be the sole or principal cause, as long as it was a causative factor in a claimant's condition of ill-being. *Lopez v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130355WC-U, P25 (Ill. App. Ct. 3d Dist. 2014). Employers take their employees as they find them. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 199 (2002).

When the claimant's version of the accident is uncontradicted and [the] testimony is unimpeached, [her] recital of the facts surrounding the accident may be sufficient to sustain an award. *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982).

The parties stipulated that Petitioner sustained accidental injuries to her on August 13, 2019. Petitioner sought treatment for these complaints shortly after the injured occurred and has been in a continuous course of care ever since. The medical records documenting causal connection from Dr. Hong, MAPS, Dr. Hamid, Dr. Jaycox and Dr. Landphair note the opinion that Petitioner's

mechanism of injury was a competent one that caused Petitioner's current condition of ill-being.

Respondent offered the opinions of Dr. Candido, who testified that Petitioner did not suffer from Complex Regional Pain Syndrome, and that her current condition of ill-being was not related to the work accident. Respondent also offered the opinions of Dr. Vora, who essentially endorsed the same opinions as Dr. Candido and supported his findings although they differed as to the diagnosis. It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue but may look 'behind' the opinion to examine the underlying facts. Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill.2d 1 (1979); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225 (1992).

Even if the Petitioner had a preexisting condition as asserted by Respondent, in *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853-54, 663 N.E.2d 1057, 215 Ill. Dec. 543 (1996), the Appellate Court considered the applicability of the chain of events principle to a case involving a preexisting condition and reasoned as follows: "The employer also contends that the facts of the present case do not support the Commission's 'chain of events' analysis because [the claimant] had a preexisting condition. The employer cites no authority for the proposition that a 'chain of events' analysis cannot be used to demonstrate the aggravation of a preexisting injury, nor do we see any logical reason why it should not. The rationale justifying the use of the 'chain of events' analysis to demonstrate the existence of an injury would also support its use to

demonstrate an aggravation of a preexisting injury." *Walquist Farm Partnership v. IWCC*, (January 11, 2021) This is a Rule 23 Illinois Appellate Court decision. However, since it was issued after January 1, 2021 the decision may be cited for its persuasiveness, but not as precedent.

The Arbitrator heard the testimony of the witnesses, reviewed the medical records and evidence depositions and finds the opinions of Drs. Hong, Pontinen, Hamid, Jaycox and Landphair to be persuasive. The Arbitrator finds Petitioner's testimony as to her complaints credible. Petitioner underwent multiple conservative modalities of care including physical therapy, various injections, medial branch blocks, a DRG stimulator trial and ultimately the permanent DRG implant, which proved to be a success in reducing Petitioner's pain and CRPS symptoms. Unlike Dr. Vora, and like the treating physicians, the Arbitrator does find is faking her injuries and would undergo a DRG implant in her spine for secondary gain. Petitioner credibly reported improvement with range of motion, weight-bearing, activities of daily living, etc. The Arbitrator finds Petitioner's treating providers' explanation of the symptoms and reasoning for the proposed treatment credible and persuasive. In contrast, Drs. Candido and Vora opinions are not supported by a plain reading of the evidence. Petitioner's testimony that she was pain free, very active, and working without restrictions until the accident date was unrebutted. She had a long history of conservative treatment which failed over the course of two years. The medical records detail the extensive treatment, Petitioner's responses to treatment. Petitioner's subjective complaints are supported by the objective findings on diagnostic studies as well as the treating providers' physical examinations. The Arbitrator finds Dr. Candido's opinions are inconsistent with the medical evidence and diagnostic studies and are not supported by the more credible medical evidence and opinions.

With regret, the Arbitrator finds that Dr. Vora was sarcastic and evasive while answering deposition questions on cross-examination. (RX 25, pp. 30, 38-40, 50). He needlessly demeaned Petitioner's counsel during the deposition, stating, "You've got to ask me a question if you're going to do your job." (RX 25, pp. 34-35, 53). He interrupted and instead of answering questions on cross examination, he would flippantly respond with one-word answers, such as "sure" and "okay." (RX 25, pp. 52-53). He refused to answer questions at times on cross examination, alleging that he "did not understand" the question being asked yet he had no trouble answering questions on direct. (RX 25, pp. 51-53). When specifically asked why the fax cover sheet of the IME reports sent to defense counsel said, "corrected report" on it, the doctor claimed to have no knowledge of this. (RX 25, p. 30). Dr. Vora's mansplaining the law and how this Arbitrator would rule on legal issues to Ms. Strom is inconsistent with civility expected of

a member of his profession and of an "Independent Medical Examiner." However, Dr. Vora's conduct during cross examination was consistent with Petitioner's testimony as his conduct and attitude during her examination.

Dr. Vora opined that Petitioner was "faking" her injuries and that there was no objective evidence to support any of her complaints. Further, Dr. Vora opined that Petitioner was malingering and exhibited secondary gain; however, none of her treating providers reported this type of behavior nor did the original Section 12 physician doctor retained by Respondent, Dr. Hamid. Dr. Vora claimed that Petitioner was not walking with an antalgic gait and that she was seen walking normally on surveillance. On cross examination, he later changed his testimony and admitted that she did have an antalgic gait while walking into Illinois Bone & Joint for his Section 12 examination, but that this was not legitimate and yet fails to persuasively explain why. It is unclear if Dr. Vora viewed all the video surveillance since his findings and opinions are inconsistent with the video. The Arbitrator disagrees with Dr. Vora. The video surveillance consistently depicts Petitioner walking with a slight limp and one day with a marked limp. Whether the video surveillance reveals that Petitioner walked with a limp is within the common knowledge and experience of the layperson and this Arbitrator finds that video surveillance depicts Petitioner consistently walking with at least a slight limp or altered gait.

Dr. Vora opined that Petitioner could return to full duty without restrictions and placed her at maximum medical improvement. He did so without reviewing a job description.

After having reviewed the surveillance video multiple times and once in during the trial, the Arbitrator disagrees with Dr. Vora's assessment of Petitioner's gait pattern and his opinions as a whole. The Arbitrator finds Dr. Vora cherry-picked items from the medical evidence that would support his opinion that no further medical care was warranted. and only finding that she suffered a shin contusion. Dr. Vora failed to adequately and persuasively explain why his findings and opinions were so inconsistent with all the treating physicians- Dr. Pontinen, Dr. Hong, Dr. Hamid, Dr. Jaycox and Dr. Landphair. It is apparent that Dr. Vora failed to take into consideration all pertinent positive findings and failed to explain why he did not take into consideration the objective findings and opinions of the treating physicians and evidence. The Arbitrator in determining the persuasiveness of the Dr. Vora's findings and opinions, takes into consideration Dr. Vora's lack of civility and "mansplaining" his answers to Petitioner's attorney. Apparently, Dr. Vora was having a bad day when he conducted his Section 12 examination of Petitioner and when answering the

cross-examination questions of Petitioner's attorney, Ms. Strom. His conduct is inconsistent with his excellent training and professional accomplishments.

The Arbitrator is not persuaded by the findings and opinions of Dr. Candido. The Arbitrator is quite aware that that Dr. Candido is able to generate lengthy Section 12 reports which at first blush appear to be a very complete summary of the medical evidence. However, Dr. Candido has a pattern of failing to note or address the objective findings of the treating physicians. Dr. Candido boasts that his findings are "unequivocal, unimpeachable and objective " and brags that this examinations and reports are the unimpeachable, objective and complete. Although Dr. Candido's volunteers that his findings are "unequivocal, unimpeachable and objective " in comparison to others, the Arbitrator notes that Dr. Candido's findings are consistently inconsistent with the findings of all the treating physicians at Rush University and MAPS – Dr. Pontinen, Dr. Hong, Dr. Hamid, Dr. Jaycox and Dr. Landphair (*see e.g.,* RX 26,pp. 61. 86) The Arbitrator further notes that Dr. Candido's findings and opinions are inconsistent with the findings and opinions of Dr. Vora. Dr Vora diagnosed a left leg shin injury and Dr. Candido diagnosed with Tarsal Tunnel Syndrome which as Dr. Pontinen explained is the compression of the posterior tibial nerve as it passes around the medial malleolus and to the foot. As noted above, Dr. Pontinen and none of the other treating physicians agreed with Dr. Candido. Nor did Dr Vora agree with Dr. Candido's diagnosis. Whereas there is a general consensus between the treating physicians as to Petitioner's diagnosis and causality.

The Arbitrator is not persuaded by Respondent assertion that that Petitioner had a pre-existing condition that is the cause of her current condition of ill-being. The evidence is not sufficiently persuasive evidence to support this defense. The Arbitrator notes that Respondent's witness had not voiced any complaints about Petitioner's pre-accident work performance nor was she aware that Petitioner had a pre-existing condition to her left foot. In fact, after Petitioner was laid off due to COVID-19 related reduction in business. Respondent's witness testified that the company invited Petitioner to return to work. It is undisputed that before Petitioner's work accident, she did not miss any time off work for a pre-existing condition. Petitioner did not seek or receive medical treatment for a disabling condition nor did request reasonable accommodation for a left foot condition of ill-being prior to work her work injury.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that her condition of ill-being to the left foot and ankle is causally connected to the accident.

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

Under section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are necessary to diagnose, relieve, or cure the effects of his injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165, 351 Ill. Dec. 63 (2011)*. It remains undisputed that Petitioner was performing her regular duties of employment with Respondent on August 13, 2019, and that she suffered a left foot, ankle and shin injury and had extensive medical care since the accident date with various providers.

Under section 8(a) of the Workers' Compensation Act, an employer's liability to pay for medical services is limited to (1) first aid and emergency treatment, *plus* (2) two additional doctors chosen by the employee *and* (3) any additional providers and services recommended by the two physicians selected by the employee. (820 ILCS 305/8(a) (West 2010). Petitioner was sent by her employer directly to Working Well, the occupational health provider. (PX 1). She was not sent to the emergency room so Working Well shall be considered the "first aid" treatment per Section 8(a), since Petitioner only went to Working Well twice. Also, Work Well was not Petitioner's choice. Petitioner's primary care physician, Dr. Galante, saw Petitioner for a yearly checkup and addressed her various health issues It is clear that Dr. Galante conducted the visit as previously scheduled annual checkup and did not treat Petitioner for her work injury. . He simply noted a sprained ankle and recommended that Petitioner consult with a specialist. Petitioner denied that her PCP rendered treatment and the Arbitrator agrees.

Petitioner was then sent to Dr. Hong by the nurse case manager which Respondent assigned to her claim. Petitioner followed the direction of the nurse case manager and saw James Hong, DPM, of Bone & Joint Specialists. (PX 2). During this timeframe, Dr. Hong referred Petitioner to pain management on December 19, 2019 (PX 2, pp. 23-34); however, this request was denied by Respondent. Petitioner came under the care of Midwest Anesthesia & Pain Specialists (MAPS) upon referral from Dr. Hong.

Petitioner then chose to continue treatment with Dr. Hamid, an orthopaedic surgeon with Midwest Orthopaedics at Rush, subsequent to the

Section 12 examination that he performed at Respondent's request on December 18, 2019. (PX 3, PX 11). Dr. Hamid also recommended pain management at the first office visit on March 12, 2020. As a result, Petitioner saw Dr. Jaycox at Rush University Pain Center as her second line of treatment for pain management, who is in the same practice as Dr. Landphair, with Rush University Medical/Pain Centers. (PX 6, PX 7). Because Dr. Hong and Dr. Hamid both recommended pain management, Petitioner had two choices, and she used one choice for MAPS and another choice for Drs. Jaycox and Landphair who work in tandem.

Although, Petitioner has been seen by a number of physicians, the Arbitrator does not find that Petitioner was "doctor shopping". She was following the directives of her employer and the nurse case manager and the chain of referrals within the medical providers at Rush Medical Center in her quest to get better. The Arbitrator notes that the DRG combined with Lyrica has reduced her nerve pain and, thus, this prescribed treatment is reasonable and necessary to cure and relieve Petitioner of her work-related left foot injury.

Petitioner offered PX 1-9 and PX 12-15 with unpaid bills from Working Well, Bone & Joint Institute, Midwest Orthopaedics at Rush, Loyola University Medical Center, MAPS, Rush University Medical Center, Rush University Pain Center, Athletico, ATI, the Blue Cross Blue Shield lien, ADCO and Electronic Waveform Lab. The Arbitrator finds that these outstanding bills are for reasonable, necessary, and causally related care. Based upon the record as a whole, the Arbitrator finds that Respondent shall pay for these reasonable and necessary medical services, pursuant to the medical fee schedule, or contracted rate, as provided in Sections 8(a) and 8.2 of the Act. The awarded bills shall be payable to Petitioner and her counsel directly. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission. However, the parties agreed on the record that if there were any unpaid medical bills prior to Dr. Candido's first Section 12 examination of January 28, 2020, Respondent accepts responsibility for payment and would pay those bills directly. (T. pp. 284 – 286

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO PROSECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth above. The proof is in the pudding. The DRG

combined with Lyrica has reduced her nerve pain. It worked. It worked well. Petitioner has enjoyed significant pain relief and an improved quality of life. The DRG stimulator that was prescribed and implanted into Petitioner's spine has worked as intended. Petitioner is entitled to receive the necessary medical care to maintain the DRG stimulator and the prescribed Lyrica medication. Respondent is ordered to authorize and pay for such treatment.

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

Petitioner claims to be entitled to attorney fees and penalties under Sections 16, 19(k), and 19(l) of the Act. The Arbitrator notes that Petitioner does not allege an entitlement to TTD. Respondent has agreed to pay for medical treatment incurred prior to Dr. Candido's initial examination and Petitioner agreed that Respondent may pay those unpaid bills directly to the medical providers. Therefore, Petitioner seeks penalties and fees for unpaid medical expenses incurred after Dr. Candido's Section 12 examination and apparently for the failure to authorize prospective medical.

The purpose of sections 16, 19(k), and 19(l) is to further the Act's goal of expediting the compensation of workers and penalizing employers who unreasonably, or in bad faith, delay or withhold compensation due an employee. *Avon Products, Inc. v. Industrial Commission*, 82 Ill. 2d 297, 301 (1980). In the instant case, the weight of the medical evidence presented by multiple doctors, including a podiatrist, orthopaedic surgeon and pain management specialists, support the CRPS diagnosis or at least a chronic never diagnosis which stemmed from Petitioner's work-related injury. This is well confirmed by positive outcome of the DRG implant combined with prescribed Lyrica. The Arbitrator does not find the findings and options of Dr. Vora and Dr. Candido's to be persuasive.

The Arbitrator is mindful that Respondent provided multiple lengthy Section 12 reports from a board-certified pain management expert and a board-certified orthopedic surgeon specializing in foot and ankle maladies. Respondent in its defense of this claim assiduously introduced 41 exhibits. Although it is clear to this Arbitrator that Respondent believed its denial of benefits was just, the Arbitrator does not share this belief. Based on the preponderance of the evidence, Petitioner is entitled to benefits under the Act. The Respondent provided both of its retained expert physicians Petitioner's medical records from the instant accident as well as the Petitioner's primary care physician and oncologist for review and comment. However, based on the record as a whole

and in light of the demeanor of Respondent's experts, the Arbitrator finds that Dr. Candido and Dr. Vora have failed to persuade the Arbitrator of their asserted findings and opinions.

The Arbitrator finds that the experts reliance upon or assumption of Petitioner walking 30 miles one week after undergoing major breast cancer surgery is unsupported by the evidence. Their reliance on the video surveillance to is also misplaced. Although, the Arbitrator finds that the findings and opinions of the treating physicians to be more persuasive than those of Dr. Candido and Dr. Vora, it does not translate to penalties.

The Arbitrator does not support Respondent's refusal to authorize the recommended prospective medical care. Although, the Arbitrator finds that based on the weight of the evidence Petitioner is entitled to prospective medical care, the Arbitrator is unable to award penalties under the law. The Arbitrator is bound by holdings in *Hollywood Casino v. IWCC,* 2012 Ill. App. (2nd) 110426WC and *O'Neil v. IWCC*, 2020 IL App (2d) 190427WC wherein the Appellate Court held that the Illinois Workers' Compensation Commission lacked statutory authority to impose penalties on an employer for an for unreasonable refusal and unreasonable delay in authorizing surgery, nor could attorney fees under Section 16 be awarded, The appellate courts in *Hollywood Casino* and *O'Neal* explained that Section 19(k) and Section 19 (l) addressed payment of benefits, not authorization for medical treatment, and the requirement in Section 8(a) of the Act. to provide and pay for reasonable and necessary medical services had no penalty provision. Therefore, the Arbitrator concludes that Petitioner is not entitled to penalties and fees for Respondent's failure to authorize prospective medical care for which the Petitioner is entitled to receive.

IV. CONCLUSION

The Arbitrator finds that the Petitioner has sustained her burden of proof by a preponderance of the evidence that her current condition of ill-being to her left foot is causally connected to her work injury and that she is entitled to have her unpaid medical bills paid by Respondent.

The Arbitrator further finds that Petitioner sustained her burden of proof by a preponderance of the evidence that she is entitled to the prescribed prospective medical treatment. Petitioner's testimony was credible, and the findings and opinions of her treating physicians are more persuasive than the findings and opinions of Dr. Candido and Dr. Vora. Dr. Pontinen and Dr. Hamid

in their testimony provided reasonable and straight forward explanations and treatment recommendations, especially in light of the length of treatment rendered to Petitioner by MAPS. The Arbitrator also relies upon the medical records from Dr. Hong, Dr. Hamid, Dr. Jaycox and Dr. Landphair in finding in favor of Petitioner.

The Arbitrator further finds that Respondent's surveillance films do not support Respondent's claim that Petitioner is not entitled to benefits under the Act.

Finally, the Arbitrator finds that Petitioner, based on the weight of the evidence, is not entitled to penalties and fees and for the unpaid medical submitted into evidence and does not award penalties for Respondent's failure to authorize prospective medical.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC032540
Case Name	Deborah Nordsiek v. Peoria Public Schools District #150
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0279
Number of Pages of Decision	16
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Hania Sohail
Respondent Attorney	Matthew Brewer

DATE FILED: 6/13/2024

/s/ Amylee Simonovich, Commissioner

Signature

24IWCC0279

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Deborah Nordsiek,

Petitioner,

vs. NO: 17 WC 032540

Peoria Public Schools District #150,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, prospective medical, temporary total disability, 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 thereof.

The Commission reverses the finding of accident and causation with regard to the cubital tunnel condition. An employee who alleges a repetitive-trauma injury must meet the same standard of proof as an employee who alleges an injury arising from a single identifiable event. *Durand v. Ill. Indus. Comm'n*, 224 Ill. 2d 53, 64 (2006). The employee must prove by a preponderance of the evidence all elements to justify an award of benefits. *Quality Wood Products Corp., v. Ill. Indus. Comm'n*, 97 Ill. 2d. 417, 423 (1983). This includes establishing an accident "arising out of" and occurring "in the course of" the employment. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 444 (1987).

The concept of "in the course of" refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute v. Ill. Indus. Comm'n*, 314 Ill. App. 3d 149, 162 (2000). A claimant must identify a date on which the injury "manifested itself". *Durand*, 224 Ill. 2d at 67. This is generally either the date on which the claimant requires medical attention or the date on which the employee can no longer perform her work activities. *Id* at 72. In this case, there was no testimony as to a date of onset or manifestation of symptoms specifically related to the cubital tunnel conditions. While there was a diagnosis of bilateral cubital tunnel syndrome noted in the findings of the EMG/NCV on September 13, 2017, these were incidental findings. Both Dr. Phillips and Dr. Williams made reference to the technical diagnosis of cubital tunnel syndrome, as a result of the EMG/NCV findings, however, no symptoms were clinically correlated to the

condition and no treatment was recommended by either doctor.

For an injury to "arise out of" a claimant's employment, it must have an origin in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the injury. *Navistar International Transportation Corp. v. Ill. Indus. Comm'n*, 315 Ill. App. 3d 1197, 1202-1203 (2000). While there was some medical testimony regarding the risks Petitioner was exposed to at work in relation to repetitive trauma for the carpal tunnel, there was no such distinction for the cubital tunnel condition. Petitioner did not meet her burden of proving an accident arising out of and in the course of her employment with regard to the condition of bilateral cubital tunnel syndrome.

Petitioner is further required to establish the existence of a causal relationship between the condition of ill-being and her employment. *Navistar International Transportation Corp.,* 315 Ill. App. 3d at 1202-1203. In cases alleging repetitive trauma, the claimant generally relies on medical testimony establishing a causal connection between the work performed and the claimant's disability. *Nunn v. Ill. Indus. Comm'n*, 157 Ill. App. 3d 470, 477 (1987), citing, *Peoria county Belwood Nursing Home v. Ill. Industrial Comm'n*, 115 Ill. 2d 524, 530 (1987). While medical testimony as to causation is not necessarily required, "where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that claimant's work activities caused the condition complained of." *Nunn,* 157 Ill. App. 3d at 477-478. As the symptomology for carpal and cubital tunnel conditions are generally intertwined and there was no distinction between the symptomology of the conditions within evidence submitted, an expert opinion is necessary to address whether the condition of cubital tunnel was causally related to the work performed by the Petitioner. As noted above, no such medical opinion was provided in this case. Petitioner did not meet her burden of proving a causal connection between the diagnosed condition of bilateral cubital tunnel syndrome and her employment.

The Commission agrees with the Arbitrator's finding of temporary total disability, however, modifies the period of temporary total disability awarded to reflect an award of benefits from December 29, 2017 through February 25, 2017 for a total of 8 3/7 weeks. The Commission modifies the award cited in issue (K) of the Arbitrator's Decision to reflect a period of 8 2/7 weeks to a period of 8 3/7 weeks. Arbitration Decision, p. 7. The Commission further modifies the second paragraph of Arbitration Decision Order to read, "Respondent shall pay Petitioner temporary total disability benefits of $579.39/week for 8 3/7 weeks, commencing December 29, 2017 through February 25, 2018, as provided in Section 8(b) of the Act."

The Commission also agrees with the Arbitrator's finding of reasonable and related medical expenses, however, modifies the last paragraph of the medical award cited in issue (J) to read, "The Arbitrator orders the Respondent to pay the Petitioner directly medical bills in the amount of $31,721.35, as provided in Section 8(a) and 8.2 of the Act." Arbitration Decision, p. 7. Accordingly, the Commission modifies the first sentence of the Arbitration Decision Order to read, "Respondent shall pay reasonable and necessary medical services of $31, 721.35, as provided in Section 8(a) and 8.2 of the Act."

As the Petitioner did not meet her burden of proof with regard to accident and causation in

relation to the bilateral arms, the Commission hereby vacates the award of 3.5% loss of use of the right arm and 3.5% of the left arm. The permanent partial disability award is reduced to 42.75 weeks, reflecting the remaining award of 10% loss of use of the right hand and 12.5% of the left hand.

The Commission modifies the second to last paragraph of the Arbitrator's narrative in the Section pertaining to issue (L), striking the sentence, "With regards to Petitioner's arms, Petitioner testified that she continues to experience numbness and tingling with her bilateral arms."

The Commission otherwise agrees with the Arbitrator's analysis pursuant to the five factors of 820 ILCS 305/8.1(b). In their consideration of the affirmed award to the bilateral hands, the Commission further assigns the following weight to the factors:

(i) The reported level of impairment pursuant to an AMA assessment. The Commission assigns no weight to this factor.
(ii) The occupation of the injured employee. The Commission assigns some weight to this factor.
(iii) The age of the employee at the time of the injury. The Commission assigns some weight to this factor.
(iv) The employee's future earning capacity. The Commission assigns no weight to this factor.
(v) The evidence of disability corroborated with the treating physicians' medical records. The Commission assigns significant weight to this factor.

Finally, the Commission modifies a scrivener's error in the first paragraph of the medical narrative of issue (J), striking the word "knee" and replacing the word with "bilateral hands". Arbitration Decision, p. 9.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on November 2, 2022, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay to Petitioner reasonable and necessary medical services as set forth in Petitioner's exhibits for causally related treatment, as provided in Section 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay to Petitioner temporary total disability benefits of $579.39/week for 8 3/7 weeks, commencing on December 29, 2017 through February 25, 2017, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay to Petitioner permanent partial disability benefits of $521.44/week for 42.75 weeks, as the injuries sustained caused 10% loss of use of right hand and 12.5% loss of use of the left hand, as provided in Section 8(e) of the Act.

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

June 13, 2024
o: 5/7/2024
AHS/kjj
051

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

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC032540
Case Name	Deborah Nordsiek v. Peoria Public Schools District #150
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Hania Sohail
Respondent Attorney	Matthew Brewer

DATE FILED: 11/2/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 2, 2022 4.44%

/s/Kurt Carlson, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Deborah Nordsiek
Employee/Petitioner
v.
Peoria Public Schools District #150
Employer/Respondent

Case # **17** WC **032540**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Peoria**, on **September 28, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **September 13, 2017**, 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 $**45,192.66**; the average weekly wage was $**869.08**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services of $**31,721.35**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**579.39**/week for **8 2/7** weeks, commencing **December 29, 2017** through **February 26, 2018**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**521.44**/week for **63.835** weeks, because the injuries sustained caused the **10**% loss of the **right hand**, **12.5**% loss of the **left hand**, **3.5%** loss of the **right arm** and **3.5**% loss of the **left arm** as provided in Section 8(e) of the Act.

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

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

NOVEMBER 2, 2022

Kurt A. Carlson

Signature of Arbitrator

Deborah Nordsiek v. Peoria Public Schools District # 150
17WC032540

Arbitrator Finding of Facts

Petitioner filed an Application for Adjustment of Claim claiming accidental injuries sustained while working for Peoria Public Schools District #150 on September 13, 2017. Petitioner alleged that she sustained repetitive trauma injuries. The Application for Adjustment of Claim was entered and admitted into the evidence as Petitioner's Exhibit 1. Prior to proceeding to hearing, parties filled out a Stipulation/Request for Hearing. The Request for Hearing was entered and admitted into the evidence as Arbitrator's Exhibit 1. The Arbitrator notes that the issues and disputes at the time of the Arbitration were of accident, causal connection, medical bills, TTD and nature and extent of the injuries.

The Arbitrator notes that Petitioner testified credibly. At the time of the hearing, she was not employed and the last time she worked was sometime in August of 2018.

Petitioner testified that in August of 2018, she worked at Better Business Bureau and worked there as a Dispute Resolution Coordinator. As to the employer in question, Petitioner testified that she was last employed by District #150 in July of 2018 and that she voluntarily retired from her position there.

Petitioner testified that she was hired by District #150 sometime in 1991. She started working initially as a bus driver and later in 1993 started working at Title I, District #150 Governmental Department at a secretarial position which involved mostly typing.

In 1995, Petitioner began working at Mark Bills Middle School, as a secretary. She indicated that as school secretary her job duties included, but not limited to, typing data into the district systems, filing and other clerical duties. She indicated that at Mark Bills she would also be responsible for purchase orders and would type up memos for the staff and would maintain mailing, filing and payroll. She indicated that at Mark Bills her job required her to use a type writer 30% of the time and would require her to keyboard 60% of the time. She testified that in May of 2008 she transferred to the Technology Department of District #150. She worked there as an Administrative Assistant and was responsible for creating purchase orders for the entire school district, inputting and asset tagging the technology orders, creating help deck tickets on the computer for technology related issues, packing and repacking of boxes and some communication with vendors and district staff via email. Petitioner testified that at least 70% to 80% of her job in the technology department required her to use a keyboard. Petitioner testified that she continued to work in the technology department until she voluntarily resigned from her position in July of 2018.

Petitioner testified that while doing various jobs for Respondent, Petitioner worked 40 hours a week. She was allotted one half hour lunch which she rarely took.

As to the ergonomic involved, Petitioner testified that she had various work stations throughout her employment at District #150 and that none of them were ergonomically correct. Petitioner testified that at one point she had a metal desk and she had various other desks of varying heights. She indicated that there was one time where there was a two-by-four prop to lower the desk. She testified that she had very uncomfortable chairs that were not adjustable. She did not have any place to rest her hands and forearms and she would rest her hands and forearms on her desk. Petitioner demonstrated at the time of the Arbitration various positioning in which she would type. The Arbitrator notes that all the positioning Petitioner demonstrated indicated Petitioner's wrists to be either above and/or below her waist level. Petitioner demonstrated bending her wrists while she's typing. Petitioner testified and the Arbitrator agreed the various postures Petitioner noted all seem to be extremely uncomfortable in which Petitioner would keyboard during her job.

Petitioner testified that during the performance of her job duties, she started developing problems. Petitioner testified that the problems started sometime in 2016. Petitioner testified that when her problems started, she was provided with a new work station known as work fit – TL model sometime in 2016. Petitioner testified that she was also provided with an adjustable chair sometime in early 2017. Petitioner testified that while the chair and the new work station was an improvement from the prior chair and work station she had, the chair and work station did not cure Petitioner's problems and Petitioner's problems continued to progressively get worse. Petitioner testified that by August of 2017 her problems were worse enough that she needed to seek medical attentions. She testified that she first saw her primary care physician, Dr. Stephanie Lindstrom on August 21, 2017. Petitioner testified that prior to seeing Dr. Lindstrom, she was experiencing pain and numbness that would wake her up several times during the night. She started wearing braces, however, the braces did not help alleviate her symptoms.

Petitioner testified that her primary care physician, Dr. Lindstrom, referred her to see a neurologist. Petitioner testified that she saw Dr. Jacob Tony for a nerve conduction study. The nerve conduction study was completed on September 13, 2017. She testified that after undergoing the nerve conduction study, she was aware of her diagnosis of bilateral carpal and cubital tunnel syndrome and was aware that her conditions are associated with the job duties that she performed at District #150. Petitioner testified that after seeing Dr. Tony and after being diagnosed with bilateral carpal and cubital syndrome, it was her understanding that the work station that she has been using is ergonomically incorrect. Petitioner testified to a handout that Dr. Tony provided to her after her EMG. The handout regarding ergonomics is attached as part of Petitioner's Exhibit 3 and is the fourth page of Petitioner's Exhibit 3. Petitioner testified that the ergonomics displayed in Petitioner's Exhibit 3 is not at all close to what her work station was when she started having problems at District #150.

The Arbitrator notes that Respondent is not disputing notice in the present case. Petitioner testified that after undergoing the EMG, on September 15, 2017 she notified her supervisor, Michelle Seipel, regarding her issues and the test results from Dr. Tony.

At that point, Petitioner was requested to contact the Human Resource and fill out a Form 45. Petitioner testified that Form 45 was not delivered to her until October 11, 2017. She also testified that after notifying her supervisor about her problems, she was requested to go se IWIRC.

Petitioner testified that she went and saw IWIRC on October 11, 2017 and it was her understanding that IWIRC will no longer see her as they deemed her condition to be non-work related. The Arbitrator notes that medical records of IWIRC were entered and admitted into the evidence as Petitioner's Exhibit 4. The medical records of IWIRC document that Petitioner was experiencing numbness and tingling in both hands and elbows. Consistent with Petitioner's testimony, IWIRC deemed Petitioner's condition to be non-work related and released her from their care.

Petitioner testified that since Work Comp was not approving any treatment, she on her own went to see Midwest Orthopaedic Center and saw Dr. James Williams. Petitioner testified that she knew of Dr. Williams as he had previously treated her family members. Petitioner testified and the medical records note that Petitioner first saw Dr. Williams on November 8, 2017. Dr. Williams notes that Petitioner has worked as a Secretary for over 20 years. He noted that Petitioner has been having symptoms for a while and the symptoms are constant. Consistent with Petitioner's testimony, Dr. Williams noted that Petitioner symptoms included waking up at night with numbness and tingling and pain. Dr. Williams reviewed the EMG that was previously performed by Dr. Tony and diagnosed Petitioner with carpal tunnel syndrome. Petitioner testified and medical records of Dr. Williams were entered and admitted into the evidence as Petitioner's Exhibit 6 reflect that at the recommendation of Dr. Williams, Petitioner proceeded with a right carpal tunnel on December 29, 2017 and a left carpal tunnel release on January 12, 2018.

The Arbitrator, consistent with Petitioner's testimony, notes that Dr. Williams took Petitioner off of work from the date of her first surgery, December 29, 2017, and kept Petitioner off of work and/or on restrictions until February 26, 2018.

Medical records of Midwest Orthopaedic Center reflect that Petitioner was last seen by Dr. Williams on February 22, 2018. At that point, he had noted that Petitioner is very pleased with the outcome of the surgery, however, she continued to experience some numbness and tingling in the tips of the fingers on her left side. The Arbitrator notes that operative report of Dr. Williams of December 29, 2017 and January 12, 2018 was entered and admitted into the evidence as Petitioner's Exhibit 7, 8 and 9.

Petitioner testified that at the request of the Respondent she did submit to an Independent Medical Evaluation with Dr. Phillips. Petitioner was not questioned as to what job duties she conveyed to Dr. Phillips that she did at the Respondent. Petitioner, was shown a copy of Respondent's Exhibit 4 that was entered and admitted into the evidence. Respondent's Exhibit 4 is a Peoria Public Schools District #150 job description. Petitioner did indicate that the job description does seem to summarize the job that she performed while working at District #150 in their Technology Department.

The Arbitrator notes that Dr. James Williams was deposed and his deposition transcript was entered and admitted into the evidence as Petitioner's Exhibit 10. Dr. Williams indicated that Petitioner's EMG that he reviewed revealed moderate bilateral carpal as well as cubital tunnel syndrome. Dr. Williams' Dep Tr. Pg. 5. Dr. Williams testified that based on the diagnosis of carpal tunnel syndrome he recommended patient to undergo surgical intervention as he had believed that Petitioner had undergone adequate conservative treatment of splinting, taking anti-inflammatory and home exercises. Dr. Williams' Dep Tr. Pgs.7-8.

Dr. Williams testified consistent with his medical records and testified that he discharged patient from his care on February 22, 2018. Dr. Williams' Dep Tr. Pg. 14. He did indicate that during the last visit, Petitioner continues to experience numbness and tingling in the tips of her fingers on the left side. He did testify that he released Petitioner to work at a full duty capacity starting February 26, 2018.

As to the causation. Dr. Williams testified that "If indeed as was stated in the statement that was made to me with the hypothetical question, if indeed the patient as she stated in there that she worked at a work station where she had a nonadjustable chair, she has a work station where she has to rest her hands and forearms on the metal desk, if indeed that's how she typed both, it sounds like, at an old typewriter 30 percent of the time, which is even much worse than a keyboard, it's harder to press the keys, as well as at a computer keyboard for 60 percent of the time, I do feel that her condition of bilateral carpal tunnel could at least have been aggravated if not caused by her work activities due to working in a non-ergonomic work station." *Dr. Williams' Dep Tr. Pgs. 22-23.*

Dr. Williams' answer was in response to a hypothetical listed on page Pages 14 to 22 of his deposition transcript. The Arbitrator notes that the hypothetical presented by Petitioner's Attorney in which Dr. Williams seems to be consistent with the job description, job duties and the ergonomics that were involved with Petitioner's work station.

The Arbitrator notes that Dr. Phillips evidence deposition was also taken and was entered and admitted into the evidence as Respondent's Exhibit 1. Dr. Phillips agreed that Petitioner suffered from bilateral carpal and bilateral cubital syndrome. Dr. Phillips' Dep Tr. Pg. 24. Dr. Phillips conceded that Dr. Williams' causation opinion is based on improper ergonomics of Petitioner's work station. He testified that he did ask Petitioner to replicate as to how she operated her work station. He agreed that he did not take any photographs of the reenactment of Petitioner's use of her work station. Dr. Phillips' Dep Tr. Pg. 28. The Arbitrator notes that despite Respondent producing photographs of Petitioner's work station as Respondent's Exhibit 5, Dr. Phillips indicated that he was not provided with any photographs of Petitioner's work station. He agreed that his opinion of causation is highly dependent on the job duties that he notes Petitioner performed while working for the Respondent. *Dr. Phillips' Dep Tr. Pg. 29*. Dr. Phillips indicated that even if Petitioner typed 60% of her day on the computer, she wasn't in a

high-risk position. He indicated that the wrists weren't hyper extended or hyper flexed as she took time away from her computer. *Dr. Phillips' Dep Tr. Pg. 31.* Unlike what Petitioner testified, Dr. Phillips was of the opinion that Petitioner typing two hours of the day and being on the phone three hours of the day. *Dr. Phillips' Dep Tr. Pg.36*. Dr. Phillips agreed that constantly entering data on the compute, typing non-stop without any breaks, entering data for 60% of an eight hour shift can be associated with high-risk for developing carpal tunnel syndrome. *Dr. Phillips Dep Tr. Pg.37*.

CONCLUSIONS OF LAW

(C) Did an accident occur out of and arose out of the course of Petitioner's employment by Respondent?

(E) Was timely notice of the accident given to Respondent?

Consistent with Arbitrator's finding of facts, the Arbitrator finds that Petitioner sustained repetitive trauma injuries on September 13, 2017. The Arbitrator notes that Petitioner testified that the first time she saw Dr. Tony on the date of the EMG on September 13, 2017, she knew about her condition and its association with her job duties. The Arbitrator notes that the term repetitive trauma was established by the Supreme Court in *Peoria County Belwood* case decided many years ago. It was referenced by the court in order to set a standard for the date of accident in a case which did not involve a single trauma. As the court later explained in its *Durand decision*, the standard of proof is the same as a single trauma case. The Petitioner must simply prove that his work was a causative factor. As stated above, the Petitioner satisfied his burden of proof on that issue. The accident date used should be the date when the injury manifested itself which is the date when both the fact of the injury and the causal relationship between the injury and the Petitioner's employment would have become plainly apparent to a reasonable person. Here the Petitioner is alleging the repetitive trauma accident date of September 13, 2017, the date when her symptoms and the association between her symptoms and her job duties was made apparent to her.

The Arbitrator further notes that Petitioner testified credibly regarding her job duties. He notes that Petitioner's supervisor, Michelle Seipel was present at the time of her testimony but did not rebut the job description and duties as testified to by Petitioner. Based on that, the Arbitrator finds that on September 13, 2017, that Petitioner sustained repetitive trauma injuries while working for the Respondent. The Arbitrator notes that Petitioner demonstrated various positioning in which she would use her keyboard, the positioning of Petitioner's wrist and arms during keyboarding appears to be uncomfortable, awkward and ergonomically incorrect as expressed by Dr. Williams. The Arbitrator notes that Dr. Phillips did not indicate as to how Petitioner specifically used her work station and/or her keyboard, but simply indicated that he believed that the ergonomics involved with Petitioner's work station was correct. Based on that, the Arbitrator finds that Petitioner's condition of ill-being in the form of bilateral

carpal and cubital tunnel syndrome is related to the job that Petitioner performed while working for the Respondent. The Arbitrator notes that both Dr. Phillips and Dr. Williams agreed that Petitioner suffers from bilateral carpal and cubital tunnel syndrome. Petitioner, however, did not undergo any surgical intervention for her bilateral cubital tunnel syndrome.

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

Regarding the issue of medical bills, the Arbitrator having found that there was an accident, notice and causal relationship between the accident and the Petitioner's conditions of ill-being, the Arbitrator awards medical bills as found in Petitioner's Exhibit 11 to the Petitioner with any credit given to the Respondent for any medical bills previously paid by the Respondent. The Arbitrator notes following medical bills to be related to Petitioner's knee condition as found in Petitioner's Exhibit 11.

NAME OF PROVIDER	ACCOUNT NUMBER	DATE OF SERVICE	TOTAL AMOUNT OF BILL
Associated Anesthesiologists	77726	12/29/17-1/12/18	$1,834.00
IWIRC	10241644	10/11/17	$109.51
Midwest Orthopaedic Center	378275	11/8/17-2/22/18	$3,315.00
Peoria Tazewell Pathology Group	5151*8694705327.1		$19.20
UnityPoint Health (physicians)	2088188	9/13/17-11/7/17	$1,434.00
UnityPoint Health (Proctor Hosp)	336435639	12/29/17	$11,486.96
UnityPoint Health (Proctor Hosp)	336645124	1/12/18	$13,522.68
	TOTAL		**$31,721.35**

/cls

The Arbitrator orders the Respondent to pay the Petitioner directly medical bills in the amount of $31,721.35 reasonable and necessary medical treatment. The medical bills are to be paid pursuant to the Illinois Workers' Compensation Commission fee schedule.

(K) What temporary total benefits are in dispute?

Petitioner testified and Dr. Williams' medical records reflect that Petitioner was taken off of work from the date of the first surgery on December 29, 2017 and was recommended to remain wither off of work or on light duty until February 26, 2018. The Arbitrator, based on prior findings of causation, awards Petitioner TTD for a period of 8 -2/7 weeks at a rate of $579.39 per week.

(L) What is the nature and extent of the injury?

Pursuant to 820 ILCS 305/8.1(b) the Arbitrator finds the following factors in considering the Petitioner's nature and extent of the injury in this case:

1. The reported level of impairment pursuant to an AMA assessment.

The Arbitrator notes that there has been no AMA assessment performed in this case by either party. Therefore, the Arbitrator does not have any facts to consider as it relates to an AMA assessment.

2. The occupation of the injured employee.

The Arbitrator notes that the Petitioner at the time of the accident was working as a Data Processing System Analyst in the Technology Department. Petitioner testified that she is currently not working. She voluntarily retired from her position with the Respondent.

3. The age of the employee at the time of the injury was 53 years old.

The Arbitrator is taking this into consideration in the nature and extent of the injury.

4. The employee's future earning capacity.

The Arbitrator notes that no evidence was presented to reflect that Petitioner sustained a loss of earning capacity as a result of the accident of September 13, 2017.

5. The evidence of disability corroborated with the treating physicians' medical records.

With regards to Petitioner's hands, Petitioner testified that she still continues to experience some problems with her hands and does have trouble in maintaining her grip. The Arbitrator notes that Dr. Williams' medical records discussed that Petitioner continues to experience some numbness and tingling with her left hand. With regards to Petitioner's arms, Petitioner testified that she continues to experience numbness and tingling with her bilateral arms.

The Arbitrator awards Petitioner 10% loss of use of her right hand, 12.5% loss of use of her left hand, 3.5% loss of use of her left arm and 3.5% loss of use of her right arm pursuant to Section 8(e) of Illinois Workers' Compensation Act. The Arbitrator awards Petitioner PPD benefits for 69 weeks at a rate of $521.44 per week.

Kurt A. Carlson

Signature of Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC019381
Case Name	Lionel Mitchell v. Church's Chicken
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0280
Number of Pages of Decision	22
Decision Issued By	Maria Portela, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	David Martay
Respondent Attorney	Peter Havighorst

DATE FILED: 6/13/2024

/s/Maria Portela, Commissioner

Signature

DISSENT: /s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LIONEL MITCHELL,

Petitioner,

vs. NO: 18 WC 19381

CHURCH'S CHICKEN,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, temporary total disability benefits and permanent partial disability benefits. and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms the Arbitrator's Decision as to accident, causation, temporary total disability benefits, prospective medical treatment and medical expenses, but corrects the Order section of the Arbitrator's Decision. The Commission strikes the sentence that reads, "Respondent shall pay reasonable and necessary medical services of $4,013.8, in accordance with Sections 8(a) and 8.2 of the Act, and as is set forth below." The Commission replaces that sentence with, "Respondent shall pay reasonable and necessary medical services of $24,237.98 as outlined in Px1,

Px5, Px7, Px8, Px9, Px10 and Px11, in accordance with Sections 8(a) and 8.2 of the Act, and as is set forth below."

Moreover, the Commission makes the following modifications to the Arbitrator's Decision:

In the second to last sentence of the last paragraph on the 4th page of the Arbitrator's Decision, the Commission modifies the sentence to read, "After the initial evaluation, Dr. Mekhail wanted to review the actual MRI films taken on September 13, 2018." The Commission additionally adds the following sentence to the last paragraph on the 4th page of the Arbitrator's Decision: "Dr. Mekhail testified he ordered an updated MRI as the 2018 lumbar MRI was more than 2.5 years old. The updated MRI was completed on 1/20/21. (Px2, pp. 16-17)"

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $307.47 per week for a period of 224-6/7 weeks, from June 29, 2018 through October 19, 2022, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall be given a credit of $7,379.00 for TTD paid during that period.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $24,237.98 for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the L5-S1 fusion procedure offered by Dr. Mekhail, along with all related services, in accordance with §§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 expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 13, 2024
MEP/dmm
O: 41624
49

/s/ *Maria E. Portela*
Maria E. Portela

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

DISSENT

I respectfully disagree with the majority's opinion that Petitioner's current condition of ill-being is causally related to the work-related injury and I further disagree that a lumbar decompression and fusion is reasonable and medically necessary. For the reasons set forth below, I would find Petitioner sustained a low back strain which reached MMI on January 1, 2019, when Petitioner was approximately six months out from the accident. Because I believe Petitioner reached MMI on January 1, 2019, I would also vacate the awarded TTD benefits and medical benefits extending past that date.

To obtain compensation under the Act, Petitioner has the burden of proving all of the elements of his claim, including the existence of a causal relationship between the employment and the injury. *Beattie vs. Ill. Workers' Comp. Comm'n*, 276 Ill. App. 3d 446, 449, 657 N.E.2d 1196, 1199 (1995). Additionally, where prospective medical benefits are being sought and MMI is disputed, it remains the claimant's burden to prove that his current condition continues to be causally related to the work injury. *Agbezouhlon v. Ill. Workers' Comp. Comm'n*, 2021 IL App (3d) 200161WC-U (cited for persuasive purposes under amended Supreme Court Rule 23). The burden of proof must be met by the preponderance of the evidence, and liability cannot be based on imagination, speculation, or conjecture. *Illinois Bell Telephone Company vs. Ill. Workers Comp. Comm'n*, 265 Ill. App. 3d 681, 685, 638 N.E.2d 307, 310 (1994).

In the present matter, Respondent's Section 12 examining physicians, Dr. Grear and Dr. Phillips, both credibly opined that Petitioner's injury was limited to a low back strain which reached MMI. Dr. Phillips also credibly testified that facet joint arthropathy standing alone is not an accepted indication for a fusion and he refuted the need for a decompression based on the absence of any nerve compression. The IME opinions are not, however, the only basis for my dissent. There is also a conflict among the treating spine surgeons. Dr. Mekhail stands alone in his opinion that surgery is necessary.

The purpose of the Workers' Compensation Act is to provide financial protection to workers who have sustained bodily injury arising out of and in the course of their employment. *Pathfinder vs. Industrial Commission, 62 Ill. 2d 556, 563,* 343 N.E.2d 913, 917 (1976). The Act was also drafted

with the intention of striking a fair and equitable balance between employees and employers. As noted by Appellate Court, the requirement that employees submit to examination by a physician chosen by the employer under Section 12 of the Act is designed to provide employers with a "level playing field." *W. B. Olson, Inc. vs. Illinois Workers' Compensation Commission*, 2012 Il. App. (1st) 113129WC, ¶ 50. As the trier of fact, we must carefully scrutinize the underlying reasons and bases given for the medical opinions provided by both treating physicians and Section 12 IME physicians. When the Commission reviews an arbitrator's decision, it exercises original jurisdiction, not appellate jurisdiction, and the Commission is not bound by the arbitrators' findings. *Hosteny vs. Ill. Workers' Comp. Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474 (2009). Upon careful examination of the medical records and medical testimony, I find Dr. Mekhail's opinions are not credible.

Following the emergency room visit, Petitioner came under the care of Dr. Blair Rhode at Orland Park Orthopedics. Dr. Rhode noted low back pain with radiating pain to the right lateral thigh. He noted that Petitioner's response to straight leg raising was equivocal and indicated Petitioner's radicular symptoms were subjective. After Petitioner failed to improve with therapy, Dr. Rhode ordered an MRI of the lumbar spine which Petitioner underwent on September 13, 2018. The radiologist assessed disc bulges at L4-L5 and L5-S1 with mild bilateral foraminal stenosis and facet arthropathy with ligamentum flavum hypertrophy. (T. 603)

Petitioner returned to Orland Park Orthopedics for two follow-up evaluations after the MRI, the first with physician assistant Mark Bordick on September 19 and the second with Dr. Rhode one month later on October 19, 2018. The MRI films were unavailable; however, both Mr. Bordick and Dr. Rhode noted there was "no significant neural foraminal stenosis or spinal stenosis seen by the radiologist per the report." (T. 299, 303) Despite continued therapy, Petitioner's complaints remained unchanged.

Petitioner then presented for a spine surgery evaluation with Dr. Nitin Kukkar on October 26, 2018. (T. 609-612) The Arbitrator's decision misidentified Dr. Kukkar as a pain management provider. (Arbitration Decision at 3). As reflected in the medical records, Dr. Rhode recommended a spine consultation on October 19, 2018, and Dr. Kukkar's office visit records identify him as "Dr. Nitin Kukkar, Orthopedic Spine Surgery." (T. 309, 609) In weighing the medical evidence, it is significant that Dr. Kukkar's medical findings, assessments, and determinations were those of a spine surgeon and not a pain management physician.

Dr. Kukkar personally reviewed the films and noted "severe facet arthropathy" with fluid signal in the facet joints bilaterally at L5-S1. (T. 610) It was Dr. Kukkar's impression that Petitioner's pain was coming from the fluid signal in the facet joint which was likely aggravated by the lifting at work. Dr. Kukkar recommended the following treatment plan: "At this point [in] time ***the best thing would be to get a diagnostic injection*** in the facet joints at L5-S1. I will order bilateral L5-S1 facet joint injections **which will help us get** bilateral **diagnosis** as well as treat the patient." (Emphasis added) (T. 611) Clearly, Dr. Kukkar's thinking regarding the etiology of Petitioner's pain complaints reflected a working diagnosis needing additional diagnostic evidence and that facet joint injections would be useful in that regard. Dr Kukkar's office visit note then indicated that Petitioner decided to pursue an epidural steroid injection. It is unclear whether the reference to an epidural steroid injection was a dictation error or an actual choice made by Petitioner as Dr. Kukkar issued a separate written order for L5-S1 facet injections. (T. 614) While authorization was pending, Dr. Kukkar re-evaluated Petitioner on November 30, 2018. He noted Petitioner's condition had improved with therapy and he

recommended an additional three weeks of therapy. Dr. Kukkar directed Petitioner to return for follow-up in three weeks to reassess. (T. 616) Dr. Kukkar did not recommend surgery.

Petitioner then underwent an epidural steroid injection rather than facet joint injections on February 19, 2019. (T. 638, 649) The injection was performed by Dr. Andre Rackic at Midwest Anesthesia and Pain Specialists. (T. 649) The failure to perform facet joint injections resulted in the absence of diagnostic evidence confirming the facet arthropathy was the pain generator. When Petitioner returned to Dr. Rhode on February 22, 2019, Dr. Rhode noted Dr. Kukkar had recommended facet joint injections and that an ESI had been performed instead. (T. 311) Dr. Rhode further noted the ESI provided little to no relief. On April 12, 2019, Dr. Rhode's physician assistant referred Petitioner "back to ortho spine" for further consultation. (T. 322)

Petitioner then presented to Dr. Swastik Sinha for a second spine surgery evaluation on April 13, 2019. (T. 905-906) On examination, Dr. Sinha noted normal 5/5 motor strength for all muscles groups in the lower extremities, normal reflexes, intact sensation, and Petitioner walked with a normal full weight-bearing gait. (T. 905-906) Dr. Sinha reviewed the images from the September 13, 2018 lumbar MRI and determined "***there is currently no surgical indication***." (Emphasis added) (T. 906) Dr. Sinha recommended Petitioner return to pain management for further evaluation. He also recommended Petitioner wear an LSO brace.

Petitioner returned to Midwest Anesthesia and Pain Specialists on March 26, 2019, where he was seen by physician assistant Angie Osmanski under the supervision of Dr. Thomas Pontinen. (T. 319-321) The physician assistant noted Petitioner had undergone an LESI without any relief. The treatment plan recommended continued use of a vascutherm machine, Meloxicam and Tramadol along with lidocaine patches and cream, and "work conditioning for low back pain x 10 sessions." (T. 321) There was no recommendation for another injection at that time.

Dr. Rhode next saw Petitioner on July 19, 2019 and he recommended continued physical therapy. (T. 326) Dr. Rhode continued to see Petitioner intermittently for follow-up evaluations. On October 23, 2019, Dr. Rhode noted Petitioner was scheduled for an IME in two days and instructed Petitioner to return for follow-up after the IME. (T. 353)

On October 25, 2019, Dr. Michael Grear performed a Section 12 IME at Respondent's request. He issued his report on November 5, 2019. (T. 952) By this point in time, Petitioner was 17 months out from his work injury. Dr. Grear noted Petitioner was a physically fit "well-muscled" 50-year-old with an abdominal "six pack." Dr. Grear also noted a height of 5'6" and weight of 150 pounds. Dr. Grear further noted Petitioner arrived at the examination ambulating without assistive devices and Petitioner was able to move and re-position from sitting to standing to laying down without any difficulty. Dr. Grear reviewed the medical records of Dr. Rhode, Dr. Kukkar, and Midwest Anesthesia and Pain Specialists. On examination, Dr. Grear noted the absence of low back paraspinal muscle spasm and Petitioner exhibited bilateral hip motion without pain. Petitioner was able to forward flex and touch his toes without difficulty. Petitioner was also able to hyperextend and perform right and left lateral rotation without difficulty. (T. 954) Petitioner's quadriceps, hamstrings, and extensor hallucis longus all exhibited normal 5/5 motor strength. Dr. Grear further noted normal sensation. Dr. Grear reviewed x-ray studies which showed mild osteoarthritic changes at L4-L5 and L5-S1. Dr. Grear diagnosed a lumbar strain which had resolved. He further opined Petitioner had reached MMI from the work injury and indicated no further treatment was necessary. (T. 955-956) It was also Dr.

Grear's opinion that Petitioner had reached MMI as of January 1, 2019. (T.957) Dr. Grear indicated five months was a reasonable period of time for rehabilitation and noted there were no objective medical findings to substantiate Petitioner's persistent and unchanged subjective low back complaints beyond that time frame. (T. 957) Dr. Grear opined work restrictions were not medically necessary. Based on these opinions, Respondent terminated TTD benefits with its last payment ending on December 27, 2019. (T. 959)

Dr. Rhode continued seeing Petitioner for follow-up evaluations from January 6, 2020 through October 5, 2020. On October 5, 2020, Dr. Rhode declared that Petitioner had plateaued and recommended an FCE with instructions for Petitioner to return after the FCE had been completed. (T. 360-361) Petitioner returned to Dr. Rhode on November 2 and December 9, 2020. The office visit notes are missing from Petitioner's medical exhibits; however, there are work status notes for those two dates of service. (T. 251, 250) For reasons not explained in the records, Dr. Rhode purportedly referred Petitioner to a third spine surgeon.

On December 10, 2020, Petitioner presented to a third spine surgeon, Dr. Anis Mekhail, at Parkview Orthopedic Group. (T. 593) Dr. Mekhail indicated Petitioner had been referred for evaluation and his initial evaluation note was faxed to Dr. Rhode. Petitioner complained of back pain with occasional radiating pain down the right leg. Petitioner reported he received an injection which failed to help. On examination, Dr. Mekhail noted good lumbar range of motion, negative straight leg raising, normal motor strength, and normal sensation. Dr. Mekhail further noted Petitioner's back had no tenderness. Dr. Mekhail obtained new x-rays including flexion/extension views and noted "mild degenerative changes." Presumably, there was no spinal instability given that Dr. Mekhail's assessment of the x-rays was limited to mild degenerative changes. Dr. Mekhail reviewed the report from the September 13, 2018 MRI and indicated he wanted to see the films before making any recommendations.

Dr. Mekhail re-evaluated Petitioner on January 7, 2021. Dr. Mekhail noted Petitioner was having a significant amount of back pain, which Dr. Mekhail characterized as mechanical pain secondary to movement. Petitioner also had occasional radiating pain down both legs, especially the right leg. Dr. Mekhail commented Petitioner was neurologically intact but exhibited pain with range of motion. He reviewed the MRI films and indicated the imaging showed destruction of the facet joints at L5-S1 with fluid present. (T. 595). Dr. Mekhail also indicated the left facet joint appeared to be significantly degenerated and commented "that causes instability and can explain his back pain." (T. 595) With the exception of instability, Dr. Mekhail's reading of the MRI was similar to Dr. Kukkar's reading of the MRI. (T. 610) Dr. Mekhail recommended a lumbar fusion as Petitioner had failed conservative management. Dr. Mekhail recommended securing a new MRI due to the passage of time. Dr. Mekhail issued a work status report ordering a new MRI and indicated his diagnosis was lumbar stenosis with instability at L5-S1. (T. 596)

A second MRI performed on January 20, 2021 demonstrated "hypertrophic facet simply noted at L5-S1 with moderate fluid signal/joint effusions and left greater than right bulky hypertrophy." (T. 231) The fluid signal was previously seen in the first MRI by Dr. Kukkar and Dr. Mekhail. (T. 231) The new MRI further showed moderate to severe right neuroforaminal stenosis exacerbated by posterior element spondylosis at L5-S1 and severe foraminal stenosis on the left side. Petitioner next saw Dr. Mekhail on March 30, 2021. Dr. Mekhail reviewed the updated MRI and indicated it was his

impression that the L5-S1 level was the culprit due to the severe facet arthropathy present with severe stenosis. (T. 599) He recommended a decompression and fusion at L5-S1.

Dr. Frank Phillips performed a Section 12 IME at Respondent's request on May 18, 2021. (T. 908) Petitioner complained of low back axial pain and denied radicular symptoms. Petitioner described his pain as constant, worse with activity, and relieved with laying down. On examination, Dr. Phillips noted normal findings with straight leg raising, normal reflexes, normal sensation for the L2 through S1 dermatomes, and normal 5/5 motor strength for all muscle groups in the lower extremities bilaterally. (T. 911) Petitioner ambulated with a normal gait and demonstrated the ability to perform heel/toe walking without difficulty. On range of motion testing, Petitioner demonstrated forward lumbar flexion to 50 degrees and extension to 40 degrees with some pain reproduced with forward flexion. Dr. Phillips reviewed the second MRI from January 20, 2021 and noted bilateral facet arthropathy at L5-S1, worse on the left side. (T. 911-912) At that level the foramen and central canal were widely patent and there was no disc herniation. Dr. Phillips opined Petitioner sustained a low back sprain/strain with no structural injury. He opined that the underlying facet joint arthropathy at L5-S1 was not causally related. Dr. Phillips further opined there was no need for surgical intervention. (T. 912) Dr. Phillips opined there was no medical basis for work restrictions. Dr. Phillips also commented that six months represents a typical time frame for recovery and opined the injury had reached MMI. Further commenting regarding the proposed surgery, Dr. Phillips noted there was no spinal instability and no significant stenosis to justify a decompression and fusion. (T. 912)

Dr. Mekhail last saw Petitioner on December 13, 2021. (T. 601) In response to the IME opinions of Dr. Phillips, Dr. Mekhail agreed the work injury had not caused the facet joint arthropathy but it was his opinion that the injury aggravated the condition. Dr. Mekhail commented that the L4-L5 level had mild degenerative changes and did not need surgical intervention. He indicated and that all the pathology was at the L5-S1 level which is the level that required surgery. Dr. Mekhail then suggested, "I hope the adjuster considers that, even consider a second opinion."

Dr. Mekhail testified via deposition in December 2021. Regarding his initial exam findings, Dr. Mekhail testified Petitioner's back was without any tenderness and Petitioner had good range of motion. (T. 552) Dr. Mekhail noted negative straight leg raising findings, intact sensation, and normal motor strength. In short, Petitioner had normal neurological findings. (T. 553) Dr. Mekhail subsequently obtained and reviewed the films from the September 2018 lumbar MRI and it was his assessment that the imaging demonstrated significant damage to the facet joints at the L5-S1 level with fluid present. He testified that fluid is seen in patients with advanced arthritis. Dr. Mekhail testified that the left-sided facet joint had significant destruction which can cause instability. Dr. Mekhail opined the facet joints were likely causing Petitioner's back pain. Dr. Mekhail disagreed with the radiologist's reading. From his reading of the films, Petitioner had significant foraminal stenosis whereas the radiologist described the stenosis as mild. (T. 556) Dr. Mekhail attributed Petitioner's right leg pain to the foraminal stenosis. Based on his review of the September 2018 MRI, Dr. Mekhail determined Petitioner was a surgical candidate. (T. 557) Mr. Mekhail further testified that Petitioner had failed conservative treatment. Dr. Mekhail further testified regarding his medical rationale for surgical intervention. He described Petitioner's condition as mechanical back pain, meaning "pain with motion" and radicular symptoms. (T. 557) Dr. Mekhail felt the L5-S1 level was unstable. Dr. Mekhail ordered an updated MRI. Dr. Mekhail testified Petitioner had severe facet arthropathy and severe foraminal stenosis. (T. 559) Based on the updated MRI, Dr. Mekhail

determined the L5-S1 level was the level that needed to be addressed surgically. The updated MRI also showed fluid at that level. He agreed with the radiologist's findings regarding the severe left-sided foraminal stenosis and moderate-to-severe foraminal stenosis on the right side. Dr. Mekhail testified he recommended a decompression to alleviate the pinching on the nerve and fusing the joint. (T. 561)

Dr. Mekhail testified he reviewed Dr. Phillips' IME report. He disagreed with Dr. Phillip's conclusions. Dr. Mekhail opined the work injury aggravated a pre-existing degenerative condition at the L5-S1 level. He opined the surgery he recommended was reasonable and causally related. Dr. Mekhail further disagreed with Dr. Phillips' assessments regarding the degree of the stenosis present. Regarding their differing opinions on the question of spinal instability, Dr. Mekhail testified that the presence of fluid supported his beliefs that instability was present, resulting in mechanical back pain associated with movement. (T. 567)

Dr. Mekhail testified that the fluid was a sign for arthritis comparable with arthritis in the knee joint. (T. 554) He described the fluid as basically inflammation. Dr. Mekhail further testified that "people go for a knee replacement when they have fluid in the joint and knee arthritis" and "by the same token you have significant damage to your facet joint and fluid in the joint." (T. 567)

Dr. Mekhail testified he could not recall if he had seen Petitioner's prior treatment records. (T. 568) Dr. Mekhail stated he typically refers to any pertinent information from prior treatment records when patients bring them. If prior treatment records were made available, his office scans them into their records. Dr. Mekhail noted he did not enter any comments in his treatment notes regarding prior records and indicated "so I don't have them in my chart." (T. 568)

On cross-examination, Dr. Mekhail testified that facet joint arthropathy can cause instability and pain which presents as mechanical pain triggered by movement. (T. 570) According to Dr. Mekhail, if a patient presents with back pain all the time and it's not related to range of motion, then the patient more likely has a back sprain. He further commented that patients with back sprains typically exhibit tenderness to palpation whereas tenderness can be absent with mechanical back pain. Dr. Mekhail testified Petitioner presented with pain associated with motion and therefore it was his opinion that his facet joints were the source of his pain. (T. 570-571)

On continuing cross-examination, Dr. Mekhail agreed Petitioner was neurologically intact and had no nerve damage. (T. 571) Dr. Mekhail further agreed Petitioner walked with a normal gait and testified Petitioner was "a fit person in very good shape, and he keeps it that way." (T. 572) Dr. Mekhail testified Petitioner's lumbar spine had good range of motion but painful with extension.

On further cross-examination, Dr. Mekhail testified he based his surgical recommendation on the MRI performed two years earlier in 2018. (T. 576-577) Respondent's attorney apprised Dr. Mekhail that prior treating surgeons had seen the same MRI and did not recommend surgery. Addressing those physicians, Dr. Mekhail noted that Dr. Rhode is a sports medicine surgeon and not a spine surgeon. (T. 578) Dr. Mekhail discounted the contrary opinions of Dr. Grear and Dr. Phillips because they are "independent medical evaluators" and stated, "I don't think I agree with their report because, again, they're doing it from a different perspective." (T. 578-579) Dr. Mekhail also testified that's the reason why he recommended that the employer secure a second opinion in his August 13, 2021 progress note, adding "that is not to me a second opinion." (T. 577, 578) Dr. Mekhail then

asked when did Dr. Kukkar see Petitioner. Upon being advised that Dr. Kukkar examined Petitioner in October 2018, Dr. Mekhail replied Petitioner was four months out from his injury at that time and it could have been too early to make a surgical recommendation. Dr. Mekhail testified he would be happy to review Dr. Kukkar's note. Dr. Mekhail then testified that typically we try to treat this condition conservatively for six months before recommending surgery. (T. 579) The following colloquy then followed regarding Dr. Sinha:

A: When did Dr. Sinha treat Mr. Mitchel?

Q: April 13, 2019. **That would have been almost a year after the injury**.

A: Absolutely. **And I don't have his note**. What did he say, though?

Q: He just recommended injections.

A: But did he see him after the injection and said, No surgery? He recommended conservative, which is not wrong. * * * had I seen Mr. Mitchell initially, I would have recommended physical therapy. I would have recommended injection. I would have recommended medication until he exhausted … conservative treatment. ***So I don't know when Dr. Sinha saw him.*** *** **But did Dr. Sinha see him after failing conservative treatment, and he told him there is no surgery I would recommend?**

Q: Uh-huh.

A: **I would like to see the note saying, no surgical recommendation**, and I don't know if that's the case. I just would be interested to see that.
(T. 579-580)

Dr. Mekhail went on to testify that Petitioner had reported he had undergone extensive therapy and had an injection which didn't help. (T. 581) Petitioner's attorney did not conduct any re-direct examination of Dr. Mekhail and Dr. Mekhail never saw the records of Dr. Kukkar or Dr. Sinha.

Dr. Phillips testified via deposition in March 2022. Dr. Phillips confirmed he reviewed the medical records of Dr. Rhode, Dr. Kukkar, Dr. Mekhail, the pain management records, the records of various physician assistants, the reports of imaging studies, and Dr. Grear's report. (T. 922) Dr. Phillips noted two MRI studies had been performed and he reviewed both reports along with the images from the second MRI completed in January 2021. During his examination, Petitioner reported constant back pain and denied any radicular or neurological symptoms. Petitioner reported he received therapy and had an injection without any relief. Dr. Phillips testified Petitioner walked with a normal gait and was without tenderness to palpation. He testified Petitioner exhibited slightly diminished range of motion (75% to 80% of normal) with pain complaints during forward flexion. (T. 923) Dr. Phillips testified he found Petitioner neurologically intact with normal lower extremity strength, normal reflexes, and negative straight leg raising. Dr. Phillips found no abnormalities on examination. (T. 923-924)

Dr. Phillips further testified regarding the second MRI completed in January 2021. He reviewed the images and noted Petitioner's spine was unremarkable except for facet joint arthritis at

L5-S1. (T. 924) He further noted there was no disc herniation, no significant disc pathology, and no nerve compression anywhere in the lumbar spine. Dr. Phillips testified there was no structural spine injury seen in the MRI. Based on Petitioner's subjective low back pain and history, Dr. Phillips diagnosed a low back sprain/strain causally related to the reported work injury. (T. 925) That said, it was Dr. Phillips' opinion that Petitioner's continuing subjective pain complaints were not causally related to the original work injury. Dr. Phillips explained that Petitioner's sprain/strain injury had ample time to resolve and the MRI was negative for structural injuries and showed minimal pathology. (T. 925) Dr. Phillips further noted there was no objective basis for Petitioner's ongoing pain at the time of his IME (over 2½ years after the accident). (T. 925-926)

Dr. Phillips disagreed with Dr. Mekhail's surgical recommendation. Dr. Phillips agreed that Petitioner's spine does have a marked facet joint arthritis; however, that was the only pathology present and was not an accepted indication for a fusion. (T. 926) Dr. Phillips further opined that no further medical treatment was needed. Dr. Phillips opined that Petitioner had reached MMI. Asked to provide a time frame, Dr. Phillips concurred with Dr. Grear's opinion that Petitioner reached MMI six months following the accident. (T. 927)

On cross-examination, Dr. Phillips agreed he did not review the films from the first MRI, only the films from the second MRI. Questioned about the fluid at the L5-S1 facets, Dr. Phillips testified that fluid is a classic sign for arthritis. (T. 930) Petitioner's attorney asked Dr. Phillips if foraminal stenosis can produce leg pain. Dr. Phillips testified that leg pain can be related to foraminal stenosis; however, the leg pain would have be on the same side as the foraminal stenosis and travel along a consistent nerve distribution. (T. 931)

On further cross-examination, Dr. Phillips addressed the mechanical low back pain described by Dr. Mekhail. Dr. Phillips testified that the term mechanical back pain simply means the patient subjectively reports pain while moving. Dr. Phillips further testified that the facet joint arthritis was clearly not caused by the work injury. He agreed it was theoretically possible for a lifting injury to aggravate the symptoms of facet arthropathy. Dr. Phillips described the foramen as being like a tunnel and explained that facet arthropathy can cause foraminal stenosis because the facets form the roof of the foramen. Dr. Phillips further pointed out that whether or not the resulting stenosis is medically significant depends on the extent of the narrowing. By way of example, Dr. Phillips explained that if facet arthritis causes the foramen to narrow from 12 millimeters to 11 millimeters, then that could be called stenosis but it's not meaningful because foraminal stenosis is only clinically relevant if it's producing nerve root compression. (T. 935) Dr. Phillips further testified that in this case Petitioner did not have significant foraminal stenosis because he had no nerve root impingement. (T. 934)

On re-direct, Dr. Phillips testified Petitioner complained of low back pain with no neurological symptoms. He testified to the essential criterion for recommending surgery; that being the presence of a correctable pathology consistent with the patient's symptoms. (T. 941) Dr. Phillips further testified that Petitioner had no nerve compression, either clinically or on imaging, and a fusion is not appropriate for subjective back pain. Dr. Phillips further stated he had never performed a fusion where facet arthropathy is the only diagnosis and emphasized that facet arthritis is simply not an accepted indication for a fusion. (T. 941-942) On re-cross examination, Dr. Phillips agreed that Petitioner had exhausted conservative treatment; however, Dr. Phillips credibly noted that the exhaustion of conservative treatment, standing alone, is never an indication for surgery. (T.942)

Based on the medical evidence and testimony, I believe Petitioner failed to satisfy his burden to prove his current condition remains causally related to the work injury and he failed to prove the proposed lumbar fusion is medically reasonable and necessary. Dr. Mekhail diagnosed two distinct conditions; the first being facet arthropathy requiring a fusion, and the second being foraminal stenosis requiring a decompression. I will address each separately.

Regarding Dr. Mekhail's recommended fusion to address the facet arthropathy, Dr. Mekhail emphasized the presence of fluid adjacent to the facets as a justification for surgery. In support of that position, Dr. Mekhail compared the presence of fluid in the knee joint as a sign of arthritis and provided knee replacement as a supporting analogy for his recommended lumbar fusion. Dr. Mekhail's analogy is unpersuasive. Arthritis in the knee with fluid present is not in and of itself a basis for knee replacement. Factors to be considered for knee replacement include the extent of the arthritis, the extent to which there is a loss of cartilage, the patient's weight, the patient's age, and the impact of the knee pain on the patient's activities of daily living. Fluid and effusion, whether it exists in the knee joint or in the spine, is the body's anti-inflammatory response; however, its mere presence is not an indicator for surgical intervention. Dr. Phillips agreed that fluid is a classic sign for arthritis and he also agreed that Petitioner's spine had significant facet joint arthritis at L5-S1. Dr. Phillips credibly testified, however, that facet arthritis is not an accepted indicator for a lumbar fusion. Dr. Phillips' opinion is supported by Dr. Sinha who determined Petitioner was not a surgical candidate.

As for Dr. Mekhail's recommended decompression addressing the foraminal stenosis, Dr. Phillips found Petitioner neurologically normal with no objective signs on examination or imaging for any nerve compression. Dr. Mekhail opined the severe stenosis had narrowed the foramen to the point where it was pinching the nerve; however, he also found Petitioner neurologically normal. As such, Dr. Mekhail's medical rationale for a decompression is internally inconsistent. Due to this inconsistency, Dr. Mekhail's opinion regarding the need for decompression is unreliable. As noted by Dr. Phillips, there must be clinically correctable pathology producing symptoms consistent with that pathology in order to consider surgical intervention.

Dr. Mekhail's reliance on the MRI imaging in support of his opinions is not persuasive. Notably, Dr. Kukkar looked at the same 2018 MRI and did not recommend surgery. Instead, Dr. Kukkar determined, "At this point [in] time the *best thing would be to get a diagnostic injection in the facet joints at L5-S1*. I will order bilateral L5-S1 facet joint injections which will help us get bilateral (*sic*) diagnosis as well as treat the patient." (Emphasis added) (T. 611) As mentioned, Petitioner received an epidural injection instead which failed to provide any relief. Dr. Mekhail attempted to downplay Dr. Kukkar's failure to recommend surgery with the suggestion that Dr. Kukkar had not recommended surgery only because Dr. Kukkar had examined Petitioner earlier in the Petitioner's course of treatment before conservative treatment had been exhausted. Dr. Mekhail provided a six-month timeline for giving conservative treatment measures a chance before considering surgery; however, Dr. Mekhail was unaware that Dr. Kukkar had recommended further diagnostic workup in the form of facet injections.

It is also notable that Dr. Sinha, the second spine surgeon to evaluate Petitioner, looked at the same 2018 MRI and determined Petitioner was not a surgical candidate. (T. 906) Dr. Sinha saw Petitioner when Petitioner was almost 10 months out from his injury, well past the 6-month time frame given by Dr. Mekhail. Dr. Mekhail was unaware of Dr. Sinha's evaluation and he was unaware that Dr. Sinha had examined Petitioner after the failed epidural injection. Dr. Mekhail asked to see

his treatment note; however, Petitioner's attorney elected to forego presenting Dr. Sinha's treatment note to Dr. Mekhail on re-direct and finished the deposition without further discussion.

As mentioned above, Dr. Mekhail stands alone as the only physician recommending surgery. Dr. Kukkar, the first treating spine surgeon, recommended further diagnostic workup in the form of facet joint injections and did not recommend surgery. Dr. Sinha, the second treating spine surgeon, determined Petitioner was not a surgical candidate and recommended Petitioner return for pain management. Respondent's first IME physician, Dr. Grear, diagnosed Petitioner with a low back strain and opined he reached MMI. Respondent's second IME physician, Dr. Phillips, also diagnosed a low back sprain and agreed Petitioner had reached MMI. Dr. Rhode, though not a spine surgeon, determined Petitioner had plateaued and ordered an FCE. For reasons which were never explained, Petitioner did not have the FCE and elected to see Dr. Mekhail.

For the above reasons, I dissent from the majority's opinion and would vacate the Arbitrator's award for prospective medical benefits and vacate the award for TTD and medical expenses after January 1, 2019.

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC019381
Case Name	Lionel Mitchell v. Church's Chicken
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	David Martay
Respondent Attorney	Peter Havighorst

DATE FILED: 4/13/2023

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

/s/ Jeffrey Huebsch, Arbitrator

Signature

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

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

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

Lionel Mitchell Case # **18**WC **019381**
Employee/Petitioner
v.
Church's Chicken
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **October 19, 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, **6/25/2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**15,988.44**; the average weekly wage was $**307.47**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **4** dependent children.

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

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

Respondent shall be given a credit of $**7,379.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**7,379.00**.

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

ORDER

Respondent shall pay reasonable and necessary medical services of $4,013.8, in accordance with Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall authorize and pay for the L5-S1 fusion procedure offered by Dr. Mekhail, along with all related services, in accordance with §§8a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $307.47/week for 224-6/7 weeks commencing June 29, 2018 through October 19, 2022.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a permanent disability, if any.

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

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

APRIL 13, 2023

Signature of Arbitrator

FINDINGS OF FACT

On June 25, 2018, Petitioner was employed by Respondent as a crew member. His responsibilities included opening the store, doing inventory and anything, "that was required in the store that needed to be done, I was the one to do it whatever it was." (TR10). He had been so employed for about 2 years.

Petitioner testified that on June 25, 2018, he was charged with bringing boxes of chicken and 50lb bags of flour off a delivery truck and into the store. While he was moving the chicken boxes inside the freezer, he heard a "pop" in his back. (TR11). Petitioner later tried to move a standing ice machine and, as he was doing it, he stated that he heard a pop again in his low back. He felt pain in his low back. He rported his injury to his supervisor.

According to his testimony, on the date that he was injured, Petitioner reported to the emergency room at Ingalls Memorial Hospital. Petitioner testified that he was advised to seek additional medical care. The records from Ingalls were not submitted by either Party.

On June 29, 2018, Petitioner sought treatment with Dr. Blair Rhode at Orland Park Orthopedics. (PX1). According to the medical records and Petitioner's testimony, he had never sought medical care for his back prior to the work accident. (TR19). Petitioner continued to receive treatment by Dr. Rhode through September 27, 2022. (PX1).

At the initial evaluation with Dr. Rhode, Petitioner was given a 20lb lifting restriction. Petitioner returned to Dr. Rhode on July 6, 2018, still complaining of low back pain. Dr. Rhode prescribed medications and took Petitioner off work. (TR20). On August 27, 2018, Petitioner was examined by Dr. Rhode again and was prescribed an MRI for the low back. An MRI was performed on September 14, 2018. Petitioner returned to Dr. Rhode on September 19, 2018, and was prescribed physical therapy, medications and was authorized off work. (PX1).

Petitioner returned to Dr. Rhode on October 19, 2018, and was prescribed additional physical therapy. On October 26, 2018, Petitioner was examined by Dr. Rhode's partner Dr. Nitin Kukkar. Dr. Kukkar recommended that Petitioner undergo a lumbar epidural steroid injection. The first epidural steroid injection was performed on February 19, 2019. (PX1, PX5).

Petitioner returned to Dr. Rhode on March 11, 2019, who prescribed ongoing physical therapy and placed Petitioner back to light duty work. (PX1). Petitioner next saw Dr. Rhode on April 12, 2019, and was prescribed a second epidural injection. Petitioner returned to Dr. Kukkar for a pain management evaluation on May 16, 2019, and Petitioner advised the doctor that the first epidural steroid injection had not helped. PX5). Petitioner continued with medical care with Dr. Rhode throughout the summer of 2019 and continued to undergo physical therapy at ATI Physical Therapy. (PX12).

Dr. Rhode referred Petitioner to Dr. Swastik K. Sinha, a spine surgeon, for a consultation. Petitioner was seen by Dr. Sinha on April 13, 2019. Dr. Sinha charted that he thought that Petitioner had Left SI Joint pain. The MRI did not show significant disc herniation or stenosis. There was no current surgical indication and Petitioner was directed back to pain management and the use of a LSO brace was to be considered. (PX14).

Petitioner had follow-up appointments with Dr. Rhode in October, November and December of 2019 and was prescribed additional physical therapy and was continued to be authorized off work. (PX1). On February 5, 2020, Petitioner reported to Dr. Rhode and was prescribed another lumbar epidural steroid

injection. On March 4, 2020, Petitioner reported to Dr. Rhode with complaints of back pain, bilateral leg pain and numbness going down his right leg. Petitioner next saw Dr. Rhode on June 22, 2020, at which time the doctor was still prescribing an epidural steroid injection. Petitioner saw Dr. Rhode on September 9, 2020, October 5, 2020, and November, 2020, at which time he was still recommending an injection, physical therapy and authorizing Petitioner off work. Dr. Rhode also referred Petitioner to an orthopedic spine surgeon, Dr. Anis Mekhail. (PX1).

Petitioner reported to Dr. Mekhail on December 10, 2020. (PX3). Dr. Mekhail prescribed an updated MRI and Petitioner returned for an evaluation on March 30, 2020. At this evaluation, Dr. Mekhail prescribed a lumbar fusion. Petitioner continued seeking follow up medical treatment with Dr. Rhode and his PA from April through August 2021. (PX1). The same work restrictions remained in place. Petitioner continued under the care of Dr. Rhode with monthly evaluations throughout 2022. The last evaluation was on September 27, 2022, at which time Dr. Rhode was still authorizing Petitioner off work (awaiting authorization for surgery) and referring Petitioner back to Dr. Mekhail for a lumbar fusion surgery. (PX1).

Petitioner testified that he has not received any temporary total disability benefits since Respondent obtained its Section 12 report from Dr. Phillips. (RX1). Petitioner testified that he has constant pain in his low back with his right leg occasionally giving out. (TR28-29). Petitioner stated that his pain in his low back remains chronic and constant every day. He rated his pain level at an 8 but sometimes becomes unbearable and goes to 11. (TR31-32). Petitioner admitted that he can still lift up to 50 to 60 pounds, but he has significant pain after putting anything down. (TR33). Petitioner continues to take Norco and Ibuprofen. He takes the Norco at least once a day and sometimes up to 3 pills per day. (TR34).

Petitioner testified that if the fusion surgery that was offered by Dr. Mekhail was awarded, he would undergo the surgery.

On cross examination, Petitioner testified that he had worked for the Respondent for 2 years prior to the work injury. (TR36). Petitioner further testified he had worked for a company called Chicago Magnesium prior to his employment with Church's. (tr37). He had suffered a wrist injury while with that employer and filed a workers' compensation claim. However, he had never filed a workers' compensation claim for a back injury before his employment with Respondent. (TR37-38). Petitioner testified that five months before the trial, he had been involved in a motor vehicle accident. At the time of trial, his car was in the shop. However, Petitioner testified he was not injured and there was only a small dent in the car. (TR47-48). Petitioner also testified that, at a time after the June 2018 work accident, he slipped down a small flight of stairs at his mother-in-law's house. Petitioner testified that, "it wasn't nothing. It was just a slip. I've slipped before." (TR48). Petitioner then volunteered bizarre testimony about ejaculating when he was driving home from work, which had never happened to him before in his life. Petitioner then said he called his doctor and told him. This was a couple of years ago, no last year. He was driving from his doctor (Dr. Mekhail?), no to his doctor, no from his doctor. (TR49-50). There is no mention of any such incident in the medical records.

Petitioner submitted the evidence deposition of Dr. Anis Mekhail, taken on December 16, 2021, as PX2. Dr. Mekhail is Petitioner's treating doctor and is board certified in orthopedic surgery, concentrating his practice on treatment of the spine. (PX2, TR5). He performs approximately 300 to 400 spine surgeries per year. (PX2, TR7). Dr. Mekhail initially examined Petitioner on December 10, 2020. The history Dr. Mekhail took was that he injured his back on June 25, 2018, at work and was complaining of pain in his back as well as pain going down his right leg. At the time Petitioner initially saw Dr. Mekhail, he had tried one injection, and was referred by Dr. Rhode for additional evaluation. (PX2, TR10-11). The physical exam was benign. (PX2, TR 11). After the initial evaluation, Dr. Mekhail wanted to review the actual MRI films. (PX3). Petitioner returned for an evaluation on January 7, 2021, and at that point the doctor had the opportunity to review the MRI films.

According to Dr. Mekhail, Petitioner, "had significant damage to his joints. We call it the facet joints, which are the joints in the back of the spine, between L5 and S1… I made comment on each joint. One had significant fluid in it." (PX2, TR13). The doctor went on to testify that the "left joint showed significant destruction of the joint, which basically when you have the joint damage, you have instability of that spinal signal, and in my opinion that could explain his back pain." (PX2, TR14). Dr. Mekhail, also believed that Petitioner had "significant" foraminal stenosis, it was not just a mild condition, as was reflected on the MRI report. (PX2, TR15). Dr. Mekhail reached the conclusion that Petitioner was a surgical candidate as of January 2021 because, "he had mechanical back pain. That means pain with range of motion of his back, and he had the radicular symptoms which are consistent with his foraminal stenosis. And with the failure of conservative treatment, I felt that addressing the L5-S1 would address his symptoms." (PX2, TR17).

Dr. Mekhail believed that his interpretation of the MRI films was consistent with the interpretation and the report written by the radiologist. (PX2, TR18-19). Dr. Mekhail was recommending an L5-S1 decompression and then fusing the joint that was causing the pain. (PX2, TR20).

Dr. Mekhail testified that he had read the IME report from the Respondent's expert, Dr. Frank Phillips. Dr. Mekhail testified that he disagreed with the opinions and conclusions of Dr. Phillips and rendered an opinion that while Petitioner probably had a pre-existing condition in the form of degeneration in his spine, he believed that it had been aggravated by the alleged injury that Mr. Mitchell presented with. Dr. Mekhail agreed with Dr. Phillips that there was no disc herniation at the L5-S1 level but believed that Petitioner had facet arthropathy in his spine that had been aggravated by the work accident. (PX2, TR22-23). Dr. Mekhail testified that he thought Dr. Phillip's report confirmed that Petitioner had fluid in the joint. According to Dr. Mekhail, "people go for a knee replacement when they have fluid in the joint and knee arthritis. But by the same token, you have significant damage to your facet joint and fluid in the joint. That is a cause for his back pain. Mr. Mitchell had very classic pain with mechanical pain." (PX2, TR26).

On cross examination, Dr. Mekhail stated that the only thing that was abnormal with respect to Petitioner's physical examination was the pain he experienced with the range in motion in his back. (PX2, TR30). Dr. Mekhail admitted that his range of motion was good, but he had pain with lumbar extension. (PX2, TR31). Dr. Mekhail also admitted that his opinion on causation linking his need for lumbar fusion to the work accident was based upon Petitioner's history of accident of moving a leaking ice machine. (PX2, TR33). Dr. Mekhail went on to testify that Petitioner saw him two years after the date of the accident. Dr. Mekhail felt that Petitioner had exhausted conservative treatment and was therefore a surgical candidate. (PX2, TR40).

Respondent submitted the evidence deposition of Dr. Frank Phillips, taken on March 22, 2022, as RX1. Pursuant to Section 12 of the Act, Petitioner was examined by Dr. Phillips for an independent medical evaluation on May 8, 2021. Dr. Phillips is a board-certified orthopedic surgeon, whose practice is essentially confined to managing patients with spinal disorders. (RX2, TR6). Dr. Phillips testified that he reviewed the medical records from the treating doctors as well as the actual MRI films from the study done in January of 2021. Dr. Phillips took a history from Petitioner which included a statement that he was disconnecting a hose from an ice machine when he felt a pop in his back and Petitioner described having pain since that time. (RX2, TR9). Dr. Phillips testified that he performed a physical examination of Petitioner and did not note any abnormal findings. Regarding his interpretation of the MRI films, Dr. Phillips testified, "the positive finding was the facet joints, which are the little joints in the back of his spine, at L5-S1, had some arthritis. Other than this, it was a very unremarkable MRI. No disc herniation, no significant disc pathology, no compression of the nerves anywhere in his low back." (RX2, TR11). Based upon his physical examination as well as his interpretation of the films, Dr. Phillips diagnosed Petitioner with a sprain/strain injury of his lumbar spine. (RX2, TR12). Dr. Phillips further thought that the sprain/strain injury was related to the work injury Petitioner sustained on June 25, 2018. Dr. Phillips did not concur with Dr. Mekhail that Petitioner was a candidate for

lumbar fusion surgery. According to Dr. Phillips, there was no clear indication for fusion surgery. He based that opinion on the fact there was only marked facet arthritis which he did not believe was an accepted indication for fusion. Dr. Phillips did not believe that Petitioner was a candidate for any additional medical treatment and could return to full duty work. (RX2, TR13).

On cross examination Dr. Phillips confirmed that he did not review the MRI taken in 2018, but rather only saw the films of the MRI taken in January 2021. Dr. Phillips admitted that when Petitioner initially sought medical care, he was having pain running down the back of his right leg. According to Dr. Phillips, significant foraminal stenosis as noted by Dr. Mekhail, could be a competent cause for the pain Petitioner was experiencing going down the back of his leg. (RX2, TR17-18). Dr. Phillips further stated that he performed a Waddell's test and Petitioner was negative. It indicated that Petitioner was not faking or exaggerating his pain complaints regarding his mechanical low back pain. (RX2, TR19). Dr. Phillips further stated that Petitioner's lifting incident could have aggravated the underlying pre-existing facet arthropathy including an aggravation of the symptoms associated with the condition. (RX2, TR21) In addition to disagreeing with the opinions of Dr. Mekhail, Dr. Phillips also disagreed with the radiologist's conclusion that Petitioner suffered from moderate to several right neural foraminal stenosis. (RX2, TR22). Dr. Phillips diagnosed Petitioner with a sprain/strain and he did not have an explanation why doctors Dr. Kukkar, Dr. Rakic and Dr. Rhode all recommended injections for the lumbar spine. Dr. Phillips stated that the recommendation for injections would be highly unusual for a sprain/strain type injury. (RX2, TR25).

Respondent submitted the report of Dr. Michael Grear, regarding his Section 12 examination of Petitioner on October 25, 2019, as RX3. Dr. Grear thought that Petitioner had suffered a lumbar strain as a result of the work accident and had reached MMI as of January 1, 2019. Treatment to January 1, 2019 was reasonable and necessary, but the ESI and Norco were not reasonable and necessary and the ESI could not be said to be causally related to the work accident. There was no need for treatment beyond January 1, 2019 and Petitioner was capable of full duty work. (RX3).

CONCLUSIONS OF LAW

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

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between his employment and his injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

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

Regarding issue (C), did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds:

Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on June 25, 2018.

Petitioner credibly testified that he suffered an injury to his low back while stocking boxes of chicken and bags of flour from the inside of a truck into Respondent's store on June 25, 2018. Petitioner testified that he further injured himself later in the day, when he was moving a leaking ice machine. (TR 13-16). Petitioner specifically testified that he noticed a pop in his back. (TR13). The Arbitrator notes that Petitioner gave a consistent history of injury to all of his treating doctors as well as to Respondent's examining doctor, Dr. Phillips, regarding injuring himself at work. The Arbitrator further notes that when Petitioner initially reported for treatment, he noted back pain along with associated pain running down the back of his right leg. (PX1).

Respondent did not offer any evidence or testimony at trial to rebut Petitioner's assertions that he injured himself at work on the date in question.

Regarding issue (F), is Petitioners current condition of ill being causally related to the injury, the Arbitrator finds:

Petitioner's current condition of ill-being regarding his low back, to wit: unstable L5-S1, mechanical low back pain, foraminal stenosis at L5-S1, in need of the fusion procedure at L5-S1 offered by Dr. Mekhail, is causally related to the work accident of June 25, 2018.

This finding is based upon the testimony of Petitioner, the medical records and the persuasive opinions of Dr.Mekhail.

Petitioner's testimony regarding the work accident and that he had no prior back injuries is unrebutted.

The opinions of Dr. Mekhail in this matter are more persuasive than the opinions of Dr. Phillips. Petitioner's testimony was consistent with the medical records. Having observed Petitioner in person at trial, the Arbitrator finds that Petitioner was a credible witness in this matter, although, as stated above, the car incident testimony was volunteered and was bizarre.

Petitioner testified that he continues to suffer from back pain that he rated on an 8 out of 10 and sometimes would be greater. Petitioner underwent a significant course of physical therapy and an injection and continued to suffer pain. Petitioner further noted that if the Commission were to find in his favor, that he still wished to undergo the lumbar fusion surgery as recommended by Dr. Mekhail.

Dr. Mekhail testified that Petitioner continues to suffer from significant facet arthropathy in his low back that had been aggravated by the work accident. Dr. Phillips testified that Petitioner only suffered a sprain/strain. The Arbitrator notes that the opinions and conclusions of Dr. Mekhail regarding his interpretation of the MRI reports are more consistent with the radiologist's readings of the MRI films compared to those of Dr. Phillips. The Arbitrator notes that the MRI films show that Petitioner had significant facet joint arthropathy, as noted by both doctors, but he was also diagnosed in the MRI's by both Dr. Mekhail and the radiologist with significant neural foraminal stenosis which would explain Petitioner's pain going down the back of his right leg. The benign physical exam noted by Dr. Phillips was also noted by Dr. Mekhail, who explained that this was consistent with his diagnosis of mechanical low back pain, for which he endorsed the fusion surgery to palliate Petitioner's complaints.

Regarding issue (J), were the medical services that were provided to Petitioner reasonable and necessary and has Respondent paid all appropriate charges for reasonable and necessary medical services, the Arbitrator finds:

Having found that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent and having found his current condition of ill being is causally related to the injury, all medical care provided to Petitioner in order to resolve his low back pain has been reasonable and necessary. The Arbitrator did not detect any medical treatment which was excessive. Respondent is responsible for the following medical bills: $13,234.39- Orland Park Orthopedics (PX1): $1,150.00- Dr. Nitin Kukkar (PX5): $2,670.00- Windy City Medical Specialist (PX7): $453.51- Infinite Strategic Innovations (PX8): $1,714.84- RX Development (PX9): $3,905.00--Persistent Toxicology Billing (PX10): $1,110.24- Prescription Partners (PX11). This award is pursuant to Sections 8(a) and 8.2 of the Act and Respondent shall pay these bills to Petitioner per the medical fee schedule. Respondent is entitled to a credit for all awarded bills that it has paid or compromised.

Regarding issue (k), what temporarily benefits are in dispute the Arbitrator finds:

Having found in favor of Petitioner on the issues of accident and causation, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from the date he was authorized off work up until the hearing date. Petitioner testified he has not worked since the date of accident. Petitioner was authorized off work mainly by his treating providers at Orland Park Orthopedics as well as Dr. Mekhail. (PX1, PX3) The Arbitrator finds Petitioner has proven by preponderance of the evidence that he is entitled to temporary total disability benefits from June 29, 2018 (the date that Petitioner was first taken off work by Dr. Rhode), through the trial date of October 19, 2022, representing 224 - 6/7 weeks at the weekly rate of $307.47.

Regarding issue (O), other, what prospective medical services, if any should be awarded, the Arbitrator finds:

Having found in favor of Petitioner on the issues of accident and causation and having considered the testimony of Petitioner and Dr. Mekhail, the Arbitrator finds that Petitioner is entitled to the award of prospective medical services for the L5-S1 fusion procedure offered by Dr. Mekhail.

Accordingly, Respondent shall authorize and pay for the L5-S1 fusion procedure offered by Dr. Mekhail, along with all related services, pursuant to Sections 8(a) and 8.2 of the Act..

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC028022
Case Name	Carlos Sanchez v. ABM Industries, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0281
Number of Pages of Decision	20
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jonathan Currie
Respondent Attorney	Christopher Jarchow

DATE FILED: 6/13/2024

/s/ Amylee Simonovich, Commissioner

Signature

24IWCC0281

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carlos Sanchez,

Petitioner,

vs. NO: 20 WC 028022

ABM Industries, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and the nature and extent of the injury, 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 agrees with the finding of the Arbitrator that a compensable accident occurred on November 10, 2020. However, the Commission modifies the legal basis for the finding of accident to that of an employment risk analysis.

To meet his burden of proving his injury was the result of a compensable accident, Petitioner must show by a preponderance of the evidence that he sustained a disabling injury which arose out of and in the course of his employment. *Sisbro*, 207 Ill. 2d 193, 203 (2003). The phrase "in the course of employment" refers to the time, place, and circumstances surrounding the injury. *Id*. It is undisputed that Petitioner's bilateral eye injuries occurred in the course of his employment.

To satisfy the "arising out of" prong of the analysis, Petitioner must show that his injury "had its origin in some risk connected with, or incidental to, the employment." *Id*. A risk is incidental to the employment "…when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties." *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848. A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had in common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Caterpillar Tractor*, 129 Ill. 2d at 58; *Sisbro*, 207 Ill. 2d at 204.

After considering the totality of the evidence, the Arbitrator concluded the Petitioner's injury had arisen out of his employment. Petitioner was injured when the glass from a revolving door shattered and the wind from the outside caused shards of glass to blow into the Petitioner's face and eyes. The Arbitrator's analysis focused on a neutral risk analysis. She found that while the general public had access to the revolving doors, they did not engage with the doors in the same manner or with the same frequency that Petitioner did. As she found the Petitioner was exposed to the risk to a greater degree than the general public, both qualitatively and quantitatively, she accordingly found the Petitioner had proven his injury had arisen out of his employment.

While the Commission agrees with the Arbitrator's finding that the Petitioner's injury arose out of his employment, the Commission finds the injury was the result of a risk distinctly associated with the Petitioner's employment. "The presence of a "hazardous condition" on the employer's premises renders the risk of injury a risk incidental to employment; accordingly, a claimant who is injured by such a hazardous condition may recover benefits without having to prove that he was exposed to the risk of that hazard to a greater extent than are members of the general public." *Dukich v. Ill. Workers' Comp. Comm'n*, 2017 IL App (2d) 160351WC, citing *Archer Daniels Midland v. Industrial Comm'n,* 91 Ill. 2d 210, 216 (1982).

Petitioner testified he was working as a janitor for the Respondent in the office building at 71 South Wacker Drive. T.30. He worked at that location in that lobby every day. T.40-41. On the date of his injury, he had just begun working his shift. T.31. He testified he had cleaned the fingerprints off the revolving glass doors and was walking over to the directory to wipe it down when the glass of the revolving door shattered. T.13, 32-34. The surveillance video showed Petitioner completing a wiping of one of the doors and moving through the lobby surrounded by floor to ceiling glass windows and doors toward a glass directory. RX5. As he was walking across the lobby with the rag he had just been using in his hand, one of the glass panels inexplicably burst causing his injury.

The Commission finds the shattering of the single pane of glass of the revolving door to be evidence of a defect or hazardous condition on Respondent's premises, thus an employment related risk. The condition of these premises was a causative factor in his injury.

The Commission also modifies the award of permanent partial disability benefits for Petitioner's November 11, 2020 right eye injury. The Commission notes the analysis of the Arbitrator under criteria set forth under §8.1b, factor (v) was focused primarily on the disability relating to the left eye. The disability corroborated by the treatment records for the right eye were limited to a diagnosis of dry eye. There was no loss of visual acuity for the right eye and limited future treatment was recommended for the right eye. The Commission therefore reduces the award for the loss of use of the right eye from 12.5% to 5%.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on December 1, 2022, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner

reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,896.74 to Rush University Medical Center and $457 to Trustmark Recovery Services for treatment at Eye Center Physicians, as provided in Section 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent reimburse Petitioner in the amount of $204.41 for out-of-pocket costs paid to America's Best Contacts & Eyeglasses.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner permanent partial disability benefits of $432.00/week for 72.9 weeks because the injuries sustained caused 40% loss of use of the left eye and 5% loss of use of the right eye pursuant to Section 8(e) of the Act.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $34,150.95. 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.

June 13, 2024
O: 4/16/24
AHS/kjj
051

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

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC028022
Case Name	Carlos Sanchez v. ABM Industries, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Richard Johnson
Respondent Attorney	Christopher Jarchow

DATE FILED: 12/1/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 29, 2022 4.55%

/s/Nina Mariano, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Carlos Sanchez
Employee/Petitioner

v.

ABM Industries, Inc.
Employer/Respondent

Case # **20** WC **28022**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arbitrator Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **July 20, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **11/10/2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**$37,440.00**; the average weekly wage was $**720.00**.

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

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

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

Respondent shall be given a credit of $**0.00** 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

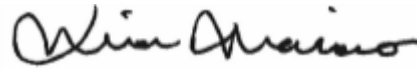
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,896.74 to Rush University Medical Center, and $457 to Trustmark Recovery Services for treatment at Eye Center Physicians, as provided in section 8(a) and 8.2 of the Act.

Respondent shall reimburse Petitioner in the amount of $204.41 for out of pocket costs paid to America's Best Contacts & Eyeglasses.

Respondent shall pay Petitioner permanent partial disability benefits of $432.00/week for 85.05 weeks, because the injuries sustained caused 40% loss of use of the left eye and 12.5% loss of use of the right eye pursuant to §8(e) of the Act.

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

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



DECEMBER 1, 2022

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

CARLOS SANCHEZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 20 WC 028022**
	)	
ABM INDUSTRY GROUP, LLC.,	)	
	)	
Respondent.	)	

FINDINGS OF FACT

The parties agree that on November 10, 2020, Petitioner and Respondent were operating under the Illinois Workers' Compensation or Occupational Diseases Act and their relationship was that of employee and employer. The parties agree that Petitioner gave the respondent notice of a November 10, 2020 injury within the time limits stated in the Act. The parties agree that Petitioner's average weekly wage is $720.00. The parties agree that Petitioner lost no time from work due to the November 10, 2020 incident and is therefore not due Temporary Total Disability (TTD) benefits. (AX1)

The threshold disputed issue in this matter is (C) whether the Petitioner sustained accidental injuries that arose out of and in the course of employment with respondent. Other disputed issues include: (F) whether Petitioner's current condition of ill-being causally is connected to this injury or exposure; (J) whether Respondent paid all appropriate charges for all reasonable and necessary medical services; (L) the nature and extent of Petitioner's injury, and (M) whether Petitioner is entitled to attorney's fees and penalties under sections 16, 19(k), and 19(l). (AX1)

Petitioner testified he was employed by ABM Industries as a janitor. (Tr. 11-12) He had worked for the Respondent for over 15 years. (RX3) Petitioner testified he primarily worked in the lobby of 71 S. Wacker, a Chicago high rise office building (Tr. 12) Petitioner testified that ABM does not own 71 S. Wacker, but contracts with the building to provide janitorial services. (Tr. 30-31)

Petitioner testified that he is only to perform his job duties in this lobby area and does not perform his job duties in any other area of the building. Petitioner testified that his job duties consist of mopping, vacuuming, and cleaning fingerprints in the lobby of 71 S. Wacker. T. 12. Petitioner also testified that he is at times required to use machinery or go out into the street to perform his work activities for Respondent. Petitioner testified that cleaning the glass revolving doors in the lobby was a major part of his work duties for Respondent. T. 14. Petitioner testified that cleaning the revolving doors is something he performs many times a day. Petitioner testified that his job requires that he be near those glass doors for work every day, many times a day. T. 40-41. Petitioner testified that he is required to work with this glass no matter what the outside weather, and is to perform his work activities even in snowy or rainy conditions.

Petitioner testified that the lobby in which he was assigned to work was open to the general public (Tr. 32) Petitioner testified that this lobby is the area for which tenants, guests, and vendors would access their units (Tr. 32) Petitioner testified that anyone that would have to enter the building would do so through the lobby to access the elevators (Tr. 33)

Petitioner testified that on November 10, 2020, shortly after he finished cleaning the fingerprints on the revolving door glass and was walking toward the directory to clean that, the glass of the revolving door shattered and went into his eyes. T. 15. Petitioner was 44 years old on that day. Petitioner testified that he immediately felt pain in his eyes, his eyes teared up, and his vision became blurred. T. 15. Petitioner testified that following the accident he tried to use the sink to wash out his eyes. T. 36 Petitioner testified that this incident was witnessed by security personnel who notified his supervisor by radio. T. 42. Petitioner testified that he did not know why the glass shattered.

An Incident Report completed by Petitioner's supervisor documents that Petitioner was injured after the revolving door collapsed causing the glass to shatter and blow into his eyes. RX3. The Incident Report documents that Petitioner was injured performing a "routine task" and was using a microfiber cloth. It further indicates that it was windy and thunderstorming and the wind blew the glass onto the employee. RX3. Security video of the incident was admitted as Respondent's Exhibit 5. The video shows Petitioner emerging from within a set of glass revolving doors, walking toward an electronic directory adjacent to another set of glass revolving doors, and

carrying what appears to be a blue cloth in his hand. RX5. Petitioner looks over his shoulder to face the revolving doors when the glass suddenly shatters, startling Petitioner, who took cover behind the nearby directory. RX 5. The security video ends with Petitioner appearing to be in some discomfort, rubbing his eyes as he walks out of view. Petitioner testified that he is not wearing glasses in this video. Petitioner testified that prior to November 10, 2020, he did not have any issues with his vision, never wore glasses, nor was he ever diagnosed with any visual condition.

Petitioner sought treatment at Rush University Medical Center on November 10, 2020. (PX1, p. 6) Petitioner reported bilateral eye pain. Petitioner described he was at work earlier when shattered glass from a door flew into his eyes one hour before evaluation. Petitioner described burning pain and itching in bilateral eyes and felt as if there were foreign bodies under his eyelids. Petitioner was assessed with a superficial corneal abrasion in the right eye and possible foreign body in the left eye. (PX1, p. 9) Petitioner's visual acuity was found to be "reassuringly within normal limits" and noted to be 20/20 in the left eye and 20/30 in the right eye. *Id*. It is noted that he does not wear contacts or glasses. Petitioner had both eyes flushed for symptomatic relief. Petitioner was discharged with topical antibiotic ophthalmic ointment and referred to follow up with ophthalmology. Petitioner was not assessed with any work restrictions. *Id.*

Petitioner was seen at Eye Centers Physicians, Ltd. on December 21, 2020. (PX2, p. 17) Petitioner described that since his incident at work he complained of itching, burning, double vision, blurry vision, decreased eyesight and excessive tearing. The base eye exam performed at this visit revealed Petitioner's visual acuity to be 20/30 in the left eye and 20/25 for the right eye. Petitioner was assessed with dry eye and age-related nuclear cataract of the bilateral eyes. Petitioner was recommended to simply monitor the cataracts. Petitioner was given eye drops for the dry eye and recommended to use a warm compression. Petitioner was discharged from the clinic with instructions to return as needed. No work restrictions were imposed on the Petitioner. (PX2, p. 22)

Petitioner sought treatment at America's Best Contacts and Eyeglasses on February 27, 2021 pursuant to the handwritten medical documentation. Petitioner was seen for double vision, itchy eyes, and frequent blinking. This report indicates that Petitioner had an accident in November 2020 and his uncorrected visual acuity was noted

as 20/20 right, 20/70 left. He was instructed to acquire bifocal glasses for farsightedness and astigmatism and eye drops for ocular irritation and itching caused by allergic conjunctivitis was recommended. (PX3, p. 3)

Petitioner followed up with Eye Centers Physicians, Ltd. on November 18, 2021 (PX2, p. 9) Petitioner described having an injury at work about one year prior. Petitioner claimed that his vision has not improved. Petitioner felt as if his vision required more light. He indicated glasses sometimes helps. He has more issues at near. Petitioner indicated his eyes would itch every now and then and would complain of discomfort every now and then. Petitioner denied pain. Petitioner was assessed with presbyopia of both eyes, age related nuclear cataract of both eyes, and dry eye. Petitioner was assessed with having difficulty at reading near and recommended bifocals. It was indicated that he was reading at 20/20 at near with bifocals. Visual distance acuity with correction was noted to be 20/20 for both eyes and was not tested without correction. Petitioner's cataracts were found to be mild and was instructed to monitor. Petitioner's dry eye was recommended to have eye drops and warm compress. Petitioner was discharged from the clinic without any work restrictions.

Petitioner retained Dr. Steven C. Eidt to author a records review report on May 5, 2022. (PX4) Dr. Eidt did not perform a physical examination or take a verbal history from Petitioner. (PX4, p. 4) Dr. Eidt found Petitioner had dry eye, presbyopia, allergic conjunctivitis, and age-related nuclear cataracts. Dr. Eidt explained that presbyopia is seen beyond the age of 40 and is routinely treated with glasses. Dr. Eidt explained that cataracts are common in older populations though may develop due to trauma. Dr. Eidt indicated that rarely superficial ocular trauma, such as corneal abrasion was associated with cataract formation. (PX4, p.5) Dr. Eidt indicated that dry eye can be a residual effect of ocular surface injury and use of artificial tears is a mainstay of treatment. Dr. Eidt also opined that the treatment actions implemented in the medical record were reasonable, necessary and consistent with the standard of care.

Dr. Eidt opined that Petitioner suffered a significant ocular injury at his work place. He was treated effectively in the Emergency room and has been followed with relatively healthy subsequent ocular exams. Dr. Eidt recommend Petitioner continue use of routine artificial tear use. Dr. Eidt indicated that despite the age-related cataracts his vision remains stable. He further explains that future evaluations may show further visual acuity deterioration related to the precocious cataract formation, eventually requiring cataract surgery and if this is required

it most likely would have been exacerbated by the traumatic events described in the medical record. Dr. Eidt outlined that no visual restrictions were noted.

Dr. Eidt authored a second report on July 11, 2022. (PX4, 9.6) Dr. Eidt indicated that though Petitioner was assessed with age-related cataracts, ocular trauma is one of the known causes of the development of visually significant cataracts in a precocious manner. He indicated that it cannot yet be determined when the cataracts will become visually significant and if they were to develop precociously, in the absence of any other predisposing causes, it is most likely that early cataract development would be due to the trauma described in the work related events. He also indicated that the medical records show a sustained and visually significant change in the amplitude of astigmatism in the left eye of a full diopter, which could be the cause of a decrease in uncorrected visual acuity from 20/20 to 20/70. Dr. Eidt further opined that this could be from structural corneal changes experienced during the healing process of a corneal abrasion.

Petitioner testified that he never saw nor was evaluated by Dr. Eidt. (Tr. 26-27) Petitioner testified he never had a conversation with nor provided a medical history to Dr. Eidt. (Tr. 27)

Petitioner testified he did not lose any time from work as it relates to the bilateral eye injury. (Tr. 29-30). Petitioner testified that he did return to his normal job duties. (Tr. 30) Petitioner testified he did not require any light duty work restrictions. (Tr. 30)

Petitioner testified that his physicians have not recommended any further treatment. (Tr. 23) The last time he saw a physician for his bilateral eyes was on November 18, 2021. (Tr. 38) Petitioner testified that he did not have an appointment scheduled or a name of a physician with whom he wished to treat, but expects to see a physician for his eyes in the foreseeable future. (Tr. 38-39)

Petitioner testified that he does not feel his visual problems have resolved and his visual problems interfere with his daily activities. T. 21. Petitioner testifies he is still dealing with “black dots” in his vision and needs to rub his eyes because he feels like they are “scratchy”. *Id*. Petitioner testified that driving has become more dangerous and feels it would not be safe to drive without his glasses. T. 22. Petitioner testified that these “dots” that appear in his vision resemble people at times and this frightens him. *Id*.

Testimony of Donna Dachowski

Ms. Donna Dachowski testified she was employed by ABM Business Industries as a project manager for 17-1/2 years (Tr. 50) Ms. Dachowski testified that ABM is a janitorial company. (Tr. 51) Ms. Dachowski testified that her job duties included delegating duties to the staff, ensuring safety of the employees on the job, ordering supplies and performing inspections of her employee's work throughout the building. Ms. Dachowski testified that her job duties require that she also handle work injuries (Tr. 51-52).

Ms. Dachowski testified that once an employee reports a work injury that she calls a nurse on a telephone number. A nurse answers the call and asks for the facts surrounding a work injury. The nurse then asks to speak to the employee directly and makes assessments from there. (Tr. 53) Ms. Dachowski also testified that when a workplace injury is reported she completes a preprinted accident report and obtains the information on that form from the injured employee. (Tr. 53)

Ms. Dachowski testified she was Petitioner's supervisor on November 10, 2020. (Tr. 54) Ms. Dachowski testified that ABM does not own the building at 71 S. Wacker and instead is contracted with that property to provide cleaning services. (Tr. 54) Ms. Dachowski testified ABM does not control or maintain the property at 71 S. Wacker (Tr. 54- 55)

Ms. Dachowski testified that she became aware that the Petitioner was injured at work via telephone call from the security desk (Tr. 55-56) Ms. Dachowski testified she spoke to Mr. Sanchez following the injury and asked Petitioner to use an eyewash solution in a large bottle. Ms. Dachowski testified she offered to call 911 though Petitioner refused. Ms. Dachowski testified that on November 10, 2020 there were severe windstorms in the City of Chicago. Ms. Dachowski testified that the severe weather sirens went off that day. (Tr. 57)

Ms. Dachowski described the lobby where Petitioner was injured. Ms. Dachowski testified that any visitors that came to the building would have to access the building through the lobby. Ms. Dachowski testified that the lobby was open to the general public. (Tr. 58) Ms. Dachowski testified that she completed an accident report referenced as Respondent's Exhibit 3 (Tr. 59-60). Ms. Dachowski reviewed and signed that document.

Ms. Dachowski testified that when Petitioner did return to work following his November 2020 injury his work quality remained good. Specifically, Ms. Dachowski testified that Petitioner had good performance with no

issues. (Tr. 63) Ms. Dachowski reported that Petitioner never complained about eye pain or blurred vision. (Tr. 63) Ms. Dachowski testified that Petitioner never requested accommodations due to his injury or complained of any eye pain or blurriness. (Tr. 63)

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

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

In regard to "C": Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? Arbitrator finds as follows:

It is undisputed that Petitioner was injured in the course of his employment thus the sole inquiry to be determined is whether Petitioner's accident arose out of a risk of his employment with Respondent.

After considering the totality of the evidence, the Arbitrator concludes that Petitioner has met his burden and has sufficiently shown by a preponderance of the evidence that he sustained an accident that arose out of and in the course of his employment with Respondent on November 10, 2020.

In order for claimant to recover, he must demonstrate that he sustained accidental injuries that arose out of and in the course of his employment. "In the course of" refers to time, place, and circumstances of the injury. *Orsini v. Industrial Comm'n*, 117 Ill.2d 38, 44, 109 Ill.Dec. 166, 509 N.E.2d 1005 (1987). An injury may be said to arise out of the employment if the conditions or nature of the employment increases the employee's risk of harm beyond that to which the general public is exposed. (*Caterpillar Tractor Co. v. Industrial Comm'n* (1989), 129 Ill.2d 52, 58, 133 Ill.Dec. 454, 541 N.E.2d 665; *Campbell "66" Express, Inc. v. Industrial Comm'n* (1980), 83 Ill.2d 353, 47 Ill.Dec. 730, 415 N.E.2d 1043.) That increased risk could be qualitative, such as some aspect of employment that contributes to risk, or quantitative, such as the number of times they are required to encounter the risk. *Springfield Urban League v. Illinois Workers' Comp. Comm'n*, 2013 IL App (4th) 120219WC, 990 N.E.2d 284, 290 (4th Dist. 2013). A risk is incidental to employment when it is connected with what the employee must do to fulfill his duties. *Orsini*, 117 Ill.2d at 45, 509 N.E.2d at 1008.

On November 10, 2020, Petitioner was walking away from a set of revolving doors that he had just cleaned, when the glass from the revolving door shattered and the wind from outside caused shards of glass to blow into Petitioner's face and eyes. The accident report, the emergency room records and the video surveillance footage all support this mechanism of injury. Petitioner testified that he did not know what caused the glass to shatter, while Petitioner's supervisor testified that there were high winds that day. Arbitrator notes that neither expert testimony opining on the structural causes of the incident, nor a weather report documenting the conditions of that day were introduced into evidence.

Petitioner testified that cleaning the revolving glass door is a major part of his job duties and to do so he is required to physically touch or be in close proximity with the revolving glass door every single day, several times per day. In fact, the majority of Petitioner's job requires his presence in the lobby where he is exposed to glass. The accident report introduced into evidence states that Petitioner sustained a work-related injury while performing a routine task. The risks posed by frequent contact and close proximity with glass near the perimeter

of the high rise building are incidental to Petitioner's employment as a janitor for Respondent because in order to fulfill one of his main job duties, cleaning the revolving door glass, he is required to physically engage with the glass, presumably with some force, in order to clean it and in general, be near it. The Arbitrator finds it significant that Petitioner was struck by material relating to his employment.

If there was inclement weather on the date the incident occurred, both Petitioner and his supervisor testified that even in inclement weather Petitioner is still expected to perform his job duties. In fact, Petitioner's supervisor testified that many of the tenants took shelter because of alleged inclement weather and yet Petitioner was still working in the lobby at that time. Petitioner's supervisor testified that Mr. Sanchez was the only employee working in the lobby at that time.

While the general public has access to the revolving doors, which prompts a neutral risk analysis, the general public does not engage with the doors in the same manner and are not engaging with the glass revolving doors with the same frequency that Petitioner does. The ordinary man, free of obligations of any particular employment, would not choose to be in close prolonged proximity with glass windows especially during high wind and inclement weather situations. The Arbitrator finds it significant that Petitioner can only perform his job duties in the lobby area where he was injured. Because performance of his job duties required that he be frequently in contact with, or in close proximity to glass windows, Petitioner was subjected to the plainly apparent dangers of glass windows of high-rise structures in high wind, inclement weather situations. Accordingly, the Arbitrator finds that Petitioner established that his employment with Respondent placed him at an increased risk of injury both quantitatively and qualitatively.

In regard to "F"-- Is Petitioner's current condition of ill-being causally related to the injury?, the Arbitrators finds as follows:

Petitioner's accident and symptomatology is well documented and noted in the accident reports and treating records contemporaneously to his accident. The histories contained in all of the treating medical records are consistent with one another and state that Petitioner sustained injuries as a result of a work related accident that took place on November 10, 2020. Dr. Steven Eidt at Eye Specialists Chicago reviewed petitioner's medical

records and it was his opinion based on a reasonable degree of medical certainty that Petitioner suffered a significant ocular injury at his workplace due to a shattered glass door. Dr. Eidt further opined that further evaluations may show further visual acuity deterioration related to precocious cataract formation, eventually requiring cataract surgery and should this become an eventuality, it most likely would have been exacerbated by the traumatic events described in the medical record. Arbitrator adopts Dr. Eidt's opinions. Respondent did not introduce any medical opinions into evidence. Illinois has recognized the validity of the "chain of events" analysis of causation. See *Price v. Industrial Comm'n*, 278 Ill.App. 3d 848, 854 (1996). There is no evidence in the record that Petitioner had any prior problems with his vision and never wore glasses or contacts prior to the work accident. Arbitrator is persuaded by the fact that cataracts were not diagnosed per the medical record from the date of the accident. The "chain of events" analysis in this case supports Dr. Eidt's opinions finding causation between the accident and Petitioner's current condition.

Therefore, the Arbitrator concludes, based upon a preponderance of the evidence presented, that Petitioner's current condition of ill-being is causally related to the November 10, 2020, work accident.

In regard to "J"-- Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services? Arbitrator finds as follows:

Petitioner testified that he paid out of pocket for some of his medical treatment for medical services related to the November 10, 2020, but the majority of his bills remain unpaid, some of which are now with collections. After reviewing all Petitioner's treatment records, Dr. Eidt opined that the treatment actions implemented in the medical record were reasonable, necessary, and consistent with the standard of care. Respondent did not introduce any medical opinion challenging the reasonableness or necessity of the medical treatment rendered.

Therefore, Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,896.74 to Rush University Medical Center, and $457 to Trustmark Recovery Services for treatment at Eye Center Physicians, as provided in section 8(a) and 8.2 of the Act. Respondent shall also

reimburse Petitioner in the amount of $204.41 for out of pocket costs paid to America's Best Contacts & Eyeglasses.

With regard to "L" – What is the nature and extent of the injury?, the Arbitrator finds as follows:

Pursuant to Section 8.1(b) of the Act, the following factors are to be considered in determining the level of permanent disability for accidental injuries occurring on or after September 1, 2011: (i) reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employees' future earning capacity; (v) evidence of disability corroborated by the treating medical record. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. 820 ILCS 305/8.1b(b).

With regard to Subsection (i) of Section 8.1(b), Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. *See* Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, Arbitrator gives no weight to this factor.

With regard to subsection (ii) of section 8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a janitor at the time of the accident and that he is able to return to work in his prior capacity as a result of said injury. Petitioner did not testify to any difficulties he has with performing his job. Therefore, Arbitrator gives some weight to this factor.

With regard to subsection (iii) of section 8.1b(b), the Arbitrator notes that Petitioner was 44 years old at the time of the accident. Because of his relatively young age, the Arbitrator therefore gives greater weight to this factor as he presumably has substantial work-life ahead of him.

With regard to subsection (iv) of section 8.1b(b), no evidence was presented indicating that Petitioner's earning capacity was affected. Therefore, Arbitrator gives no weight to this factor.

With regard to subsection (v) of section 8.1b(b), evidence of disability corroborated by the treating records, the Arbitrator notes that Petitioner testified in a credible and believable fashion regarding his ongoing visual issues and treatment he has undergone. Petitioner's unaided visual acuity deteriorated significantly and decreased from 20/20 to 20/70 in the left eye. Petitioner testified that he has consistent discomfort, blurry vision, itchiness, and presently has visual disturbances in his field of vision that impact his day to day activities. Petitioner testified that he does not feel his issues have been resolved and he plans to see a physician for his eyes in the foreseeable future. Because Petitioner's complaints and symptomatology are supported by the treating records, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 12.5% loss of use of his right eye, and 40% loss of use of his left eye, pursuant to Section 8(e) of the Act.

In support of the Arbitrator's decision with respect to M (Penalties and Attorney's Fees), the Arbitrator finds as follows:

With regards to Section 19(1), the Act reads,

> In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.

It has long been held that penalties authorized by Section 19(1) serve as a late fee and apply whenever the employer or its carrier simply fails or neglects to make payment or unreasonably delays payment "without good and just cause." *McMahan v. Industrial Comm'*n, 702 N.E.2d 545 at 553 (1998). If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of Section 19(1) penalties is mandatory. *Id*. The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. *Board of Education of the City of Chicago v. IC*, 93 Ill.2d 1 (1982). Thus, it is not good enough to merely assert honest belief that the employee's claim is invalid or that his award is not supported by the evidence; the employer's belief is honest only if the facts which a reasonable person

in the employer's position would have would justify it. *Id*. Awards under section 16 and 19(k) are proper only if the employer's delay in making payment is unreasonable or vexatious. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 504-05 (1998). That is, the refusal to pay must result from bad faith or improper purpose.

In this matter, Arbitrator does not award to Petitioner Attorney's Fees and Penalties as a good faith dispute existed amongst the parties with regard to whether the accident arose out of Petitioner's employment. Respondent raised a legitimate accident dispute. Petitioner has not carried the burden of proof that Respondent's denial of Petitioner's claim is either unreasonable or vexatious. Petitioner's claim for Penalties and Attorney's Fees is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014645
Case Name	Alice Kieft v. Champaign County
Consolidated Cases	19WC015534;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0282
Number of Pages of Decision	38
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Bruce Bonds

DATE FILED: 6/13/2024

/s/ Amylee Simonovich, Commissioner

Signature

24IWCC0282

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alice Kieft,

Petitioner,

vs. NO: 19 WC 014645

Champaign County,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, average weekly wage/benefit rates, temporary total disability, reimbursement and hold harmless of medical bills, 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 thereof.

The Commission modifies the last sentence on page 29 of the narrative portion of the Arbitrator's award for issue (L), striking the following language, "Arbitrator finds this case to be a loss of trade, and therefore gives some weight to this factor." Arbitration Decision, p. 29. The Commission replaces this language with, "The Arbitrator gives some weight to this factor."

The Commission agrees with the Arbitrator's analysis and award of temporary total disability for the period of April 3, 2019 through June 18, 2020 in the Order of the Decision, but modifies the weeks and parts thereof awarded. The award is hereby modified to a total of 63 2/7 weeks pursuant to Section 8(b) of the Act. The Commission corrects a scrivener's error in the first paragraph of Issue (K) on page 27 of the Decision, striking "April 2, 2019" and replacing it with "April 3, 2019".

The Commission further corrects a scrivener's error in the first sentence of the second paragraph on page 17 of the Arbitration Decision, striking "2019" and replacing it with "2020".

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the

Arbitrator filed on September 6, 2022, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's average weekly wage pursuant to Section 10 of the Act is $270.61.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner reasonable and necessary medical services as set forth in Petitioner's exhibits for causally related treatment, as provided in Section 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $220.00/week for 63-2/7 weeks, commencing April 3, 2019 through June 18, 2020, as provided in Section 8(b) of the Act. Respondent shall be entitled to a credit for $4,065.36 in TTD previously paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $220.00/week for 100 weeks, as the injuries sustained caused 20% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner $220.00/week for 6 weeks for nasal fractures sustained, as provided in Section 8(d)2 of the Act. Respondent shall be entitled to a credit for $469.08 in statutory payments previously paid.

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

June 13, 2024

o: 5/7/2024
AHS/kjj
051

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

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014645
Case Name	KIEFT, ALICE v. CHAMPAIGN COUNTY
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	35
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Bruce Bonds

DATE FILED: 9/6/2022

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

/s/Crystal Caison, Arbitrator

Signature

Duplicate Case #19WC015534

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

ALICE KIEFT
Employee/Petitioner

Case # **19** WC **014645**

v.

Consolidated cases:

CHAMPAIGN COUNTY
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 **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Urbana**, on **March 17, 2022**. After reviewing all the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

☐
☒
☒

M. Should penalties or fees be imposed upon Respondent?

N. Is Respondent due any credit?

O. Other **TTD Underpayment**

19WC014645 (Duplicate Case #19WC015534)

FINDINGS

On **4/2/19**, 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 $**1,753.49**; the average weekly wage was $**270.61**.

On the date of accident, Petitioner was **69** 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 $**4,065.36** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**469.08** for other benefits, for a total credit of $**4,534.44**.

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

ORDER

- The Arbitrator finds that the Petitioner has met her burden of proving that her current condition of illbeing is causally to the work accident of 4/2/19.
- The Arbitrator finds that Petitioner’s average weekly wage pursuant to Section 10 of the Act is $270.61.
- The Arbitrator orders the Respondent to pay all reasonable and necessary medical services as set forth in Petitioner’s exhibits for causally related treatment Petitioner underwent, as provided in Section 8(a) and 8.2 of the Act.

- The Arbitrator orders the Respondent to pay temporary total disability benefits of $220.00 /week for 63 and 1/7 weeks, commencing 4/3/19 through 6/18/20, as provided in Section 8(b) of the Act. Respondent is entitled to a credit for $4,065.36 in TTD previously paid.

- The Arbitrator orders the Respondent to pay Petitioner permanent partial disability benefits of $220.00/week for 100 weeks, because the injuries sustained cause the 20% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

- The Arbitrator orders the Respondent to pay Petitioner her statutory 6 weeks for the nasal fractures she sustained in the accident at a rate of $220.00/week. The Respondent is entitled to a credit for $469.08 in statutory payments previously paid.

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

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

SEPTEMBER 6, 2022

Signature of Arbitrator

Duplicate Case #19WC015534

STATE OF ILLINOIS)
)SS
COUNTY OF CHAMPAIGN)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ALICE KIEFT Case # **19** WC **014645**
Employee/Petitioner

v.

Consolidated cases: __

CHAMPAIGN COUNTY
Employer/Respondent

PROCEDURAL HISTORY

This claim came before Arbitrator Crystal L. Caison for trial on March 17, 2022, in Urbana, Illinois on Petitioner's Request for Hearing. The issues in dispute in Case #19WC014645 and from the April 2, 2019 accident are causal connection, Petitioner's earnings, unpaid medical bills, temporary total disability "TTD" benefits and TTD underpayment, and Respondent credit. (AX1) The Arbitrator notes there is a second Case #19WC015534 referenced on the Request for Hearing form and in an Application for Adjustment of Claim included in Petitioner's exhibit. (AX1 & PX1) However, no evidence was presented on that claim. The Arbitrator considers that second Application for Adjustment of Claim as a duplicate of Case #19WC014645. Therefore, this decision is limited to Case#19WC014645.

FINDINGS OF FACT

Arbitration Testimony

Petitioner

Alice Kieft ("Petitioner") was a 69-year-old single female with no dependent children on April 2, 2019. (AX1) Petitioner testified that she was born of February 23, 1950. Petitioner has a bachelor's degree in Sociology and Social Work from Bradley University. Petitioner has worked in the Champaign Urbana area for the last two years and prior to that lived in Rantoul, IL. (Tr. 18-19)

Petitioner was employed by Champaign County, the Respondent, on April 2, 2019. Petitioner was employed at that time as a poll judge for the election. Petitioner had done this position for years and years as she felt it was a contribution in the form of her civic duty. (Tr. 19-20)

Petitioner testified that she would arrive early around 5:00 a.m. to help set things up, put up signs and get the computers and polling stations ready. Petitioner was hired to work as a poll judge for one day, that being April 2, 2019. Petitioner was paid $200.00 for her work that day. (Tr. 20-21)

Petitioner testified that on April 2, 2019 she was carrying a tote out to a co-worker's car when she tripped and fell on the ground. Petitioner's face hit the cement which is what stopped her fall. Petitioner testified that there were ballots inside of the tote. The cause of Petitioner's fall was a cement parking block in the parking lot where the polling station was located. (Tr. 21-22)

Petitioner testified that the area where she fell was totally concrete. Petitioner hit the concrete with her face first and then hit most of her left side as she came down. Petitioner was unsure if she lost consciousness. Petitioner testified that after she fell, she was shaking, and she noticed that she could not sit up by herself. Some coworkers and some onlookers came to assist her, one of which was an EMT who helped her get up into a seated position. Petitioner testified that she started shaking a lot and when she

tried to move her hand above her head, she could not because it hurt too much. Petitioner also noticed blood on her hands. Petitioner testified that she had experience with transcendental meditation and that she used this to try to calm herself down immediately following the accident. (Tr. 22-24) Petitioner said that she was taken to Carle Emergency Room by ambulance and provided a history of the accident and what she noticed about herself physically. (Tr. 24-25)

Petitioner testified that on April 3, 2019 she was discharged from the emergency room and was to follow up with her primary care physician. (Tr. 27) Petitioner said that once she was released from the emergency room, she "hurt all over." Petitioner said that could not sleep at night because she had been using a CPAP for years which covered her nose and due to her nasal fracture, she could not put anything over her nose. Petitioner said she had to buy a recliner because she was unable to lay flat. Petitioner said she slept in a recliner for about a month after the accident. Petitioner said she had a hard time getting around and described needing help from her sister to drive and to cook. Petitioner testified that she could not do anything other than go to the bathroom by herself following the accident. Petitioner testified that she slept a lot and she felt confused all the time following the accident. (Tr. 27-28)

Petitioner testified that following the accident, she noticed that she would forget things and had been informed by other people that she was becoming forgetful. Petitioner noted in instance where she put milk in the cupboard as opposed to the fridge. Petitioner also used the example of playing a game with her sister and she couldn't remember how to play it. Petitioner testified that she was raised playing games and this was a game called Blokus that had played all the time as a child but following the accident she could not remember how to play or how to keep score at the end. Petitioner's sister had to keep score because she couldn't do the addition. (Tr. 28-29)

Petitioner testified she did not have any similar issues with the feeling of confusion, forgetfulness, memory problems, feeling of passing out, spells or episodes of this nature before the accident. (Tr. 29-31)

Petitioner testified that on April 20, 2019 she was doing stuff in her kitchen that day and as she was hanging on to the counter she needed to go around the dishwasher to get to her sink. Petitioner testified that she felt as if she was falling backwards towards her counter and so she grabbed another counter and she cut her left leg on the side of the dishwasher. Petitioner initially thought she had just bruised her left leg but later noticed her shoe started to feel wet and she had discovered blood there. (Tr. 31-32) Petitioner testified that she believed that the cause of this incident regarding the dishwasher was related to the accident of April 2, 2019. Petitioner testified that her balance was so off following the fall that she had to be careful on how she walked and had to hold on to things. Petitioner testified that this incident was due to her balance being off following the accident. (Tr. 34-35)

Petitioner confirmed that she had suffered falls before the April 2, 2019 accident. Petitioner testified that her falls before the accident did not have anything to do with her balance. Petitioner testified that her balance issues were consistent following her April 2, 2019 fall and she had to be careful all the time. Petitioner continues to have balance issues but does not have to use a walker anymore. Petitioner is terribly afraid of falling and will not go out when it is snowing or when it looks wet or slippery at all outside. Petitioner touches things in her apartment as she is walking around and she has things arranged in her apartment so that she can touch something all the time when she is getting around her apartment. Petitioner has removed all her throw rugs and has moved all of her cat stuff away from where she would be walking. Petitioner testified that she is terrified of falling. (Tr. 35-36)

Petitioner testified that she began physical therapy at Carle Therapy Services in July 2019. (Tr. 36) Petitioner testified that the focus of her physical therapy was on

balance and exercises and tools she could use to counteract her balance issues. (Tr. 37) Petitioner testified that she believed that the physical therapy she participated in did help. The physical therapy made Petitioner more confident, and Petitioner continued her exercises after she completed physical therapy for a while which continued to help her ongoing issues. *Id.*

Petitioner testified that in August 2019 she began receiving trigger point injections. (Tr. 37) Petitioner testified that prior to the April 2, 2019 accident she had never received any sort of trigger point injections. *Id.* Petitioner testified that the trigger point injections did help for a long time, but Petitioner was instructed that eventually the benefits from the trigger point injections would wear off which they did. (Tr. 38)

Petitioner testified that she continued to suffer from sleep issues following the fall. Petitioner testified that did not sleep very well during this time and she slept in the recliner that she purchased following the accident. Once Petitioner got out of the recliner and back into her own bed, she continued to have issues with sleeping. Petitioner testified she could not stop sleeping and at times slept for 20 hours a day. Petitioner was instructed by her physicians to sleep as long as she can as that would help heal her brain. (Tr. 39-40)

Petitioner testified that she was not driving following the accident. Petitioner did not have any issues driving or getting herself around before this accident. (Tr. 40-41)

In addition to working as a poll judge for the Respondent, Petitioner also held concurrent employment with Panera Bread. Petitioner was a driver for Panera which required her to deliver food. Petitioner did other jobs for Panera but her primary task was driving. When working for Panera before the accident Petitioner was able to lift two 15lb bags and take them up as many as three flights of stairs if she had to. Petitioner worked for Panera part-time and began working for Panera approximately one year before her April 2, 2019 accident. Petitioner testified that she did notify employees of

the County that she had the second job with Panera. (Tr. 41-42) Petitioner's wages with Panera were admitted as Petitioner's Exhibit 7.

Petitioner did not return to work for Panera Bread after this accident. Petitioner did not believe that there was any way she would be able to continue that work. (Tr. 44)

Petitioner testified regarding her emotional state following the accident. Petitioner indicated that she could not be in a room with a lot of people because of the noise and because she would get very confused and would not know which direction she should go. Petitioner testified she wanted it to all stop, the noise and she wanted people to leave. Petitioner testified she did not have these issues before the accident and that prior to the accident she loved being around people. Petitioner testified following the accident she couldn't even go to a movie theater which is something she also loved. (Tr. 45-46)

In April 2019, Petitioner began seeing Dr. Dizen, a psychologist, with the Carle Physician Group. Petitioner saw Dr. Dizen regularly on a weekly basis for some time after the accident. (Tr. 46) Petitioner testified that the treatments and the visits that she had with Dr. Dizen helped her tremendously. Dr. Dizen, in addition to his treatments, also adjusted Petitioner's medications which helped balance out her feelings and her emotional reactions to things. Petitioner testified that following the accident her anger and episodes of crying were out of control and she felt as though there was nothing she could do about it. (Tr. 46) Petitioner said that she also saw Dr. Traugott, a psychiatrist, who is also with Carle Physician Group. (Tr. 46-47)

Petitioner testified that on the date of trial that she still has trouble controlling her emotions and when she gets frustrated or when she is in a room full of people she has difficulty. Petitioner said that she can't go to a restaurant because it might be crowded. If she goes to restaurants, she said that she goes at off times to avoid a crowd. Petitioner testified that she went to Panera Bread on her birthday this year and some of the kids she had worked with came over and hugged her and it was wonderful. Petitioner

said that she can't take extreme light. Petitioner said that she has glasses that change color because she cannot remember to change her glasses into sunglasses. Petitioner said that she still reacts badly to noises. She said when the woman who lives next door slams her door, it bothers her. Petitioner said that she still has a hard time with balance and uses a walking stick and at times a cane. Petitioner described her perception being off as far as distance and putting things down. Petitioner said that when she is watching tv and a dog dies, she breaks into tears. Petitioner testified that when she hears sad news now, her emotions may range from breaking out into tears to not reacting at all. (Tr. 48-49)

Petitioner testified she did not have the sorts of extreme emotional reactions or no reactions at all before the accident. Before the accident, Petitioner said she loved being around people and used to go dancing and go to concerts and weddings and things like that and she cannot do that anymore. Petitioner described not even being able to go home for family Christmas because there are kids and there will be too much noise. (Tr. 49-50)

Petitioner testified that was living by herself before the accident and she is still living by herself now. However, Petitioner testified that now she has a home health aide that comes in 15 hours a week to help her with laundry and cooking and to monitor her while she's in the shower in case she falls. The home health care aide helps with making the bed and doing chores. (Tr. 50)

Petitioner confirmed that she has not returned to Panera, the County or any other work since the April 2, 2019 accident. Petitioner testified that in the perfect world she would still be working for Panera as she loved that job. Petitioner described in her past having had other jobs that had a lot more responsibility. For example, Petitioner worked for American Express previously where she managed 120 people over six states and she couldn't begin to fathom that she would be able to do something like that job at this point in her life. (Tr. 51)

Petitioner also testified regarding her current ability to drive. Petitioner is currently driving. However, she described her driving now as much different. Petitioner testified she had to get a car with a backup camera because it is hard for her to turn all the way around to see behind her. Petitioner said that she is very careful when going around curves and she has to drive slowly because she wants to make sure she can see everything around her. Petitioner said that she cannot drive at night because the lights from the streetlamps and other cars affect her vision. Petitioner said that she has a hard time with direction even if it's a place she has been to many times in the past. (Tr. 52-53)

Petitioner also testified that she uses curbside pickup for her groceries. Petitioner testified that if her order is not complete it's too bad for her because she cannot go into the store due to be overwhelmed and anxious around that many people. Petitioner orders all her clothes off Amazon because she cannot go into a clothing store. Petitioner has difficulty playing simple games with her nephew. (Tr. 52-53)

Medical Evidence

On April 2, 2019, an ambulance came to the scene and took Petitioner to Carle Emergency Room. Petitioner arrived at the emergency room at Carle Hospital by EMS after falling on the concrete. Petitioner complained of left shoulder and face pain. Petitioner also had an inability to breathe out of her nose with swelling, bruising and minimal bleeding noted to the forehead and nose. Petitioner arrived in a C collar. Petitioner provided an accurate history of her accident to the emergency room physicians at Carle Hospital. Additionally, Petitioner had complaints of head, facial, left shoulder, left hip, and left leg pain. An examination was performed, and it was recommended Petitioner undergo various diagnostic studies. (PX2, 4-8)

X-rays of the left hip, left tibia/fibula and the left shoulder revealed no radiographic evidence of acute displaced fracture or dislocation. (PX2, 8-10, 103, 107)

CT of the facial bones revealed acute fractures involving the nasal bones and septum. (PX2, 10-11) CT of the cervical spine revealed no acute displaced osseous fracture involving the cervical spine. (PX2, 11-12) CT of the brain revealed no evidence of acute intracranial hemorrhage but did show frontal scalp swelling. (PX2, 12-13) CT of the thoracic spine revealed no evidence of acute displaced fracture involving the thoracic spine. (PX2, 108-109) CT of the lumbar spine revealed no evidence of acute fracture. (PX2, 110) Final diagnostic impression from the emergency room was a closed head injury, closed fracture of the nasal bone, acute pain of the left shoulder due to trauma, pain of the left leg, and facial abrasion. (PX2, 14)

On April 3, 2019, Petitioner was also evaluated by the physicians at Carle Foundation Hospital Oral and Maxillofacial Surgery. Dr. Swaminarayan took a history and performed an examination of Petitioner. Dr. Swaminarayan diagnosed Petitioner being status post fall from standing height on April 2, 2019 which resulted in a nasal bone, nasal septum, and frontal sinus fractures along with upper lip, forehead, and nasal dorsum lacerations. Dr. Swaminarayan elected not to have Petitioner undergo surgical intervention and Petitioner would be reevaluated in one week regarding her nasal bone and frontal sinus fractures. Suture repair of Petitioner's facial lacerations were performed. (PX2, 19-22)

On April 9, 2019, Petitioner initially met with Dr. Muge Dizen who is a psychologist with Carle Physician Group. Dr. Dizen diagnosed Petitioner with bipolar disorder, post-traumatic stress disorder, and anxiety. (PX4, 14) Petitioner was also diagnosed with depression. (PX4, 15) The records from Carle Psychiatry indicate that Petitioner saw Dr. Dizen and other physicians in the psychiatric department almost weekly starting in April 2019 through December 2019. (PX4, 14-70)

On April 14, 2019, Petitioner returned to the emergency room at Carle. The history of present illness from that record indicates that Petitioner presented to the emergency department today complaining of near syncope, or a temporary loss of

consciousness. Petitioner indicated that while sitting at home she felt like she was going to pass out and so she hit her life alert button. Petitioner complained of a mild headache, dizziness and near syncope since the accident of April 2, 2019. (PX2, 28)

On April 19, 2019, Petitioner followed up with the Carle Physician Group to address her nasal and sinus fractures. Petitioner did note some congestion as well as some persistent drainage from the nose. Dr. Brian Mitchell examined Petitioner and confirmed that Petitioner would not need surgical intervention for her nasal and sinus fractures. Petitioner was allowed to follow up as needed for these fractures. (PX2, 32-35)

On April 21, 2019 and following the dishwasher incident, Petitioner presented to the ER at Carle Hospital. The note from this visit indicates Petitioner had cut her leg yesterday and she could not get it to stop bleeding. A physical examination was remarkable for a 2cm skin tear to the left lower leg. The area was cleaned and dried and a steri-strip was applied to the area of the tear. (PX2, 36-40)

On April 24, 2019, Petitioner followed up with Carle Hospital regarding the skin tear she suffered from the dishwasher incident. Petitioner's prior complaint was the wound being painful and oozing following the dishwasher incident a few days earlier. Petitioner's wound was cleansed with a sterile saline solution and a new clean dressing was applied to the wound. Petitioner was discharged home with a prescription for Keflex and was to return to the emergency department if symptoms persist or worsen or if new symptoms develop. Petitioner was also to follow up with her primary care physician for evaluation. (PX2, 40-44)

On April 29, 2019, Petitioner was again seen in the emergency department at Carle Hospital. Petitioner indicated that the wound she suffered from the dishwasher incident was looking more red and becoming warmer and inflamed. Petitioner was admitted to the hospital at this time. Petitioner was able to walk but was unable to bear the pain that continued with regards to her left leg. Petitioner described her fall from

April 2, 2019, and indicated since then she had been having balance issues and that caused her to sustain the leg injury she suffered in the dishwasher incident. (PX2, 49) Due to the lack of response that Petitioner's left leg laceration had to oral antibiotics, Petitioner stayed in the hospital from April 29, 2019 through her discharge on May 2, 2019 and was instructed to follow up with her primary care physician in one week. (PX2, 63)

During Petitioner's hospital stay, sepsis was ruled out. During Petitioner's admission, she was kept on Vancomycin and Cefepime. Petitioner was administered an antibiotic regimen and was switched subsequently to Levaquin.

On May 17, 2019, Petitioner was again seen at the emergency department at Carle Hospital. Petitioner indicated that her leg was red and hot and she feared that she needed additional IV antibiotics. (PX2, 68) Petitioner indicated that once she had finished her seven-day course of Levaquin, the redness in the area of her left leg started to return. Petitioner had mild localized pain and chronic peripheral edema. Petitioner was given a prolonged course of Levaquin and was instructed to return if her symptoms were to worsen. (PX2, 75)

On May 28, 2019, Petitioner was also seen at the Wound Healing and Limb Preservation Center within the Carle Physician Group. Petitioner's left leg had improved. Petitioner also described being seen by Neurology and indicated that she was having issues regarding forgetfulness and was being instructed not to drive for several months. (PX2, 76) Petitioner was prescribed a spandagrip compression hose to wear on her left lower extremity to help with healing. (PX2, 77)

On July 2, 2019, Petitioner's initial physical therapy evaluation was performed at Carle Therapy Services. Petitioner's symptoms included left knee, upper back pain, left shoulder, neck pain, back of head and forehead pain, left lower leg wound and tiredness. Petitioner also complained of dizziness with spinning and light headedness. (PX2, 84)

On July 10, 2019, Petitioner later presented to the Sleep Clinic at Carle Physician Group. Petitioner presented to discuss daytime sleepiness that had been worse since her April 2, 2019 fall. This note confirms that Petitioner was unable to wear her CPAP following the accident because a mask could not be found that fit her face appropriately and she had developed severe swelling from her accident. This record also confirms that Petitioner did purchase a recliner for her home because she had been unable to wear to CPAP once she was released from the hospital due to her facial swelling. (PX2 87-88) Petitioner was ordered to obtain a CPAP adjustment study. (PX2, 93) Petitioner underwent a sleep study at the Carle Regional Sleep Disorder Center on September 17, 2019. (PX2, 95-96)

On August 12, 2019, Petitioner was initially seen by Physician Assistant Sarah Henry ("PA Henry") for trigger point injections. Petitioner was diagnosed with whiplash injuries, post-concussion headache, and myalgia. A trigger point injection was administered into the bilateral cervical paraspinal and suboccipital musculature. (PX3, 37-40)

On September 24, 2019, Petitioner followed up with PA Henry. An additional trigger point injection was administered into the bilateral cervical paraspinal suboccipital and trapezius musculature. (PX3, 81-84)

On October 10, 2019, Petitioner was sent at the Geriatric Clinic at Clinic Physician Group. Petitioner presented with multiple concerns following her fall from April 2, 2019. Petitioner continued to suffer with post-concussive syndrome and was followed closely with Neurology for these symptoms. Petitioner had suffered a recent fall and felt like she had taken multiple steps backwards in her overall recovery. Petitioner complained of increased light and sound sensitivity. Petitioner reported being more emotional lately and has routinely been seen by the Psychology Department at Carle. Petitioner reported being unable to do her job with Panera due to her balance and given the fact that at this time she was having to use a walker. Petitioner also reported

she had been unable to work in the restaurant itself due to light and sound sensitivity. (PX3, 114-115)

On October 11, 2019, Petitioner was again seen by PA Henry. Petitioner complained of having more problems with headaches with aggravations to anxiety and depression. PA Henry recommended that Petitioner should meet with occupational medicine to help navigate worker's compensation regarding her April 2, 2019 injury. At this visit, PA Henry administered an additional trigger point injection into the bilateral trapezius musculature. (PX3, 132-135)

On October 15, 2019, Petitioner was referred to the Occupation Medicine Clinic where she initially saw Dr. Philbert Chen. Petitioner provided a history regarding her April 2, 2019 accident. It was noted that Petitioner was still in physical therapy at this time. Dr. Chen took a history and assessed Petitioner as having a history of a traumatic fall with post-traumatic headaches and balance issues, nasal fracture, and knee pain. Dr. Chen recommended Petitioner continue to follow up with her treating providers. Dr. Chen's notes also state "her outlook does not look promising. She is encouraged to seek other employment as I do not believe she will return to her prior job." (PX3, 137) Dr. Chen went on to note that he did not believe Petitioner would be able to return to her regular job at Panera and he did not think that Petitioner would ever be able to return to her original job with Panera. Dr. Chen opined that Petitioner needed to find a sit-down type job long term and he believed Petitioner's symptoms were plateauing. Dr. Chen continued to recommend physical therapy and indicated at some point he may recommend a Functional Capacity Evaluation and declare her at MMI. It was noted that Petitioner's case is complicated by the fact that she has numerous pre-existing conditions as well as several traumatic falls after her April 2, 2019 fall. (PX3, 136-137)

On October 28, 2019, PA Henry performed another trigger point injection to Petitioner's left cervical paraspinal and trapezius musculature. (PX3, 141-142)

On November 13, 2019, Petitioner followed up with Dr. Chen at the Department of Occupational Medicine. Overall, Petitioner was stable and some of her symptoms had slightly improved. Petitioner noted that the trigger point injections performed provided relief. Petitioner was also being seen at the pain clinic as they are monitoring her pain medication. Petitioner is continuing to attend physical therapy. Petitioner noted that her left shoulder bothers her a bit, but the concern is that this may be coming from her cervical spine. Petitioner was diagnosed with a history of traumatic fall with post traumatic headaches, balance issues, anxiety, left knee pain, left neck and shoulder impingement syndrome. Dr. Chen noted Petitioner had an Independent Medical Examination set up in the near future and once that was completed, she would return for recheck. Dr. Chen reiterated once again that he discussed with Petitioner that she should look for a different job. (PX3, 151)

On November 15, 2019, PA Henry performed an additional trigger point injection to the left cervical paraspinal and trapezius musculature on. (PX3, 153-154)

On November 19, 2019, Dr. Robert Beatty performed an IME of Petitioner. Dr. Beatty is a neurosurgeon. Dr. Beatty took a history from Petitioner as well as reviewed Petitioner's medical records and imaging. Dr. Beatty further took a physical examination. Dr. Beatty concluded Petitioner did suffer a concussion as a result of the April 2, 2019 fall. Dr. Beatty did note Petitioner had suffered a prior concussion in 1971 and perhaps another in 1998. Dr. Beatty noted that due to the prior concussions before her work accident that the cumulative symptoms that resulted from the accident of April 2, 2019 produced significant symptoms. Dr. Beatty believed that Petitioner's balance, memory, headaches, and confusion have all improved since the fall. Dr. Beatty noted Petitioner's balance seemed to be her biggest problem.

Dr. Beatty diagnosed Petitioner with post-concussive syndrome and indicated that her current condition is in part related to the April 2, 2019 work accident. Dr. Beatty again believed that her most significant objective findings was her imbalance which in

Petitioner's case attributed to the wide based gait due to her concussion which Dr. Beatty believed to be a legitimate physical finding. Dr. Beatty believed that Petitioner was not at MMI as of his November 19, 2019 examination. Dr. Beatty believed Petitioner at MMI one year following the accident which would be April 2, 2020.

Dr. Beatty indicated that he was unclear as to why Petitioner was having pain injections and was on narcotic medications but clarified that he was not asked to comment on these problems. It is noted that Dr. Beatty did not provide a causation opinion relative to the pain injections and narcotic pain medications Petitioner was being prescribed by her treating physicians.

Dr. Beatty issued work restrictions to Petitioner that she is not able to return to work carrying over 10pounds to and from her car given her balance issues. Dr. Beatty believed a sedentary job would be reasonable and based upon his understanding of her work as an election judge she is able to perform this work without restriction other than avoiding carrying over 10pounds to and from her vehicle. Dr. Beatty also noted that he would restrict Petitioner from driving until one year post injury. It is further noted that Dr. Beatty did not make reference to Petitioner's concurrent employment with Panera as well as her job requirements for her position with Panera Bread. (RX3)

On December 6, 2019, PA Henry administered another trigger point injection to Petitioner's left cervical paraspinal musculature. (PX3, p 160-161)

On January 2, 2020, Petitioner saw Dr. Arthur Traugott. Dr. Traugott took a history from Petitioner and noted her prior issues and diagnoses. Dr. Traugott performed a mental status exam and diagnosed Petitioner as type 2 bipolar disorder. Dr. Traugott adjusted Petitioner's medications. (PX4, 71-72)

On January 6, 2020, PA Henry administered a trigger point injection to Petitioner's bilateral trapezius musculature. (PX3, 164)

On February 19, 2020, Petitioner followed up with Dr. Chen. Petitioner indicated that her ongoing therapy has helped her knee and her shoulder. Petitioner has been

practicing balancing exercises. Petitioner also noted an improvement in her headaches and that they are less frequent. Petitioner indicated she was still not back to baseline but was improving and had not returned to work yet. Dr. Chen continued to diagnose history of traumatic fall post-traumatic headaches, memory issues, balance, and anxiety, left knee pain, left neck and shoulder pain, all improving. Dr. Chen recommended Petitioner continue her therapy and that she will transition to the YMCA. Dr. Chen kept Petitioner off work as of this date. Dr. Chen also recommended neuropsychiatric testing to assist with addressing Petitioner's memory deficits and traumatic brain injury. (PX3, 177-178)

On February 24, 2020, RN Abigail Hoekstra administered a trigger point injection into Petitioner's bilateral cervical paraspinal suboccipital and trapezius musculature. (PX3, 180-181)

On March 12, 2020, Petitioner followed up with Dr. Chen and he noted the IME report of Dr. Beatty and confirmed that Petitioner's current condition of ill-being is at least in part due to her April 2, 2019 injury. Dr. Chen noted Dr. Beatty's suggested work restriction of not carrying over 10 pounds to and from her vehicle and no driving until one year post injury. Dr. Chen noted he believed it was reasonable at this point to order a Functional Capacity Evaluation. Dr. Chen noted Petitioner's walking was getting and she still uses a cane for reassurance. Headaches are improving. Petitioner's vision is still not back to normal.

Dr. Chen recommended Petitioner undergo a Functional Capacity Evaluation. Dr. Chen issued work restrictions of no lifting over 10 pounds when she is stationary. Dr. Chen did not believe Petitioner should be carrying and walking at the same time. She should mainly be seated. Petitioner can stand for 10 minutes out of every hour and not do a lot of walking. Dr. Chen limited Petitioner's working to 8 hours per day. Dr. Chen indicated Petitioner can drive but very limited with minimal personal driving.

Petitioner should not be driving as far as work and cannot do frequent stop and go getting in and out of her vehicle. (PX3, 182-183)

The Respondent also obtained an addendum report from Dr. Beatty dated March 20, 2020. Dr. Beatty did not see Petitioner at this time but did review additional records she outlined in his report admitted as Respondent's Exhibit 4. Dr. Beatty indicated that upon review of the additional records his initial opinions had not changed. Dr. Beatty did not believe the memory problems were related to Petitioner's concussion. Chief symptom suggested was headaches which were improving. Dr. Beatty continued to anticipate MMI at one year from the date of the injury which would be April 2, 2020. Dr. Beatty opined that work restrictions should remain the same and reevaluation at MMI. Neuropsych testing, in Dr. Beatty's opinion, would not be a prerequisite to reaching MMI.

In June 2019, Petitioner did undergo the neuropsychological evaluation that Dr. Chen recommended. Dr. Tara Riddle performed this neuropsych testing at the Carle Neuropsychological Clinic. Dr. Riddle concluded Petitioner is a 70-year-old female referred for a neuropsychological evaluation, given concern for cognitive difficulties following the concussion she sustained on April 2, 2019.

The results of the testing performed by Dr. Riddle suggest that Petitioner is demonstrating intact cognitive abilities across all domains assessed, including overall intellect, attention, processing speed, memory, executive abilities, language, and visuospatial skills. Regarding emotional functioning, the testing reported indications of moderate depression and anxiety. Overall, Petitioner's current performance are not suggestive of a cognitive disorder, no impairments are noted on testing and abilities remain well within normal limits and commensurate with estimated baseline. Petitioner was reassured that her cognitive abilities appear to be within the normal limits despite concerns about lasting cognitive impacts of her injury. Persisting cognitive difficulties

would not be expected given the nature of the injury as described for which there was a brief (if any) loss of consciousness and no noted intracranial findings.

Dr. Riddle noted there may be transit impact on her concerns and relation to other aspects of her health, such as chronic pain concerns and medications that may on occasion impact her efficiency of thinking. Some degree of the patient's reported cognitive concerns is also believed to likely relate to emotional state, given mental health history and reported range of symptoms present at this time, which also could at times interfere with cognition.

Dr. Riddle recommended that Petitioner follow up with her primary care physician for monitoring and management of chronic health conditions and to follow up as needed with Neurology for continued assistance with management of chronic headaches. Petitioner was to continue to follow up with the mental health care team for medication management and assistance with coping skills.

Petitioner continued to see Dr. Dizen as well as Dr. Traugott through April 2020.

ARBITRATOR'S CREDIBILITY ASSESSMENT

Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical

records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

At arbitration, Petitioner answered all questions asked of her and with no apparent attempt to evade the questions. Petitioner was sincere, credible, and able to articulate the significant impact this case has had on her physical health, her mental health, and on her life.

The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. Although Petitioner was visibly upset at times when she described her experiences after the April 2, 2019 accident, she appeared to be a credible witness.

CONCLUSIONS OF LAW

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

The findings of fact, summaries of medical evidence and credibility findings above, are incorporated herein.

WITH RESPECT TO ISSUE (F), IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner's current condition of ill-being as it relates to Petitioner's post-concussion syndrome which includes her problems with balance, memory, confusion, psychological issues, and her inability to drive are causally related to the accident of April 2, 2019.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205 (2003). Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. *Id.* Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Id.* "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59 (1982).

The Arbitrator relies on the following in support of her findings: First, Dr. Beatty, the Respondents IME physician in this case issued two reports. Both of which found a causal connection between Petitioner's post-concussion syndrome and the accident of April 2, 2019. (RX3-4) Second, Petitioner testified that before the accident she did not have issues with balance, memory, or confusion. (Tr. 29) Moreover, Petitioner testified that any falls she had before the accident did not have anything to do with her balance. (Tr. 35) It should also be noted that Dr. Chen, Petitioner's treating occupational medicine doctors agreed with Dr. Beatty. Petitioner's post-concussion syndrome also aggravated Petitioner's pre-existing psychological issues including her bipolar disorder, post-traumatic stress disorder, anxiety, and depression for which Petitioner was treated by Dr. Dizen and Dr. Traugott.

A causal connection also exists between the accident and Petitioner's other orthopedic issues including her nasal fractures, left knee pain, left neck and shoulder impingement syndrome. There is no dispute that Petitioner's nasal fracture is related to

the accident. Respondent did pay Petitioner the statutory six weeks for her nasal fractures, albeit at the rate of $78.18. Furthermore, there is no evidence that Petitioner was suffering from any left knee, neck, or left shoulder issues leading up to the accident in question. Petitioner noted that she underwent trigger point injections for her neck and left shoulder, something she had not had before this accident. Petitioner was also seen at Carle's Interventional Pain Clinic for her left knee, neck and left shoulder following the accident, something she was not doing before the accident. Additionally, Petitioner required extensive physical therapy after the accident. Based on Petitioner's credible testimony that she was not suffering from any left knee, neck, or left shoulder issues before this accident, no evidence was presented to rebut that testimony, and the mechanism of injury in this case (a fall on concrete where Petitioner hit her face first and then hit most of her left side as she came down; Tr. 22-23) a causal connection is established for these conditions based on a chain-of-events analysis.

Furthermore, the accident in question caused an aggravation of Petitioner's pre-existing sleep disorder. Petitioner presented to the Carle Sleep Clinic for daytime sleepiness that had been worse since her fall on April 2, 2019. The records from Carle Sleep Clinic confirm that Petitioner was unable to wear her CPAP following the accident because a mask could not be found that fit her face appropriately as she had developed severe swelling from her accident. These records also confirm that she had to purchase a recliner for her home because she had been unable to wear to CPAP once she was released from the hospital due to her facial swelling. (PX2, 87-88) As a result of this a CPAP adjustment study was ordered. (PX2, 93)

On September 17, 2019, Petitioner underwent a sleep study at the Carle Regional Sleep Disorder Center. (PX2, 95-96) Petitioner testified she could not stop sleeping and at times slept for 20 hours a day after the accident. Petitioner was instructed by her physicians to sleep as long as she can as that would help heal her brain. (Tr. 39-40) The credible testimony of Petitioner, the records in evidence and the chain-of-events

presented at trial support that due to the nasal fracture Petitioner sustained in the accident she required care and treatment with the Carle Sleep Clinic. As such, this condition and treatment is also casually related to the accident.

WITH RESPECT TO ISSUE (G), WHAT WERE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

Section 10 of the Illinois Workers' Compensation Act sets forth the methods for calculating a claimant's average weekly wage:

1) The actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury, illness or disablement excluding overtime, and bonus divided by 52;

2) If the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted;

3) Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed;

4) Where by reason of the shortness of the time during which the employee has been in the employment of his employer or of the casual nature or terms of the employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury, illness or disablement was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer.

Section 10 also provides that, if a claimant was working concurrently and the employer had knowledge of the concurrent employment prior to the injury, the claimant's wages from all employers shall be considered in the AWW rate calculation as if earned from the employer liable for compensation. The courts have broadly construed concurrent employment to generally favor inclusion of additional wages in the claimant's average weekly wage.

In *Mason*, the parties disagreed on the method by which the concurrent wages would be used in calculating the claimant's average weekly wage. The employer argued that the total wages should be added together and divided by the total weeks in which the claimant actually worked. The claimant disagreed and claimed that the average weekly wage calculation consists of a two-prong approach: First, his average weekly wage should be calculated for each employer separately. Second, the two average weekly wage calculations from each job should be added together to determine the claimant's overall average weekly wage. *Mason Mfg., Inc. v. Industrial Comm'n, 331 Ill. App. 3d 575 (4th Dist. 2002).*

Mason citing to *Cook* acknowledged that the average weekly wage calculation by the Commission would result in a substantial windfall to the claimant and that such a windfall had been criticized in the past appellate decisions. *Cook v. Industrial Comm'n, 231 Ill. App. 3d 729 (3d Dist. 1992). Mason Mfg., Inc. v. Industrial Comm'n, 331 Ill. App. 3d 575 (4th Dist. 2002).*

Nevertheless, the court agreed with the claimant and affirmed the Commission's average weekly wage calculation as argued by claimant. "We believe that in cases of concurrent employment, the better practice is to determine the average weekly wage of each job separately, by the method appropriate to that job, then add the averages together to determine the average weekly wage." Applying that rationale, the court

found that the third method, as articulated in Section 10 and in *Sylvester* was appropriate. *Mason, 331 Ill. App. 3d at 579.*

Mason citing to *Village of Winnetka* opined that "determination of an employee's average weekly wage is often problematic because the methods of determining the average weekly wage set forth in Section 10 are somewhat ambiguous and often are not readily applicable to the facts of the case at hand. Creating a more workable framework for determining average weekly wage is the province of the legislature, however, not the courts. All the courts can do is interpret the statute and apply it to the facts at hand so as to best achieve the results our legislature intended." *Village of Winnetka v. Industrial Comm'n, 250 Ill. App. 3d 240 (1st Dist. 1993).*

The court concluded by stating "determining which formula in section 10 as to average weekly wage should be used is difficult in many cases. We should defer to the Commission in their determination of the weekly average wage if we can find it consistent with the provisions of Section 10." *Mason Mfg., Inc. v. Industrial Comm'n, 331 Ill. App. 3d 575 (4th Dist. 2002)*

In *Sylvester*, citing to *Ricketts*, *D.J. Masonry* and *Peoria Roofing*, although the court recognized "the concern over a windfall to the employee remains relevant in computing average weekly wage, it is not determinative, and the appellate court has consistently rejected the windfall argument in construing Section 10 to exclude lost time from the computation of average weekly wage." *(197 Ill.2d 225, 236 (2001) Citing to Ricketts V. Industrial Comm'n, 251 Ill.App.3d at 811(1983); D.J. Masonry Co. v. Industrial Comm'n, 295 Ill.App.3d at 933-34 (1998); Peoria Roofing & Sheet Metal Co. v. Industrial Comm'n, 181 Ill.App.3d at 620-21 (1989).* Moreover, the *Sylvester* court further opined that "Section 10 'resulted from negotiations and compromise between business and labor interests.'" Section 10 "'both benefits and disadvantages both business and labor' of the employee's income. We see no reason to upset this

carefully crafted legislative scheme." *(197 Ill.2d 225, 236 (2001) Quoting Illinois-Iowa Blacktop, Inc. v. Industrial Comm'n, 180 Ill.App.3d 885, 891, 893 (1989).*

Applying *Mason*, the Arbitrator must first determine the average weekly wage of each job separately, by the method under Section 10 which is most appropriate to that job, then add the averages together to determine the overall average weekly wage.

In the case at bar, Petitioner was hired to work for the Respondent for only one day as a poll judge and was paid $200. (Tr. 20-21; RX 2). Petitioner's employment with the Respondent prior to her injury extended over a period far less than 52 weeks. As such, Petitioner's expected work week for the Respondent was just one day. Applying the third method from Section 10, Petitioner was paid $200 for the entirety of the "weeks and parts thereof" in which she worked for Respondent. The Arbitrator notes that this appears to be a windfall to Petitioner. Nonetheless, Petitioner's average weekly wage with the Respondent pursuant to Section 10 of the Act is $200.

Next, Petitioner's wages with Panera were admitted into evidence. (PX 7) These records show that Petitioner earned $1,553.49 in the 22 weeks that she worked for Panera prior to the April 2, 2019 accident. *Id.* Applying the second method from Section 10, the AWW from Petitioner's work at Panera is $70.61.

Now that the AWW for each job has been determined, then those averages must be added together to determine the AWW for purposes of concurrent employment. Here Petitioner held concurrent employment with Respondent and Panera Bread. Petitioner testified that the Respondent had knowledge of her job with Panera prior to her April 2, 2019 accident. (Tr. 41-42) This testimony was unrebutted, and it is widely known that poll judges typically only work one day and have regular jobs outside of their work on election day.

Based on the foregoing, the Arbitrator finds that the AWW for Petitioner is $270.61. This would give Petitioner a TTD and PPD rate of $220 as that is the minimum rate for her accident that occurred on April 2, 2019.

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

The Arbitrator finds that the medical services that were provided to Petitioner are reasonable and necessary and further finds that Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Section 8(a) of the Act states a Respondent is responsible … "for all the necessary first medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Based on the findings above regarding causal connection, the Arbitrator orders the Respondent to pay for the medical bills related to the conditions set forth above in the causal connection analysis above. These conditions include Petitioner's post-concussion syndrome with associated balance, memory, confusion, bipolar disorder, post-traumatic stress disorder, anxiety, and depression issues. These conditions also include Petitioner's left knee, neck and left shoulder as well as her sleep issues. These bills are set forth in Petitioner's Exhibit 5.

Petitioner also submitted a lien issued by the Illinois Department of Healthcare and Family Services. To the extent any causally connected bills were paid for by the

IDHFS, the Respondent will be responsible for repayment of those bills to the IDHFS or must hold Petitioner harmless for said bills.

WITH RESPECT TO ISSUE (K), WHAT IS THE TEMPORARY TOTAL DISABILITY PERIOD THAT PETITIONER IS ENTITLED TO RECEIVE BENEFITS, THE ARBITRATOR FINDS AS FOLLOWS:

Consistent with the Arbitrator's prior findings above regarding causal connection, the Arbitrator further finds that Petitioner is also entitled to TTD benefits for 63 and 1/7 weeks, commencing April 2, 2019 through June 18, 2020 at a rate of $220 a week.

The law in Illinois holds that "[a]n employee is temporarily totally incapacitated from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit." *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill. 1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 561 N.E.2d 623 (Ill., 1990) citing *Ford Motor Co. v. Industrial Comm'n*, 126 Ill.App.3d 739, 743, 467 N.E.2d 1018, 81 Ill.Dec. 896 (1984).

The Temporary Total Disability (TTD) period is in dispute. Petitioner claims entitlement to TTD benefits from April 3, 2019 through June 18, 2020, or 63 weeks and 1/7 days at a rate of $220 a week. Respondent accepted liability for TTD through from April 3, 2019 through April 3, 2020, or 52 weeks at a rate of $78.18, paid a sum of $4,065.36 in benefits and disputes the period of TTD of April 4, 2020 through June 18, 2020. (AX1)

Dr. Beatty, the Respondent's IME physician in this case, opined that for one year after the accident Petitioner would require restrictions of no carrying over 10pounds to and from her car, and no driving. (RX3-4) Dr. Beatty opined that Petitioner could work a sedentary job. Although the poll judge was at times a sedentary job, Petitioner's accident occurred when she was carrying a tote full of ballots out to a co-worker's car.

(Tr. 21-22) As a poll judge, Petitioner was also tasked with setting things up, putting up signs and getting the computers and polling stations ready. Based on Dr. Beatty's restrictions, Petitioner was unable to return to work as a poll judge for at least one year.

When working for Panera before the accident Petitioner was tasked with delivering food to customer which at times required her to lift two 15lb bags and take them up as many as three flights of stairs. (Tr. 41) As such, Petitioner would not be able to perform her job at Panera with the restrictions issued by Dr. Beatty.

On February 19, 2020, Dr. Chen kept Petitioner off work. Dr. Chen also recommended neuropsychiatric testing to assist with addressing Petitioner's memory deficits and traumatic brain injury. (PX3, 177-178) Petitioner last saw her treating physician Dr. Chen on March 12, 2020. Dr. Chen issued work restrictions of no lifting over 10pounds when she is stationary. Dr. Chen did not believe Petitioner should be carrying and walking at the same time. She should mainly be seated. Petitioner can stand for 10 minutes out of every hour and not do a lot of walking. Dr. Chen limited Petitioner's working to 8 hours per day. (PX3, 182-183)

Petitioner did later undergo the neuropsychological evaluation that had been recommended by Dr. Chen. The neuropsychological testing was performed by Dr. Tara Riddle at the Carle Neuropsychological Clinic on June 19, 2020. This testing was the only pending treatment recommendation when Petitioner last saw Dr. Chen. Once that treatment was completed, on June 19, 2020, it can be inferred that Petitioner was at maximum medical improvement.

Petitioner contends that she reached maximum medical improvement on June 19, 2020 when she completed the treatment recommended by Dr. Chen. From the date of accident through the date of MMI Petitioner was on restrictions which prevented her from returning to work for both the Respondent and Panera.

Based on the Arbitrator's prior findings above, the Respondent paid Petitioner a total of $4,065.36 in TTD benefits. (RX 5) However, Petitioner is entitled to a total of

$13,891.43 in TTD benefits ($220 x 63 and 1/7 weeks). As such the Arbitrator orders Respondent to pay Petitioner $9,826.07 in TTD benefits still owed.

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation**: The Arbitrator notes that the record reveals that Petitioner was employed as a poll judge and as an employee at Panera Bread at the time of the accident. The Arbitrator further notes that on October 15, 2019, Petitioner's treating physician, Dr. Chen, stated that "her outlook does not look promising as it relates to her "regular job" at Panera making food deliveries." Referring to Petitioner's job at Panera, he further opined that "she is encouraged to seek other employment as I do not believe she will return to her prior job." (PX3,137) He did not opine similarly about her "once a year job" helping with elections. Moreover, there is nothing in the record that states that Petitioner could not perform the work of a polling judge which is the most part a sedentary position. Dr. Chen opined that Petitioner needed to find a sit-down type of job long term. *Id.* Arbitrator finds this case to be a loss of trade, and therefore gives some weight to this factor.

(iii) **Age**: Petitioner was 69 years old at the time of the accident. As a result, Petitioner has a limited work-life expectancy wherein she will have to continue to endure her ongoing issues. As such, the Arbitrator gives greater weight to this factor.

(iv) **Earning Capacity**: Petitioner's future earnings capacity, the Arbitrator notes that Petitioner has not returned to work for either the Respondent or Panera Bread as a result of her injuries. As such, Petitioner has suffered a loss of future earnings capacity. The Arbitrator therefore gives greater weight to this factor.

(v) **Disability**: Evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner's testimony at trial was consistent with the medical records submitted into evidence. Petitioner was sincere and credible and further was able to articulate the significant impact this case has had on her physical health, her mental health, and on her life. Because the Arbitrator finds Petitioner credible and because the Arbitrator believes this accident has indeed had a significant impact on Petitioner's life, greater weight is given to this factor.

Based upon the foregoing evidence and factors above, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of **20% loss of use of person as a whole** pursuant to §8(d)(2) of the Act.

WITH RESPECT TO ISSUE (N), WHAT AMOUNT OF CREDIT IS ENTITLED TO THE RESPONDENT FOR BENEFITS PAID TO PETITIONER, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Respondent entered benefit payment records substantiating TTD, PPD issued to Petitioner and medical bills paid on her behalf. (RX 5) Petitioner did not object to the exhibit or benefits issued. The Arbitrator notes that there is a minor scrivener's error of .90 cents reflected on the Request for Hearing Form, which shows the statutory fracture payment in the amount of $469.98. However, the Respondent's exhibit correctly reflects $469.08 for the statutory fracture benefits previously paid. (AX1, RX5).

Per the Parties' stipulation, the Respondent is entitled to a credit in the amount of $4,065.36 for TTD benefits and $469.08 for other benefits (representing statutory fracture) and for payments made towards the awarded outstanding expenses as outlined in Respondent's Exhibit 5 paid through the date of hearing. Further, the Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving credit.

WITH RESPECT TO ISSUE (O), WHETHER PETITIONER IS ENTITLED TO ADDITIONAL STATUTORY PAYMENT BECAUSE RESPONDENT USED PPD RATE OF $78.18, THE ARBITRATOR FINDS AS FOLLOWS:

Lastly, the Arbitrator notes that the Respondent paid Petitioner $469.08 representing the statutory six weeks for her nasal fractures. Based on this payment, the Respondent was using a PPD rate of $78.18. Consistent with Arbitrator's prior findings above regarding Petitioner's earnings, the Arbitrator finds that Petitioner is entitled to additional statutory payment at the PPD rate of $220, and therefore the total payment owed to Petitioner for her nasal fractures is $1,320. As such, in addition to the award of 20% person as a whole set forth above, the Arbitrator orders the Respondent pay Petitioner an additional $850.92 representing the underpayment of the original statutory amount paid by the Respondent.

It is so ordered:

Arbitrator Crystal L. Caison DATE: September 2, 2022

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC021155
Case Name	Juana Alvarez v. Raymundo's Foods Products, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0283
Number of Pages of Decision	19
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Patrick Morris

DATE FILED: 6/13/2024

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JUANA ALVAREZ,

Petitioner,

vs. NO: 15 WC 21155

RAYMUNDO'S FOODS PRODUCTS, INC,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 28, 2023 is hereby affirmed and adopted.

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

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 13, 2024

o061124
AHS/ldm
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC021155
Case Name	Juana Alvarez v. Raymundo's Foods Products, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Brenton Schmitz
Respondent Attorney	Patrick Morris

DATE FILED: 4/28/2023

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

/s/ Ana Vazquez, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Juana Alvarez
Employee/Petitioner

v.

Raymundo's Food Products, Inc.
Employer/Respondent

Case # **15** WC **021155**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **October 25, 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 **June 22, 2015**, 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's average weekly wage was $**407.75**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**3,132.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**3,132.00**.

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

ORDER

Respondent shall pay for the reasonable and necessary medical services, as provided in Petitioner's Exhibits 1 through 11, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Bills for left knee related treatment provided by Illinois Orthopedic Network and Mid-City Rehabilitation after September 24, 2015 are denied.

Respondent shall pay to Petitioner temporary total disability benefits of **$253.00/week** for **230 2/7 weeks**, commencing June 30, 2015 through November 27, 2019, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**253.00/week** for **153.03 weeks**, because the injuries sustained caused the **3.5% loss of use of the left leg** and **10% loss of use of the left hand**, as provided in Section 8(e) of the Act, and caused the **25% loss of the person as a whole**, as provided in Section 8(d)2 of the Act.

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

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

Ana Vazquez

Signature of Arbitrator

APRIL 28, 2023

PROCEDURAL HISTORY

This matter proceeded to hearing on October 25, 2022 in Chicago, Illinois before Arbitrator Ana Vazquez. The issues in dispute are (1) accident, (2) causal connection, (3) unpaid medical bills, (4) temporary total disability ("TTD") benefits, and (5) the nature and extent of Petitioner's claimed injuries. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated. Ax1. The Parties stipulated that Respondent is entitled to a credit in the amount of $3,132.00 for TTD benefits paid to Petitioner by Respondent. Ax1 at No. 9.

FINDINGS OF FACT

Petitioner testified that on June 22, 2015, she worked as a packer for Respondent. Transcript of Proceedings on Arbitration ("Tr.") at 14, 15. Respondent is in the business of packing rice pudding and flan. Tr. at 14. Petitioner's job duties as a packer consisted of packing all the product, including flan, into boxes. Tr. at 15. Petitioner explained that the flan would come down the line, she would put the flan into a box, and then she would turn and put the box onto a pallet. Tr. at 15. Petitioner testified that approximately 48 flans went into a box. Tr. at 16. Petitioner worked Monday through Friday from 6 a.m. to 5 p.m., and sometimes overtime on Saturdays until noon. Tr. at 16.

Petitioner testified that she had not had any accidents or injuries to her neck, left hand, or left knee other than the work injury of June 22, 2015.

Accident

Petitioner testified that she was injured while working on June 22, 2015. Tr. at 17. Petitioner testified that her coworker placed a box on the floor and when Petitioner turned to put a box of packed flan onto the pallet, she tripped over the box and fell face first. Tr. at 17. Petitioner fell on her face, then her left hand, and then her left knee, and she also hit her head. Tr. at 18. On cross examination, Petitioner testified that she did not recall if her left arm was extended or tucked in when she fell. Tr. at 34. Petitioner testified that after she fell, her whole body hurt, including her hand, her knee, and her face. Tr. at 18-19. Petitioner testified that she did not have any problems with her jaw or her teeth after she fell. Tr. at 29. Petitioner testified that after she fell, her coworkers lifted her up and took her to the dining area, where the supervisor came and saw her. Tr. at 19. The supervisor took Petitioner to the office and Mr. Andres from the office took her to the clinic. Tr. at 19.

Medical records summary

Petitioner presented at Excel Occupational Health Clinic and was seen by Erik Marsiglia, D.O. Petitioner's Exhibit ("Px") 1 at 11-13. The record reflects that Petitioner was carrying a box of warm bread and tripped over a box on the floor, and that Petitioner was not sure exactly how she fell. Petitioner reported her face hitting the ground and chipping a tooth in the left upper jaw. Petitioner complained of pain in the left side of her face, pain in the left palm, pain in the left knee, and a headache. Swelling of the lips and left palm was noted. On exam of the cervical spine, extension and rotation combined to the left produced some left posterolateral neck pain and tenderness to palpation was noted over the posterior lateral neck. On exam of the left upper extremity, erythema over the dorsal hand with some sloughing of skin due to a burn injury three weeks prior at home was noted. Tenderness to palpation over the palmar aspect of the first metacarpal base and lateral palm was noted. No pain over the proximal wrist or over the distal forearm was noted. On exam of the left lower extremity, a 0.5 cm area of ecchymosis over the inferior lateral patella with scant erythema was noted. Tenderness to palpation over the inferolateral patella over the area of ecchymosis was noted. Squatting produced mild left knee pain and Petitioner was able to stand on each leg independently without difficulty. X-rays of

the skull were obtained and revealed a small lucency over the left maxilla on AP view. X-rays of the left hand were obtained and revealed no obvious dislocation or fracture. Petitioner was assessed with (1) contusion to the left face, (2) chipped upper tooth, (3) contusion to the left hand, (4) contusion to the left knee, and (5) cervical strain. Px1 at 13. Petitioner was prescribed Acetaminophen and was allowed to return to regular work without restriction. Petitioner was instructed to follow up with a dentist for her chipped tooth.

Petitioner returned to Excel Occupational Health Clinic on June 25, 2015 and reported tingling of her left hand and continued pain in the left hand and left knee and numbness of her face and left hand. Px1 at 7-8. Petitioner's diagnoses were (1) contusion to face, left hand, and left knee with no improvement, (2) pain in the face, left hand, and left knee, and (3) left upper tooth fracture. Petitioner was placed on sedentary work only restrictions. Petitioner followed up at Excel Occupational Health Clinic on June 29, 2015, and Petitioner reported that she felt worse than she did the week prior. Px1 at 4-5. Petitioner's diagnoses were unchanged, and her work restrictions were maintained.

Petitioner presented to Dr. Sajjad Murtaza at Illinois Orthopedic Network for an initial evaluation on June 30, 2015. Px2 at 12. Petitioner reported a consistent accident history. Petitioner reported continued left-sided facial pain, worsened pain in the left side of her neck, radiation to the left upper extremity, and left thumb pain over the thenar eminence. Petitioner also complained of left-sided pain over the rib cage and left knee pain. She also reported headaches, dizziness, and constant blurry vision in her left eye. Findings were noted on exam for Petitioner's cervical spine, left thenar eminence and left thumb, and left knee. Dr. Murtaza's assessment was that Petitioner had worsening left-sided neck pain with radiation to the left upper extremity, left thumb and wrist pain, and left-sided knee pain to the medial aspect. An MRI of the cervical spine and physical therapy for the cervical spine and left knee were ordered. Petitioner was referred to Dr. Wiesman for her left thumb and thenar eminence pain. Petitioner was kept off work.

Petitioner underwent an MRI of the cervical spine at Preferred Open MRI on July 2, 2015, which demonstrated (1) C5-6 spondylosis with right posterolateral disc osteophyte complex causing mild right lateral recess stenosis and mild narrowing proximal right foramen and (2) C6-7 spondylosis with larger right posterior lateral disc osteophyte complex causing moderate narrowing right foramen and mild right lateral recess impingement. Px2 at 14-15. Petitioner returned to Dr. Murtaza on July 9, 2015, at which time Dr. Murtaza's impressions were cervical radiculopathy, cervical spine pain, broken teeth, facial pain with numbness, left hand pain, and left knee pain. Px2 at 17. Petitioner was prescribed Norco, and physical therapy and an epidural steroid injection at C5-6 was recommended. Petitioner was kept off work. Petitioner underwent an interlaminar cervical epidural steroid injection at C5-6 using fluoroscopic needle localization and epidurogram and trigger point injections on July 16, 2015.

Petitioner underwent a left wrist MRI at Preferred Open MRI on July 24, 2015 with the following impressions (1) limited exam secondary to motion on multiple sequences, (2) no definite MRI evidence for internal derangement of the left wrist, (3) probable ganglion cysts along the ventral margins of the distal radial and ulnar epiphyses, and (4) small radiocarpal, ulnar-carpal, and triquetum-pisiform joint effusions. Px2 at 22-23.

On August 6, 2015, Dr. Murtaza recommended Petitioner undergo a second cervical epidural steroid injection at the C6-7 level using a left paramedian nerve approach to provide further relief of Petitioner's neck and left upper extremity pain and continued physical therapy. Px2 at 24. Petitioner was kept off work. Px2 at 25.

On August 17, 2015, Petitioner presented to Dr. Chandrasekhar Sompalli at Illinois Orthopedic Network for complaints of left knee pain and swelling. Px2 at 27. Dr. Sompalli noted that when Petitioner tripped

over the box at work on June 22, 2015, her left knee twisted and flexed in position. On exam, a positive McMurray's was noted. Dr. Sompalli's assessment was left knee pain and possible meniscal tear. An MRI of the left knee was ordered, continued physical therapy was recommended, and Petitioner was kept off work.

Petitioner also presented to Dr. Irvin Wiesman at Illinois Orthopedic Network on August 17, 2015 for left hand pain. Px2 at 29. Petitioner had a positive Finkelstein exam. Dr. Wiesman's diagnosis was left De Quervain tenosynovitis. Dr. Wiesman administered a steroid injection into the first extensor compartment space. Petitioner was allowed to return to work with the restriction of no use of the left upper extremity.

On August 20, 2015, Petitioner underwent a cervical epidural steroid injection at C6-7 using fluoroscopic needle localization and epidurogram and trigger point injections. Px2 at 31.

Petitioner underwent a left knee MRI at Preferred Open MRI on August 21, 2015, which demonstrated (1) no definite MRI evidence for internal derangement of the left knee, with findings suggestive of intrasubstance degenerative signal within the posterior horn of the medial meniscus, (2) mild tricompartmental degenerative joint disease and chondromalacia patellae, (3) quadriceps and patellar tendinosis/tendinopathy, and (4) small volume knee joint effusion and soft tissue edema, and (5) a small cluster of probable ganglion cysts near the proximal insertion of the lateral gastrocnemius tendon and a minimal Baker's cyst. Px2 at 33. The cruciate ligaments, collateral ligaments, and menisci were grossly intact.

Petitioner returned to Dr. Sompalli on August 29, 2015 and was diagnosed with internal derangement of the left knee. Px2 at 39. Dr. Sompalli noted that the MRI did not reveal any significant abnormalities. Petitioner was administered an injection into her left knee and was kept off work. Petitioner testified that the injections into her left knee helped more. Tr. at 26.

Petitioner next saw Dr. Murtaza on September 3, 2015, at which time Petitioner reported 50-percent improvement in symptoms for two days following the second cervical epidural steroid injection. Px2 at 42. Dr. Murtaza recommended diagnostic cervical medial branch blocks on the left at C4-5, C5-6, and C6-7 and an EMG/NCV study of the bilateral upper extremities to help determine the pathology of Petitioner's radicular symptoms. Petitioner was to continue physical therapy for the cervical spine, left wrist, and left knee and was kept off work.

Petitioner presented at UIC College of Dentistry on September 21, 2015 for evaluation. Px4 at 14. Petitioner reported a consistent accident history and that she began experiencing jaw pain the following day. The assessment provided was that Petitioner's symptoms appeared to be myofascial in nature and that no surgical intervention was warranted at that time.

Petitioner underwent an EMG/NCV study on September 28, 2015, which was administered by Dr. Aleksandr Goldvekht. Px2 at 57-63. The electrodiagnostic impressions were (1) evidence supportive of chronic left C6-7 cervical radiculopathy and reinnervated motor unit potentials were identified exclusively on need EMG without evidence of active denervation, (2) evidence of mild-moderate bilateral median sensory neuropathies at the wrist with conduction block and/or loss of sensory axons to digit two, and (3) no evidence of brachial plexopathy, focal ulnar neuropathies at the elbow or wrist segments, upper limbs large fiber polyneuropathy or myopathy. It was noted that the finding of mild-moderate bilateral median sensory neuropathies at the wrist were consistent with the typical demyelinative and possibly axonal pathophysiology of median neuropathy in carpal tunnel syndrome. The clinal impressions and recommendations were (1) cervical spine neuroimaging correlation for

possible structural causes of nerve root disease was advised and (2) bilateral neutral position wrist splints for carpal tunnel syndrome were recommended.

On September 30, 2015, Petitioner was seen by Dr. Jeffrey K. Wingate at Illinois Orthopedic Network for complaints of severe neck pain combined with severe daily headaches, muscle spasms, difficulty holding her head up, difficulty sleeping, left hand numbness and loss of strength and loss of coordinated muscular function involving the left upper extremity. Px2 at 51-54. Dr. Wingate's impressions were (1) C5 through C7 cervical stenosis with left upper extremity radiculopathy and (2) clinical pre-myelopathy, radiographic evidence for myelopathy, and decreased space available for the cord. Dr. Wingate recommended that Petitioner continue with invasive pain management to lessen the severity of her day-to-day pain. He agreed with the likelihood that the work-related injury was causally associated with the need for all of the medical care that had been rendered and the ongoing medical care that was indicated. Dr. Wingate also recommended that Petitioner be placed in a cervical orthosis and that she continue physical therapy. He also recommended and agreed with further epidural steroid injection administration, as well as a high-resolution MRI. Petitioner was kept off work. Px2 at 55.

Petitioner returned to Dr. Sompalli on October 3, 2015 for complaints of left knee pain and giving way. Px2 at 64. Dr. Sompalli's diagnosis was left knee pain and internal derangement. Dr. Sompalli noted that the only thing she could offer Petitioner was a diagnostic left knee arthroscopy to evaluate the cause of the pain. Dr. Sompalli noted that "[t]he MRI is positive 90% of the time, but it can miss 10% of the time for pathology in the knee." Petitioner was to continue with physical therapy and was kept off work.

Petitioner underwent left-sided medial branch blocks at C4-5, C5-6, and C6-7 using fluoroscopic needle localization on October 15, 2015. Px2 at 67.

Petitioner returned to Dr. Wiesman on October 23, 2015. Px2 at 68. Dr. Wiesman's assessment was left De Quervain's tenosynovitis. Dr. Wiesman noted that Petitioner had done well with conservative management. A second cortisone injection was administered into the extensor compartment space of the left wrist. Dr. Wiesman recommended additional occupational therapy and allowed Petitioner to return to work with the restriction of no use of the left upper extremity.

Petitioner followed up with Dr. Murtaza's office on October 28, 2015 and with Dr. Murtaza on October 29, 2015. Px2 at 71, 74. She reported adverse effects following the medial branch blocks administered on October 15, 2015. Dr. Murtaza's assessment was cervical spondylosis causing radiculopathy at the C6-7 dermatomes. Dr. Murtaza did not recommend any further injections and referred Petitioner to Dr. Wingate. Petitioner testified that the injections into her neck initially helped, but then they did not. Tr. at 23. Petitioner testified that each injection helped for about eight days. Tr. at 23. Petitioner followed up with Dr. Sompalli for her left knee on December 12, 2015. Px2 at 77.

Petitioner participated in physical therapy for her left hand, her left knee, and her neck, which initially helped for "about three days." Tr. at 23. Petitioner participated in 112 sessions of physical therapy at Mid-City Rehabilitation from July 7, 2015 through March 22, 2016. Px3.

Petitioner next saw Dr. Murtaza on April 28, 2016, for complaints of continued neck and left upper extremity pain and numbness. Px2 at 81.

Petitioner underwent a series of cervical spine MRIs on May 20, 2016 at Upright MRI of Deerfield, LLC. The MRI of the cervical spine in recumbent position demonstrated no evidence of pathologic disc alteration in recumbent position. Px2 at 85-87. The MRI of the cervical spine in flexion and extension position demonstrated restriction of the movement in flexion and extension positions. Px2 at 88-90. The MRI of the cervical spine in right and left lateral bending positions demonstrated restriction of movement in right and left lateral bending positions in comparison with neutral position. Px2 at 91-93.

The MRI of the cervical spine in neutral upright position demonstrated (1) loss of normal cervical lordosis, (2) degenerative cervical spondylosis, (3) mild spinal canal stenosis, mild right and minimal left foraminal stenosis due to broad based disc bulge associated with right paracentral disc fragment extrusion pointing caudally, osteophyte and uncinate processes hypertrophy at C6-7, (4) mild compression of the thecal sac and minimal bilateral foraminal stenosis due to broad based predominantly right paracentral disc bulge with osteophyte, uncinate processes and facet joints hypertrophy at C5-6, (5) minimal bilateral foraminal stenosis due to disc osteophyte complex at C4-5, (6) broad based disc bulge with osteophyte that mildly indents the thecal sac at C3-4, and (7) mild bilateral maxillary sinusitis. Px2 at 94-97.

On May 28, 2016, Dr. Sompalli continued to recommend a left knee diagnostic arthroscopy, discharged Petitioner from care, and kept Petitioner off work. Px2 at 98. Petitioner did not undergo the recommended left knee surgery. Tr. at 26-27, 38.

Petitioner returned to Dr. Wingate on June 8, 2016 at which time he recommended a 2-level spinal fusion. Px2 at 101-102. Petitioner followed up with Dr. Wingate on August 12, 2016 and November 11, 2016. Px2 at 109, 112. Petitioner was kept off work.

On January 27, 2017, Petitioner saw Dr. Wiesman for left thumb pain, at which time Dr. Wiesman recommended a left wrist extensor compartment release. Px2 at 115. Dr. Wiesman allowed Petitioner to return to work with the restriction of no use of the left upper extremity. Px2 at 114.

Petitioner followed up with Dr. Wingate on March 10, 2017, May 22, 2017, and June 15, 2017. Px2 at 118, 121, 125, 127. Petitioner was kept off work. Px2 at 118, 121, 126, 127.

On June 26, 2017, Petitioner was seen by Dr. Mansour V. Makhlouf at SMG Crown Orthopedics for De Quervain referral. Px10 at 9-10. Dr. Makhlouf's assessment was De Quervain's disease, an injection was administered, and a splint was applied. Petitioner returned for follow up with Dr. Makhlouf on July 24, 2017 and a second injection was administered, and surgery was discussed. Px2 at 12-13. Petitioner testified that she sought treatment at Crown Orthopedics on her own because she was in a lot of pain and could not do anything with her left hand. Tr. at 27.

On October 20, 2017, Dr. Wingate noted that Petitioner had two large disc herniations at C5-6, and C6-7 and a positive EMG/NCV conduction study concurrent with the distribution of Petitioner's left arm pain. Px2 at 134-135. Dr. Wingate noted that it was possible for large disk herniations within a small cervical canal to cause presentation of contralateral arm pain and that mass effect and change in position of the spinal cord within the canal can cause this type of presentation. Dr. Wingate noted that the causal relationship between Petitioner's conditions and work-related injury was supported by Petitioner never having had left arm pain prior to the accident, never having severe headaches prior to the accident, and Petitioner never having severe muscle spasms with difficulty positioning and holding her neck prior to the work-related injury. Dr. Wingate noted that he stood by his recommendation for an anterior cervical discectomy with decompression of the spinal cord and removal of the large, herniated disks at C5-6 and C6-7. He noted that it was his opinion that invasive surgical care would more likely than not lessen Petitioner's impairment and/or long-term disability because of the injury. He also noted that he did not feel that any amount of physical therapy would decompress the nerve roots, lessen the radiculopathy, or improve Petitioner's ability to return to gainful employment. Dr. Wingate recommended a repeat EMG/NCV and kept Petitioner off work. Dr. Wingate also noted that he agreed with Dr. Goldberg's recommendation for an anesthesiologist well versed in complex regional pain syndrome to evaluate Petitioner and disagreed that Petitioner would be able to return to work in her current condition.

On October 26, 2017, Petitioner underwent an EMG/NCV study at Chicago Medical Images, which was conducted by Dr. Olga Kozlova. Px2 at 136-141. The study was abnormal and there was electrodiagnostic evidence of (1) bilateral mild median mononeuropathy with compression at the wrist, or bilateral carpal tunnel syndrome, and (2) bilateral signs of denervation in the C6 and C7 innervated muscles suggesting cervical spinal canal stenosis at C6 and C7 and evidence of ongoing muscle denervation bilaterally suggesting a spinal cord involvement/compromise. The EMG/NCV report reflects that severe pain over the left lateral wrist was suggestive of De Quervain's tenosynovitis, and the pain was out of proportion to the degree of carpal tunnel syndrome on left. There was also no electrodiagnostic evidence of bilateral brachial plexopathy, ulnar and radial mononeuropathies, upper extremity polyneuropathy or inflammatory myopathy. Petitioner returned to Dr. Wingate on November 10, 2017, December 22, 2017, March 23, 2018, May 4, 2018, June 22, 2018, August 3, 2018, and September 28, 2018. Px2 at 142, 144, 146, 149, 151, 152, 154, 157. Petitioner was kept off work.

Petitioner returned to Dr. Makhlouf on December 11, 2017, and the record notes that a left De Quervain release had been performed and that Petitioner was healing well. Px2 at 17. An operative report was not included within Px10. Petitioner testified that the hand surgery was paid by her husband in cash. Tr. at 27-28. Petitioner followed up with Dr. Makhlouf on December 18, 2017 and January 29, 2018. Px10 at 20, 21-22, 24.

Petitioner followed up with Dr. Eugene Lipov at Illinois Orthopedic Network for her cervical spine condition on November 14, 2018, January 9, 2019, and March 6, 2019. Px2 at 157, 159, 161. Petitioner was kept off work.

Petitioner was seen by Dr. Kevin Koutsky at Illinois Orthopedic Network on March 29, 2019 for an orthopedic spine evaluation. Px2 at 164-166. Dr. Koutsky noted that the MRIs of May 20, 2016 revealed central disk herniations at C5-6 and C6-7 contributing to central and foraminal stenosis and loss of cervical lordosis. Dr. Koutsky also noted that the EMG/NCV study of October 26, 2017 revealed some evidence of carpal tunnel syndrome and bilateral signs of denervation in the C6 and C7 innervated muscles. Dr. Koutsky's assessment was C5-6, C6-7 radiculopathy, disk herniation. He noted that Petitioner had failed conservative management. He noted that Petitioner would be a reasonable candidate for an anterior cervical decompression and fusion with instrumentation and bone graft at C5-6 and C6-7, and that the need for surgery was causally and directly related to her work injury. He also noted that Petitioner was unable to work due to her symptoms. Dr. Koutsky noted that he disagreed with Dr. Goldberg's opinion that Petitioner would not benefit from an anterior cervical decompression and fusion at C5-6 and C6-7 and with Dr. Goldberg's opinion that Petitioner could work unrestricted.

Petitioner followed up with Dr. Lipov on May 31, 2019 and with Dr. Koutsky on August 30, 2019 and November 27, 2019. Px2 at 168-173. Petitioner was kept off work by both doctors. Petitioner testified that she did not undergo the recommended neck surgery. Tr. at 24, 38.

Petitioner testified that she does not have group health insurance and that she does not have group coverage through her husband or his employer. Tr. at 38. Petitioner has not made any effort to seek coverage through the Affordable Care Act or through Medicaid. Tr. at 38.

Temporary total disability

Petitioner testified that she returned to work at Respondent the day after the accident, that she did very little work, and that she felt bad. Tr. at 20, 39.

Petitioner testified that at the time of arbitration she was not working and that she had not worked since the last date that she worked at Respondent. Tr. at 20, 29. Petitioner has not looked for a job since she stopped working at Respondent. Tr. at 29, 41.

On cross examination, Petitioner recalled receiving a letter from Onesimo Romero from Respondent in December 2018. Tr. at 39-40. Petitioner testified that "[t]hey asked me to come to work." Tr. at 40 Petitioner agreed that they said that they had a position for her within her restrictions. Tr. at 40. Respondent offered the letter from Mr. Romero, dated early December 2018, as Respondent's Exhibit ("Rx") 9, which was admitted without objection. Petitioner did not return to work at Respondent after June 23, 2015. Tr. at 40.

Current condition

Petitioner testified that at the time of arbitration, her neck was feeling bad and that she had pain, which she rated a seven or eight out of 10. Tr. at 25. Petitioner testified "[s]ometimes it could be less and other times I feel very bad." Tr. at 25. Petitioner testified that she takes medication for her neck when she feels "very, very bad," however, at the time of arbitration, she was not being prescribed any medication for her neck. Tr. at 25.

Petitioner testified that at the time of arbitration, her left knee felt fine and that she was not taking any medication for her left knee. Tr. at 27.

Petitioner testified that regarding her left hand, "[a]fter they did the surgery, I'm fine because before I couldn't do anything." Tr. at 28. Petitioner testified, however, that she experiences moments of weakness, including when grabbing a plate. Tr. at 28.

Petitioner testified that "sometimes I feel like I'm going towards my side," when she is walking at home, that her neck hurts while washing dishes, and that her neck bothers her when she sleeps. Tr. at 30, 42. On cross examination, Petitioner testified that "[s]ometimes I'm walking and I'm just feeling as if I'm going to one side, but I'm not dizzy." Tr. at 43. Petitioner testified that this sensation came about as time passed, and that she did not have this feeling while treating with Dr. Wingate and Dr. Koutsky. Tr. at 43. Petitioner testified that this sensation began four years prior to the date of arbitration. Tr. at 44. Petitioner then testified that she told the doctor for her neck that she was leaning, and that the doctor told her it was a consequence of the neck. Tr. at 44-45.

Section 12 Examinations

i. ***Cervical spine***

Petitioner was examined by Dr. Edward J. Goldberg on August 24, 2015. Rx1. Petitioner reported a consistent accident history. Following his examination and review of medical treatment records, Dr. Goldberg opined that Petitioner aggravated degenerative disk disease of the cervical spine and that she also had a cervical strain. He further opined that the epidural steroid injections were not required, as Petitioner did not have radicular complaints and the MRI did not correlate any left upper extremity complaints. Dr. Goldberg also opined that the aggravation of degenerative disk disease and the cervical strain were due to the accident and that the work accident aggravated an asymptomatic condition. Dr. Goldberg recommended an additional two weeks of physical therapy and a return to full duty work once completed. Dr. Goldberg opined that at that time, Petitioner could return to work with a 10-pound lifting restriction.

Dr. Goldberg authored an Addendum on December 24, 2015 following his review of additional medical treatment records. Rx3. Dr. Goldberg noted that when he initially examined Petitioner on August 24, 2015, he felt that she had aggravated her degenerative disk disease of the cervical spine and that he had noted some mild spinal stenosis at C5-6 and C6-7 to the right. He also noted that there was no herniation and that there was nothing to explain any subjective left upper extremity radicular type pain in the MRI. Dr. Goldberg further noted that at no point was there any radicular complaints in the left upper

extremity, and it was only in the neck and left arm. Dr. Goldberg opined that Petitioner aggravated the preexisting degenerative disease of cervical spine, which could be the cause of her neck pain, and that there was nothing on the MRI which would explain Petitioner's left upper extremity radicular-type complaints. He again opined that Petitioner's diagnosis was aggravation of a preexisting asymptomatic problem, which was rendered symptomatic by the accident. He opined that no further physical therapy was required for Petitioner's cervical spine or that Petitioner required injections, that Petitioner could return to work full duty, and that no restrictions were required for the cervical spine. Dr. Goldberg noted that he disagreed with Dr. Murtaza's statement of September 30, 2015, where although there was stenosis on the right, one would have left upper extremity radicular symptoms, which was subjective, and that there was no objective physical nerve compression in the MRI of the cervical spine.

Dr. Goldberg authored a second Addendum on March 8, 2016, wherein he clarified that Petitioner was at maximum medical improvement ("MMI") for the cervical spine on November 4, 2015. Rx4.

Dr. Goldberg examined Petitioner again on May 15, 2017. Rx5. Following his examination and review of additional medical records, including the MRI of May 2016, Dr. Goldberg opined that he could not explain Petitioner's left arm complaints upon the two MRIs, as there was no evidence of any nerve compression on the left at C5-6 and C6-7. He opined that Petitioner may have some double crush on the EMG and noted that his concern was that Petitioner may have some early chronic regional pain syndrome. He opined that the physical therapy Petitioner had after his March 8, 2016 report was appropriate and due to the June 22, 2015 accident. He did not recommend an anterior cervical discectomy and fusion at C5-6 and C6-7, as there was no evidence of any nerve compression on the left. He again noted that Petitioner was at MMI after the additional therapy in 2016. Dr. Goldberg opined that regarding Petitioner's left upper extremity complaints, she did have hypersensitivity and no swelling, and that it may be reasonable to refer Petitioner for evaluation by an anesthesiologist who does pain management to ascertain whether it was early chronic regional pain. He again noted that he did not believe that Petitioner's left upper extremity complaints were coming from the cervical spine, and that Petitioner could return to work full duty.

ii. ***Left hand/wrist and left knee***

Petitioner was examined by Dr. Jay L. Levin on September 24, 2015. Rx2. Following his examination and review of medical treatment records, including MRI films of the left hand/wrist and left knee, Dr. Levin opined that Petitioner's diagnoses were contusions of the left wrist/hand area and left knee. Dr. Levin did not recommend any additional treatment for Petitioner's left hand or left knee. He opined that a course of six physical therapy sessions for the left knee and left hand would have been medically appropriate. Dr. Levin further opined that Petitioner was at MMI and that she would have reached MMI four weeks post-injury. Dr. Levin also opined that Petitioner could have returned to work between zero- and 14-days post-injury, and that at that time, she could work in a full duty unrestricted capacity referable to any left wrist or left knee injury from the June 22, 2015 event.

Petitioner was examined for a second time by Dr. Levin on October 25, 2017. Rx7. Dr. Levin examined Petitioner's left wrist. Dr. Levin provided his opinions in a report dated November 8, 2017. Rx8. Dr. Levin opined that Petitioner's diagnosis was contusion to the left wrist/hand area from the event of June 22, 2015. He noted that the assessment of October 25, 2017 showed no specific signs of malingering or Waddell's findings, but that Petitioner's persistent complaints were nonorganic. Dr. Levin noted that Petitioner's symptoms should have resolved within four weeks post injury and that no additional medical care or treatment would have been required for the left wrist or hand following four weeks post-injury. Dr. Levin opined that any treatment for the left wrist or hand four weeks post-injury was not required or recommended. Dr. Levin noted that the surgical recommendation for the left De Quervain's tenosynovitis was inconsistent with the September 24, 2015 exam where Petitioner had a negative

Finkelstein test. Dr. Levin opined that Petitioner should have reached MMI within four weeks after the June 22, 2015 occurrence.

iii. ***Pain management***

Petitioner was examined by Dr. Kenneth D. Candido on October 17, 2017. Rx6. Following his examination and review of medical treatment records, Dr. Candido noted that he did not identify sufficient evidence to consider the diagnosis of complex regional pain syndrome type I or type II. Dr. Candido opined that Petitioner's diagnoses were (1) degenerative disc disease of the cervical spine with cervical radicular symptoms that do not correspond to the anatomical derangement noted on MRI and (2) left hand wrist pain, chronic. Dr. Candido opined that Petitioner's accident was a slip-and-fall that resulted in chronic and unrelieved pain in the left arm, hand, and wrist. He agreed that the disc degeneration and bulge could have occurred at the time of the accident, however, the left-sided symptoms did not correspond with the cervical MRI. Dr. Candido further noted that the EMG did match, and that there was a possibility that the current diagnosis of left-sided cervical radicular type pain may have been the result of the slip-and-fall, but the mechanism of why Petitioner experienced pain in the left side had yet to be elucidated and was unclear from the diagnostic studies performed to date. Dr. Candido recommended a repeat EMG study. He noted that from a pain management perspective, there was nothing to do aside from conservative care and management. Dr. Candido opined that based on Petitioner's examination, she was capable of light duty work with restrictions that included no lifting or carrying more than 25 pounds and no repetitive overhead work using the left arm or hand. These restrictions, he noted, were related to the June 22, 2015 accident. Dr. Candido further opined that "MMI was attained according to Dr. Goldberg and others…However, the diagnosis has not been convincingly established…" He again recommended a repeat EMG and noted that if there were no changes in the condition by EMG, he would consider Petitioner to have attained MMI. Dr. Candido agreed that no additional interventional care and treatment was needed for the right-sided disc protrusion.

CONCLUSIONS OF LAW

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

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

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

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

Issue C, whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

In order for a claimant to be entitled to benefits under the Act, a claimant must prove by a preponderance of the evidence that she suffered an injury that arose out of and in the course of her employment. *McAllister v. Ill. Workers' Comp. Comm'n, 2020 IL 124848*, ¶32 (2020) citing *Sisbro, Inc. v. Industrial Comm'n.*, 207 Ill. 2d 193, 203 (2003). The "in the course of" element, refers to the time, place, and circumstances under which the injury occurred. *Id.* at ¶34 citing *Scheffer Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67 (1977). An injury "arises out of" a claimant's employment if it has its origin in some risk connected with or incidental to the employment so as to create a causal connection between the employment and injury. *Id*. at ¶36 citing *Sisbro*, 207 Ill. 2d at 203.

Having considered all the evidence, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she sustained an accident that arose out of and in the course of her employment by Respondent on June 22, 2015. In support of her finding, the Arbitrator relies on Petitioner's credible testimony that (1) her duties included packing product into a box and then placing the box onto a pallet when full, (2) on June 22, 2015, as she turned to put a box of flan onto a pallet, she tripped over a box that had been placed on the floor by a coworker, (3) she fell face first, and fell on her face, her left hand, and left knee, and also hit her head, (4) that her whole body, including her face, left knee, and left hand, hurt following the fall, and (5) that she was helped up by coworkers and driven to Excel Occupational Health Clinic by Mr. Andres on June 22, 2015. The Arbitrator also relies on the treatment records in evidence, which corroborate Petitioner's testimony, and document treatment beginning on June 22, 2015.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). Even if the claimant had a preexisting degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied if the claimant can show that a work-related injury played a role in aggravating or accelerating her preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient to prove a causal connection between the accident and the claimant's injury. *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 (1982).

The Arbitrator finds that Petitioner's current condition of ill-being as to her cervical spine, left wrist, left knee, and face are causally related to the June 22, 2015 injury. The Arbitrator relies on the following in support of her findings: (1) the records of Excel Occupational Health Clinic, (2) the records of Illinois Orthopedic Network, (3) the records of SMG Crown Orthopedics, (4) the records of Mid-City Rehabilitation, (5) Petitioner's credible testimony that she had not had any accidents or injuries to her neck, left hand, or left knee aside from the work injury of June 22, 2015, and (6) the fact that none of the records in evidence reflect any cervical spine, left wrist, or left knee issues or treatment prior to June 22,

2015. The Arbitrator notes that the evidence demonstrates that Petitioner was in condition of good health and was able to work full duty and without restrictions immediately prior to the work accident.

Regarding Petitioner's cervical spine condition, the Arbitrator has considered the opinions of Dr. Goldberg and finds that the opinions of Dr. Goldberg do not outweigh the opinions of Dr. Murtaza, Dr. Wingate, or Dr. Koutsky. The Arbitrator finds that overall, the record supports Dr. Wingate's and Dr. Koutsky's assessment of C5-6 and C6-7 disk herniations with radiculopathy and Dr. Wingate's opinion that it was possible for large disk herniations within a small cervical canal to cause presentation of contralateral arm pain and that mass effect and change in position of the spinal cord within the canal can cause this type of presentation. Px2 at 134-135.

Regarding Petitioner's left knee condition, the Arbitrator notes that while Dr. Sompalli diagnosed internal derangement of the left knee, Dr. Sompalli acknowledged that the left knee MRI did not reveal any significant abnormalities. The Arbitrator further notes that at arbitration, Petitioner testified that her left knee was fine. The Arbitrator finds that overall, the record supports Dr. Levin's September 24, 2015 diagnosis of a left knee contusion as a result of the June 22, 2015 injury.

Regarding Petitioner's left wrist, the Arbitrator finds that overall, the record supports the opinions of Dr. Wiesman, including that Petitioner suffered from De Quervain's tenosynovitis following the work accident. The record demonstrates persistent complaints and continuous symptomology of the left wrist following the June 22, 2015 work accident. The Arbitrator notes that Dr. Makhlouf also diagnosed Petitioner with left-sided De Quervain's on June 26, 2017. While the Arbitrator has considered the opinions of Dr. Levin, the Arbitrator finds his opinions regarding Petitioner's left wrist condition unpersuasive, where the records document a positive Finkelstein's on August 17, 2015 and October 23, 2015.

Regarding Petitioner's facial injuries, the Arbitrator notes that Petitioner presented for evaluation of jaw pain at UIC College of Dentistry on September 21, 2015. The Arbitrator finds that overall, Petitioner's facial injuries were myofascial in nature, as reflected in the treatment record of September 21, 2015.

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

Consistent with the Arbitrator's prior findings regarding the issues of accident and causal connection, the Arbitrator finds that Petitioner's medical treatment has been reasonable and necessary, and that Respondent has not yet paid all appropriate charges. At arbitration, Petitioner presented the following unpaid medical bills: (1) Excel Occupational Health Clinic ($0), (2) Illinois Orthopedic Network ($15,483.70), (3) Mid-City Rehabilitation ($30,778.80), (4) UIC Dentistry ($0), (5) Chicago Neurodiagnostics ($4,350.00), (6) Metro Anesthesia Consultants ($4,105.56), (7) Premier Healthcare Services ($433.07), (8) G&U Orthopedics ($2,239.43), (9) EQMD ($1,288.65), (10) SMG Crown Orthopedics ($0), and (11) Midwest Specialty Pharmacy ($9,196.54). The Arbitrator notes that billing for ondansetron and gabapentin dispensed by EQMD in 2015 and 2016 correspond with dates that Petitioner underwent cervical epidural steroid injections and medial branch blocks, as well as a follow up appointment with Dr. Murtaza on April 28, 2016. As the Arbitrator has found that Petitioner's treatment has been reasonable and necessary, the Arbitrator finds that all bills, as provided in Px1 through Px11, are awarded, except for bills for left knee treatment provided by Illinois Orthopedic Network and Mid-City Rehabilitation after September 24, 2015, the date of Dr. Levin's initial IME

wherein he found Petitioner at MMI for the left knee. The Arbitrator further finds that Respondent is liable for payment of these bills, apart from the exceptions noted, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

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

Issue K, whether Petitioner is entitled to TTD, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to TTD benefits. Petitioner claims that she is entitled to TTD benefits from June 30, 2015 through December 27, 2019. See Ax1, No. 8. Respondent disputes Petitioner's claim, and Respondent claims that it paid TTD benefits to Petitioner from June 30, 2015 through September 24, 2015 and denies liability for any and all additional alleged periods of lost time. Ax1 at No. 8.

The evidence demonstrates that Petitioner was placed on a sedentary work only restriction by Excel Occupational Health Clinic on June 25, 2015 and June 29, 2015. There is no evidence that Respondent accommodated Petitioner's sedentary work only restriction. While Respondent may have had a position available for Petitioner in early December 2018, the letter authored by Mr. Romero, Rx9, does not describe the position available to Petitioner. Regardless, Petitioner was kept off work by Dr. Murtaza, Dr. Wingate, Dr. Lipov, and Dr. Koutsky from June 30, 2015 through November 27, 2019. Accordingly, the Arbitrator finds that Petitioner is entitled to TTD benefits from June 30, 2015 through November 27, 2019.

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

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

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

With regard to criterion (ii) and criterion (iii), the Arbitrator notes that at the time of the accident, Petitioner was 52 years of age and was employed at Respondent as a packer. Following the June 22, 2015 accident, Petitioner returned to work the following day, June 23, 2015. Petitioner, however, did not return to work at Respondent after June 23, 2015 and has not worked or looked for employment since. The Arbitrator notes that while Petitioner had been kept off work due to her cervical spine condition, Petitioner has not returned for treatment of her cervical spine since November 27, 2019. As there is a lack of evidence as to Petitioner's work status subsequent to November 27, 2019, the Arbitrator gives these factors minimal weight.

With regard to criterion (iv), the Arbitrator notes that there is no evidence of reduced earning capacity in the record. The Arbitrator assigns less weight to this factor.

With regard to criterion (v), the medical records reflect that following the June 22, 2015 accident, Petitioner suffered from cervical radiculopathy associated with disk herniations at C5-6 and C6-7, left De Quervain's tenosynovitis, a left knee contusion, and pain and contusion of the left side of the face, a chipped tooth in the upper jaw, and myofascial symptoms of the jaw.

Petitioner underwent multiple epidural steroid injections and medial branch blocks for treatment of the cervical spine, and a two-level cervical fusion was recommended by Dr. Wingate and Dr. Koutsky. Petitioner testified, however, that she did not undergo the recommended neck surgery. Petitioner also testified that at the time of arbitration she felt pain in her neck, including when washing dishes and when she sleeps. She also testified that she sometimes feels like she is leaning when she walks. Tr. at 25, 30, 42-45. The record demonstrates that Petitioner last sought treatment for her cervical spine on November 27, 2019.

Petitioner underwent multiple injections as well as a left De Quervain's release for treatment of the left De Quervain's tenosynovitis. The Arbitrator notes, however, that the actual operative report for the left De Quervain's release was not offered, but was noted in Dr. Makhlouf's December 11, 2017 note. At arbitration, Petitioner testified that after the left De Quervain's release, she is fine, but experiences moments of weakness, including when grabbing a plate. Tr. at 28. The record demonstrates that Petitioner last sought treatment for her left hand on January 29, 2018.

Petitioner participated in physical therapy for her left knee, left hand, and cervical spine. At arbitration, Petitioner testified that her left knee felt fine and that she did not have any problems with her jaw or teeth after she fell. Tr. at 27, 34.

Upon consideration of the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 3.5% loss of use of the left leg and 10% loss of use of the left hand, pursuant to Section 8(e), and 25% loss of the person as a whole, pursuant to Section 8(d)2 of the Act.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC027768
Case Name	Marilyn Jordan v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0284
Number of Pages of Decision	21
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Elizabeth Hackney
Respondent Attorney	Andrew Zasuwa

DATE FILED: 6/13/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARILYN JORDAN,

Petitioner,

vs. NO: 21 WC 27768

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, prospective medical care, and temporary total disability benefits and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes a clarification as outlined below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affims the Aribitrator's Decision. However, the Commission modifies the Order Section of the Decision as it pertains to the award of prospective medical treatment to read as follows:

Respondent shall authorize and pay for the bilateral total knee replacement surgery and attendant care as recommended by Dr. Freedburg.

All else is affimed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 1, 2023, is hereby affirmed and adopted, with the clarification as set forth above.

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

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

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

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

June 13, 2024

CMD/dmm
O: 61124
045

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

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

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC027768
Case Name	Marilyn Jordan v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Richard Gordon, Elizabeth Hackney
Respondent Attorney	Andrew Zasuwa

DATE FILED: 9/1/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 29, 2023 5.35%

/s/Crystal Caison, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Marilyn Jordan
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **21** WC **027768**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **June 5, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 28, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**56,477.60**; the average weekly wage was $**1,411.94**.

On the date of accident, Petitioner was **64** years of age, ***single*** with **0** dependent children.

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

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

ORDER

The Arbitrator finds that the Petitioner has met her burden of proving that her current condition of ill-being is causally related to the work accident of September 28, 2021.

The Arbitrator orders the Respondent to pay reasonable and necessary medical services as set forth in Petitioner's Exhibits D, E, F, G, H and I for causally related treatment Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act.

Petitioner is entitled to prospective medical under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.

Respondent shall pay Petitioner temporary total disability benefits of $941.29/week for 44 weeks ($41,416.76), commencing August 2, 2022 through June 5, 2023, as provided in Section 8(b) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Crystal L. Caison

SEPTEMBER 1, 2023

Signature of Arbitrator

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
19(b)

Marilyn Jordan	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21WC027768
Chicago Transit Authority,	)	
	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on June 5, 2023 before Arbitrator Crystal L. Caison. Issues in dispute include causal connection, medical bills, TTD benefits, and prospective medical care. (AX 1).

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

Marilyn Jordan ("Petitioner") was a 64-year-old single female with no dependent children on September 28, 2021. She alleges that she sustained an accidental injury initially to her left knee and because of that left injury caused her to overcompensate the use of her right knee, thereby causing injury to her right knee and the injuries to both knees arose out of and in the course of her employment by Respondent on September 28, 2021.

Petitioner testified that on September 28, 2021, the Chicago Transit Authority employed her. She had worked at the CTA for 13 years. She testified that she began her employment as a part-time bus operator and after five years she became a full-time bus operator. She testified that her duties as a bus operator are to transport passengers to and from their destinations on a daily basis so they can be on time. (Tr. 12)

Petitioner acknowledged in her testimony that she had filed a prior workers' compensation claim in 2010 or 2012. She testified that on September 28, 2021 she was working for the CTA

and her shift had started around 3 pm. She testified that she was going back to the 95th terminal for her lunch break and would need to keep the bus at the terminal as there was no other operator to take her bus. (Tr. 15-16)

Petitioner testified that she went to the break room to warm up her lunch and was planning to go back to her bus as she was responsible for the bus. She testified that she took the escalator down to the bus when the escalator jerked, causing her to lose balance and fall on her left knee. She testified that she noticed blood and felt stiffness and tightness in her leg. She testified that she also felt pain in her left elbow. (Tr. 17-18)

Petitioner testified that she was taken to Roseland Hospital. (Tr. 17) She testified that after the accident, she experienced shooting pain in her leg up to her thigh. She testified that she did not have any pain at all in her left knee prior to her work accident and had never had any injuries to her left knee prior to the work accident. (Tr. 22-23)

Petitioner testified that she recalled being treated at Roseland Hospital for a laceration to the left knee and elbow pain. She was given pain medication and a bandage to her left knee. (Tr. 24) She testified that her pain persisted, so she followed up with her own doctor, Dr. Pedraza, who recommended physical therapy three times a week. (Tr. 25)

Petitioner testified that she attended physical therapy at Fullerton Drake Medical Center with Dr. Gerber. She testified that the therapy helped the pain in her left elbow but did not help with her left knee. She testified that the pain in her left knee had gotten worse. (Tr. 25-26)

Petitioner testified that she completed her physical therapy, but it did not help to resolve her pain. She testified that she was referred for an MRI of her left knee and saw Dr. Sompalli. She testified that she recalled being diagnosed with a meniscus tear in her left knee. (Tr. 27)

Petitioner testified that she also sustained a right knee injury from putting pressure on her right knee because she could not take pressure on her left knee. (Tr. 28) She testified that she was on her way to therapy and heard her right knee pop while going down the stairs. She testified that when she arrived at therapy her right knee had swollen up. (Tr. 28)

Petitioner testified that she did not have any issues with her right knee before it popped and did not have any prior treatment for it (Tr. 28) She testified that her right knee pain was caused by going to and from therapy and going up the stairs at her home. She testified that she did not believe she would have had the right knee injury if not for the left knee injury. (Tr. 29-30)

Petitioner testified that she had an MRI to her right knee.(Tr. 30) She testified that Dr. Sompalli recommended she undergo a bilateral knee replacement. She sought a second opinion from Dr. Howard Freedburg in May of 2022 and testified that he came to the same conclusion as Dr. Sompalli. (Tr. 30-33) Petitioner testified that Dr. Freedburg recommended gel shots, but they wore off. (Tr. 33-34)

Petitioner testified that she felt that if she had the knee replacement surgery, she would improve her mobility. She testified that she currently receives assistance with doing chores such as cleaning and meal preparation. She testified that she wants bilateral knee replacement surgery. (Tr. 34-37)

Petitioner denied in her testimony that she had any mobility issues prior to the work injury. She testified that she currently has trouble walking and does not drive "as far now" and does not drive a bus. She testified that she wanted to continue her career as a bus operator. She testified that she has retired from the CTA as of April 1, 2023 so she can get a pension. (Tr. 37-38)

Petitioner testified that she was hoping to advance to a supervisor position at CTA but acknowledged she had previously faced difficulties with promotion due to a blemish on her record. (Tr. 39) She testified that she had the blemish removed after filing a grievance. She testified that at the time of the work injury she had been hoping to get promoted to supervisor but acknowledged that the hiring memo had not been put out. (Tr. 40)

Petitioner acknowledged in her testimony that she would like to continue to work at CTA but that because she retired, she cannot be reinstated. (Tr. 42) She testified that she still has pain and limitations in her knees. (Tr. 43-44)

On cross-examination Petitioner testified that she attended an appointment in June of 2022 with Dr. Joshua Jacobs at Midwest Orthopedics. She testified that she was always truthful and accurate in her the statements she made to Dr. Jacobs. (Tr. 44-45)

Petitioner testified that she felt a pop in her right knee while going down the stairs at home. (Tr. 45) On re-direct examination Petitioner testified that when she felt the pop in her knee she was on the way to physical therapy. (Tr. 46)

Medical

On September 28, 2021, Petitioner presented to Roseland Community Hospital and was diagnosed with pain in her left elbow, pain in her left knee and a laceration without foreign body. It was noted she had a fall on an escalator. Petitioner was discharged the same day. The records state that Petitioner was able to bear weight on the left leg and it was explained to Petitioner that x-rays would not be required given good range of motion, strength against resistance and ability to weight-bear in the affected joints. X-rays were offered to Petitioner for peace of mind but were refused by Petitioner as she agreed that the injuries did not warrant x-rays. (PX D, 039)

On September 30, 2021, Petitioner presented to Dr. James Pedraza with Midwest Anesthesia and Pain Specialists. The consistent history of injury is noted with complaints of the left knee and left elbow. Dr. Pedraza recommended that Petitioner remain off work and obtain physical therapy. (PX G, 008)

On October 28, 2021, Petitioner returned to Dr. Pedraza. It was noted that she was walking with a cane due to pain in her right knee. (PX G, 011)

On December 22, 2021, Petitioner presented to Dr. Sompalli with complaints of bilateral knee pain due to a work injury on September 28, 2021. Petitioner provided a consistent history of the accident. Petitioner was referred to physical therapy by her attorney and reported right knee pain from overcompensating due to the left knee. The notes indicate that while on her way to physical therapy she heard a popping noise followed by swelling in her right knee. (PX E, 010)

Dr. Sompalli reviewed the left knee MRI and felt it showed a meniscus tear. Petitioner received bilateral knee lidocaine injections. An MRI of the right knee was recommended. Petitioner was to remain off work. Dr. Sompalli recommended a left knee arthroscopy, partial lateral and medial meniscectomy and debridement. A cold therapy unit was recommended. (PX E, 011-012)

On January 12, 2022, Petitioner stated that she was favoring the right knee and put all her weight on it. (PX G, 021) Petitioner followed up with Dr. Pedraza regularly until September 28, 2022. (PX G, 046)

On February 1, 2022, Petitioner underwent an MRI of the right knee at MRAD. (PX I)

On February 8, 2022, Dr. Sompalli reviewed the right knee MRI and felt it demonstrated effusion, medial patella plica and chondromalacia of the medical compartment. Dr. Sompalli recommended a right knee arthroscopy, chondroplasty, excision of plica, and synovectomy. Petitioner was ordered to use crutches after the surgery. (PX E, 014-015)

On March 8, 2022, Petitioner returned to Dr. Sompalli and an additional lidocaine injection was administered to the bilateral knees. (PX E, 018)

On May 4, 2022, Petitioner saw Dr. Howard Freedburg at Suburban Orthopedics for a second opinion. A consistent history of the injury is noted. (PX F, 010)

Dr. Freedburg noted Petitioner had a past medical history of bilateral primary osteoarthritis of the knee. He reviewed both MRI slides of the left and right knees. X-ray images of the bilateral knees taken at the doctor's office demonstrated moderate to severe degenerative changes. Dr. Freedburg's impression was bilateral knee osteoarthritis aggravated by the work accident and a medial meniscus tear. (PX F, 012)

Dr. Freedburg recommended injections. He opined that based off her history Petitioner had prior degenerative joint disease of her knees but had no prior symptoms. He felt that her current condition was causally connected to the work accident. (PX F, 013)

On June 7, 2022, Petitioner followed up with Dr. Sompalli and he noted that Petitioner was to see Dr. Joshua Jacobs at Midwest Orthopedics for an IME. (PX E, 026)

On June 28, 2022, Petitioner presented to Dr. Joshua Jacobs for an IME at Midwest Orthopedics at Rush in Chicago, IL. Dr. Jacobs reviewed numerous medical records including accident reports, MRI slides, hospital records, physical therapy records, and treating records from both Dr. Sompalli and Dr. Freedburg. He took plain films of both knees for review. The doctor also performed a physical examination (RX 2)

Dr. Jacobs reviewed the plain films of the bilateral knees and opined that they revealed bilateral osteoarthritis of the knees with severe medial joint space narrowing with the left slightly greater than the right. (RX 2)

Dr. Jacobs diagnosed Petitioner with several medial compartment osteoarthritis of both knees, morbid obesity, and status post contusion/laceration of the left knee. He opined that osteoarthritis and obesity were preexisting conditions and not related to the 09/28/2021 work injury. He opined that the left knee contusion/laceration had resolved and was related to the work injury. (RX 2) Dr. Jacobs opined that Petitioner's current disability was consistent with the natural

history of osteoarthritis of the knees, characterized by progressive pain and disability with time, accelerated by the concurrent presence of obesity. *Id*.

Dr. Jacobs did feel that bilateral total knee replacements were necessary to address her osteoarthritis but did not believe they would be necessary as a result of the 09/28/2021 work accident, which resulted in a contusion that had since resolved. (RX 2)

On September 7, 2022, Petitioner returned to Dr. Freedburg and received orthovisc injections to her bilateral knees. (PX F, 039)

On September 21, 2022, Dr. Freedburg acknowledged that he reviewed Dr. Jacobs' IME report. He indicated that he disagreed with Dr. Jacobs' opinion. (PX F, 045)

On October 2, 2022, Petitioner began physical therapy at Fullerton Drake Medical Center. Petitioner presented with complaints of pain and limitation of motion in the left knee and left elbow.

On October 5, 2022, a full physical examination of Petitioner was performed including a motor examination where her gait was noted to be a little slow but otherwise normal. (PX H, 026)

On October 11, 2022, it was noted that Petitioner's left knee and right knee (due to overuse) are painful with flexion and extension but improving. (PX H, 028)

Deposition Testimony of Dr. Howard Freedburg

On March 28, 2023, the deposition of Dr. Freedburg was held via Zoom. Dr. Freedburg testified that he was an orthopedic surgeon specializing in general orthopedic surgery with a subspeciality in sports medicine and joint replacements. He testified that he performs knee surgery including total knee replacements. He testified that he is board-certified. (PX K, 002)

Dr. Freedburg testified that he has been performing total knee replacements for over 40 years and estimated that he does about 50 a year. He testified that Petitioner was a patient of his and was still actively treating with him. (PX K, 003) Dr. Freedburg testified that Petitioner had felt a jerk in her left knee causing her to lose her balance and fall onto her left knee and left elbow. Both areas were bleeding. He testified that she attended physical therapy, and her right knee went out and popped because she was putting so much weight on it. She then came to him for a second opinion. (PX K, 004)

Dr. Freedburg testified that he believed that Petitioner had preexisting conditions in her left knee, but that the work accident made her left knee symptomatic. He testified that she had not seen a doctor previously for her left knee and did not have any symptoms. (PX K, 004)

Dr. Freedburg testified that the left knee MRI showed a Grade 1 to 2 sprain of the post remedial corner of the knee and a Grade 1 sprain of the ligament on the outside of the knee. He was unsure whether the medial meniscus tear was a new injury but testified that the sprains were absolutely new injuries caused by the work accident. As to the arthritis, he testified that it was old but that he did not know whether she had any more articular cartilage damage from the accident that would have accelerated the degenerative change in the knee. (PX K, 005)

Dr. Freedburg testified that his notes stated Petitioner's right knee went out and popped when she was at Drake Medical Center. (PX K, 005-006) Dr. Freedburg testified that Petitioner is a candidate for total knee replacement. (PX K, 007)

The doctor testified that the records at Roseland Hospital specified that both of Petitioner's knees were problematic , and that Petitioner had reported to staff on the date of the work accident that she had bilateral knee pain. (PX K, 007) Dr. Freedburg discussed the right knee MRI and opined that it did not show any ligamentous injury and testified that it either showed an acceleration of degenerative changes, a bony lesion, or a complete exacerbation of arthritis (PX K, 008) Dr. Freedburg testified that Petitioner was a candidate for a right total knee replacement. *Id.* Dr. Freedburg testified that the right knee condition was aggravated or accelerated by the incident on the escalator at work, and also due to the overcompensation issue with the favoring of the right knee. *Id*

Dr. Freedburg testified that he disagrees with Dr. Joshua Jacobs that the need for total knee replacement is unrelated to the work accident. (PX K, 010) Dr. Freedburg testified that somewhere in the escalator work injury, there was an acute injury to the right knee. (PX K, 010) He testified that he understood the mechanism of injury as one to the left knee and elbow but stated that the Roseland Hospital records noted complaints to both knees, so somehow, she must have injured that knee in the accident. (PX, 011)

Dr. Freedburg testified that someone with severe osteoarthritis could complain of right knee pain without suffering an injury. He testified that a total knee replacement could be performed on someone who had never suffered an acute injury. He testified that it is possible that the nature or degree of trauma can make it more or less likely that a degenerative condition is

accelerated. (PX K, 011) He testified that his opinion could change based on the records he reviews. *Id*.

Dr. Freedburg testified that a BMI of 36 is not obese and that obesity started at 40. He testified that osteoarthritis can be a relentlessly progressive disease. He testified that it is possible to get a root meniscus tear with extrusion from arthritis alone and into itself. He testified that there are a lot of causes for osteoarthritis and that it is possible for someone to have a temporary aggravation in terms of a contusion when they already have a degenerative condition. (PX K, 012)

Dr. Freedburg opined that the mechanism of injury reported by Petitioner was culpable to have produced the symptomatology Petitioner had presented with, and she would require total knee arthroplasty if a series of Hyaluronic acid injections failed to work for her. He opined that Petitioner had been doing fine prior to the work accident and that the work injury caused her to lose the normal hemostasis of her knees. (PX L, 002)

Deposition Testimony of Dr. Jacobs

On September 13, 2022, the deposition of Dr. Jacobs was held via Zoom. Dr. Jacobs testified that he is an orthopedic surgeon who is board certified with a focus on the hip and the knee. He testified that he practices at Rush University Medical Center. He testified that he is published in the field of orthopedic surgery. His specialty is adult reconstructive orthopedic surgery. (RX 1, 005-006)

Dr. Jacobs testified that he stopped performing surgeries five years ago but prior to stopping performed between 50 and 75 cases a year. He estimated that about 60 to 70 were on the knee. He testified that he keeps up with the latest literature in his practice and still publishes. (RX 1, 008)

Dr. Jacobs testified that he saw Petitioner for an Independent Medical Examination on June 28, 2022. He testified that he reviewed medical records and received a history of injury from the Petitioner. He testified that Petitioner was a bus operator for the CTA and was descending on an escalator when it suddenly jerked, and she lost her balance landing on her left knee and left elbow. (RX 1, 012)

Dr. Jacobs testified that he performed a physical examination of Petitioner and took x-rays. He testified that the x-rays of the bilateral knees showed severe osteoarthritis involving the medial compartments of the knee, with the left slightly more involved than the right. (RX 1, 018)

Dr. Jacobs testified that he reviewed MRI imaging studies along with the reports. He felt the reports were consistent with his interpretation of the imaging, that she had severe osteoarthritis in both knees. (RX 1, 020)

Dr. Jacobs testified that osteoarthritis tends to be progressive and symptomatic. He testified that the natural history of the disease would result in a need for knee replacement. (RX1, 021) The doctor testified that he had disagreed with Dr. Sompalli's recommendation for arthroscopic surgery because he did not see any catching or locking, mechanical symptoms, in Petitioner's clinical presentation. (RX 1, 022)

Dr. Jacobs testified that the symptoms Petitioner had at the IME appointment were related to osteoarthritis in the knees, a preexisting symptom that was not caused by or causally related to the work episode. (RX 1, 023) The doctor testified that he felt Petitioner had sustained a contusion or laceration of the knee from the work-related fall. He testified that while the laceration exacerbated her pain, it was a temporary situation. He characterized osteoarthritis as "relentlessly progressive." (RX 1, 023)

Dr. Jacobs testified that he felt the contusion had resolved by the time Petitioner saw him. He testified that the contusion did not have any effect on her osteoarthritis, that her osteoarthritis was following the natural history based on the severity of changes seen on the MRI and plain radiographs. (RX 1, 024)

Dr. Jacobs testified that he believed Petitioner should have been restricted from work, but those restrictions were not related to the contusion, but to the preexisting osteoarthritis. Dr. Jacobs testified that Petitioner likely reached maximum medical improvement within six weeks. (RX 1, 025)

Dr. Jacobs reviewed additional medical from Dr. Freedburg for visits on May 4, 2022, July 13, 2022, and August 10, 2022, along with a record from Dr. Sompalli on June 7, 2022 and testified that his opinion he had offered in prior testimony had not changed. (RX1, 027)

Dr. Jacobs reviewed the August10, 2022 note from Dr. Freedburg in which the doctor opines that Petitioner had bilateral knee osteoarthritis that was aggravated by the work accident. Dr. Jacobs testified that he disagreed with Dr. Freedburg's opinion. He testified that the course of Petitioner's osteoarthritis is following the natural history of osteoarthritis and characterized the work injury as a relatively minor injury. He testified that it was inevitable she would get to this point (RX 1, 027-028)

Dr. Jacobs testified that HA injections are commonly given by evidence to support them is limited. (RX 1, 029) He opined that if Petitioner underwent those injections, it would be due to the preexisting osteoarthritis in her knees, and not the contusion/laceration she sustained in the fall. *Id*.

Dr. Jacobs testified that the fact that Petitioner did not report having any symptoms prior to the work injury did not change his opinion. He testified that he had seen the severity of her disease and had taken care of thousands of patients with osteoarthritis over the years. He explained in his testimony that the natural history of the osteoarthritis process is for it to become progressively severe over time, regardless of activity. (RX1, 030)

Dr. Jacobs testified that he had not reviewed any medical records for dates prior to the work injury. (RX 1, 034) The doctor testified that you cannot tell whether a meniscus tear is degenerative or acute by an MRI. *Id.* at 035 He testified that meniscus tears can be caused or contributed to by a fall, but typically there would be a twisting component to the injury, which he did not get from Petitioner's history. *Id.* at 036 He testified that obesity is not the only condition that could lead to degeneration in Petitioner's knees. *Id.* at 037

Dr. Jacobs testified that osteoarthritis is a progressive deterioration of the articular cartilage and meniscal fibular cartilage in various joint. There is not a complete understanding of the pathogenesis –how it occurs. He testified that the hallmark is loss of cartilage, changes in the subchondral bone, changes in surrounding ligaments, loss of range of motion. He testified that there is no cure for osteoarthritis, and it becomes progressively more symptomatic with time, producing more disability. Eventually, it will lead to a difficult time walking and doing activities of daily living. (RX 1, 038)

Dr. Jacobs testified that whether an injury to the knees can advance the progression of osteoarthritis would depend on the injury. (RX 1, 039) He testified that whether osteoarthritis can be aggravated by a fall could depend on the fall, whether or not the aggravation is permanent would depend on the nature of the fall. He testified that typically the injuries that significantly exacerbate osteoarthritis would involve intraarticular fractures, though it is possible where there is no fracture. He testified that there was no evidence of fractures in Petitioner's case. (RX 1, 054-055)

Dr. Jacobs testified that it is possible to have an injury to additional body part due to overcompensation. (RX 1, 048)

Dr. Jacobs testified that treatment administered after the resolution of the left knee contusion had no relation to the contusion and was actually related to the progressive osteoarthritis in the knees. The doctor testified that he was surprised that no x-rays were obtained on either of Petitioner's knees on the date of the work injury. He testified that if someone had significant trauma to their knees, he would have anticipated that a doctor would order x-rays to see if there was a fracture. (RX 1, 066-67)

Dr. Jacobs testified that although he did not review prior imaging studies of the knees from prior to the work accident, he felt that the amount of deterioration and cartilage thinning seen on the post-accident images would not have occurred in a one-or two-month time period from the minor injuries Petitioner sustained. (RX 1, 069)

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

The Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. Petitioner's testimony at arbitration was consistent with the medical records regarding history of accident, history of complaints and physical findings. The Arbitrator compared Petitioner's

testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

Dr. Freedburg's testimony was consistent with his medical records, and he did not appear to be making any attempt to expand on his previously stated opinions or evade questions put to him on cross-examination. His physical examination findings were consistent with those of the other physicians who had examined or treated Petitioner. The Arbitrator finds that Dr. Freedburg was a credible witness.

Dr. Jacobs' testimony was consistent with his report, and he made no attempt to evade questions put to him on cross-examination. The only time that Dr. Jacob's testimony was unconvincing was when he opined that the symptoms Petitioner had at the IME appointment were related to osteoarthritis in the knees, a preexisting symptom that was not caused by or causally related to the work episode. The Arbitrator finds that Dr. Jacobs credible, albeit, less persuasive.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

While Dr. Freedburg conceded that Petitioner had a pre-existing severe osteoarthritis, he disagreed that Petitioner's current disability was consistent with the natural progression of osteoarthritis. (PX L, 1-2; PX K, 4). Dr. Freedburg opined that even if there was a natural history to suggest that Petitioner was going to eventually become symptomatic, she was asymptomatic

prior to the September 28, 2021, fall, and that the type of fall Petitioner sustained is consistent with a mechanism of injury causing an exacerbation of her osteoarthritis and to become symptomatic. *Id.* Dr. Freedburg opined that because Petitioner was asymptomatic prior to her September 28, 2021, the work injury caused Petitioner to lose the natural homeostasis of the left knee. Dr. Freedburg based his opinion on the uncontested fact that Petitioner was fine prior to the fall, had no history of being symptomatic, has not done well since the accident, and had a consistency and history of complaints that are consistent with Petitioner's injuries. *Id.* Dr. Jacobs reviewed Petitioner's treating records and opined that all medical treatment rendered to Petitioner was medically appropriate. (PX O, 2, PX N, 46). Dr. Jacobs testified that overcompensating for the injury to the left knee could cause an injury to the right knee. (PX N, 48). Dr. Jacobs agreed that Petitioner's mechanism of injury, falling onto the left knee, could exacerbate an asymptomatic condition of osteoarthritis. (PX N, 49).

Dr. Jacobs further opined that Petitioner would require "ongoing treatment" and that if conservative treatment failed, Petitioner would be a "candidate for bilateral total knee arthroplasties." (PX O, 12). Dr. Jacobs also recommended restrictions of "no walking or standing in excess of one hour per day and no lifting in excess of 25 pounds." *Id*.

It is unrebutted that prior to the September 28, 2021 work accident, Petitioner did not have any issues with her left or right knee and that she was performing full duty work. Petitioner testified that as of June 5, 2023, there have been no improvements in her symptoms.

Based on the above, as well as the credible evidence, the Arbitrator finds the Petitioner's current condition of ill-being, as it relates to her left and right knees, is causally related to the injuries sustained on September 28, 2021.

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

Section 8(a) of the Act states a Respondent is responsible …"for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects

of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Having found the Petitioner's current condition of ill-being, as it relates to her left and right knees, is causally related the injuries sustained on September 28, 2021, the Arbitrator finds the Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary medical services as set forth in Petitioner's Exhibits D, E, F G, H & I for causally related treatment Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

Petitioner testified that she had constant severe pain in both knees. This pain prevented Petitioner from walking and driving as far as she used to. Petitioner also testified that sitting and standing, or any activity that caused bending in the knees causes significant pain. Petitioner's treating physician likewise determined that Petitioner was unable to work as he took her off work beginning May 4, 2022, and has kept her off of work since.

Based on the above, the Arbitrator finds Respondent liable for 44 weeks of TTD benefits (August 2, 2022 through June 5, 2023) at a weekly rate of $941.29, which corresponds to $41,416.76 to be paid directly to Petitioner.

Issue O, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Having found the petitioner's current condition of ill-being, as it relates to her bilateral knees, is causally related to the injuries sustained on September 28, 2021, the Arbitrator finds that Petitioner is entitled to the bilateral total knee replacement surgery recommended by Dr. Freedburg. Respondent shall authorize and pay reasonable and necessary medical services associated with said surgery.

It is so ordered:

Crystal L. Caison

_____

Arbitrator Crystal L. Caison

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC026134
Case Name	Cameron Jenkins v. Cargill Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0285
Number of Pages of Decision	15
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Matthew McCue
Respondent Attorney	Kenneth Bima

DATE FILED: 6/13/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cameron Jenkins,

Petitioner,

vs. NO: 21 WC 26134

Cargill, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses and permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 10, 2023, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $40,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 13, 2024

o5/22/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC026134
Case Name	Cameron Jenkins v. Cargill Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Matthew McCue
Respondent Attorney	Kenneth Bima

DATE FILED: 3/10/2023

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

/s/ Bradley D. Gillespie

Signature

21WC026134STATE OF ILLINOIS)
)SS.
COUNTY OF MCLEAN)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

CAMERON JENKINS
Employee/Petitioner

v.

CARGILL INC.
Respondent

Case # **21** WC **026134**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **BRADLEY GILESPIE**, Arbitrator of the Commission, in the city of **BLOOMINGTON, ILLINOIS**, on **9/26/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **11/17/2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**57,200.00**; the average weekly wage was $**1,100.00.**

On the date of accident, Petitioner was **34** years of age, ***married*** with **3** dependent children.

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

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

Respondent is entitled to a credit under Section 8(j) of the Act to be determined at a future hearing.

ORDER

The total medical award is $1,709.05 to OSF Occupational Health per Petitioner's Exhibit 4.

Petitioner is prospectively awarded the proposed right shoulder arthroscopy recommended by Dr. Keller.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Bradley D. Gillespie **MARCH 10, 2023**

Signature of Arbitrator

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CAMERON JENKINS,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.: 21WC026134**
	)	
CARGILL INC.,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

This matter was tried on September 26, 2022, pursuant to §19(b)/8(a), on the issues of causal connection, unpaid medical bills, and prospective medical treatment pursuant to Section 8(a) for a recommended arthroscopic right shoulder surgery. (Arb. Ex. 2) This case was consolidated and tried with case 21 WC 026151, with the same parties in connection to a left shoulder injury. (Arb. Ex. 1 & Arb. Ex. 2)The following issues were in dispute at arbitration:

- Causal Connection
- Medical Bills
- Prospective Medical Care

FINDINGS OF FACT

Petitioner testified that he was 36 years old and began working at Cargill in Bloomington, Illinois in approximately mid-April 2016. (Tr. p. 11) He testified that he has worked full time since his hire date in various positions including general laborer, process operator, extraction operator, and first operator. (Tr. pp. 11-12) Petitioner recounted his job activities in these positions, which involved manual labor and transitioned into a combination of monitoring screens and manual adjustments of valves and machinery. (Tr. p. 13) He testified that the first operator position is mostly an oversight position, but also involved hands-on work if necessary. (Tr. p. 14)

On the date of injury to his right shoulder, Petitioner testified that he was working overtime in an extraction operator role, which involved overseeing the steam lines in the facility and making sure that they are opened and closed as necessary. (Tr. pp. 12, 14-15) Petitioner testified that this is combination of manual and electronic remote processes. (Tr. p. 15)

On November 17, 2020, while working as an extraction operator, he testified that he was warming up a DT vessel, a process the previous operator had started but had not finished. (Tr. p. 15) Petitioner observed that a steam line was open, he went to the first floor of the facility to visually confirm. Petitioner testified that he climbed up onto a small platform to close the valve, which required him to reach out his right arm to close it. He testified that he was having trouble getting the steam line valve to turn with his arm outstretched, and he put his right arm and shoulder into it. (Tr. p. 16) He was able to loosen the line but felt a pop in his shoulder. He switched to his

left shoulder and finished closing the valve. Once the valve was closed, he left the platform, went up a step ladder, and went to close another valve with both hands. It was also stuck, and he turned it to left, and felt more pain and irritation in his right shoulder. Petitioner testified that he felt burning pains down to his elbow and throbbing on the top of the shoulder. (Tr. p. 17) Petitioner testified that he closed the valve, returned to his office to make sure everything was running smoothly, and reported the injury to his supervisor within an hour. (Tr. pp. 16-17) He testified that his supervisor drove him to OSF Occupational health that day. (Tr. p. 17)

Petitioner was evaluated by Dr. Mary Yee-Chow at OSF Occupational Health in Bloomington on the date of accident. (PX #3 pp. 2-5) The records indicate that Petitioner reported twisting a valve with his right hand when he heard a pop in his shoulder, causing a burning pain. Dr. Chow conducted a physical exam and found positive tenderness with forced internal rotation, decreased range of motion, positive Hawkins and Neers signs, painful arc with the right shoulder, and positive tenderness to the posterior aspect of his right shoulder. (PX #3 p. 4) Dr. Yee-Chow ordered x-rays and released Petitioner to work full duty with a follow-up appointment scheduled.

Petitioner followed-up with Dr. Yee-Chow on December 3, 2020. (PX #3 pp. 7-9) Dr. Yee-Chow examined Petitioner and took a history, noting pain and popping with activities of daily living. She ordered an MRI arthrogram of the right upper extremity, which was completed on December 18, 2020, at Fort Jesse Imaging Center. (PX #3 pp. 10-11) Petitioner testified that he was told by Dr. Yee-Chow that he would be referred to an orthopedic doctor for evaluation and treatment. (Tr. p. 19)

Petitioner testified that his next visit was with Dr. Lawrence Li. (Tr. p. 19) Petitioner testified that his supervisor, Scott Bruemmer, told him that he was sending him to Dr. Li for treatment. (Tr. pp. 19-20) Petitioner testified that Dr. Li conducted a physical exam and took a verbal history. (Tr. p. 20) Petitioner testified that he was not given a mileage check by Respondent or given any report from Dr. Li or the Respondent. Petitioner recalled meeting with Dr. Li one more time, but not being offered any treatment. Petitioner testified that he was not aware that this was a Section Twelve examination pursuant to the Workers' Compensation Act. (Tr. pp. 21-22)

Respondent introduced Dr. Li's two reports at trial with no hearsay objection. (Tr. pp. 8-9) According to the report dated February 18, 2021, Petitioner was seen by Dr. Li at his office on that date. (RX # 4 pp. 6-8) Dr. Li reviewed the first report of injury, Occupational health notes, the x-ray report taken by occupational health, and the MRI arthrogram, as well as a twenty second video of Petitioner using the valve involved in the accident. Dr. Li conducted a physical exam and took a history and indicated that he believed Petitioner suffered a partial tear and opined that the work injury was related to the current diagnosis. Dr. Li recommended injections, anti-inflammatories, and physical therapy.

Petitioner testified that he did not get any more treatment for his right shoulder injury before his second injury date in August of 2021, nor was any treatment authorized by Respondent. (Tr. p. 22) Petitioner did not have any formal work restrictions but was instructed by his supervisors Brad Williams, Scott Bruemmer, and Carl Sayer not to do heavy lifting with his right arm, avoid anything involving shoulder strength, no shoveling, no opening lids on rail cards, and no turning any heavy-duty steam or water valves. (Tr. pp. 22-23) Petitioner testified that the first

operator position does not involve these tasks primarily, and he was able to do most of his job without difficulty and was able to request one of his supervisors complete more strenuous tasks.

Petitioner testified that he had a second work injury on August 27, 2021. (Tr. p. 23) He was instructed to open up different vessel in extraction to deal with a hexane leak. He testified that he was not allowed to use bower tools because it could cause a spark and explosion. This operation required Petitioner to manually tighten nuts and bolts on the large doors with brass wrenches. Petitioner testified that he was instructed to tighten them down as tight as he could to avoid future leaks. (Tr. p. 24) He was holding the nut with his right hand and tightening with his left, putting his weight into the motion, when he felt a pop in his left shoulder. He testified that he felt a burn and asked his co-worker first operator Ryan Bunner what to do and was advised to report the injury to a supervisor. He testified that he filed the report and was driven by a supervisor to OSF Occupational Health. (Tr. pp. 24-25)

Petitioner saw Dr. Mary Yee-Chow at OSF Occupational Health in Bloomington on August 27, 2021, for his left shoulder. (Tr. p. 25; PX #3 pp. 14-17) Petitioner gave a history of the injury and described the mechanism of tightening bolts on a vessel door when his shoulder popped. Dr. Yee-Chow examined Petitioner and found popping with the movement of the left shoulder, active range of motion to 180 degrees, tenderness with forced external/internal rotation, and positive Hawkins sign. She took an x-ray and recommended a follow-up appointment.

Petitioner followed-up with Occupational Health on September 16, 2021, at which time Dr. Yee-Chow noted a consistent history and exam and recommended an MRI. (PX #3 pp. 19-21). The MRI was completed on October 7, 2021. *Id*. at 22. Petitioner followed up with Dr. Yee-Chow on October 12, 2021. *Id*. at 25-27. At that time, Petitioner was referred to Dr. Brent Keller at Central Illinois Orthopedic Surgery.

Petitioner saw Dr. Keller at Central Illinois Orthopedic Surgery on November 4, 2021, for his left shoulder injury. (PX #2 pp. 1-3). Petitioner's history was recorded and was consistent with his report of injury and testimony at trial. Dr. Keller conducted a physical exam, noting no tenderness at the AC joint, loss of range of motion of the left shoulder, and a positive impingement sign. Dr. Keller diagnosed the claimant with left shoulder impingement, AC joint osteoarthritis, and a partial thickness rotator cuff tear. He recommended physical therapy and an injection. Dr. Keller's notes indicate that he performed an injection, though Petitioner testified that he had no memory of receiving a left shoulder steroid injection. (Tr. pp. 27-28). Dr. Keller recommended therapy and a follow up in four weeks.

Petitioner testified that he did his physical therapy at Central Illinois Orthopedic Surgery until his follow up visit on December 2, 2021. (Tr. p. 28; PX #2 pp. 5-8). During that follow up visit, Dr. Keller recommended more physical therapy. Petitioner followed up again on January 4, 2022, at which time Dr. Keller recommended a left shoulder arthroscopic surgery for a possible rotator cuff repair. (PX #2 pp. 9-11)

Prior to Petitioner's January 4, 2022, visit to Dr. Keller, Respondent sent an IME addendum request to Dr. Li, which was included in Respondent's exhibits and is dated December 31, 2021. (RX #4 pp. 1-2). Dr. Li was presented with additional records, which included an EMG/NCV report dated August 18, 2020, and its accompanying order, Dr. Matthew Rossi's notes from August

8, 2020 - September 16, 2020, and two MRI reports from January 7, 2015. Dr. Li reviewed the treatment from 2020, noting that his opinion had changed in that he now believed Petitioner had a pre-existing condition which was aggravated by his work injury. He indicated that Petitioner did not note this prior treatment and that the December 18, 2020, MRI findings could be a progression of the 2015 right shoulder tendinosis. Dr. Li still indicated that his causation opinion remained the same. Dr. Li was not asked to give any opinion in reference to the left shoulder injury of August 27, 2021.

Petitioner was given authorization to treat for his right shoulder and began treating again on March 8, 2022, the first time since December of 2020. (Tr. p. 29) Petitioner was seen by Dr. Keller at Central Illinois Orthopedic Surgery, who conducted a physical examination and took a history. (PX #2 pp. 13-16) Dr. Keller noted a positive impingement sign as well as tenderness anteriorly along with a reduced range of motion. Dr. Keller diagnosed Petitioner with right shoulder impingement and a possible tear. Although the treatment notes indicate that Dr. Keller recommended a second MRI, Petitioner testified that he did not receive a second MRI. (Tr. p. 30)

Petitioner followed up with Dr. Keller on March 17, 2022. (PX #2 pp. 17-20) Dr. Keller noted no change in the physical examination and diagnosed Petitioner with impingement syndrome of the right shoulder, right AC joint arthritis, and a partial thickness supraspinatus tear. Dr. Keller performed a steroid injection and recommended physical therapy.

Petitioner's last follow-up with Dr. Keller for his right shoulder was on April 19, 2022, at which time he recommended a right shoulder arthroscopy. (PX #2 pp. 21-23) Petitioner testified that this is still the recommended treatment from Dr. Keller, but he has had no follow-ups with Dr. Keller since this visit for either shoulder. (Tr. p. 30)

At trial, Petitioner testified that he had previously had a work injury in 2015 with a previous employer. (Tr. p. 31) The employer wanted him to get his right shoulder examined, and Petitioner went to Dr. Matt Rossi. Dr. Rossi ordered an MRI which showed mild tendinitis, and Petitioner was cleared for work the next day. (Tr. pp. 31-32) Petitioner testified that he had no right shoulder issues before 2015, and no issue with his right shoulder between the MRI and the August 27, 2022, accident at Cargill. (Tr. pp. 32-33)

Petitioner testified that he had also experienced prior issues with his left arm and saw Dr. Rossi in August 2020 for numbness in the left shoulder. (Tr. p. 33) Petitioner testified that he was worried about his heart since his father had just died from a heart attack, and he wanted to make sure that the arm numbness wasn't related to a cardiac condition. Petitioner testified that he had numbness in his left arm down to his pinky and ring finger. Petitioner testified that he was referred to Dr. Edward Trudeau for an EMG test and that Dr. Rossi diagnosed him with thoracic outlet syndrome. (Tr. pp. 33-34) Petitioner testified that he was offered some stretches and ibuprofen and his symptoms resolved in a couple weeks. (Tr. p. 34) Petitioner testified that at the time of his November 17, 2020, injury, he wasn't having left or right shoulder problems, and that he did not consider his numbness of the left arm to be a shoulder injury. (Tr. p. 32-34)

On cross examination, Petitioner testified that he has not been taken off work or been given restrictions for either shoulder, by any doctor since his November 17, 2020, injury. Petitioner testified that contrary to Dr. Rossi's notes, his numbness was localized to his left shoulder, not

bilaterally. (Tr. p. 37) Petitioner testified that Dr. Trudeau's testing also showed bilateral cubital tunnel syndrome, which could explain his bilateral arm numbness. (Tr. p. 38) Petitioner testified that he didn't think Dr. Li needed to know about these diagnoses at his IME appointment because he didn't view it as a shoulder issue and he didn't have shoulder pain, and that the numbness was not at all comparable to the burning pain from the injury. (Tr. pp. 38-39, 48) Petitioner was asked about Cargill's group disability plan and indicated that he believes it pays 60 percent of salary but was not sure and did not pursue that option because he believes this is a work-comp matter. (Tr. pp. 39-41) Petitioner indicated that he was choosing to exercise his right to a trial as opposed to treating on his own insurance or seeing a provider other than Dr. Keller for another opinion. (Tr. pp. 41-42) Petitioner testified that work comp cut off his treatment after his IME visit with Dr. Cohen. (Tr. p. 43)

Petitioner testified that he lifted weights around 2016, but when he started with Cargill, he had trouble continuing this due to his family obligations and work routine. (Tr. p. 44) Petitioner testified that he had not lifted since 2016. Petitioner was asked why Dr. Rossi would indicate that his complaints were related to lifting weights, and Petitioner testified that he had just started a two-week process on trying to get back into lifting weights, and Dr. Rossi thought that might be responsible for his symptomology and numbness. (Tr. pp 44-45) Petitioner clarified that he stopped consistently lifting weights in 2016, but he still occasionally lifted and was lifting in the two weeks prior to his Dr. Rossi visit. (Tr. p.p. 45-46)

Petitioner testified that he is a volunteer firefighter but hasn't attended meetings for the last year. (Tr. p. 46) Petitioner testified that 90 percent of their calls are EMT calls for which he is not qualified. He has not been on a structure fire call either. Petitioner testified that he did attend a car fire, where he ran the pump at the truck. (Tr. p. 47)

Petitioner testified that he cannot enjoy his hobbies to the fullest since the injuries (Tr. p. 47) Petitioner testified that he liked to golf, with a pre-injury average of 10-15 times a year. Post injury, he testified that he golfed once or twice in 2021, and not at all in 2022.

Brad Williams, representative of Cargill, was present but did not testify.

Evidence Deposition of Dr. Brett Keller

Dr. Brett Keller was deposed by the parties on July 14. 2022. (PX #1) Dr. Keller is a board-certified general orthopedic surgeon with a practice focused on treatment of shoulders and knees. (PX #1 pp. 3-4) Dr. Keller primarily performs surgeries and office consultations, very rarely does IMEs and records reviews, and gives depositions as part of his legal-medical work. *Id*. at 4.

Dr. Keller testified that he first met Petitioner on November 4, 2021. (PX #1 p. 5). Dr, Keller testified that he started treating Petitioner for his left shoulder injury only and recounted his three visits with Petitioner for that injury. *Id*. at 5-10. He testified that he recommended a left shoulder arthroscopy, subacromial decompression, distal clavicle excision, and a possible rotator cuff repair. *Id*. at 10.

Dr. Keller also testified concerning his three visits with Petitioner for his right shoulder injury. (PX #1 pp. 10-16) Dr. Keller confirmed that he had no record of a March 8, 2022, MRI of the right shoulder in his records. *Id*. at 14. He testified that he recommended a right shoulder arthroscopy, subacromial decompression, distal clavicle excision, and a possible rotator cuff repair. *Id*. at 16.

Dr. Keller testified about his understanding of the mechanism of Petitioner's right shoulder injury which was consistent with Petitioner's trial testimony. He opined that the accident caused and/or aggravated Petitioner's current condition and need for surgery. (PX #1 pp. 16-17) Dr. Keller provided his understanding of the mechanism of Petitioner's left shoulder injury which was consistent with Petitioner's trial testimony. He opined that the mechanism of injury caused and/or aggravated Petitioner's current condition and need for surgery. *Id*. at 18-19.

On cross-examination, Dr. Keller stated that his opinions were based on the belief that Petitioner was asymptomatic prior to either work injury. (PX #1 p. 19) Dr. Keller confirmed that his opinions were based in reliance on Petitioner's given history as well as the MRI films and his examination. *Id*. at 19-23. Dr. Keller opined that the recommended surgery was likely to help the Petitioner's pain and strength because the sources of pain were likely impingement and rotator cuff tearing. *Id*. at 23-24.

Dr. Keller was asked about Dr. Cohen's IME findings, and he noted that Dr. Cohen's physical examination was inconsistent with his own clinical findings. (PX #1 pp. 24-27) Dr. Keller reiterated his surgical recommendation and noted that he did not believe that Petitioner's exam was essentially normal. *Id*. at 28-29.

On re-direct examination, Dr. Keller was given the records of Petitioner's 2015 right shoulder MRI and visit, as well as his August 2020 thoracic outlet syndrome diagnostic testing and treatment notes from Dr. Rossi. (PX #1 pp. 29-31, Dep. Ex. 4) Dr. Keller opined that after reviewing those records, he only notes some mild rotator cuff tendinosis of the right shoulder, and that the records did not change his causation opinion. *Id*. at 31.

On re-cross examination, Dr. Keller stated that he did not think the right shoulder tendinosis in 2015 was indicative of a natural progression of Petitioner's condition because it was significantly different than the nature of the tear shown on the 2020 MRI. (PX #1 pp. 32-33) Dr. Keller noted that he only reviewed the 2015 MRI report, not films. *Id*. at 33.

Evidence Deposition of Dr. Michael Cohen

Dr. Michael Cohen was deposed by the parties on July 27, 2022. (RX #2) Dr. Cohen is a board-certified orthopedic surgeon specializing in treatment of the upper extremities. (RX #2 pp. 4-5) He practices in Joliet and sees approximately 100 patients a week, performs 400 surgeries a year, and performs three independent medical examinations a year. *Id*. at 5.

Dr. Cohen testified that he conducted an independent medical examination of Petitioner on March 23. 2022 at the request of Respondent's attorney. (RX #2 pp. 5-6) Dr. Cohen took a history, conducted an examination, and produced a report of his findings. *Id*. at 6-7. Dr. Cohen

reviewed the medical history. *Id*. at 7-11. He recounted his physical examination findings. *Id*. at 11-13. Notably, Dr. Cohen did not note a loss of range of motion, did not note any impingement, assessed Petitioner's rotator cuff strength as full on both sides, and found no provocative signs for a labral tear or instability on either side, noted no AC joint tenderness, no biceps tenderness, effusion, ecchymosis, or swelling bilaterally. *Id*. at 11-12. Dr. Cohen testified that he believed Petitioner suffered sprains or strains of both shoulders on their respective accident dates and related them to the work injuries. *Id*. at 13. Dr. Cohen stated he believed Petitioner had reached maximum medical improvement. *Id*. at 13-14. He stated that Petitioner did not need any work restrictions. *Id*. at 14.

On cross examination, Dr. Cohen confirmed that he did not review any treatment records for Petitioner from January 8, 2015, to August 7, 2020, and had no record of Petitioner having trouble or difficulty working during that time period. (RX #2 pp. 15-16) Dr. Cohen testified that he would not consider thoracic outlet syndrome to be a shoulder injury. *Id*. at 16. Dr. Cohen stated that he did not see anything in Dr. Yee-Chow or Dr. Keller's notes indicating thoracic outlet syndrome. *Id*. at 16-17. Dr. Cohen agreed that Dr. Yee-Chow's visit noted decreased range of motion, tenderness with forced internal rotation, positive Hawkins and Neer signs, and a painful range of motion of the shoulder with tenderness, all findings that were significantly different than his examination in March of 2022. *Id*. at 17. Dr. Cohen noted that he did not believe he reviewed the MRI films of the right shoulder *Id*. at 18.

Dr. Cohen testified that he reviewed Dr. Li's IME report and noted that Dr. Li's examination showed positive Neer and Hawkins signs. (RX #2 pp. 19-20) He agreed that Dr. Li recommended right shoulder treatment which was not offered and for which Dr. Cohen did not review any of the treatment notes. *Id*. at 20-21.

Dr. Cohen testified that he believed that there might have been pre-existing left shoulder treatment but noted that he did not review any records showing a prior left shoulder MRI and that the description taken by Dr. Yee-Chow was very similar to the MRI conducted on the right shoulder in 2015. (RX #2 pp. 21-22)

Dr. Cohen testified that there was no evidence of rotator cuff tears on either side. (RX #2 pp. 22-23) When asked whether the MRI report from December 2020 represented evidence of rotator cuff symptomology, Dr. Cohen testified that the MRI had no bearing on symptomology but stated it was an objective image finding of a rotator cuff tear. *Id*. at 23-24. Dr. Cohen also indicated that he did not review the films of the left shoulder MRI or have any opinion of Dr. Keller's finding of a left shoulder partial thickness rotator cuff tear. *Id*. at 24.

On re-direct and re-cross examination, Dr. Cohen clarified that he reviewed the images for the January 2015 right shoulder MRI but only reviewed reports for the December 2020 right shoulder MRI and the October 2021 left shoulder MRI. (RX #2 pp. 26-27)

CONCLUSIONS OF LAW

In Support of the Arbitrator's Decision regarding (F) Is Petitioner's current condition of ill-being causally related to the injury, and (K) Prospective Medical Care, the Arbitrator notes as follows:

The Arbitrator incorporates by reference the Findings of Fact set forth in the foregoing paragraphs. The Arbitrator finds and concludes that Petitioner's current condition of ill-being to his right shoulder is causally connected to his November 17, 2020, work injury. The Arbitrator also finds that Petitioner's work accident aggravated his condition to the point where surgical intervention is required and finds that the proposed right shoulder arthroscopy recommended by Dr. Keller is causally related to the November 17, 2020, accident. The foregoing findings are based on Petitioner's credible testimony, a review of the medical records and the overall medical testimony.

Petitioner testified that while closing a steam valve at an awkward angle, he felt immediate pain in his right shoulder. He reported it immediately and sought treatment. He was offered treatment at OSF Occupational Health, and his MRI demonstrated evidence of a partial thickness tear. Instead of sending Petitioner to an orthopedic treater, Respondent sent Petitioner to an IME without proper notice or mileage. Petitioner complied, believing this to be a treatment referral, was told his condition was related to his work injury and a course of treatment was recommended. Respondent did not authorize treatment for more than a year after their IME was conducted, and instead sought an addendum report following a second shoulder injury to his opposite shoulder. The Arbitrator finds the addendum report also supports causation for the work-relatedness of the injury. In fact, all three providers referenced in this decision find that Petitioner suffered a work-related injury to some degree.

The Arbitrator finds Dr. Keller's testimony on causation and treatment recommendations to be most persuasive. Dr. Keller's exam findings are consistent with Dr. Yee-Chow's findings and are indictive of some degree of tearing and impingement in Petitioner's right shoulder. Dr. Keller initially offered treatment in the form of physical therapy and an injection. Dr. Keller's exam findings were consistent throughout his treatment notes. On the other hand, Dr. Cohen's exam, taken just a week after Dr. Keller's first visit with Petitioner, shows a completely different set of examination findings which are inconsistent with those of Dr. Keller, Dr. Yee-Chow, and Dr. Li. The Arbitrator does not find Dr. Cohen's opinion that Petitioner is at maximum medical improvement and requires no treatment to be persuasive, as his opinions and examination are not as credible when weighed against two other treating physicians and Respondent's first IME doctor, Dr. Li.

The Arbitrator also notes that testimony regarding Petitioner's right shoulder treatment prior to his November 17, 2020, accident does not supersede a finding of causation as related to the work injury. The Arbitrator specifically notes that the January 7, 2015, MRI does not show evidence of a rotator cuff injury. Dr. Keller opined that Petitioner's condition when he first saw him in March of 2022 was not indicative of a natural progression of his previous right shoulder condition. After reviewing the January 2015 MRI report, Dr. Li opined that it changed his opinions on causation in that there was a pre-existing condition, and the pre-existing condition

was aggravated by the alleged work injury. Dr. Cohen testified that Petitioner did not have a condition which needed surgical intervention and did not express an opinion regarding a pre-existing condition. Therefore, the Arbitrator finds that Petitioner's 2015 right shoulder injury and MRI have no bearing on causation in this case, as it was either unrelated or there was an aggravation of Petitioner's pre-existing condition.

Regarding Petitioner's diagnosis of thoracic outlet syndrome in 2020, Petitioner testified that his complaints primarily involved numbness his left upper extremity, and the condition was not painful. Petitioner testified that he did not consider thoracic outlet syndrome as a shoulder condition, which is why he didn't discuss it with Dr. Li, whom he thought he was seeing for treatment. Dr. Li is the only doctor to relate Petitioner's thoracic outlet syndrome diagnosis to his current condition of ill-being. But, as stated above, Dr. Li opined that this pre-existing condition was aggravated by Petitioner's work injury. Dr. Cohen and Dr. Keller did not observe signs of thoracic outlet syndrome in Dr. Yee-Chow's examination findings nor in their own physical examinations of Petitioner. Moreover, Petitioner testified that this condition had resolved prior to his work accident. The Arbitrator does not find that the thoracic outlet syndrome diagnosis in August of 2020 has any bearing on the causation in this case, based on the testimony of all providers and Petitioner's testimony.

Wherefore, the Arbitrator finds and concludes that Petitioner's right shoulder rotator cuff tear and impingement as diagnosed by Dr. Keller is related to his November 17, 2020, work accident. The Arbitrator finds that the proposed right shoulder arthroscopy, subacromial decompression, distal clavicle excision, and rotator cuff repair by Dr. Keller to be causally related to the November 17, 2020, work accident. Dr. Cohen disagrees with this recommendation, but the Arbitrator notes that Dr. Keller, as Petitioner's treating physician, is in the best position to decide whether such treatment is reasonable and necessary.

The Arbitrator, having found Petitioner's current right shoulder complaints to be causally related to his November 17, 2020, work accident, awards the right shoulder surgery proposed by Dr. Keller.

In support of the Arbitrator's Award as to (J) Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator notes as follows:

The Arbitrator incorporates by reference the Findings of Fact and Conclusions of Law set for the in the paragraphs above. Having determined that Petitioner has established a causal relationship between his current right shoulder condition and his November 17, 2020, work injury, it logically follows that the reasonable, necessary and related medical expenses are properly awarded. Petitioner's Exhibit 4 is a compilation of outstanding medical bills for related medical treatment. Therefore, the Arbitrator orders Respondent to pay the outstanding medical bills set forth in Petitioner's Exhibit 4 per the Fee Schedule. Per stipulation by the parties, any other bills related to Petitioner's right shoulder condition are awarded, and this award does not preclude the payment of further bills not included in Petitioner's Exhibit 4. Respondent will be entitled to a 8(j) credit for all bills already paid, per stipulation by the parties.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC016384
Case Name	Marcie Woods v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0286
Number of Pages of Decision	21
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Alexander Pino
Respondent Attorney	Terrence Donohue

DATE FILED: 6/13/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARCIE WOODS,

Petitioner,

vs. NO: 22 WC 016384

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein, and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, causal connection, TTD, and prospective medical care, and being advised of the facts and law, reverses the Decision of the Arbitrator and awards workers' compensation benefits for the reasons stated below. The Commission further remands this case to the Arbitrator for further proceedings for a determination 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).

Petitioner asserts that she sustained a work-related accident on May 12, 2022, while employed as a construction laborer by the City of Chicago. She had been so employed by the City of Chicago for the past 26 years. Petitioner testified that on May 12, 2022, she was assigned the task of installing snow fences near North Avenue beach. The process involved placing rolls of wood and fencing materials onto a fence post and tying them in three places, at the top, middle and bottom of the posts.

Petitioner testified that around 6pm on the date of the accident, she was bent down to the ground while tying the fencing to the bottom portion of the fence post, when she felt a sharp pain

on the left side of her low back. She fell over after feeling the pain. Her co-workers assisted her to their work truck so she could lie down.

Petitioner reported the work accident to her supervisor, Troy Quincy the morning following on Friday, May 13, 2022, at 6:05 am. At hearing Petitioner testified on direct examination that she first obtained medical treatment on May 17, 2022, at Concentra Clinic.

Petitioner was impeached on cross examination when she was questioned regarding a medical record dated May 14, 2022, from WellNow Clinic (incorrectly referred to as Work Now Clinic in the Decision) in Evergreen Park, Illinois. Petitioner initially reaffirmed that she first received medical treatment at Concentra on May 17th and that was the first medical attention that she had received following the accident. The WellNow record of May 14, 2022, states a history of present illness that reflects the patient works in a warehouse where she does a lot of repetitive movements and that she started having pain in her lower back when she was stocking a low shelf.

Petitioner acknowledged she went to WellNow Clinic for care but denied reporting the history of working in a warehouse and getting injured while stocking shelves. Petitioner denied the content of the record of the history of present illness. She testified that she reported to WellNow Clinic that excruciating pain in her back and left leg started when she was working outside on a snow fence.

Petitioner presented at Concentra on May 17, 2023. The medical record of that date reflects that Petitioner sustained a work injury to the left side of her back on May 12, 2022. Petitioner stated she was bending down near North Avenue beach when the back pain began. She expressed that the pain radiated down to her left leg and foot. Inexplicably, she indicated that she had not been seen elsewhere for this injury. The Arbitrator found that based upon her lack of credibility Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment.

Petitioner was assessed as having a lumbar strain by Dr. Houseknecht. Cyclobenzaprine, ibuprofen, and a lidocaine patch were prescribed. She was referred to physical therapy three times per week for four weeks. Petitioner was ordered to return to clinic for follow up in two days. She was released to modified duty only. “Return to modified activity today. Should be seated 90% of time, mostly seated work with position changes as needed- no lifting, pulling, pushing, bending, twisting, or climbing.” An x-ray was performed that showed no evidence of fracture.

On May 23, 2022, Petitioner was seen by Dr. Taiwo at Concentra Clinic. He documented that Petitioner’s left lower back symptoms were unchanged, and that left sided muscle spasms were present on palpation. He ordered Petitioner off work with a return to clinic on May 31, 2022.

Petitioner returned to Concentra on May 31, 2022, for further follow up. She reported continued left low back pain with a pain score of 7/10. She stated that her only relief was when lying down and that her back pain interfered with sleep. Petitioner was directed to remain off work and diagnosed with left lumbar radiculopathy and lumbar strain. She was instructed to return to clinic on June 7, 2022.

On June 7, 2022, Petitioner was again assessed as having left lumbar radiculopathy and lumbar strain. An MRI was performed on June 15, 2022. The MRI noted several findings, most significantly a posterior disc bulge at L4-L5 and posterior right subarticular disc protrusion at L5-S1 causing right neural foraminal narrowing. On June 15, 2022, Dr. Taiwo referred Petitioner to Midwest Orthopedics for evaluation and treatment of the "herniated L5 disc". Petitioner was kept on "no work" status as light duty was not available.

Petitioner was first seen by Dr. Colman, an orthopedic surgeon at Midwest Orthopedics on July 5, 2022. Dr. Colman's clinical note reveals that he reviewed the MRI of the lumbar spine which revealed a right sided L5-S1 disc herniation. Dr. Colman diagnosed spinal stenosis of the lumbar region with neurogenic claudication. He ordered continued physical therapy 3 times per week for 6 weeks. He prescribed meloxicam and Flexeril. Petitioner was kept off work and directed to return to clinic for follow-up on August 8, 2022, with physician's assistant Joseph Samuels.

On July 14, 2022, Petitioner underwent a Section 12 evaluation by Dr. Ghanayem at the request of Respondent. His review of the MRI revealed some degenerative changes in the lumbar spine and a small L5-S1 disc protrusion on the right side. Dr. Ghanayem's impression at the conclusion of his examination was that Petitioner had an element of SI joint dysfunction and/or sacral sprain. Dr. Ghanayem then reconsidered his assessment of Petitioner's condition and determined her to be at MMI as will be addressed later in this Decision.

Petitioner returned to Midwest Orthopedics on August 8, 2022, and was seen by Dr. Colman's physician assistant Joseph Samuels. Petitioner reported that she was improved since her prior visit but was recovering more slowly than she expected. She continued to express complaints of primarily left sided low back pain with radiation. PA Samuels continued physical therapy and kept Petitioner off work. He expressed optimism that Petitioner would recover without the need for surgical intervention. Petitioner was scheduled for further follow up in one month.

On September 7, 2022, Petitioner returned to Midwest Orthopedics in follow up and was seen by PA Joseph Samuels again. PA Samuels noted that Petitioner had stopped the physical therapy that was prescribed due to the IME doctor's finding that she was at MMI with resulting termination of benefits. PA Samuels documented that Petitioner had regressed and that her back pain has persisted. He charted positive SI joint findings on the left, a positive Faber and positive pelvic thrust. The clinical note states significant disagreement with Dr. Ghanayem's MMI determination and recommends continuation of another 12 sessions of physical therapy in order

to restore Petitioner to a functional level. PA Samuels ordered Petitioner remain off work and return to the office for further follow up on October 19, 2022. Petitioner continued physical therapy until October 14, 2022, which was her last medical service.

In his final clinical note on September 7, 2022, PA Samuels wrote:

> I believe the interruption in therapy with only 5 sessions [of PT] has been a setback for her. She does not show any signs of malingering or secondary gain today. I think she would benefit from another 12 sessions of PT 2-3 times per week, remain off work during that time. If her pain persists, she could be a candidate for an SI injection. I think the proper conservative care needs to be taken in order to get her back to work. She is to remain off work in the interim and follow up once the PT is completed.
> RTC on 10-19-22 at 10:15.

At hearing Petitioner testified that her last medical care was at Midwest Orthopedics on October 19, 2022. The Commission finds however that there is no clinical record for that date attached as an exhibit to the authenticated transcript. Therefore, the last clinical record from Midwest Orthopedics in evidence is dated September 7, 2022. Petitioner seeks prospective medical care based upon her assertion that she understood that Dr. Colman recommended injections when she last saw him on October 19, 2022. The Commission finds no evidence in the record that Petitioner saw any healthcare provider at Midwest Orthopedics on October 19, 2022. The record shows Petitioner did see PA Samuels on September 7, 2022. On that date PA Samuels discussed that Petitioner "could be a candidate for an SI injection if her pain persisted after a course of 12 additional PT sessions. The Commission finds that there was no actual recommendation for injections but that it was discussed as a possible option if Petitioner continued to experience pain following the additional physical therapy. There is no evidence that Petitioner presented for further medical evaluation therefore was no prospective medical care recommendation made upon which to base an award.

Respondent referred Petitioner to Concentra Clinic on May 17, 2022. Petitioner was given modified duty restrictions that required she remain seated for 90% of her workday and prohibited lifting, pulling, pushing, bending, and twisting. Petitioner testified that there was no light duty work available within the restrictions and so she was off work.

Petitioner was kept off work by Dr. Colman and by PA Samuels commencing July 5, 2022. PA Samuels' final note on September 7, 2022, anticipates keeping Petitioner off work pending the completion of the course of physical therapy and return medical evaluation. The Commission notes based upon review of the records that Petitioner's last PT session took place on October 14, 2022. Since Petitioner did not return for further medical evaluation the Commission finds that her work restriction extended to October 14, 2022. Based upon the foregoing analysis the Commission finds that Petitioner was entitled to TTD benefits commencing May 17, 2022, through October 14, 2022. The Commission finds no evidence in the record to support an award of TTD benefits beyond October 14, 2022.

Returning to the impeachment on cross-examination of Petitioner with the WellNow records (RX2) the Commission notes that the exhibit tendered by Respondent reflects that it is a faxed document that is five pages in length. Pages 2 through 5 of Respondent's Exhibit 2 were admitted into evidence. Page 1 out of 5 of RX2 was not produced by Respondent and not entered into evidence. In a typical medical record, the first page is generally the face sheet which includes demographic details about the patient, including the name of the employer. It is concerning to the Commission that this page is missing and there is no written record from WellNow Clinic that reflects Petitioner's stated place of employment.

The record was introduced by Respondent for the purpose of discrediting Petitioner, suggesting that she had outside employment, and intending to show that she did not sustain her injury arising out of or in the course of her employment with the City of Chicago. The incompleteness of this record is concerning, and the Commission draws the inference that the face sheet would have reflected that Petitioner was an employee of Respondent when she sought care at WellNow Clinic. The Commission's concern about the missing face sheet and the identity of Petitioner's statement regarding her place by employment is reinforced by the fact that on Respondent's Claim Payment List (RX4) there is a charge from WellNow UrgentCare for May 14, 2022, that was paid on June 8, 2022. Clearly the claim was submitted for payment by WellNow Urgent Care because Petitioner had identified to the clinic that she was employed by the City of Chicago at the time of service on May 14, 2022.

Also notable, there is no record certification attached to the WellNow record (RX2) nor is there any subpoena or record certification from Respondent stating the number of records received or that the records are true, correct, and complete. The Commission notes that the conduct of Respondent in not producing this record in its entirety suggests unfairness toward the claimant in the handling of her claim. The Commission finds that with the missing page of RX2 WellNow Clinic note of May 14, 2022, the medical record lacks the necessary indicia of reliability and should not have been considered as a basis for the determination of the issue of accident.

The Arbitrator relied heavily upon this history of present illness (RX2) in his negative assessment of the credibility of the Petitioner, and denied compensability based upon a finding that she had failed to meet the burden of proof on the issue of accident due to her misstatements to health care providers. Additionally, the Arbitrator relied upon a statement Section 12 examiner Dr. Ghanayem placed in his report of July 14, 2022, that he watched Petitioner from his second-floor office window getting into her car at the parking lot following his evaluation and observed her getting into the passenger side of the vehicle "Putting full weight on the seat." This observation caused him to reverse the clinical assessment that he made during the Section 12 examination that Petitioner likely had a component of SI dysfunction or a sacral sprain. Based upon his parking lot observation Dr. Ghanayem subsequently concluded that Petitioner was

magnifying her symptoms. He therefore declared her to be at MMI and released her to full duty work.

The Commission questions the reliability of observations made from a second story window that purport to declare that Petitioner put her full weight on a car seat. Dr. Ghanayem's ability to evaluate seated weightbearing from an unspecified distance and when the Petitioner is seated inside a vehicle is concerning. For this reason, the Commission is not persuaded by Dr. Ghanayem's opinion that Petitioner was at MMI and able to return to full-duty work as a construction laborer as of July 14, 2022.

As a result of Dr. Ghanayem's opinion, Respondent terminated Petitioner's TTD and medical benefits. For the foregoing reasons the Commission reverses the Decision of the Arbitrator and awards workers' compensation benefits to Petitioner.

IT IS THEREFORE ORDERED BYTHE COMMISSION that the Decision of the Arbitrator is reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,217.20 per week for a period of 21.4 weeks, commencing May 17, 2022 through October 14, 2022, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $3,261.79 for unpaid medical expenses under §8(a) 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 expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

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

June 13, 2024
SJM/msb
o-05/8/2024
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC016384
Case Name	Marcie Woods v. City of Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Alexander Pino
Respondent Attorney	Terrence Donohue

DATE FILED: 6/28/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 27, 2023 5.21%

/s/Steven Fruth, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Marcie Woods Case # **22 WC 16384**
Employee/Petitioner

v.

City of Chicago
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 **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **January 10, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☒ Other **Prospective Medical**

FINDINGS

On **5/12/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**94,951.48**; the average weekly wage was $**1,875.99**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **3** 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 $**15,825.29** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**15,825.29**.

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

ORDER

Petitioner's Application for benefits and prospective medical care is denied

In no instance shall this award be a bar to subsequent hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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.

_____ **JUNE 28, 2023**

Signature of Arbitrator

Marcie Woods v. City of Chicago
22 WC 16384

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***F:*** Is Petitioner's current condition of ill-being causally related to 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? TTD; ***O:*** Is Petitioner entitled to prospective medical care?

Petitioner claims she is entitled to TTD benefits from May 13, 2022 through January 10, 2023, which Respondent disputes.

FINDINGS OF FACT

Testimony of Petitioner

Petitioner Marcie Woods was employed as a laborer for the City of Chicago on May 12, 2022 , a position she has held for 26 years. She described her job duties as hand sweeping, pulling garbage, and special assignments, such as the snow fence. Petitioner testified that on May 12, 2022 she was assigned to a job putting up a snow fence at North Avenue Beach. She described dropping rolls of wood and fencing, posting the posts, unrolling the rolls, throwing the rolls onto the posts, and tying the rolls, top, middle, and bottom.

Petitioner testified that around 6:00 PM on May 12, 2022 her crew was on a slope at North Avenue Beach. She was tying the bottom of a fence section when she experienced a sharp pain in her back. She "kind of fell", and her coworkers helped her to the truck. She stated she laid down in the back seat due to shooting pains, but she did not think anything of it at the time. She felt that she only needed to stop for a minute. Her pain came from being stooped and bent to touch the ground. Petitioner initially had pain in her lower back on the left side. She stopped working. Petitioner testified she returned to work the next day and told her supervisor Troy Quincy what happened, around Friday morning at 6:05 AM.

Petitioner testified she was sent to Concentra, where she was seen on May 17, 2022. Petitioner presented with complaints of sharp pains on the right side, and her left side with muscle spasms on her left leg. She was prescribed medication. She then followed up at Concentra 2 days later on May 19, 2022 and then 2 more times on May 31 and June

7, 2022. On June 7 she reported improvement in her symptoms from taking muscle relaxers. Petitioner testified she was then prescribed an MRI of her lumbar spine which she obtained, and then returned to Concentra on June 15 following the MRI.

Petitioner testified they then referred her to Dr. Colman at Midwest Orthopaedics at RUSH for an initial evaluation on July 5, 2022. He prescribed medication and physical therapy and restricted her from work. She received physical therapy at "Midwest Rush Orthopedics."

Petitioner testified she underwent an IME with Dr. Ghanayem on July 14, 2022, after which she received a letter stating her benefits were terminated and they would no longer pay for medical treatment.

She testified that she returned to Dr. Colman on August 8, 2022 after 5 physical therapy sessions. She said he kept her off work and continued to prescribe physical therapy. She testified that she followed up with Dr. Colman on September 7, 2022, and last saw him on October 19, 2022. Petitioner understood Dr. Colman was recommending injections which were not approved.

Cross-examination

Petitioner testified that she had described to her supervisor that this event occurred at the North Avenue Beach location, near the parking lot. (T. 20-21). Petitioner testified that her initial medical treatment was at Concentra on May 17, 2022 and that she had not been seen for medical care prior to that time. When asked whether she had gone to WorkNow on May 14 in Evergreen Park, she admitted that she had.

Petitioner testified that she reported to the WorkNow doctors that she was injured on May 14 while working on the snow fences. Petitioner denied that she advised the WorkNow personnel that she worked in a warehouse and did a lot of repetitive movements. When asked again whether she had told the WorkNow clinic personnel that she worked in a warehouse and did a lot of repetitive movements, she responded that she told them that it was repetitive movement, but not that she was stocking, but that she was in and up and down position. Petitioner testified that she told them it was outside and insisted that she did not tell them that she worked in a warehouse.

Petitioner confirmed she underwent an independent medical examination with Dr. Ghanayem on July 14, 2022 and that he performed a physical examination.

Petitioner first confirmed that the first time she saw Dr. Colman was on July 5, 2022, and then next saw him on August 8, 2022. On further cross-examination she admitted that she actually did not see Dr. Colman on August 8, but rather saw physician assistant Samuels. Petitioner further testified that her next visit on a September 7, 2022 at Midwest Orthopaedics was again with physician assistant Samuels, and again she did not see Dr. Colman. Petitioner then testified that at her last visit at Midwest Orthopaedics

on October 19, 2022 she again did not see Dr. Colman, but rather physician assistant Samuels. She confirmed this was the last time she saw any medical professional.

Re-direct examination

On re-direct examination Petitioner clarified her May 14, 2022 visit at WorkNow that she was in excruciating pain. She let them know what type of work she did and that she was a laborer for streets and sanitation. She confirmed that she did not work in a warehouse, and that she worked outside. She testified she spent 15 minutes with the provider at WorkNow and that she did not tell anyone there that she worked in a warehouse. Petitioner further testified she did not have any other job in May 2022 other than her job with the City of Chicago.

Medical Evidence

On May 14, 2022 Petitioner was seen at WorkNow UC in Evergreen Park, Illinois (RX #2). She complained an injury to her back. Petitioner reported she works in a warehouse where she did a lot of repetitive movements. She stated on Thursday that she was stocking things on a high medium and low shelf. She stated that when she got to the low shelves she started having pain in her low back. She believed that if she rested her back it would improve. Petitioner reported she still has continued pain. She has been taking Aleve and naproxen with minimal relief.

On examination she had normal straight-leg raising test but her back examination was noted as abnormal. There was tenderness of the soft tissue of the left lumbar region. X-rays were unremarkable for acute abnormality including fracture. She had a normal neurologic examination. It was suspected she had a muscle strain. Pain control, physical therapy, and follow-up with primary care doctor were discussed. The assessment was acute low back pain. She was then discharged.

Petitioner presented to Concentra on May 17, 2022 (PX #2). She reported she was bending up and down on Thursday placing a fence. Pain radiated from the left side of her low back down to her left leg. She described symptoms which started at the time of a work injury on May 12, 2022 at 5:45 AM at which time she was bending to put up fences. She developed bilateral low back pain, left greater than right, which has been ongoing since. She attempted to keep working, but pain has become too severe for her to continue working. She reported frequent bilateral low back pain which is moderate and aching. Her pain radiated down her left leg to her ankle/foot.

On examination of the lumbosacral spine there was tenderness in the left and right paraspinals. Palpation revealed bilateral muscle spasms. Range of motion was limited by pain. Right straight-leg raise was negative, and X-rays revealed no significant radiologic findings. The assessment was lumbar strain. She was to start cyclobenzaprine and

ibuprofen, as well as lidocaine patches. Physical therapy was prescribed. Work restrictions included sitting 90% of the time with position changes as needed, and no lifting, pushing, pulling, bending, twisting, or climbing.

Petitioner returned to Concentra on May 19, 2022 with 7/10 pain in her low back and down her left leg to the ankle. She wanted more muscle relaxer rub which works for her. She has not been working since no light duty work is available. There was tenderness in the left paraspinal at L5. There was also left-sided muscle spasms. Flexion active range of motion was limited to 30° and painful. Right and left straight-leg raises were negative. There were no significant findings on X-ray. The assessment was left lumbar radiculopathy and lumbar strain. She was started on diclofenac, Medrol Dosepak, and a muscle rub. An injection of Ketorolac was administered. She was restricted from work.

Petitioner returned to Concentra on May 23, 2022 with low back pain that radiated down the left leg. She reported she has not been working. On examination there was tenderness present in the left paraspinal L5. Palpation revealed left-sided muscle spasms. Sensation to light touch was intact. Lumbar flexion was painful at 30°. Straight-leg raising test was negative bilaterally. A lumbar MRI was ordered. She was restricted from work.

Petitioner returned to Concentra May 31, 2022. She still had 7/10 back pain, which radiates down the left leg. She only finds slight comfort when laying down. Petitioner has not been working since no light duty work is available. The lumbosacral exam findings were unchanged. She was prescribed cyclobenzaprine. She was restricted from work. On June 7, 2022 claimant returned to Concentra. Examination findings were unchanged. She was prescribed cyclobenzaprine. She was scheduled for an MRI on June 13, 2022 to rule out a herniated disc.

On June 13, 2022 Petitioner underwent a lumbar MRI without contrast at Chicago Ridge Medical Imaging (PX #3). The radiologist noted mild straightening of lumbar lordosis and that vertebral body heights were maintained. It was further noted there was no significant disc herniation or neural foraminal narrowing at L1-2, L2-3, or L3-4. There was a posterior annular symmetric disc bulge, measuring 1.5 mm at L4-5 without significant neural foraminal narrowing. There was a 4.6 mm right subarticular disc protrusion at L5-S1 which abutted the thecal sack. Disc material caused mild right neural foraminal narrowing with contact of the exiting nerve root. The radiologist was uncertain if the findings at L4-5 and L5-S1 were "indeterminate to chronic."

Petitioner returned to Concentra on June 15, 2022. On examination, there was tenderness of left paraspinals at L5. Palpation revealed left-sided muscle spasms. Flexion was painful at 45°. She had a positive left straight-leg raising test. The assessment included left lumbar radiculopathy and herniated lumbar disc. She was given additional

cyclobenzaprine and an orthopedic spine referral was made. She was restricted from work.

On July 5, 2022 Petitioner saw Dr. Matthew Colman at Midwest Orthopaedics at RUSH (PX #4). Claimant gave a history that she sustained a work-related injury working as a laborer for the Department of Sanitation on May 12, 2022. She was working on an incline, putting up heavy snow fencing around the beach, when she experienced sharp pain in her low back. Since then, she has been experiencing spasms and pain that radiated down the left leg. She had an epidural injection on May 19 without benefit. She has also been taking muscle relaxers to assist with sleep.

On examination of the lower extremities, strength was normal L2 through S1 at 5/5. Dr. Colman noted non-antalgic gait. Petitioner had full range of lumbar motion but a positive straight-leg sign on the left. Dr. Colman reviewed the MRI to reveal a right-sided L5-S1 disc herniation. Lumbar X-rays showed no obvious fracture or instability. The doctor diagnosed low back pain and spinal stenosis. Dr. Colman referred Petitioner for physical therapy 3 times a week for 6 weeks and prescribed meloxicam, Flexeril, and Tylenol. She was to remain off work.

On July 14, 2022 Petitioner underwent a §12 independent medical examination with Dr. Alexander Ghanayem at Respondent's request (RX #1). Dr. Ghanayem obtained a history that on May 12, 2022 she was working on a snow fence, tying wires up and down the fence, when she felt acute back pain in the left side of her back down into her left leg with numbness. She said she was bending and stooping repetitively when this occurred. She reported continuing symptoms. She had an intramuscular injection and a Medrol Dosepak. Petitioner was scheduled to start physical therapy on July 25. She has no right-sided leg symptoms.

On exam Dr. Ghanayem noted Petitioner stands and sits leaning away from her left side. She had difficulty moving about putting full weight on her left leg when she gets up and stands. The lower extremity neurologic exam revealed no focal deficits. Tension sign resulted in left-sided buttock pain. Her FABER sign is positive for buttock pain on the left but negative on the right. Dr. Ghanayem reviewed her MRI imaging which he stated showed some degenerative changes and a small disc protrusion at L5-S1 on the right side, not on her symptomatic left side.

Dr. Ghanayem's initial clinical impression was that Petitioner probably had a component of SI joint dysfunction and/or sacral sprain. However, the doctor watched Petitioner after the IME through a second floor window. He observed her walking through the parking lot towards her car. He observed a normal gait pattern, with little difficulty bearing any weight on either leg. She was not leaning off her left side, and when she got into the passenger side of the car, she bent and got in left-side first, putting full

weight on the seat. She sat straight in the car as he watched and pulled out of the parking spot.

Dr. Ghanayem diagnosis was not SI joint sprain or strain. He stated that if Petitioner had a real injury back in May that it would have been some sort of back sprain. He believed Petitioner is magnifying her symptoms and/or malingering. He noted that what she demonstrated in the exam room could not have resolved in the few minutes it took to leave the second floor and get into the parking lot. Therefore, he opined she was at MMI and did not require further medical care. Petitioner should return back to work at regular duty. Dr. Ghanayem opined that Petitioner has no residual disability relative to her work injury.

On July 25, 2022 Petitioner began physical therapy at Midwest Orthopedics which continued through October 14, 2022 (PX #4). On October 14 Petitioner's pain was 2/10 but any bending, sitting, and reaching increases her symptoms down her left anterior leg.

On August 8, 2022 Petitioner was seen by Physician Assistant Joseph Samuels at Midwest Orthopedics at RUSH (PX #4). PA Samuels noted she was seen about a month ago when physical therapy, meloxicam, and Flexeril were recommended. She was better but she felt it is a slower process than she anticipated. She still gets pain primarily in the left lower back radiating into the left buttock, the left anterior thigh, and down the posterior left calf. She reported that recently she had some pain on the right side of her low back, although the primary pain is left-sided. PA Samuels noted prior imaging revealed a small L5-S1 disc bulge and some right-sided foraminal stenosis, but no significant left-sided stenosis. The diagnosis remained low back pain and stenosis. She was to continue with physical therapy and the same medications. She was restricted from working. PA Samuels considered an epidural if not better but did not consider surgery.

On September 7, 2022 Petitioner returned to PA Samuels. He noted she had 5 or so sessions of physical therapy. She was then seen by an IME doctor, who said she no longer needed any therapy. PA Samuels noted her back pain has regressed and persisted since that time. It is in the bilateral lumbar region, left greater than right. It occasionally goes into the left buttock and left anterior thigh. Her pain is worse when extending backwards. The assessment remained the same.

PA Samuels wrote that he significantly disagreed with the IME doctor regarding his recommendation for no further treatment. PA Samuels added that even in the setting of a sprain/strain injury, at least 12 sessions of physical therapy are required to get patients back to a functional level. The interruption in therapy with only 5 sessions had been a setback for her. PA Samuels opined that Petitioner did not show any signs of malingering or secondary gain today. Petitioner would benefit from another 12 sessions of continuous physical therapy 2-3 times a week and should remain off work during that time. He noted if her pain persists, she could be a candidate for an SI joint injection. PA

Samuels indicated he did not anticipate surgical intervention, but she should have the proper conservative care.

CONCLUSIONS OF LAW

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

The Arbitrator finds that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. The primary basis for this finding is Petitioner's lack of credibility.

Petitioner testified that she was injured on the job on May 12, 2022 while installing snow fencing. She testified that she reported her injury to her supervisor the next day. No accident or incident report was offered in evidence. On the direct examination petitioner testified that she first received medical attention on March 17 at Concentra. However, on cross-examination Petitioner admitted that she was seen with low back pain complaints at WorkNow on May 14, 2022, confirmed by Respondent's Exhibit #2.

The WorkNow records documented Petitioner's history of injury from working in a warehouse which required a lot of repetitive activity. When confronted with this history on cross-examination Petitioner specifically denied have you worked in a warehouse. She testified that she gave a history at work now of being injured while working on a snow fence. When Petitioner sought care at Concentra she did not disclose her consultation at work now on May 14. Likewise, when Petitioner sought care at Midwest Orthopaedics at RUSH she did not disclose her consultation at work now on May 14.

The Arbitrator finds Petitioner lacked credibility for one, not testifying on direct examination about her consultation at WorkNow on May 14, 2022, and two, for not disclosing this history to her subsequent treating physicians as well as not disclosing this history to respondents IME examiner.

In addition, on direct examination Petitioner testified that she consulted with Dr. Matthew Colman at Midwest Orthopaedics at RUSH. She specifically testified that she saw Dr. Colman on August 8, September 7, and October 19, 2022. However, on cross examination petitioner acknowledge that she did not see Dr. Colman on those dates, rather Physician Assistant Joseph Samuels rendered care, confirmed by Petitioner's Exhibit #4. This demonstrates Petitioner's questionable reliability as a historian.

More telling on Petitioner's credibility is the observations of Dr. Ghanayem following his IME on July 14, 2022. Dr. Ghanayem conducted a clinical examination of Petitioner which he noted his findings in his narrative report, RX #1. However, following his IME, Dr. Ghanayem observed Petitioner through his office window as she returned to

her car in the facility parking lot. He then observed movement and behavior by Petitioner which was inconsistent with her history of complaints and limitations as well as clinical findings at the IME. Dr. Ghanayem then concluded that at best petitioner had magnified her complaints or, at worst, was malingering.

For these reasons of withholding or failing to report her full medical history, being an unreliable historian of her medical care, and exhibiting evidence of symptom magnification or malingering, the Arbitrator finds Petitioner lacks credibility. Based on this lack of credibility, the Arbitrator, as noted above, finds that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment.

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

As noted above, the Arbitrator found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. Therefore, this issue is mooted.

However, the Arbitrator notes that any opinion regarding causation must necessarily rely on the accuracy and reliability of the patient's history and complaints. Given the finding that Petitioner lacked credibility, any opinion of treating healthcare providers is of questionable reliability itself. No opinion can be reliable or persuasive if based on incomplete facts unreliable reporting by the patient.

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?*

As noted above, the Arbitrator found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. Therefore, this issue is mooted.

The Arbitrator found Petitioner lacked credibility and therefore failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. Accordingly, this issue is mooted.

Further, any decision regarding reasonable and necessary medical care must necessarily rely on the accuracy and reliability of a patient's history and complaints. Inasmuch as Petitioner lacked credibility and reliability of a reporter of her history and complaints, the Arbitrator finds that Petitioner failed to prove that the medical services she received and the charges for those services were reasonable and necessary.

K: *What temporary benefits are in dispute? TTD*

As noted above, the Arbitrator found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. Therefore, this issue is mooted.

However, the Arbitrator notes that Petitioner claims entitlement to total temporary disability benefits beginning on May 13, 2022. Petitioner presented no evidence that a physician or other health care provider directed her to take off work on May 13 or that she delivered such notice Respondent. Petitioner was first given work restrictions at Concentra on May 17, 2022. But, the Arbitrator notes such restrictions would have necessarily been reliant on the accuracy and reliability of Petitioner's history and complaints. Having found Petitioner lacked credibility it follows that Petitioner failed to prove that she was entitled to total temporary disability benefits.

O: *Is Petitioner entitled to prospective medical care?*

As noted above, the Arbitrator found that Petitioner failed to prove that she sustained an accidental injury that arose out of and in the course of her employment. Therefore, this issue is mooted.

Regardless of the mooting of this issue, the recommended prospective medical care included additional physical therapy as well as a potential SI joint injection. This recommendation was made by Physician Assistant Samuels. The Arbitrator notes that physicians assistants often assess patients conditions and recommend treatment plans Which often include physical therapy. However, the Arbitrator notes that an SI joint injection is an invasive procedure and was neither suggested nor recommended by a physician. The Arbitrator is uncertain of the scope of physician assistant practice to permit recommending invasive procedures.

Therefore, at the least, Petitioner failed to prove that she is entitled to a prospective SI joint injection.

_____ _____

Steven J. Fruth, Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	94WC026240
Case Name	Kurt D Montgomery v. Caterpillar Logistics
Consolidated Cases	
Proceeding Type	***Remand From Appellate Court, Third Division***
Decision Type	Commission Decision
Commission Decision Number	24IWCC0287
Number of Pages of Decision	7
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Michael D. Block
Respondent Attorney	Kevin Luther, Elizabeth LeBaron

DATE FILED: 6/13/2024

/s/Maria Portela, Commissioner

Signature

24IWCC0287

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KURT MONTGOMERY,

Petitioner,

vs. NO: 94 WC 26240

CATERPILLAR LOGISTICS SERVICES, INC.,

Respondent.

DECISION AND ORDER ON 8(a) PETITION ON REMAND

This matter now comes before the Commission on a second Remand Order dated November 15, 2022, from the Appellate Court of Illinois, Third District, Workers' Compensation Commission Division. In said Order, the Appellate Court reversed portions of the Commission's Order of June 26, 2018, and remanded to the Commission with directions to determine the following:

1) Whether the proposed prospective medical services and pharmaceuticals itemized in the life care plan are necessary;
2) Whether their projected costs are reasonable; and
3) Enter an order for prospective medical care and/or pharmaceuticals, if any, in accordance with those findings.

The Court affirmed that Petitioner failed to prove his radiculopathy was causally connected to the work accident and that penalties and fees on previously unpaid medical expenses were moot.

The Commission makes the following findings with respect to the necessity of the proposed prospective medical services and pharmaceuticals as itemized in the life care plan:

- Whirlpool and aqua therapy by PT for 1 hour, 5 days per week
    - The Commission denies this line item of the life care plan and orders the Respondent to pay for gym membership with whirlpool access. Dr. Zabiega testified that swimming is one of the treatments that is considered very effective and very helpful in patients who have RSD. (Px57, p. 17) Dr. Gruft opined that aqua therapy on its own would not be beneficial to Petitioner as it would not promote

bone density (Px55, 3/28/17 note). A gym membership with a whirlpool and swimming pool would be a reasonable compromise, especially since the credible medical evidence supports that Petitioner should be engaged in a home exercise program. Additionally, there does not seem to be evidentiary support for this modality 5 days/week for an hour per day. Dr. Zabiega's recommendation was for "at least 2x per week". (Px 57, pp. 41-42)

- Integrated manual therapy for 2 hours, 4 times a week
  - The Commission modifies this line item of the life care plan down to 1 hour, 3 times per week based on the testimony of Dr. Zabiega. (Px57, pp. 37-40)
- PT for 1 hour, 4 times per week
  - The Commission denies this line item as set forth in the life care plan. However, the Commission finds that PT is necessary in the event of a CRPS flare, per the frequency/duration outlined by Dr. Gruft. (PX55, 3/28/17 note)
- Biofeedback for 2 hours, 4 times per week
  - The Commission awards this line item of the life care plan. The Commission finds biofeedback to be medically necessary based on the testimony of Drs. Zabiega and Rubino. Dr. Zabiega – "the more frequent the biofeedback the better." (Px57, pp. 33-35) Dr. Rubino – "biofeedback is not recommended as a standalone treatment but is recommended as an option for a cognitive behavioral therapy." (Px59, p. 18)
- Epidural injections: cervical – 2 per level, 3x/year
  - The Commission denies this line item of the life care plan on the grounds that it is not medically necessary to relieve the effects of this injury, as radiculopathy was not found to be causally connected to the work accident and the Appellate Court affirmed this finding in their Remand Order (¶37 of the 11/15/22 Order)
- Epidural injections: thoracic – 2 per level, 3x/year
  - The Commission denies this line item of the life care plan on the grounds that it is not medically necessary to relieve the effects of this injury, as radiculopathy was not found to be causally connected to the work accident and the Appellate Court affirmed this finding in their Remand Order (¶37 of the 11/15/22 Order)
- Epidural injection: lumbar/sacral – 2 per level, 3x/year
  - The Commission denies this line item of the life care plan on the grounds that it is not medically necessary to relieve the effects of this injury, as radiculopathy was not found to be causally connected to the work accident and the Appellate Court affirmed this finding in their Remand Order (¶37 of the 11/15/22 Order)
- Pain management visits/Dr. Kelly – every month or 12x/year
  - The Commission awards one pain management visit per month in accordance with the recommendation in the life care plan.
- Neurology follow up visits/Dr. Zabiega – every 3 months or 4x/year
  - The Commission denies this line item of the life care plan on the grounds that it is not medically necessary. Neurology follow up visits with Dr. Zabiega are not medically necessary because Petitioner is already under the care of Dr. Kelly, who is also a neurologist.
- GI visits/Dr. Rotnicki – every 4-6 months or 3x/year
  - The Commission awards this line item of the life care plan on the basis it is medically necessary.
- EGD with biopsy – once per year

  - The Commission awards this line item of the life care plan on the basis it is medically necessary.
- Pain psychologist evaluation – once
  - The Commission awards this line item of the life care plan on the basis it is medically necessary.
- Pain psychologist – 20 sessions per life
  - The Commission denies this line item of the life care plan at this time. The Commission finds that until the Petitioner undergoes an initial evaluation with the pain psychologist, the frequency and duration of medically necessary sessions is speculative.
- MRI lumbar spine without contrast – every 3 years
  - The Commission denies this line item of the life care plan on the grounds that it is not medically necessary to relieve the effects of this injury, as radiculopathy was not found to be causally connected to the work accident and the Appellate Court affirmed this finding in their Remand Order (¶37 of the 11/15/22 Order)
- MRI cervical spine without contrast – every 3 years
  - The Commission denies this line item of the life care plan on the grounds that it is not medically necessary to relieve the effects of this injury, as radiculopathy was not found to be causally connected to the work accident and the Appellate Court affirmed this finding in their Remand Order (¶37 of the 11/15/22 Order)
- MRI thoracic spine without contrast – every 3 years
  - The Commission denies this line item of the life care plan on the grounds that it is not medically necessary to relieve the effects of this injury, as radiculopathy was not found to be causally connected to the work accident and the Appellate Court affirmed this finding in their Remand Order (¶37 of the 11/15/22 Order)
- Lipase – yearly
  - The Commission awards this line item of the life care plan on the basis it is medically necessary.
- CMP (complete metabolic panel) – yearly
  - The Commission awards this line item of the life care plan on the basis it is medically necessary.
- CBC (complete blood count) – yearly
  - The Commission awards this line item of the life care plan on the basis it is medically necessary.
- Hospitalization for pain management, GI issues, etc. – 10 days/year
  - The Commission denies this line item of the life care plan on the basis it is medically unnecessary at this time. It is wholly speculative as to the frequency and duration of hospitalizations the Petitioner may require for pain management, GI issues, etc.
- Lab work – yearly
  - The Commission awards this line item of the life care plan on the basis it is medically necessary.
- Spinal cord stimulator programming – 2x/year
  - The Commission denies this line item of the life care plan on the basis that it is not medically necessary at this time given Petitioner's refusal to undergo spinal cord stimulator implantation.

- Compression gloves – 4 gloves every 6 months
    - The Commission awards this line item of the life care plan on the basis it is medically necessary.
- Compression stockings – 4 stockings every 6 months
    - The Commission awards this line item of the life care plan on the basis it is medically necessary.
- Ketamine infusions – 4 series per year
    - The Commission denies this line item of the life care plan on the basis the Ketamine infusions are not medically necessary at this time. While Dr. Stanton-Hicks recommended Ketamine infusions for CRPS flare-ups, such treatment has not yet been prescribed by any of Petitioner's treating physicians.
- Sympathetic block – no frequency specified.
    - The Commission denies this line item of the life care plan on the basis that the sympathetic blocks are not medically necessary at this time. While Dr. Stanton-Hicks opined this was a necessary diagnostic, it has yet to be prescribed by any of Petitioner's treating physicians.
- Spinal cord stimulator trial – once
    - The Commission denies this line item of the life care plan on the basis that it is not medically necessary at this time given Petitioner's refusal to undergo same.
- Spinal cord stimulation implantation – once
    - The Commission denies this line item of the life care plan on the basis that it is not medically necessary at this time given Petitioner's refusal to undergo same.
- Spinal cord stimulator replacement – every 7 years for 4 times
    - The Commission denies this line item of the life care plan on the basis that it is not medically necessary at this time given Petitioner's refusal to undergo spinal cord stimulator implantation.
- Chronic pain rehab program, inpatient – once
    - The Commission denies this line item of the life care plan on the basis that it is not medically necessary. The Petitioner has already participated in such a program with Dr. Gruft at the From Pain to Wellness Clinic between February 15, 2017 through March 28, 2017.
- Nutritional assessment – initial assessment and 2x/year
    - The Commission awards this line item of the life care plan on the basis it is medically necessary based on opinions of Dr. Gruft. (Px54)
- Home health care – 2 providers 6 hours/day until age 70 for 21 years
    - The Commission denies this line item of the life care plan on the basis it is not medically necessary. This item was included at the request of the Petitioner. There is no credible recommendation at this time that this is necessary treatment for Petitioner. Dr. Gruft opined home health care may be helpful in the form of heavy cleaning, but that basically Petitioner was able to function on his own and complete his activities of daily living.
- Case management – initial evaluation – 2-4 hours
    - The Commission denies this line item of the life care plan on the basis it is not medically necessary. This item was included at the request of the Petitioner. There is no credible recommendation at this time that this is necessary treatment for Petitioner.

- Case management – ongoing management – 4 hours/year
    - The Commission denies this line item of the life care plan on the basis it is not medically necessary. This item was included at the request of the Petitioner. There is no credible recommendation at this time that this is necessary treatment for Petitioner.
- Acupuncture and Chinese medicine – 2 hours, 4x/week
    - The Commission denies this line item of the life care plan on the basis it is not medically necessary based upon Dr. Stanton-Hicks' opinion it is not needed to treat CRPS.
- Baclofen
- Klonopin
- Valium
- Morphine Sulfate Liquid
- Norco
    - The Commission denies the recommendation in the life care plan for prescriptions for Baclofen, Klonopin, Valium, Morphine Sulphate Liquid and Norco. Multiple physicians have opined that Petitioner should not be taking opioids and benzodiazepines together. This combination of medications is not medically necessary as they have poor evidence in the treatment of CRPS and when combined, facilitate tolerance and opioid hyperalgesia. However, the Commission finds that a taper program as recommended by Dr. Gruft and Dr. Stanton-Hicks is medically necessary.
- Lidoderm Patches
    - The Commission denies this line item of the life care plan on the grounds that it is not medically necessary to relieve the effects of this injury, as radiculopathy was not found to be causally connected to the work accident and the Appellate Court affirmed this finding in their Remand Order (¶37 of the 11/15/22 Order)
- Lidocaine external ointment
    - The Commission awards this line item of the life care plan on the basis it is medically necessary.
- Voltaren gel
    - The Commission denies this line item of the life care plan on the grounds that it is not medically necessary to relieve the effects of this injury as applied to knee and other areas not specified.
- Protonix
    - The Commission awards this line item of the life care plan on the basis it is medically necessary, as long as there is a current prescription.
- Zofran
    - The Commission awards this line item of the life care plan on the basis it is medically necessary, as long as there is a current prescription.
- Carafate Suspension
    - The Commission awards this line item of the life care plan on the basis it is medically necessary, as long as there is a current prescription.
- Cyproheptadine (Periactin)
    - The Commission awards this line item of the life care plan on the basis it is medically necessary, as long as there is a current prescription.

- Polyethylene Glycol
    - The Commission awards this line item of the life care plan on the basis it is medically necessary, as long as there is a current prescription.
- Wellbutrin
    - The Commission awards this line item of the life care plan on the basis it is medically necessary.

With respect to those medical services and pharmaceuticals the Commission has found to be medically necessary, the Commission finds these projected costs identified in the Life Care Plan to be reasonable at that time.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay for the above-awarded medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that all other facts findings and conclusions in the Order & Decision on 8(a) Petition of June 26, 2018 are adopted and incorporated herein.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 13, 2024

MEP/dmm
O: 41624
49

/s/ *Maria E. Portela*
Maria E. Portela

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

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC010218
Case Name	Maria Jhesenia Reinoso Vintimilla v. Springhill Suites Chicago-Chinatown
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0288
Number of Pages of Decision	19
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jack R Epstein
Respondent Attorney	Katrina Robinson

DATE FILED: 6/13/2024

/s/Amylee Simonovich, Commissioner

Signature

24IWCC0288

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Maria Jhesenia Reinoso Vintimilla,

Petitioner,

vs. NO: 22 WC 010218

Springhill Suites Chicago-Chinatown,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the accident date listed in the first sentence on page 2 of the Arbitration Decision, from March 30, 2022 to March 23, 2022, to reflect the amendment of the date of accident by Petitioner at the time of hearing. T.51.

The Commission further modifies the "Medical Benefits" section of the Order, striking the words "the billing of". Arbitration Decision, p.2.

Finally, the Commission modifies the last sentence on page 13 of the narrative portion of the Arbitrator's award for issue (J), striking the following language, "Moreover, the Respondent provided no evidence that the medical services provided to the Petitioner were unreasonable or unnecessary."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 3, 2022, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner and her attorney reasonable and necessary medical services pursuant to the fee schedule of Illinois Orthopedic Network, Midwest Specialty Pharmacy, City North Physical Therapy, Methodist Hospital, Thorek Memorial Hospital, Preferred Open MRI and Avante USA for

Chicago Central EM Physicians LLC, as provided in Section 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner and her attorney temporary total disability benefits of $486.67/week for 45 weeks, commencing March 30, 2022 through February 7, 2023, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the right shoulder arthroscopy, rotator cuff repair and subacromial decompression surgery prescribed by Dr. Christos Giannoulias, as well as all post-surgical therapy and follow up care.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $42,000. 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.

June 13, 2024

o: 6/11/2024

AHS/kjj
051

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

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

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC010218
Case Name	Maria Jhesenia Reinoso Vintimilla v. Springhill Suites Chicago-Chinatown
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Jack R Epstein
Respondent Attorney	Katrina Robinson

DATE FILED: 5/3/2023

THE INTEREST RATE FOR THE WEEK OF MAY 2, 2023 4.90%

/s/ Raychel Wesley, Arbitrator

Signature

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

)SS.
COUNTY OF **Cook**)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Maria Jhesenia Reinoso Vintimilla
Employee/Petitioner

v.

Springhill Suites Chicago-Chinatown
Employer/Respondent

Case # **22** WC **010218**

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 **Raychel Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **February 7, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, March 30, 2022, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**24,820.00**; the average weekly wage was $**730.00**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **one** dependent child.

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

Respondent shall be given a credit of $**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

Medical benefits

Respondent shall pay to the Petitioner and her attorney the billing of all reasonable and necessary medical services, pursuant to the medical fee schedule of Illinois Orthopedic Network, Midwest Specialty Pharmacy, City North Physical Therapy, Methodist Hospital, Thorek Memorial Hospital, Preferred Open MRI, and Avante USA for Chicago Central EM Physicians LL, as provided in Sections 8(a) and 8.2 of the Act.

Prospective medical benefits

Respondent shall pay and is ordered to approve the surgical procedure prescribed by Dr. Christos Giannoulias and all post-surgical therapy and follow-up care.

Temporary Total Disability

Respondent shall pay the Petitioner and her attorney temporary total disability benefits of $486.67/week for 45 weeks, commencing March 30, 2022, through February 7, 2023, as provided in Section 8(b) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

/s/ Raychel A. Wesley **MAY 3, 2023**

Signature of Arbitrator

Maria Jhesenia Reinoso Vintimilla v.
Springhill Suites Chicago-Chinatown

This cause was called for trial on February 7, 2023, before the Honorable Raychel Wesley, Arbitrator at the Illinois Workers' Compensation Commission. Jack R. Epstein appeared on behalf of the Petitioner, Maria Jhesenia Reinoso Vintimilla (hereinafter the "Petitioner"), and Katrina L. Robinson appeared on behalf of the Respondent, Springhill Suites Chicago-Chinatown (hereinafter the "Respondent").

The issues at the hearing were as follows: whether the Petitioner sustained accidental injuries that arose out of and in the course of her employment; whether the Petitioner's current condition of ill-being is causally connected to the injury; the amount owed by the Respondent for unpaid medical bills; the amount owed by the Respondent for unpaid Temporary Total Disability; and whether the Respondent is responsible for payment of future medical expenses and medical treatment.

FINDINGS OF FACT

Petitioner's Medical Treatment

On March 30, 2022, the Petitioner presented to the Emergency Room at Methodist Hospital of Chicago (hereinafter "Methodist Hospital"). Dr. Nathan Sandalow saw the Petitioner. Dr. Sandalow took a history from the Petitioner. Dr. Sandalow diagnosed the Petitioner with a right shoulder muscle strain. Dr. Sandalow instructed the Petitioner to do no heavy lifting until her symptoms improved and to return to the nearest emergency room immediately for any worsening symptoms or other concerns. Dr. Sandalow also instructed the Petitioner to take Acetaminophen and Ibuprofen every 6 hours for pain. (P. Ex. 1) (P. Ex. 3 p. 2-7).

On April 7, 2022, the Petitioner presented to Thorek Memorial Hospital (hereinafter "Thorek Hospital") and was seen by Dr. Tina Zhu. Dr. Zhu took a history from the Petitioner. The Petitioner reported right shoulder pain that began approximately ten months prior. The Petitioner described that her pain was triggered "mostly with activity." (P. Ex. 3). The pain radiated from the right side of the Petitioner's neck and into her right shoulder. The Petitioner reported severe and worsening pain. Dr. Zhu's physical exam noted pain with movement and tenderness over the trapezius, deltoid, and right clavicle. After reviewing radiology, Dr. Zhu diagnosed the Petitioner with chronic right shoulder pain or a shoulder strain. Dr. Zhu prescribed Cyclobenzaprine (Flexeril). Dr. Zhu also gave the Petitioner a physical therapy referral and a work excuse note. (P. Ex. 2).

On April 11, 2022, the Petitioner returned to Thorek Hospital and was again seen by Dr. Zhu. Dr. Zhu reviewed the Petitioner's x-ray. Dr. Zhu indicated that the Petitioner's condition was unchanged from the last visit. The Petitioner received documentation of her diagnosis and a note indicating she could not work. (P. Ex. 2. p. 8-10).

On April 18, 2022, the Petitioner presented to Illinois Orthopedic Network (hereinafter "ION") for an initial consultation and was seen by Dr. Eugene Lipov. Dr. Lipov reported that the Petitioner's right shoulder pain began approximately six weeks before she visited Methodist Hospital. The Petitioner rated her pain as a 9/10. Dr. Lipov's right shoulder examination revealed tenderness along the A.C. joint. The Petitioner had a range of motion of 150 degrees of forward flexion, 60 degrees in extension and internal rotation to the L1 level with pain, and a positive impingement sign with internal rotation. Dr. Lipov diagnosed the Petitioner with a "work-related right shoulder injury caused by repetitive motion at work for the Respondent. Dr. Lipov ordered an MRI of the right shoulder and provided the Petitioner with a referral for physical therapy and a prescription for pain medication. (P. Ex. 3 p. 18-19) (P. Ex 4. P. 40-41).

On May 10, 2022, the Petitioner underwent a phone follow-up consultation with Dr. Lipov. Dr. Lipov indicated that the Petitioner reported that she had not noticed any significant improvement and rated her pain as a 10/10. Dr. Lipov again recommended a right shoulder MRI as the Petitioner had not significantly improved with conservative management. Dr. Lipov also paused the physical therapy relative to her right shoulder injury but did continue physical therapy for her neck. (P. Ex. 3 p. 22-23) (P. Ex. 4 p. 37).

On May 13, 2022, the Petitioner underwent an MRI of the right shoulder without contrast at Preferred Open MRI. Dr. Amar Shah read the MRI and opined that the Petitioner suffered from a focal full-thickness insertional tear of the distal supraspinatus tendon, mild hypertrophic acromioclavicular joint arthritis with a type II acromion morphology, and minimal fluid within the subacromial/subdeltoid bursa. (P. Ex. 3 p. 26-27).

On May 26, 2022, the Petitioner returned to ION for an initial consultation regarding her right shoulder with Dr. Christos Giannoulias. Dr. Giannoulias indicated that the Petitioner worked as a housekeeper and started experiencing right shoulder pain. Dr. Giannoulias noted that the Petitioner was less than five feet tall and performed a "significant amount of repetitive" movements while working as a housekeeper. (P. Ex. 3). Dr. Giannoulias noted that the Petitioner performs significant activities over her shoulder level. Dr. Giannoulias's physical exam showed significant right shoulder tenderness. After reviewing the MRI and performing his examination, Dr. Giannoulias diagnosed the Petitioner with a right shoulder full-thickness rotator cuff tear. Dr. Giannoulias recommended rotator cuff repair surgery and indicated that the Petitioner wanted to proceed with surgery. (P. Ex. 3 p. 28) (P. Ex. 4 p. 34).

From April 21, 2022, to June 3, 2022, the Petitioner underwent physical therapy at City North Physical Therapy. (P. Ex. 4).

On June 14, 2022, the Petitioner presented to ION for a follow-up and was seen by Dr. Lipov. The Petitioner reported pain radiating down the right arm, tingling, and numbness, especially at night. Dr. Lipov diagnosed the Petitioner with Cervical pain, Cervicalgia, and cervical radiculopathy. (P. Ex. 3 p. 31).

On June 20, 2022, the Petitioner underwent a cervical spine MRI at Preferred Open MRI. Dr. Amar Shah read the MRI and opined that the Petitioner had mild cervical spondylosis and posterior disc protrusions. (P. Ex. 3 p. 35-36). On June 28, 2022, the Petitioner saw Dr. Lipov. Dr. Lipov indicated that the Petitioner reported

persistent pain and numbness from her neck to her right hand. Dr. Lipov's physical examination noted pain with extension and bending. Dr. Lipov referred the Petitioner for an EMG and indicated she might be a candidate for an interventional procedure for the spine. (P. Ex. 3 p. 37).

On July 12, 2022, the Petitioner had a telephone consultation with Dr. Giannoulias. Dr. Giannoulias indicated that the Petitioner was experiencing 10/10 pain and was eager to proceed with surgery. Dr. Giannoulias continued to recommend surgery. (P. Ex. 3 p. 39).

On July 15, 2022, the Petitioner underwent an EMG with Dr. Jesse Day. Dr. Day's physical exam noted a reduced sensation and indicated that the Petitioner felt weakness, pain, and numbness. Dr. Day ordered the Petitioner to follow up with Dr. Lipov for further recommendations. (P. Ex. 3 p. 41- 46).

On July 18, 2022, the Petitioner presented for an IME examination by Dr. Hythem P. Shadid. Dr. Shadid opined that the Petitioner has preexisting age-related degenerative spine and preexisting degenerative rotator cuff tendinopathy. Dr. Shadid opined that the Petitioner might be magnifying or malingering her symptoms. His reasonings were that the Petitioner's subjective complaints do not correlate with his objective findings and the diagnostic imaging; lack of response to treatment; lack of interest in returning to work; a poor recollection of her medical history; and that her clinical course of symptoms getting worse while off work is inconsistent with natural physiologic processes. Dr. Shadid opined that her previous medical treatment was reasonable, but no further treatment was required as she is now at maximum medical improvement. (R. Ex. 1 p. 15- 29).

On August 2, 2022, the Petitioner presented to ION for a follow-up and was seen by Dr. Lipov. Dr. Lipov indicated the Petitioner was experiencing severe pain, tingling, and numbness. Dr. Lipov's physical exam noted pain on extension and flexion of the cervical spine and a positive Tinel's sign over the wrist. Dr. Lipov referred the Petitioner for a neurological consult and indicated he would review her IME after receiving it. (P. Ex. 3 p. 48).

On August 25, 2022, the Petitioner presented to ION for a follow-up and was seen by Dr. Giannoulias. Dr. Giannoulias reviewed Dr. Shadid's IME report and disagreed with the findings. Dr. Giannoulias indicated that he did not believe that the MRI is a test that can determine a chronic condition. One must look at the patient's complaints and history. Dr. Giannoulias indicated that the Petitioner's reported history and symptoms are consistent with his examination. The Petitioner did not experience symptoms prior to working for the Respondent. Dr. Giannoulias stated that he continues to recommend surgery based on the Petitioner's absent symptoms before her work injury as well as her physical exam findings that have been consistent for the last six months. (P. Ex. 3 p. 50).

On August 31, the Petitioner presented to ION for a follow-up with Dr. Lipov. Dr. Lipov indicated the Petitioner reported experiencing daily debilitating pain. She has been unable to work, and the medications she has tried have not worked. Dr. Lipov recommended the Petitioner proceed with her shoulder surgery and have her neck reevaluated if her symptoms do not resolve with surgery. Dr. Lipov ordered the Petitioner to continue with over-the-counter pain medication and LidoPro ointment. (P. Ex. 3 p. 52).

On December 8, 2022, the Petitioner presented to ION for a reevaluation and was seen by Dr. Giannoulias. Dr. Giannoulias's physical exam of the right shoulder noted pain, limited strength, limited range of motion, and positive impingement signs. Dr. Giannoulias continued to recommend surgery as the Petitioner remained significantly symptomatic. Dr. Giannoulias advised her to continue with a home exercise program and to stay off work. (P. Ex. 3 p. 56).

Petitioner's Testimony

The Petitioner testified that, from the time she began working at age 25 until the time of the injury, she never had any problems with her arm or right shoulder (Tx. 12-13), and she never had any other accidents to her right shoulder prior to working for the Respondent. (Tx. 25). The Petitioner testified that she works as a housekeeper for the Respondent. The Petitioner testified that she was required to clean 13 rooms daily, and sometimes she would have to clean more, even as many as 16 or 17 rooms in one day. She worked five days a week, sometimes more. (Tx. 22).

The Petitioner testified that when cleaning each room, she was required to: make the beds, clean the bathroom, clean the showerheads and glass doors, all of which were too tall for her height, pull out all the sofa cushions and the sofa bed to check for garbage and then close it. She had two carts that she had to push with her, one for cleaning supplies and one for dirty laundry. (Tx. 14-15).

The Petitioner testified that she was required to clean items above her shoulder height, specifically the shower head and air vent. (Tx. 15). The Petitioner testified that she was required to scrub the bathrooms and bathtubs. (Tx. 16).

The Petitioner testified that she had to remove dirty sheets daily, put on new sheets, and then carry all the sheets and towels from every room and put those in her cart. (Tx. 16). When the cart became full, she would take them to the laundry room and ask the people there to empty the cart (Tx. 17) and then put new sheets and towels on the cart herself (Tx. 18).

The Petitioner testified that the cart was tall, reaching her neck. Because of her short height, when she had to empty the towels herself, she had to partially get onto the cart with her foot and bend inwards to get the sheets and towels out, using her right arm. (Tx. 17-18). The Petitioner testified that she had to reach above shoulder height to get the sheets and cleaning supplies and pull them out of their shelves. (Tx. 19).

The Petitioner testified that she eventually began to feel pain in her right shoulder. (Tx. 20). She testified that she complained to her supervisors, Maria and Anna, multiple times throughout February 2022, but they did not offer her any help. (Tx. 21, 31-32). The Petitioner testified that she never had any assistance and did her work herself. (Tx. 22).

The Petitioner testified that the pain in her right shoulder began slowly (Tx. 22) and worsened over time. She testified that it started with arm pain and could not lift her right arm to clean the shower and the glass doors. When she went to remove and change the sheets, the pain began even more in her right shoulder. (Tx. 23).

The Petitioner testified that Dr. Giannoulias told her she needed surgery on her right arm. (Tx. 25). The Petitioner testified that she wants to proceed with the surgery recommended by Dr. Giannoulias. (Tx. 26).

The Petitioner testified that she is currently feeling the same pain she was feeling on March 30, 2022, which she started to feel after working for the Respondent. (Tx. 26).

The Petitioner testified that she went to see Dr. Shadid on behalf of the insurance company and that the exam took an hour. (Tx. 26).

The Petitioner testified that she has not worked since March 30, 2022. (Tx. 27). The Petitioner testified that on March 30, 2022, she could no longer take the pain as it was so extreme. (Tx. 35).

The Petitioner testified that she had not received any money from the insurance company, and none of the medical bills had been paid. She testified that she never made another claim for her right shoulder. (Tx. 27). Because of this, she has been living off her husband's income. (Tx. 29).

The Petitioner testified that before her injury, she had never seen any medical providers for her right shoulder or arm. (Tx. 29).

The Petitioner testified that the cart is taller than her when pushing the cart with sheets. (Tx. 29), and she has to lean to the side to see. She testified that she pushes two carts at the same time with her right arm. (Tx. 30). The Petitioner testified that every day she worked, she asked for help from a "houseman." (Tx. 32).

The Petitioner testified that she left work early on March 23, 2022, due to shoulder pain, her last day. She told a manager she needed to see a doctor, but the manager still wanted her to work the next day. When the Petitioner told her manager that she wanted to see a doctor first, her manager told her no. (Tx. 36).

The Petitioner testified that, on March 26, 2022, she sent the Respondent pictures of her right shoulder and arm showing bruising. (Tx. 37) The Petitioner testified that the bruising resulted from the swelling in her arm. (Tx. 28).

The Petitioner testified that she already had pain, which worsened when she slipped and braced herself between a door and a counter using her right arm. The Petitioner testified that she told each treating physician about the incident. (Tx. 44).

On the day of her testimony, the Petitioner had her arm in a sling, which she testified was given to her at physical therapy. (Tx. 46).

The Petitioner testified she uses an interpreter when speaking to her doctors. (Tx. 47).

The Petitioner testified that she went to Thorek Hospital when her pain would not disappear and paid for her bill out of pocket. (Tx. 50).

Dr. Christos Giannoulias Testimony

Dr. Giannoulias testified that he first saw the Petitioner on May 26, 2022, when she presented to his office with complaints of right shoulder pain that began on March 30, 2022. The Petitioner reported to Dr. Giannoulias that she worked as a housekeeper, requiring significant work at the shoulder level or above. (Tx. 7).

Dr. Giannoulias testified that he reviewed the Petitioner's MRI and noted a full-thickness rotator cuff tear. (Tx. 8). Dr. Giannoulias testified that the objective findings on the MRI were consistent with the Petitioner's subjective complaints and the objective findings on the physical exam. (Tx. 9).

Dr. Giannoulias testified that, after examining the Petitioner and her records, given that she had a full-thickness rotator cuff tear and dysfunction after months of physical therapy, he recommended surgery. (Tx. 9).

Dr. Giannoulias testified that it is his opinion that the Petitioner's condition is the result of a work-related injury. He testified that based on the Petitioner's history, job requirements, and the absence of any other prior problems, he believed her job was related to the rotator cuff diagnosis and the subsequent need for surgery. (Tx. 10-11).

Dr. Giannoulias testified that he disagreed with the findings of the independent medical examiner. He testified that the times he examined the Petitioner, she had positive objective findings. She had positive Neer's and Hawkin's tests and an MRI showing a rotator cuff tear. The Petitioner's reported mechanism of injury is consistent with a rotator cuff problem, and he never felt that she was malingering or faking her symptoms. (Tx. 12).

Dr. Giannoulias testified that, as of his last examination of the Petitioner, he still recommended rotator cuff repair surgery. (Tx. 13).

Dr. Giannoulias testified that the Petitioner did not speak to him about anything regarding her case or any pending litigation with him. He knew that the independent medical examination denied her surgery, but that was the only thing ever communicated to him from the Petitioner. (Tx. 16).

Dr. Giannoulias testified that he rarely does medico-legal work, only a few independent medical examinations a month. He testified that he typically sees 400 patients monthly and does approximately 200 surgeries a year. Of those surgeries, about 60% are shoulder patients. (Tx. 17-18).

Dr. Hythem Shadid's Testimony

Dr. Shadid testifies that he does about 200 independent medical examinations annually, sees about 160 patients a week, and performs about 10-12 surgeries per week. (Tx. 7).

Dr. Shadid testified that he performed an IME of the Petitioner on July 18, 2022. Dr. Shadid testified that he took a complete history from the Petitioner and that the results of his physical exam were all normal. (Tx. 7-12).

Dr. Shadid testified that it is his opinion that the Petitioner's injury is not related to her work. He opined that the mechanism of injury and symptoms are inconsistent with a rotator cuff condition, the clinical course was inconsistent with the rotator cuff tear, and a rotator cuff tear would have been debilitating immediately rather than gradually worsening over time. (Tx. 14-16).

Dr. Shadid testified that he believes the MRI findings are consistent with an age-related natural history of rotator cuff disease, and there was no evidence of an acute injury. The Petitioner's MRI showed minimal fluid buildup, whereas an acute injury would show a lot of fluid or edema buildup. (Tx. 16-18).

Dr. Shadid testified that the Petitioner might have been magnifying and misrepresenting her symptoms. He testified that the Petitioner was a poor historian, there was a lack of correlation between her subjective complaints and his exam, she lacked interest in returning to work, and her symptoms worsening is inconsistent with natural physiologic processes. (Tx. 19-21).

Dr. Shadid testified that the Petitioner's medical treatments were necessary and reasonable but that no further treatment was required for her work injury. (Tx. 22).

Dr. Shadid testified that most of the independent medical examinations he performs are on behalf of respondents. (Tx. 26). Dr. Shadid testified that he was paid a fee to conduct an IME exam. (Tx. 28).

Dr. Shadid testified that he spent 90 minutes reviewing the Petitioner's records. He testified that he spent 30 minutes examining the Petitioner (Tx. 27), and she cooperated throughout the exam. (Tx. 30).

Sharon Espino Testimony

Espino testified that she is the general manager for the Respondent and has been for approximately 28 years. (Tx. 53). Espino testified that United Temps is an employer partner of their management company. (Tx. 53-54).

Espino testified that her job entails overseeing the hotel, from operations to sales to revenue management and guests, taking care of guests and employees. (Tx. 54).

Espino testified that it was not a part of the Petitioner's job to strip sheets. It is the job of a "houseperson" to strip the sheets and take them to the housekeepers at times, help them bring them to the laundry, and refresh guest rooms. Generally, one "houseperson" per day strips all of the rooms. (Tx. 55).

Espino testified that the carts reach her shoulder height and that she is five feet tall. (Tx. 56). Espino testified that it varies between housekeepers and a "houseperson" who takes care of the dirty sheets, puts them in the cart, and into the laundry chute that goes down to the laundry. (Tx. 56-57).

Espino testified that there are two types of rooms; one with one king bed and another with two queen beds. The cleaning process would be the same. The housekeeper would make the beds, vacuum, and clean the bathroom. Espino testified that the cleaning process would be different if the room were a checkout room. (Tx. 57)

Checkout rooms require complete cleaning; a stay-over would be a refresh. Espino testified that refreshing a room involves removing the trash and replacing the towels, which only takes 10 to 15 minutes (Tx. 57). The estimated time is 30 minutes for a complete clean. (Tx. 58).

Espino testified that some cleaning activities are at or above shoulder height. These include the mirror, the high areas of the shower, and some dusting. For dusting, they are supplied with an extender for the Swiffer to help them reach. (Tx. 58).

Espino testified that the Petitioner left early on March 23, 2022, due to right shoulder pain. (Tx. 60). Espino testified that the Petitioner was sent FMLA paperwork but never completed it. (Tx. 65).

Espino testified that she first found out about the Petitioner's workers comp claim on April 18, 2022, when she received a call from a clinic requesting information. (Tx. 65).

Espino testified that she never saw the Petitioner carrying shingles, had never been to any of the Petitioner's husband's job sites and has no independent knowledge of whether or not she was carrying shingles. (Tx. 66).

Espino testified that a housekeeping manager and supervisor are responsible for ensuring that all six floors are cleaned properly. (Tx. 68). Espino testified that Anna is the housekeeping manager. There are two supervisors below Anna, and then she is above Anna. If there is an issue regarding cleaning a room, that concern is brought to the supervisor, who would then bring it to Anna, and Anna would bring it to her. (Tx. 69).

Espino testified that she is responsible for housekeeping, the front desk, reservations, checkout, and everything in the immediate area outside the property. (Tx. 70). Espino testified that she relies on Anna to ensure all the rooms are properly cleaned, and Anna relies on the supervisors. She does not give direct orders about specific

rooms to housekeepers and the "houseperson," as that is all done through Anna and the supervisors. She is not present when that is done. (Tx. 71).

Espino testified that she does not dispute the Petitioner's testimony that she had to clean the shower, tub, air vents, windows, and carpets. (Tx. 72-73).

Espino testified that the sheets are not changed during a room refresh unless the guest specifically requests it, in which case a housekeeper would do it. (Tx. 74-75). This would be communicated directly to the housekeeper through Anna or the supervisor, not Espino. (Tx. 76-77).

Espino testified that she only speaks a little Spanish, so her instructions were relayed through Anna, who speaks Spanish, to the Spanish-speaking housekeepers. (Tx. 77).

Espino testified that she was never made aware in February or March of 2022 that the Petitioner was complaining of right shoulder pain. The photos (R. Ex. 3) were sent to Anna, as was all other communication. (Tx. 78).

CONCLUSIONS OF LAW

Regarding issue (C), Whether the Petitioner sustained an accidental injury that arose out of and in the course of her employment, the Arbitrator finds as follows:

The Arbitrator finds the Petitioner proved by a preponderance of the evidence that she sustained an accident that arose out and in the course of her employment. The Petitioner suffered an injury while performing tasks that caused an injury to her right shoulder through repetitive lifting, including tasks involving lifting items above shoulder level. The Petitioner testified she was asked to perform tasks such as pushing carts, placing and removing towels in carts above shoulder height, cleaning showers and vents above shoulder height, pushing and pulling carts, and placing and removing items from shelves at or above shoulder height. Petitioner was injured within the time period of employment at a place where the employee can reasonably be expected to be in the performance of her duties and while performing her job duties. The Arbitrator finds Petitioner's testimony and the histories she provided to her treating doctors were both credible and consistent. The Arbitrator finds the totality of the evidence establishes that Petitioner sustained a work-related repetitive injury to her right shoulder.

Regarding issue (F), Whether the Petitioner's current condition of ill-being is causally related to her employment injury, the Arbitrator finds as follows:

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill.2d 30, 36-37. When a worker's physical structures, diseased or not, give way under the stress of their usual tasks,

the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n*, 89 Ill.2d 432, 60 Ill.Dec. 629, 433 N.E.2d 671 (1982). When an employee with a pre-existing condition is injured in the course of his employment, the Commission must decide whether there was an accidental injury that arose out of the employment, whether the accidental injury aggravated or accelerated the pre-existing condition, or whether the pre-existing condition alone was the cause of the injury. *Sisbro, Inc. Industrial Comm'n*, 207 Ill.2d 193, 278 Ill.Dec. 70,797 N.E.2d 665, (2003).

In this case, the Respondent alleges the Petitioner's right shoulder problems are age-related and pre-existing. Respondent's Section 12 examiner, Dr. Shadid, testified that he believes the Petitioner suffers from right rotator cuff tendinopathy and a full-thickness tear of the supraspinatus tendon. (R. Ex. 1, p 13). However, Dr. Shadid believes these injuries were pre-existing, degenerative, and unrelated to her work for the Respondent.

Work activity is a sufficient cause of the aggravation of a pre-existing condition if the work activity presented risks greater than those to which the general public is exposed. *Twice Over Clean, Inc. v. The Industrial Commission*, 809 N.E.2d 778 (Ill.App.3 Dist. 2004). "When the claimant's version of the accident is uncontradicted, and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award." *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982). Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before the accident and decreased ability to still perform immediately after an accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill.2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96-97, 197 Ill. Dec. 502, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 666, Ill. Dec. 347, 442 N.E.2d 908 (1982).

The Arbitrator has carefully reviewed and considered all medical evidence along with all testimony. The Arbitrator concludes Petitioner has proven by the preponderance of the credible evidence that her right shoulder condition is causally related to her work for the Respondent.

It is undisputed that Petitioner was working full duty without incident prior to her repetitive injury on March 23, 2022. Petitioner credibly testified that she suffered no injury or had symptoms in her right shoulder before that date. There is no evidence in the record that Petitioner had shoulder symptoms, required any treatment, or underwent diagnostic studies before March 23, 2022. Petitioner testified she injured her right shoulder while performing her housekeeping duties and carefully described the tasks she was asked to perform, all of which the Arbitrator finds could have caused the injury to the Petitioner's right shoulder. "When the claimant's version of the accident is uncontradicted, and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award." *International Harvester*, 93 Ill.2d 59, 63-64 (1982).

The Arbitrator is not persuaded by the opinions of Dr. Shadid, who performed the Section 12 examination. Dr. Shadid opined Petitioner's right shoulder condition was pre-existing and age-related. The notes that Dr. Shadid failed to address whether Petitioner's repetitive and over-the-shoulder work aggravated or accelerated the alleged pre-existing condition or whether the alleged pre-existing condition alone was the cause of Petitioner's injury. Petitioner told Dr. Shadid she experienced pain in her right shoulder after working as a housekeeper.

Moreover, while there was testimony that the Petitioner may have also injured her right shoulder after falling, it is clear to the Arbitrator that this was simply an incidental occurrence and the cause of the Petitioner's right shoulder condition is the repetitive trauma the Petitioner suffered while working for the Respondent.

Also, there was some testimony that the Petitioner may have suffered a right shoulder injury while working with her husband. Petitioner denied this, and the Respondent provided no concrete evidence of another cause of the Petitioner's right shoulder injury. There is no evidence in the record supporting the allegation that the Petitioner suffered a right shoulder injury in any manner other than while working for the Respondent. Moreover, the Petitioner presented evidence of Dr. Giannuoulias, who corroborates the Petitioner's version of the events and opines that the Petitioner's right shoulder condition is work-related.

Petitioner has also presented sufficient evidence of a chain of events that connects her right shoulder condition to her injury. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 922 (1982).

Based on the totality of the evidence, the Arbitrator finds that the Petitioner's right shoulder condition is causally connected to her injury working for the Respondent.

Regarding issue (J), were the medical services that were provided to Petitioner reasonable and necessary, the Arbitrator finds as follows, and issue (K) Whether Petitioner is entitled to future medical expenses and approval for future surgery, the Arbitrator finds as follows:

Section 8(a) of the Act states a Respondent is responsible "…for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990); *Plantation Mfg. Co. v. Industrial Comm'n*, 294 Ill. App.3d 705, 691 N.E.2d. 13 (1997); *F & B Mfg. Co. v. Industrial Comm'n*, 325 Ill.App.3d 527, 758 N.E.2d 18 (2001).

Respondent disputed liability for the medical bills based upon accident and causation. As the Arbitrator found that the Petitioner has proven both accident and causation, the Arbitrator finds Petitioner proved by the preponderance of the evidence the medical treatment she received was related and reasonably required to cure or relieve Petitioner from the effects of her accidental injury. Moreover, the Respondent provided no evidence that the medical services provided to the Petitioner were unreasonable or unnecessary.

In making this finding, the Arbitrator specifically finds the opinion of Dr. Shadid, who indicated that the Petitioner was at MMI and able to return to work full duty after his examination, is not persuasive. Dr. Shadid

ignored the Petitioner's obvious complaints of pain and the MRI evidencing a torn rotator cuff. Instead, the Arbitrator finds persuasive the opinions of the Petitioner's treating physicians, all of whom either placed the Petitioner off work or gave the Petitioner work restrictions. The Arbitrator finds persuasive the opinions of Dr. Giannoulias, who opined that the Petitioner's right shoulder condition was work-related and required shoulder surgery.

The Arbitrator finds that the Petitioner's care and treatment have been reasonable and necessary. Thus the medical bills submitted by the Petitioner for payment are medically reasonable and necessary. As such, the Respondent shall pay the following medical bills, pursuant to Sections 8.2 and 8 (a) of the Act and subject to the Fee Schedule to the Petitioner and her attorney:

ION: $6,785.79
Midwest Specialty Pharmacy: $1,435.00
City North Physical Therapy: $7,972.81
Methodist Hospital: $445.75
Thorek Memorial Hospital (paid by petitioner): $200.00
Preferred Open MRI: $2,100.00
Avante USA for Chicago Central EM Physicians LLP: $747.00

TOTAL $19,686.35

Further, Respondent shall be given credit for all medical bills that have been paid, and Respondent shall hold Petitioner harmless from any claims by medical bills for which Respondent claims a credit pursuant to Section 8(j) of the Act.

The Arbitrator also finds that the Respondent shall pay for the treatment and surgery recommended by Dr. Giannoulias.

Regarding issue (L), Whether Petitioner is entitled to Temporary Total Disability benefits, the Arbitrator finds as follows:

To recover temporary total disability benefits, a claimant must prove by a preponderance of the evidence that the injuries arose out of and in the course of her employment and that the claimant had a resultant incapacity to work. *Pemble v. Industrial Comm'n*, 181 App.3d 409, 536 N.E.2d 1349 (1989). In this case, the Petitioner was placed off work or on limited duties by her treating physicians from March 30, 2022, through the date of the Hearing, February 7, 2023. Initially, the Respondent did not offer the Petitioner a light-duty position, and then later, her treating physicians took the Petitioner off work.

In making this finding, the Arbitrator specifically does not find persuasive the opinion of Dr. Shadid, who indicated that the Petitioner was at MMI and able to return to work full duty after his examination. Dr. Shadid ignored the Petitioner's obvious complaints of pain and the MRI evidencing a torn rotator cuff. Instead, the

Arbitrator finds persuasive the opinions of the Petitioner's treating physicians, all of whom either placed the Petitioner off work or gave the Petitioner work restrictions.

After considering the Petitioner's testimony and medical evidence, the Arbitrator finds that the Respondent is liable for Temporary Total Disability benefits from March 30, 2022, through the date of the Hearing, February 7, 2023, or 45 weeks, at the Petitioner's Temporary Total Disability rate of $486.67 per week.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC004949
Case Name	Melinda Cottle v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0289
Number of Pages of Decision	20
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	James Hardy
Respondent Attorney	Melissa Soso

DATE FILED: 6/14/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Melinda Cottle,

Petitioner,

vs. NO. 18WC004949

City of Chicago,

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 medical expenses, causal connection, maximum medical improvement date, temporary disability, permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 30, 2023, is hereby affirmed and adopted.

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

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

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

June 14, 2024
SJM/sj
o-6/5/2024
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC004949
Case Name	Melinda Cottle v. City of Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	James Hardy
Respondent Attorney	Donald Chittick

DATE FILED: 6/30/2023

/s/Crystal Caison, Arbitrator

Signature

INTEREST RATE WEEK OF JUNE 27, 2023 5.21%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Melinda Cottle
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **18** WC **4949**

Consolidated cases: **n/a**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago**, on **11/29/22**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

Case No. 18WC04949

FINDINGS

On **6/15/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**83,445.04**; the average weekly wage was $**1,604.71**.

On the date of accident, Petitioner was **44** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**39,126.31** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**39,126.31**.

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

ORDER

The Arbitrator finds that while Petitioner has established that her initial right ankle sprain and treatment through Dr. Holmes 1/31/18 release are causally related to the 6/15/17 accident, Petitioner has failed to prove that any of her other alleged ongoing conditions are causally related to the accident.

The Arbitrator finds that Respondent has paid all appropriate charges for all reasonable and necessary medical services, and nothing further is due.

The Arbitrator finds that Petitioner is entitled to TTD from 6/20/17 through 3/2/18 for a total of 36 and 4/7 weeks.

The Arbitrator finds that as a result of the injuries sustained, Petitioner is entitled to have and receive from Respondent 8.35 weeks at a rate of $775.18 per week because she sustained a 5% loss of use of the right foot.

The Arbitrator finds that Petitioner reached MMI on 1/31/18.

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

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

Crystal L. Caison

Signature of Arbitrator

June 30, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Melinda Cottle	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 18WC004949
City of Chicago	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on November 29, 2022 before Arbitrator Crystal L. Caison. Issues in dispute include causal connection, medical bills, temporary total disability (TTD) benefits, nature and extent and MMI date. (AX 1).

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

On 6/15/17, Petitioner was employed by Respondent as a Construction Laborer for the Department of Water Management. On 6/15/17, Petitioner was 44 years of age and had been employed by Respondent since 2006.

On 6/15/17, Petitioner was on duty at a pipe yard and was loading steel pipes onto a work truck. As Petitioner was descending the ladder on the truck, she twisted her right ankle on the ground, which was covered in gravel, and she experienced pain in her right ankle (PX9, Tr at p. 29-34). Petitioner reported this incident to her supervisor, returned to work the following day, and did not seek medical attention until 6/19/17, four days after the accident.

On 6/19/17, Petitioner presented to Dr. Steven Anderson of MercyWorks for an initial evaluation (Px1). On 6/19/17, Dr. Anderson diagnosed Petitioner with a right ankle sprain and provided her with an ACE wrap and crutches.

On 6/20/17, Petitioner returned to MercyWorks, where Dr. Anderson noted that Petitioner had been noncompliant with usage of the ACE wrap and was only using one of the crutches he provided (Px1). On 6/20/17, Petitioner underwent a right ankle x-ray, which showed no fracture or dislocation. On 6/27/17, Petitioner followed up with Dr. Anderson, who referred Petitioner to a course of physical therapy at Mercy Hospital and Medical Center.

The medical records reveal that Petitioner had seen Dr. Anderson at MercyWorks approximately one year prior to her 6/15/17 work accident (Rx4). On 4/26/16, approximately 14 months prior to her 2017 accident, Petitioner presented to Dr. Anderson and reported that she was experiencing right leg weakness due to stress at work. The notes from Petitioner's 4/26/16 office visit with Dr. Anderson further reveal that Petitioner had been hospitalized at Little Company of Mary Hospital from 4/22/16 through 4/25/16, at which time she was released with a diagnosis of ischemic stroke. At the time of Petitioner's 4/26/16 consultation with Dr. Anderson, she was ambulating with a cane and reported wobbling and weakness of the right lower extremity. Petitioner further reported that she was scheduled to begin physical therapy for her condition.

On 6/1/16, Petitioner returned to Dr. Anderson and denied any change to her right lower extremity symptoms (Px4). On 6/15/16, exactly one year prior to Petitioner's work accident, she returned to Dr. Anderson and reported weakness from her right calf to right foot, with numbness extending to the toes. On 6/15/16, Petitioner advised Dr. Anderson that she had seen a neurologist and was to be scheduled for an EMG. At this time, Petitioner continued to ambulate with a cane. No further records relating to Petitioner's stroke or attendant right lower extremity issues were offered into evidence.

At hearing, Petitioner was cross-examined regarding her history of right lower extremity issues and treatment. When asked whether she had ever experienced any issues or symptoms with respect to her right foot, ankle, or leg prior to her 6/15/17 accident, Petitioner responded "No" (Tr at p. 54). When asked whether she had received any treatment to her right foot, ankle, or leg prior to the 6/15/17 accident, Petitioner replied "No."

Petitioner further testified that, while she recalled suffering a stroke in April 2016, she did not remember seeing Dr. Anderson from April to June of 2016 (Tr at p. 55). Petitioner similarly testified that she could not recall the post-stroke weakness in the right calf and foot along with numbness in the right toes that was documented in the MercyWorks records (Tr at p. 56). Petitioner, likewise, claimed that she could not remember using a cane or performing physical therapy for her post-stroke condition (Tr at p. 56-57). Furthermore, Petitioner testified that she could not remember how long she had performed physical therapy following her stroke nor could she recall whether she had received any other types of treatment for her right leg and foot following her stroke (Tr at p. 57, 60). Lastly, Petitioner claimed that she could not recall how long she had been off work following her stroke (Tr at p. 57).

On cross-examination, Petitioner acknowledged that, following her 6/15/17 accident, she did not tell her treaters or physical therapist about her history of a stroke just over a year prior (Tr at p. 61). When asked whether she thought this information would be relevant to her treaters, Petitioner replied "No" (Tr at p. 62). Petitioner further testified that she had not been asked for a history of her condition by her treaters.

On 8/17/17, approximately 2 months after her work accident, Petitioner sought consultation with Dr. Laura Linde of Foot and Ankle Associates (Px2). Dr. Linde assessed Petitioner with ATL and CFL sprains, along with tendinitis, enthesopathy, and transient synovitis. Petitioner continued to follow up with Dr. Linde and was recommended for additional physical therapy at ATI.

On 9/14/17, Petitioner returned to Dr. Linde, who reviewed an EMG, diagnosed Petitioner with tarsal tunnel syndrome, and advised Petitioner that surgery would be an option if conservative treatment failed to improve her symptoms. On 9/14/17, Dr. Linde referred Petitioner to a neurologist, Dr. Melvin Wichter, and provided Petitioner with an order for an AZ brace.

On 9/18/17, Petitioner presented to ATI for a course of physical therapy (Px5). As part of her intake process at ATI, Petitioner completed a series of intake forms, the final page of which addressed Petitioner's medical history. At hearing, Petitioner acknowledged that she had

completed and signed the forms herself (Tr at p. 63). On the page for medical history, Petitioner checked the "No" box next to "Stroke." On cross-examination, Petitioner agreed that this was a misrepresentation of her medical history and that the "No" box next to "Stroke" should not have been checked (Tr at p. 64).

On 10/12/17, Petitioner returned to Dr. Linde, who noted that Petitioner had failed to make an appointment with the neurologist, Dr. Wichter, and had, likewise, failed to make an appointment to be cast for the AZ brace, which Dr. Linde had prescribed (Px2).

On 11/15/17, Petitioner attended an Independent Medical Examination (IME) with Dr. George Holmes of Midwest Orthopaedics at the request of Respondent (Rx1). Following his examination of Petitioner and review of Petitioner's medical records, Dr. Holmes issued an IME report, which addressed Dr. Linde's diagnosis of tarsal tunnel syndrome and suspicion of chronic regional pain syndrome (CRPS). In the initial paragraph of the report, which addressed Petitioner's history, Dr. Homes noted that "[t]his injury started apparently back in *April*" (emphasis added).

With respect to the diagnosis of tarsal tunnel syndrome, Dr. Holmes opined:

> "Her symptoms at this point do not appear to be consistent with tarsal tunnel and we all know that sometimes patients do have positive EMG findings that are not supported by clinical findings. Therefore, I do not believe that she has a clinical diagnosis of isolated tarsal tunnel syndrome at this time strictly based upon the EMG results" (Rx1).

With respect to Dr. Linde's suspicion of CRPS, Dr. Holmes opined:

> "At this point, there does not appear to be an underlying orthopaedic cause or explanation of her complaints. There are some inconsistencies with a diagnosis of chronic regional pain syndrome, and she has no asymmetry from the right and left lower extremities. There is no increase in sweating. The subjective complaints of hypersensitivity to light touch are subjective and do not comport with the objective examination in terms of expectations of atrophy, swelling, increased sweating or other autonomic dysfunctions" (Rx1).

Dr. Holmes recommended Petitioner obtain a triple-phase bone scan in order to determine the validity of Dr. Linde's assessment of CRPS (Rx1).

On 1/2/18, Petitioner underwent the recommended triple-phase bone scan at High Tech Medical Park (Px6). The results of the scan indicated that there was no scintigraphic evidence of CRPS in Petitioner's bilateral hands or feet.

On 1/9/18, Petitioner followed up with Dr. Linde, who reviewed the triple-phase bone scan and acknowledged that the results of the scan did not support a diagnosis of CRPS (Px2). Nevertheless, Dr. Linde noted that Petitioner's clinical symptoms still "point[ed] towards CRPS" and that a bone scan is not the only way to make a diagnosis. On 1/9/18, Dr. Linde recommended Petitioner undergo a Functional Capacity Assessment (FCA) to determine her work abilities. There is no evidence of further treatment of follow-ups with Dr. Linde following the 1/9/18 appointment.

On 1/31/18, following his own review of the triple-phase bone scan, Dr. Holmes issued an IME Addendum report, in which he concluded that he could not find any data points that supported Petitioner's ongoing subjective complaints (Rx2). Based on this assessment, Dr. Holmes found no basis to impose work restrictions, and he opined that Petitioner had reached maximum medical improvement (MMI).

On 2/6/18, Petitioner underwent an FCA at ATI as recommended by Dr. Linde (Px5). Per the FCA Summary Report, the FCA was deemed to be invalid. Accordingly, the report was "unable to comment [on Petitioner's physical demand level] due to the invalid nature of the assessment." Likewise, the report was "unable to comment on the client's capabilities due to the invalid nature of this assessment."

On 3/23/18, Petitioner presented to Dr. Shanele McGowan of Integrated Pain Management following Petitioner's own "self-referral" (Px3). In the notes from Petitioner's 3/23/18 appointment with Dr. McGowan, under the section for "Chief Complaint," the following is

provided: [Petitioner] is a 45-year-old female self-referred for initial evaluation of right ankle and foot pain that started in *January* 2017" (emphasis added). Although Petitioner's diagnostic imaging was not available for her review, Dr. McGowan recommended Petitioner undergo implantation of a right lumbar sympathetic nerve block. Per the records, this was Petitioner's only visit with Dr. McGowan, and Petitioner never followed up with this provider again.

On 6/4/18, Petitioner attended an IME with Dr. Armen Kelikian at the request of her own attorney (Px7, Rx3). Following his examination of Petitioner and review of Petitioner's medical records, Dr. Kelikian authored an IME report. Per the history Dr. Kelikian obtained from Petitioner, there was "no exact trauma" that led to her symptoms. Dr. Kelikian further stated, while he accepted the impression of CRPS type 2, "[t]here is no specific trauma. Stated by Patient just arch pain atthe [sic] original time of the injury. I am not quite sure that there is a direct causal relationship [to the work incident] . . . There is no specific injury."

On 6/9/20, following a two-year gap in treatment, Petitioner sought consultation with Dr. Scott Glaser of Pain Specialists of Greater Chicago (Px8). Per the notes from the 6/9/20 appointment, Dr. Glaser took a history from Petitioner, which contained no mention of her 2016 stroke and the right leg and right foot symptoms she experienced as a result. On 6/9/20, Dr. Glaser reported that Petitioner's symptoms had spread to her left foot. The section for "Assessment and Plan" is left entirely blank.

On 7/20/20, Dr. Glaser authored a narrative report containing his opinions about Petitioner's condition (Px8). Once again, no mention is made of Petitioner's history of stroke and the attendant weakness and numbness she experienced in her right lower extremity, which had led to a course of physical therapy and usage of a cane.

In his 7/20/20 report, Dr. Glaser assessed Petitioner with CRPS and related this diagnosis to Petitioner's 6/15/17 accident (Px8). With respect to ongoing treatment, Dr. Glaser recommended physical therapy and sympathetic nerve blocks of the lumbar spine or a spinal cord stimulator. The records contain no evidence of Petitioner actually pursuing any of this recommended treatment. With respect to work restrictions, Dr. Glaser states "it is difficult for me to be specific

about this issue without a functional capacity evaluation." No mention is made of the fact that Petitioner had already undergone a FCA in 2018, the results of which were deemed invalid. Petitioner returned to Dr. Glaser on 3/1/21 and 6/7/21, and she reported additional symptoms in her left foot and lower back (Px8). On 6/7/21, Dr. Glaser recommended Petitioner undergo right-sided lumbar epidural steroid injections. The records contain no evidence of any follow-ups with Dr. Glaser or any other providers in the year and a half between the 6/7/21 appointment and the date of hearing.

Petitioner testified that she had never attempted to return to work for Respondent despite the fact that Dr. Holmes found no basis for work restrictions as early as 1/31/18 (Tr at p. 68). Petitioner further testified that she has not looked for another job independently nor consulted with a vocational specialist to help her find alternate employment (Tr at p. 49-50, 71-72).

At hearing, Petitioner initially testified that she could not recall the last date she received medical treatment for her condition, and then offered that it was "[w]ithin the last maybe four to five months maybe" (Tr at p. 68-69). No evidence of any treatment in 2022 was submitted at hearing. Petitioner testified that, as of the date of hearing, her medical treatment had ceased (Tr at p. 69). Petitioner testified that she was allergic to almost every type of injection or prescription medication that was offered to her, and instead was treating her pain using cannabis edibles (Tr at p. 70). Petitioner testified that she declined to undergo the recommended spinal cord stimulator (Tr at p. 70-71).

CONCLUSIONS OF LAW

The findings of fact, summaries of medical evidence above and the credibility findings below, are incorporated herein.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her

actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

The Arbitrator observed Petitioner during the hearing and finds her not credible. Petitioner's testimony at arbitration was inconsistent. Petitioner's credibility is, likewise, weakened by her admission that, following her 6/15/17 accident, she did not advise her doctors or physical therapist about her history of stroke and the attendant issues she faced as a result. Petitioner testified that she did not believe this information was relevant. Petitioner also testified that her treaters did not ask her for a medical history when she saw them following the work accident. Both of these statements are directly contradicted by the intake forms Petitioner completed and signed at ATI. The Medical History page contained in the intake forms specifically inquired about Petitioner's history of stroke, and Petitioner checked the "No" box next to this inquiry. Petitioner's misrepresentations on this form, coupled with her unconvincing testimony, further weaken her credibility and claim.

The Arbitrator finds it significant that Petitioner provided inconsistent statements about her medical history.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more

vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator finds that, while Petitioner established that her initial diagnosis of a right ankle sprain is causally related to her 6/15/17 accident, Petitioner failed to establish that her disputed diagnosis of CRPS and ongoing treatment post-2018 are causally connected to her 6/15/17 accident.

In support of this finding, the Arbitrator notes the major credibility issues on the part of Petitioner that were highlighted at hearing. When cross-examined about her medical history, Petitioner initially testified that she had never experienced any symptoms relating to her right leg, ankle, or foot prior to her 6/15/17 accident. However, the records of MercyWorks directly contradict Petitioner's testimony by documenting, approximately one year before the accident, a stroke which led to weakness and numbness throughout Petitioner's right lower extremity – conditions that were so pronounced that Petitioner required, at minimum, physical therapy and usage of a cane.

When confronted with the medical records, Petitioner responded that she could not recall these prior issues with her right leg, foot, and toes nor could she recall performing physical therapy or using a cane for her condition. Petitioner's representations that she could not recall symptoms and treatment of this magnitude occurring shortly before her work accident strains credulity and undermines Petitioner's testimony as to her condition as a whole.

Petitioner's credibility is, likewise, weakened by her admission that, following her 6/15/17 accident, she did not advise her doctors or physical therapist about her history of stroke and the

attendant issues she faced as a result. Petitioner testified that she did not believe this information was relevant. Petitioner also testified that her treaters did not ask her for a medical history when she saw them following the work accident. Both of these statements are directly contradicted by the intake forms Petitioner completed and signed at ATI. The Medical History page contained in the intake forms specifically inquired about Petitioner's history of stroke, and Petitioner checked the "No" box next to this inquiry. Petitioner's misrepresentations on this form, coupled with her unconvincing testimony, further weaken her credibility and claim.

The medical records themselves, likewise, present inconsistencies. Per the history provided to Dr. Holmes at Petitioner's 11/15/17 IME appointment, Petitioner's injury dated back to April 2017, two months prior to the claimed date of accident. Similarly, in the treatment records from Petitioner's one and only visit with Dr. McGowan of Integrated Pain Management, Petitioner reported right ankle and foot pain that started in January 2017, five months before the claimed date of accident.

With respect to the expert opinion reports that were submitted into evidence, two of the three (including one offered by Petitioner's counsel) failed to find a causal connection between Petitioner's work activities and her diagnosis of CRPS. Following his review of the triple-phase bone scan, which showed no evidence of CRPS, Dr. Holmes found no basis to support Petitioner's ongoing subjective complaints. Dr. Kelikian went even further and found that, while the CRPS diagnosis was supported, there was no evidence of a specific trauma leading to this condition and, therefore, he was "not quite sure" that a direct causal relationship existed between Petitioner's condition and her work activities.

Lastly, Petitioner's lengthy gaps in treatment and her refusal to follow through with recommended treatment modalities further undermine her claim of causal connection. The records reveal a roughly two-year gap in treatment between June of 2018 and June of 2020 as well as a year-and-a-half gap in treatment prior to the hearing date. In addition to a surgical consultation with Dr. Linde, Petitioner was recommended for nerve blocks and a spinal cord stimulator, all of which Petitioner declined to pursue. Instead, she has opted to treat her alleged condition with cannabis edibles. Petitioner's lengthy gaps in treatment and failure to pursue recommended treatment

modalities further weaken her claim that she continues to suffer from the effects of her 6/15/17 right ankle injury.

Based on the above, the credible evidence, and the record taken as a whole, the Arbitrator finds that the Petitioner failed to meet her burden of proving by a preponderance of credible evidence that her condition of ill-being of CRPS in right leg, ankle or foot injury was directly caused or aggravated by the undisputed accident that occurred on June 15, 2017.

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

Section 8(a) of the Act states a Respondent is responsible …"for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator finds that, while Petitioner established that her initial diagnosis of a right ankle sprain is causally related to her 6/15/17 accident, Petitioner failed to establish that her disputed diagnosis of CRPS and ongoing treatment after 1/31/18 are causally connected to her 6/15/17 accident.

Having found that Petitioner failed to meet her burden of proving by a preponderance of credible evidence that her condition of ill-being of CRPS and ongoing treatment after 1/31/18 in right leg, foot or ankle was directly caused or aggravated by the undisputed accident that occurred on June 15, 2017, the Arbitrator denies all medical bills submitted and further finds that Respondent has already paid for the treatments related to the 6/15/17 accident. As such, the Arbitrator denies all other medical bills submitted.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Petitioner claims entitlement to TTD benefits from 6/16/17 through 11/29/22 for a total of 282 and 5/7 weeks. Respondent disputes this and claims that Petitioner is only entitled to TTD benefits from 6/20/17 through 3/2/18 for a total of 36 and 4/7 weeks.

As an initial matter, the Arbitrator notes that Petitioner's testimony corroborates that she did not seek medical attention until 6/19/17 after reporting to work that day. Therefore, Petitioner's own testimony coupled with the medical records confirm that Petitioner's first full day of lost time was 6/20/17.

The Arbitrator further notes that there are no off-work slips that were entered into evidence to support an ongoing award of benefits past 2018, and furthermore, Petitioner's claim for TTD benefits through the date of hearing is legally and factually untenable. In order for Petitioner's claim to be ripe for a nature and extent hearing, she, by necessity, must have reached MMI. Once a Petitioner has reached MMI, entitlement to TTD is severed as Petitioner's condition is no longer *temporary*. Therefore, the only benefits that could feasibly be claimed through the date of hearing are maintenance benefits, which Petitioner, in this case, failed to request entirely.

As the Arbitrator has already found that Petitioner's ongoing treatment and complaints following Dr. Holmes 1/31/18 release are not causally related to the 6/15/17 accident, Petitioner's entitlement to TTD is severed as of that date. Nevertheless, Respondent, in good faith, continued issuance of TTD benefits through 3/2/18 in anticipation of Petitioner's return to work. As Respondent stipulated to Petitioner's entitlement to TTD through 3/2/18 on the Request for Hearing form, the Arbitrator adopts this stipulation and awards Petitioner TTD from 6/20/17 through 3/2/18 for a total of 36 and 4/7 weeks.

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

The Arbitrator has analyzed the five factors as required by Section 8.1b of the Act.

i) **The reported level of impairment pursuant to subsection (a) of Section 8.1b**: Neither party submitted an AMA impairment rating and so this factor is given no weight.

ii) **The occupation of the injured employee**: Petitioner was employed as a Construction Laborer and, following her initial course of treatment, she was deemed capable of a return to work with no restrictions by Dr. Holmes in his 1/31/18 IME Addendum report. Despite Dr. Holmes determination that there was no basis on which to impose work restrictions, Petitioner never even attempted to return to her usual and customary position. The Arbitrator places great weight on this factor.

iii) **The age of the employee at the time of the injury**: Petitioner was 44 years of age on the date of her accident and, accordingly, is in the middle of her working life. This factor makes Petitioner's refusal to attempt a return to work (either for Respondent or another employer) problematic. The Arbitrator places some weight on this factor.

iv) **The employee's future earning capacity:** Petitioner's future earning capacity was unaffected by her 6/15/17 accident as Dr. Holmes determined that there was no basis for ongoing work restrictions past 1/31/18 and, therefore, Petitioner is capable of returning to work in her original occupation. Insofar as Petitioner claims she is unable to return to work in her original position, Petitioner presented absolutely no evidence of her earning capacity in alternate employment. The Arbitrator, therefore, places little weight on this factor.

v) **Evidence of disability:** Treating medical records in this case corroborate Petitioner's initial right ankle sprain; however, the records also document lengthy gaps in treatment, a multitude of inconsistencies, a significant pre-existing condition that Petitioner failed to reveal, and repeated non-compliance with treatment recommendations. The Arbitrator places great weight on this factor.

As a result of the injuries sustained, Petitioner is entitled to have and receive from Respondent 8.35 weeks at a rate of $775.18 per week because she sustained a 5% loss of use of the right foot.

Issue O, what is the MMI date, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner reached maximum medical improvement on January 31, 2018, the date which Dr. Holmes issued his Section 12 Addendum. Thus, Petitioner is not entitled to any other benefits past that date.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000630
Case Name	Wilfredo Cruz v. Rizza Cadillac
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0290
Number of Pages of Decision	38
Decision Issued By	Amylee Simonovich, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Rocco Motto
Respondent Attorney	Guy Maras

DATE FILED: 6/14/2024

/s/Kathryn Doerries, Commissioner

Signature

DISSENT: /s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WILFREDO CRUZ,

Petitioner,

vs. NO: 21WC 000630

RIZZA CADILLAC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses and prospective medical and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322.

The Commission solely modifies the last paragraph on page 29, in the Conclusions of Law, under the section titled, "On the issue of whether the petitioner is owed temporary total disability benefits, the Arbitrator finds as follows." At the end of the referenced last paragraph, the Commission adds the following sentence, "Petitioner is entitled to temporary total disability benefits commencing November 20, 2020, through October 19, 2021, pursuant to Section 8(b) of the Act."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on July 7, 2023, is hereby modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $968.04 per week for a period of 47-5/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical expenses of $18,869.30, pursuant to §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION Petitioner's claim for prospective medical care is denied.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $19,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 14, 2024
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KAD/bsd
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

DISSENT

After carefully considering the totality of the evidence, I respectfully dissent form the opinion of the majority. I would reverse the Decision of the Arbitrator and find that Petitioner

proved his current conditions of ill-being regarding his head, neck, and low back remain related to the accident and require prospective medical care.

Petitioner worked as mechanic for Respondent for 40 years prior to the work accident. On November 19, 2020, Petitioner sustained a significant trauma when he slipped and fell while changing a tire. The back of his head hit the ground and a heavy tire struck Petitioner's head. Notably, Petitioner briefly lost consciousness after his fall.

It is abundantly clear that Petitioner's current complaints regarding his head, neck, and lumbar spine are causally related to the November 2020 work accident. "A chain of events which demonstrated a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *Int'l Harvester v. Indus. Comm'n*, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908, 66 Ill. Dec. 347 (1982). Before the work accident, Petitioner was in good health and had no prior complaints regarding his head or neck. Petitioner underwent an SI joint injection before the work accident; however, he credibly testified that following the injection, he had no lumbar complaints and was able to perform all his job duties until his injury.

Contrary to the majority, I do not find the opinions of Drs. Kramer and Singh, Respondent's Section 12 Examiners, persuasive. On May 20, 2021, Dr. Kramer opined that Petitioner suffered from post-concussion syndrome with persistent left peripheral vestibulopathy, as well as bilateral occipital neuralgia, right greater than left. He also opined that these diagnoses were related to the November 2020 work accident. Dr. Kramer recommended additional treatment. However, when Dr. Kramer reevaluated Petitioner on October 5, 2021, he suddenly determined that Petitioner was at MMI, despite Petitioner's persistent symptoms. He also opined that Petitioner's complaints were not supported by any objective findings. Notably, none of Petitioner's numerous treating doctors even hinted at the possibility that Petitioner might be malingering or exaggerating his symptoms.

Similarly, after examining Petitioner in late September 2021, Dr. Singh, opined that Petitioner sustained cervical and lumbar spine strains that had resolved. Dr. Singh also opined that Petitioner's complaints were not supported by any objective findings, and placed Petitioner at MMI. However, Dr. Singh's opinions were completed undercut by his almost nonexistent review of Petitioner's treatment records. Dr. Singh only reviewed two dates of service from Dr. Moore. He did not review a single record from any physician treating Petitioner's neck and low back complaints. Dr. Singh also failed to review any records or diagnostic imaging of Petitioner's pre-accident back complaints before rendering his opinions. As Petitioner had already been undergoing treatment for his neck and back symptoms for almost a year by the time of Dr. Singh's examination, the doctor's almost severely limited review of the relevant treatment records is truly remarkable.

In direct contrast to the opinions of Drs. Kramer and Singh, Petitioner continued to treat with numerous doctors, all of whom continued to document positive objective findings during their physical examinations. (PX2; PX7). Petitioner's doctors also continued to recommend treatment

related to his ongoing complaints and their objective examination findings. For example, on September 1, 2021, Petitioner complained of continued headaches and dizziness, as well as left-sided neck pain. Dr. Bokhari's examination revealed a left cervical paraspinal muscle spasm. The doctor recommended continued care with Dr. Moore and pain management.

On September 29, 2021—the same date as Dr. Singh's examination—Dr. Bokhari noted Petitioner continued to report chronic neck pain, and the doctor's examination once again revealed a left cervical paraspinal muscle spasm. Dr. Bokhari referred Petitioner to pain management. On October 25, 2021, Petitioner complained of continued sharp stabbing pain in the posterior neck and back of his head, back pain, and spasms in his left leg. Petitioner also complained of transient monocular vision loss in the right eye, dizziness, auditory phenomena, pounding headaches, light sensitivity, and feeling pressure around the right eye. Dr. Moore recommended that Petitioner continue vestibular rehabilitation and try metoprolol.

Approximately a week later, Dr. Robinson's examination revealed a positive Spurling's maneuver, limited cervical range of motion, positive straight leg raise, and limited lumbar range of motion. Dr. Robinson diagnosed cervical and lumbar radiculopathy and prescribed physical therapy, a lumbar MRI, and pain management for consideration of cervical ESIs. He also thoroughly refuted to Dr. Singh's opinions. He noted Petitioner's lack of symptoms and ability to work without restrictions before the work accident. He also wrote: "The mechanism of injury of an 80lb [sic] tire falling on him, hitting his head first on the tire then on the concrete, is consistent with causing his current complaints. It is my opinion, within a reasonable degree of medical certainty, [that] the trauma caused an aggravation of his pre-existing underlying degenerative condition which changed the course of his neck and back pain." PX2.

On November 23, 2021, Dr. See, a pain management doctor, examined Petitioner and noted multiple objective findings. On December 14, 2021, Dr. See performed an L3-L4 interlaminar epidural injection. Approximately a week later, Dr. Robinson's objective findings were unchanged. A March 28, 2022, EMG/NCV confirmed Petitioner suffered from chronic C7 radiculopathy, right greater than left. Two days later, Dr. Chovatiya examined Petitioner and recommended a right occipital nerve block. Petitioner underwent the right occipital nerve block three weeks later, but continued to experience postural perceptual dizziness. Dr. Moore continued to prescribe medication to treat Petitioner's ongoing dizziness.

A second right occipital nerve block in June 2022 was ineffective and Petitioner continued to complain of right side headaches with blurry vision. In late July 2022, Dr. Robinson's findings during his physical examination remained unchanged. Due to Petitioner's complaints and the objective findings, he referred Petitioner to pain management for consideration of a cervical ESI.

On September 19, 2022, Dr. Andrew Kalin's examination of Petitioner revealed bilateral positive Spurling sign, and positive bilateral straight leg raise. In early October 2022, Petitioner underwent a left L5-S1 and S1 transforaminal ESI. Despite Petitioner reporting good results from

the injection, the doctor's examination continued to reveal the same objective findings. For this reason, Dr. Kalin recommended a C6-C7 cervical ESI.

The credible evidence shows Petitioner's treating physicians have continued to note significant objective findings that substantiated Petitioner's ongoing complaints. There is no question that Petitioner's symptoms did not arise until after the November 19, 2020, work accident. Additionally, Petitioner's physicians concluded that his symptoms were consistent with his mechanism of injury. It is quite telling that numerous physicians have examined Petitioner since the work accident, yet only Respondent's Section 12 Examiners concluded Petitioner's ongoing complaints were not related to the work accident and found no objective findings supported Petitioner's complaints.

For these reasons, I would find the opinions of Petitioner's treating physicians most persuasive and would reverse the Arbitrator's conclusion that Petitioner's ongoing complaints are not causally related to the November 19, 2020, work accident.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000630
Case Name	Wilfredo Cruz v. Rizza Cadillac
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	32
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Rocco Motto
Respondent Attorney	Guy Maras

DATE FILED: 7/7/2023

THE INTEREST RATE FOR THE WEEK OF JULY 5, 2023 5.26%

/s/ Jeffrey Huebsch, Arbitrator

Signature

W. Cruz v. Rizza Cadillac, 21 WC 000630

STATE OF ILLINOIS)
)SS
COUNTY OF Cook)

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

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

Wilfredo Cruz Case # **21** WC **000630**
Employee/Petitioner

v.

Rizza Cadillac
Employer/Respondent

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

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **November 19, 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, in part,*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$75,507.12** and the average weekly wage was $**1,452.06**.

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

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

Respondent shall be given a credit of $**46,189.33** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**46,189.33**.

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

ORDER

Respondent shall pay reasonable and necessary medical expenses of $18,869.30, pursuant to Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall pay Petitioner temporary total disability benefits of $968.04/week for 47-5/7 weeks, commencing 11/20/2020 through 10/19/2021, pursuant to Section 8(b) of the Act.

Petitioner's claim for prospective medical care is denied.

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

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

JULY 7, 2023

Signature of Arbitrator

STATEMENT OF FACTS

The petitioner has been employed as an Auto Technician for the respondent for approximately 40 years. (R. p. 9)

The petitioner testified that prior to November 19, 2020 he did not have any physical restrictions or limitations which impacted his ability to perform his job. (R. p. 11) Prior to November 19, 2020 he had not received medical treatment for a concussion, or any type of post-concussion syndrome, his neck, or right eye. Prior to November 19, 2020, he was not under the care of a physician for any conditions related to his head, back, neck or right eye. (R. pp. 13-14) The petitioner later testified that he had received treatment for his low back by Dr. Hasan, including an injection in his low back about 6 months prior to November 19, 2020. After the injection, Petitioner was able to fully perform his job. (R. pp. 12-13) After November 19, 2020, Petitioner did not sustain any trauma or injury to his neck, back, head or right eye. (R. p.15)

The Parties stipulated that the petitioner sustained accidental injuries which arose out of and in the course of his employment by the respondent on November 19, 2020. Petitioner testified that he was in the process of performing an oil change and rotating the tires of a Cadillac Escalade. He had completed the oil change and installed three of the tires. While lifting the fourth tire, the petitioner slipped and fell backwards. During the fall, the petitioner struck the back of his head on the ground and the tire hit his head. The petitioner testified that he remembered people picking up off the ground and that he lost consciousness for a short period of time. The petitioner testified that he injured his head, right eye, neck, and lower back. (R. pp. 11-12)

The petitioner testified that he noticed that he was in a lot of pain, with pain in the back of his head, back of his neck, and lower back. (R. pp. 14-15)

The petitioner first sought medical treatment at Silver Cross Hospital in New Lenox, IL. on November 20, 2020 at 9:03 am. (Pet. Ex. #1) The petitioner testified that he primarily had pain in the back of his head on the right side at this visit. (R. p.16) The petitioner complained of nausea and headache. There was a question of a loss of consciousness. There was no dizziness, altered level of consciousness, tingling, or weakness noted. (Pet. Ex. #1, p. 7) The physical exam was largely benign, with no mention of tenderness, abrasion or contusion on the face or back of the head, full strength in the upper and lower extremities, normal range of motion and normal strength, normal neurologic function and the back was noted to be non-tender, with normal range of motion. (Pet. Ex. #1)

A CT scan of the petitioner's brain showed no acute intracranial hemorrhage, mass effect, midline shift, or extraaxial fluid. The study was normal. The study was compared with one from 09/08/2019. (Pet. Ex. #1, p. 13) Respondent's Exhibit 11 was a portion of the Silver Cross ER chart of 9/8/2019, shows that Petitioner presented with chest pain, dizziness, and occipital pain with radiating pain to the back of the neck and towards the eyes. (Res. Ex. #11)

The assessment was that the petitioner most likely had a concussion, closed head injury. The petitioner was told to take Tylenol and ibuprofen if needed. The Petitioner was released from work for two days, told to rest and avoid video stimulation and discharged at 11:00 AM. He was also instructed to follow up with his Primary Care Physician, Michelle Danaher, M.D. (Pet. Ex. #1) The petitioner testified that Dr. Danaher had been his PCP for approximately 15 years.

The petitioner was seen by Dr. Danaher on November 24, 2020 for post ER follow-up, complaining of ongoing headache, dizziness, nausea and backache. He was taking 600mg ibuprofen every 6 hours. The physical exam was benign. The assessment was concussion

without loss of consciousness and neck pain. The petitioner was instructed to remain off work through November 30, 2020 and continue his medications. Petitioner reported continued complaints via telephone on November 30, 2020 and he was instructed to consult with a neurologist. The diagnosis was concussion without loss of consciousness. (Pet. Ex.#2, pp. 9-13)

The petitioner testified that shortly after seeing Dr. Danaher, he began receiving workers' compensation benefits.

On December 2, 2020, the petitioner had ongoing complaints and was reportedly told by Dr. Danaher to return to the Emergency Department at Silver Cross. (Pet. Ex. # 1, p. 19) The petitioner told the physicians at Silver Cross that day that he lost consciousness at the time of the accident on November 20 (sic), 2020, although it was charted that initially that fact was unknown. The petitioner complained of constant pain (6/10) in the right temporal parietal occipital region. There was no radiating pain and the character of the symptoms was pressure. Light and exertion were exacerbating factors. Intermittent dizziness and blurred vision were noted. A second CT scan of the brain without contrast was conducted that day. The study revealed no evidence of acute intracranial hemorrhage and was otherwise normal and said to be stable. (Pet. Ex. #1, pp. 22, 27) The ER physicians reported that they spoke with Dr. Danaher, who indicated that she had seen the petitioner the previous week and he was scheduled to see a neurologist the following Friday. It was noted that the petitioner did not share this information with the emergency department physicians. The back, neck and head exams were normal and unremarkable. The petitioner was diagnosed with a post-concussion headache and discharged. The course of treatment was progressing as expected, his pain status was decreased, and the assessment was improved. The petitioner was instructed to follow up with Dr. Danaher and keep

the scheduled neurologist appointment. A brain MRI was to be considered if concern for ischemia (stroke) existed. (Pet. Ex.#1, pp. 19-30)

The petitioner's wife called Dr. Danaher on December 2, 2020 to advise that the petitioner had returned to Silver Cross Hospital due to an increased headache.)Pet. Ex. #2)

On December 4, 2020, the petitioner was seen by a neurologist, Samina Bokhari, M.D. It was noted that the petitioner had been seen in the neurology clinic previously, on September 11, 2019, fourteen months prior to the accident at issue. (Pet. Ex. #2, p. 30) The petitioner reported to Dr. Bokhari that he may have lost consciousness at the time of the work accident at issue on November 23 (sic), 2020. Since the accident, the petitioner reportedly developed symptoms of forgetfulness, right-sided head pain, intermittent dizziness, sensitivity to light, and lightheadedness intermittently. It was noted that the petitioner had been seen previously for dizziness and visual aura in September 2019. Dr. Bokhari's notes further indicate that the petitioner has had the visual symptoms once every two months for over ten years. The petitioner on December 4, 2020 stated that he had not experienced visual aura for the past several months. The diagnosis was Intractable post traumatic headache, post-concussion syndrome and cervical paraspinal muscle spasm. Pain management, EEG and a brain MRI were considered. (Pet. Ex.#2, pp. 30-36) The petitioner was excused from work by Dr. Bokhari. (R. p. 20)

On December 10, 2020, the petitioner underwent an electroencephalography (EEG). There were no consistent focal asymmetries, epileptiform discharges or electrographic seizures. The EEG study was normal. (Pet. Ex. 2, p.41)

On December 14, 2020, an MRI of the brain which demonstrated a tiny 6 mm focus of hyperintense (FLAIR) signal in the right inferior cerebellum which was nonspecific and possibly related to a tiny focus of old ischemic/infarct. There were no signs of an acute process. Other

than the possible presence of a tiny and old lacunar infarct, the study was normal. (Pet. Ex.#2, p.52)

The petitioner testified that his symptoms were getting worse while he was treating with Dr. Bokhari. Dr. Bokhari recommended paain management and vestibular therapy. R. pp. 20-21)

On December 21, 2020, the petitioner was seen by Yousuf Sayeed, M.D. It was noted that since the petitioner had apparently failed conservative treatment, occipital nerve injections were being considered. (Pet. Ex. #1, p. 121) Dr. Sayeed prescribed gabapentin. His diagnosis was occipital neuralgia of the right side and post-concussion syndrome.

On January 13, 2021, the petitioner was seen by a physician's assistant, Ryan Enger, for pain management. The petitioner reported headaches to the right side of his head and the occipital and frontal region. He was awaiting approval for occipital blocks. Activities of daily life were not impaired including eating, bathing, use of the washroom, dressing, and rising from a bed or chair. The neurological exam was normal. The petitioner was advised against bedrest and encouraged to continue normal activities in order to improve functionality. Work restrictions were deferred to neurology. (Pet. Ex.#2, pp. 125-130)

The petitioner testified that that his head and neck symptoms were getting worse as he treated with Dr. Sayeed. He would go blind in his right eye every so often. (R. pp. 22-23)

On January 26, 2021, the petitioner returned to Dr. Bokhari reporting twitching in his left arm, tenderness in certain spots of his head, pain radiating down the neck into the shoulders, and a throbbing sensation in his lower back. The petitioner also reported a clear liquid discharge from his ear. (Pet. Ex. #2, p. 47)

Dr. Bokhari's exam notes reference a normal gait pattern, no acute distress, a comfortable appearance, and good eye contact. Delusions and hallucinations were absent from the exam at

that time. (Pet. Ex. #2, p. 50) Dr. Bokhari discussed the objective studies with the petitioner and found that he was most likely suffering from post-concussion syndrome. The petitioner was referred for physical and vestibular therapy.

On February 3, 2021, the petitioner was seen at the Otolaryngology department to address the reported drainage issue in the petitioner's left ear. The ear drainage reportedly presented after the accident at issue, according to the petitioner. (Pet. Ex. #2, p. 143) No hearing loss or vertigo were reported. The petitioner was found to have eczema of the left ear, provided with Betamehsone cream, and instructed to return for follow up in two weeks. (Pet. Ex. 32, pp. 142-150)

An MRI of the cervical spine was conducted on February 8, 2021. The summary indicates that a reversal of the usual cervical lordosis may be related to muscle spasm. Multilevel degenerative cervical spondylosis without significant spinal canal stenosis or cord signal was noted. (Pet. Ex. #2, pp. 75-76)

A physical therapy evaluation was also conducted that day at Duly Health Care Tinley Park, IL location. Testing was limited due to pain with positioning and light touch. Physical therapy was deemed medically necessary in order to address the petitioner's functional limitations. (Pet. Ex. #2, p. 154) Therapy was recommended two times per week for four weeks.

Dr. Bokhari evaluated the petitioner telephonically on February 10, 2021, at which time the petitioner complained of pain at the back of his neck, especially on the left side. It was noted that the petitioner had commenced physical therapy but an assessment was not yet available. With respect to the ear symptoms and discharge, it was noted that the petitioner had undergone

an otolaryngology consultation. He was found to have eczema of the left external ear. Again, the petitioner was thought to most likely be suffering from post-concussion syndrome.

On February 22, 2021, the petitioner received an occipital nerve block. The injection initially made the headaches worse, so the petitioner contacted Dr. Sayeed who scheduled a telehealth video conference. By the time of the telehealth visit, the petitioner's symptoms had improved. (Pet. Ex. #2, p. 133) Activities of daily living were reportedly tolerable. The petitioner testified that the injections provided no relief. (R. p. 23)

The petitioner had an in-person evaluation with Dr. Bokhari on March 17, 2021, at which time he reportedly described left-sided neck pain. He was taking Gabapentin and undergoing physical therapy. The petitioner's gait, affect, and appearance were normal. The petitioner reported no delusions or hallucinations. Mental status, memory, insight, speech, language cranial nerve, sensory system, and motor system testing was all normal. No abnormal movements were recorded. Muscle spasm was noted in the left cervical paraspinal region. It was noted that the petitioner had undergone physical therapy, vestibular therapy, and pain management. Referral would be made to see a spine surgeon regarding the symptomology in that region. The petitioner was instructed to return in three months.

The petitioner returned to Dr. Bokhari six months later, on September 1, 2021, complaining of ongoing headaches and dizziness. It was noted that the petitioner had established care with Kenneth Moore, M.D. at the University of Illinois. Reportedly, the petitioner was prescribed Indomathacin and Lamictal, which did not help. He was receiving pain management at Oak Orthopedics. The petitioner described a transient loss of vision in the right eye over the past month. The petitioner reported that he had also been experiencing auditory hallucinations which he described as rock music and classical music. He also reported hearing birds chirping.

The petitioner's gait, affect, and appearance were normal. Mental status, memory, insight, speech, language cranial nerve, sensory system, and motor system testing was all normal. Dr. Bokhari noted the petitioner's auditory hallucinations and recommended a repeat EEG, noting that a previous study on December 10, 2020 was normal. The petitioner was instructed to follow up in four weeks. The petitioner was advised that if the hallucinations did not resolve, he could be referred to psychiatric services. (Pet. Ex. #2)

On September 15, 2021, a third CT scan of brain was said to be normal. (Pet. Ex. #2, p. 107)

On September 22, 2021, a follow-up EEG was performed by Dr. Mayer. Dr. Mayer noted a very mild focal abnormality over the left frontotemporal region suggestive of a focal disturbance of function. The study was otherwise normal. (Pet. Ex. #2, p. 106)

It was noted that the petitioner had been evaluated by an ophthalmologist at Rush, where the petitioner was reportedly found to have a posterior vitreous detachment (detached retina) of the right eye, which likely caused his visual symptoms. He was reportedly advised to get eyeglasses to help with his headaches. (Pet. Ex. #2, p. 108)

On November 1, 2021, Dr. Robinson noted the results of the petitioner's IME with Dr. Singh. Dr. Robinson commented that the mechanism of injury at issue (80 pound tire hitting petitioner's head and hitting his head on concrete) was consistent with the petitioner's current complaints "…(T)he trauma caused an aggravation of his preexisting underlying degenerative condition which changed the course of his neck and back pain."(Pet. Ex. #2, p. 246)

The petitioner's wife called Duly Orthopedics on November 15, 2021 to request a write-up of the petitioner's condition for a Social Security Disability hearing that coming Friday. A

nursing assessment was reportedly not available this that encounter. A nursing encounter was not available on November 18, 2021 either. (Pet. Ex. #2, p. 238)

On November 23, 2021, the petitioner returned for a pain management consultation, where he was seen by Joel See, M.D. In addition to complaints of headaches and neck pain, the petitioner reported to Dr. See that his lower back pain had not been treated. (Pet. Ex. #2, p. 158) The petitioner complained of pain radiating down his left leg. Dr. See noted that he may pursue cervical injections to address the petitioner's radiating arm complaints. He also recommended lumbar injections to address the lower back pain complaints. (Pet. Ex. # 2)

On December 9, 2021, the petitioner was seen by the Ophthalmology department at Duly Health Care in Tinley Park, IL by Molly O'Shaughnessey, OD. (Pet. Ex. #2, p. 171) He was diagnosed with vitreous degeneration and detachment, dry eye syndrome in both eyes, age-related nuclear cataracts in both eyes, and visual disturbances. The petitioner complained of floaters and his vision greying out, pain in the right eye, and decreased visual acuity. Since the accident at issue, the petitioner reported that he has experienced intermittent double vision in his right eye. It was noted that Dr. Deutsch prescribed glasses but the petitioner had not had the prescription filled. The petitioner reported that the episodes occurred twice weekly. (Pet. Ex. #2, p. 173) Flashes reportedly occur in both eyes but only mildly on the left. It was noted that the vitreous degeneration and detachment was not likely related to with intermittent greying of vision. Glasses were recommended for the age-related cataracts. The petitioner's ocular health was unremarkable and unlikely responsible for the greying of vision. (Pet. Ex. #2, p. 176) Dr. O'Shaughnessey's neurologic review said that the patient denies headaches. (Pet. Ex. 3 2, p.174) He was to return back in one year. (Pet. Ex. #2, p. 177)

A lumbar epidural injection was given by Dr. See on December 14, 2021. Dr. See's diagnoses were cervical radiculopathy and lumbar radiculopathy.

On December 20, 2021, the petitioner saw Dr. Dore Robinson at Duly Othopaedics. The referral was reportedly made by Dr. Danaher. (R. p. 31) The petitioner noted that he had physical therapy for his head and neck as well as an injection for his neck. The petitioner reported sharp stabbing pain from the center of his head around his eyes traveling down his neck into his lower back and left leg. He also complained of intermittent blindness from a detached retina. Metoprolol and gabapentin did not help with pain relief. (Pet. Ex. #2)

The petitioner testified that Dr. Robinson referred him to seek chiropractic treatment. (R. p. 32) The petitioner further testified that chiropractic treatment has not provided him with any symptom relief.

The petitioner returned to Dr. Danaher for a neurology consultation on March 28, 2022. An EMG study of the bilateral upper extremities was also conducted at that time. The study was conducted in order to assess the petitioner's complaints of stabbing pains in the neck radiating into the head. The study was interpreted by Dr. Mayer. The right median and ulnar motor nerve studies were normal. On the left side, the median and ulnar motor nerve conductions were also normal but conduction studies were mildly slowed in the left forearm. Dr. Mayer opined that the diffusely diminished sensory amplitudes suggested a sensory polyneuropathy with primarily axonal features of moderate severity. It was noted that the petitioner was asymptomatic to these findings. Dr. Mayer also noted that there was no EMG evidence for an acute or active cervical radiculopathy affecting either upper extremity. He did detect the possibility of chronic radiculopathies involving the C7 nerve root. (Pet. Ex. #2, p. 180)

On July 28, 2022, the petitioner was again seen by Dore E. Robinson, DO at Duly Orthopedics with complaints of cervical and lumbar spine pain "from an work (sic) injury." The petitioner no relief with physical therapy, minimal relief from the lumbar spine injection, and no relief from Gabapentin. Tramadol did reportedly provide some relief. The petitioner was referred to Andrew Kalin, M.D. for a second opinion and was to be seen prn. (Pet. Ex. # 2, pp. 201-203)

The petitioner consulted with Dr. Kalin on September 19, 2022. Dr. Kalin's diagnoses were as follows: lumbar radiculopathy (primary), cervical radiculopathy, intervertebral disc stenosis of neural canal and cervical region, cervical spondylosis without myelopathy, cervicalgia, intervertebral disc stenosis of neural canal of the lumbar region, spondylosis of the lumbar region without myelopathy or radiculopathy, and chronic low back pain, unspecified back pain laterally, unspecified whether sciatica present. (Pet. Ex. #2, p. 325) The petitioner presented with a history of lower back pain from a work related event when he fell. Dr. Kalin reviewed the petitioner's history of treatment including injections. It was also noted that the petitioner had cervical pain and was referred by Dr. Robinson for an injection. The petitioner noted that the lower back pain was more bothersome and wanted to address that first. Dr. Kalin prescribed a lumbar epidural steroid injection. (Pet. Ex. #2, p. 334)

The petitioner returned to Dr. Kalin three weeks later on October 5, 2022, at which time he underwent a transforaminal epidural steroid injection at L5-S1.

The petitioner saw Dr. Kalin again on October 28, 2022, three weeks before hearing. Dr. Kalin noted that the petitioner presented with no new complaints and recently had a lumbar epidural steroid injection which provided greater than 50% relief. The petitioner was reportedly increasing his activities of daily life and decreasing over the counter medications. Dr. Kalin

reported that the petitioner was happy with pain relief in the lower back and wanted to treat the remaining neck pain. Dr. Kalin commented that "[t]his pain began after no specific inciting event and has been a constant and ongoing problem for him." (Pet. Ex. #2, p. 275) Dr. Kalin prescribed an epidural steroid injection at the C6-C7 level.

Petitioner's Exhibit 3 was the records of Dr. Hasan. The petitioner had seen Dr. Hasan for pain management dating back to 2015, at which time he had complaints of bilateral shoulder pain. (Pet. Ex. #3, p. 44) He also saw Dr. Hasan in 2020 for right and left sided sacroiliac pain. The onset of pain was May 13, 2020 (Pet. Ex. #3, p. 27) It was noted that the petitioner had treated with Dr. Darwish, who recommended the sacroiliac injection. The petitioner testified that he was experiencing sharp, crackling pain in his neck and lower back. He noted that he had never experienced pain like this previously. (R. p. 24) The petitioner followed up with Dr. Hasan on June 10, 2020. At that time, he reported that a Medrol Dosepak did not alleviate his lower back symptoms. Physical therapy was also conducted at that time. Tenderness was noted upon examination. The petitioner was prescribed Nabumetone and instructed to return in four weeks. Persistence with pain would necessitate the need for an MRI of the lumbar spine.

An MRI of the lumbar spine was conducted at Progressive Radiology on July 24, 2020. The study reportedly showed mild dextroscoliosis of the lumbar spine apex at L3-L4, cortical irregularity of the L3-L4 endplates with significant signal changes within the L3 and L4 vertebral bodies related to severe degenerative disc disease, severe endplate degenerative changes, and Schmorl's nodes. Disc bulge osteophyte complex protrusions were noted. Disc bulges were also noted at L4-L5 and L5-S1. It was noted that the petitioner did not want to pursue surgical intervention for the pain at that time. (Pet. Ex. #3, p. 32)

The petitioner returned to Dr. Hasan two days later on July 29, 2020. Dr. Hasan reviewed the MRI study with the petitioner and recommended an epidural steroid injection to the lower back. The petitioner was restricted from lifting more than 30-pounds at that time. (Pet. Ex. #3, p. 35)

A sacroiliac joint injection was given to the petitioner on September 22, 2020. (Pet. Ex. #3, p. 46)

The petitioner returned to Dr. Hasan on October 7, 2020. The petitioner reportedly obtained 50% improvement from the sacroiliac injection and it was noted that his symptoms had partially improved. (Pet. Ex. #3, p. 31) Dr. Hasan noted that the majority of the petitioner's symptoms were arising from the posterior lumbar spine. The petitioner was to return for bilateral facet injections at L3-L4, L4-L5, and L5-S1.

The petitioner returned to Dr. Hasan on February 17, 2021 (subsequent to the November 19, 2020 work accident). It was noted that the petitioner was being treated after a slip and fall with concussion symptoms. The petitioner was under the care of a neurologist who referred him to Dr. Saeed for pain management. Occipital nerve blocks were pending approval, but the petitioner preferred to obtain the treatment with Dr. Hasan. (Pet. Ex. #3, p. 20) The petitioner's pain rating was 5-6/10. The petitioner was to follow up once the nerve blocks were approved and follow up with neurology for his concussive symptoms.

The petitioner sought pain management with Dr. Hasan on March 3, 2021. He listed his pain points as the frontal aspect of his head, neck, and lower back. He rated his pain at 3-5/10.

With respect to past pain management treatment, the petitioner reported that he had seen Dr. Saeed upon referral from his primary care physician, Dr. Danaher. Dr. Saeed had administered occipital nerve blocks without significant relief and was on Gabapentin. The

petitioner reported dizziness and headaches. The onset date for low back pain and left hip pain was 5/13/2020. (Pet. Ex. #3, p. 15)

On examination, Dr. Hasan noted normal muscle strength and range of motion but tenderness along the cervical and lumbar spine region. Pain was also noted with lateral rotation of the cervical and lumbar spine. (Pet. Ex. #3, p. 16)

Dr. Hasan noted that he discussed the results of the cervical MRI and x-rays of the cervical and lumbar spine. The petitioner reported no significant relief from the occipital nerve blocks done by Dr. Sayeed. Dr. Hasan recommended that the petitioner continue to use Tylenol PM, continue treatment with neurology for concussive symptoms, and follow up in one month. Dr. Hasan diagnosed the petitioner with cervicalgia in the neck, low back pain, degeneration of the lumbar intervertebral disc, lumbosacral spondylosis without myelopathy, cervical spondylosis without myelopathy, cervico-occipital neuralgia, and myofascial pain.

On April 12, 2021, Dr. Hasan recommended cervical facet joint injections.

On May 25, 2021, Dr. Hasan injected the facet levels at C2-C3, C3-C4, and C4-C5. (Pet. Ex. #3, p. 80)

On June 9, 2021 the petitioner reported minimal improvement from the cervical facet joint injections. His symptoms remained the same and he showed little improvement with pain management. (Pet. Ex. #3, p. 68)

The petitioner was referred by Dr. Hasan to see Dr. Mohammad Khan at Silver Cross Neuro-Science Institute for neurology treatment. He saw the Dr. Khan once, on July 19, 2021 (Pet. Ex. #4, p. 7) In Dr. Khan's history, the petitioner denied losing consciousness at the time of the accident at issue. Dr. Khan reviewed the petitioner's diagnostic studies and noted that the CT and MRI scans of the petitioner's brain showed no structural damage. He also noted that the

MRI of the cervical spine showed no disc herniations. The absence of upper extremity radiculopathy was also noted by Dr. Khan. The petitioner's symptoms were neck pain, right occipital nerve pain, blurred vision, and vertigo. The petitioner's gait was noted to be stable. Dr. Khan diagnosed the petitioner with a cervical strain and recommended physical therapy. (Pet. Ex.#4)

The petitioner was seen at Impact Physical Therapy on one occasion, July 7, 2021. The petitioner complained of dizziness, headache, visual disturbance, auditory sensitivity, visual sensitivity, and mental fogginess. The petitioner reported that he had undergone vestibular therapy, physical therapy, occipital nerve blocks and facet injections, all of which have not offered any relief. The therapist suggested that the petitioner was suffering from a visual processing disorder. He recommended a functional visual examination, as well as a physiatrist to address the occipital complaints. (Pet. Ex. #5, p. 5)

The petitioner testified that he is not seeing any benefits from physical therapy for his back condition. (R. p. 36)

The petitioner treated at Rush Medical Ophthalmology Associates on September 13, 2021, where he was seen by Thomas A. Deutsch, M.D. (Pet. Ex. #6) The petitioner reported that he suffered from blurred vision since the date of the accident at issue. Episodes reportedly occur throughout the day, a couple of days per week. The petitioner also reported right eye twitching, white floaters, and black spots in his vision. CT and MRI scans were all reportedly normal. Dr. Deutsch noted that the petitioner saw Dr. Kenneth Moore at UIC, who suggested an evaluation for a stroke in the right eye. Dr. Deutsch diagnosed the petitioner with a vitreous detachment in the right eye. There was no indication for stroke or surgery. Dr. Deutsch recommended that the petitioner use hot compresses on his eye and monitor the situation.

A CT scan of the head and MRI of brain were conducted on September 15, 2021. Both studies were normal. (Pet. Ex. #6, pp. 3-5)

The petitioner testified that he never had any problems with his right eye before the accident at issue. He further testified that he notices blindness in his right eye every other day. (R. p. 36) The petitioner testified that Dr. Deutsch told him that he might need additional treatment in the future, but he did not specify what was recommended or discussed.

The petitioner's initial visit to U of I Hospital was on July 20, 2021. (Pet. Ex. #7) It was noted that the petitioner was on Gabapentin and Ibuprofen. Dr. Moore recommended Indomathecin and Lamictal.

On July 28, 2021, Dr. Moore noted that he had never encountered a patient with the same constellation of symptoms that the petitioner had and that he was not optimistic that he would respond to pharmacotherapy. His summary noted that the petitioner's was a "very UNUSUAL case." (Emphasis in the chart note) (Pet. Ex. #7, p. 48)

The petitioner saw Dr. Kenneth Moore, a neurologist at University of Illinois Hospital on August 12, 2021 for headache following blunt head trauma. The diagnosis was traumatic brain injury without loss of consciousness, initial encounter. (Pet. Ex. #7, p. 24) Dr. Moore discontinued the petitioner's use of Indomathecin and Lamictal due to side effects. The petitioner described the frequency, range, and scope of his headaches. It was also noted that the petitioner would hear classical or rock and roll music when the furnace blower goes on. (Pet. Ex. #7, p. 33) The petitioner's retinal images appeared to be normal based on the readings from the ophthalmoscopy. Sensory and neural testing was normal including the petitioner's gait pattern. Dr. Moore's assessment was: Unusual head pain syndrome, Unusual eye symptoms, Unusual vertigo symptoms, Unusual auditory symptoms. (Pet. Ex. #7, p. 36) He also recommended

physical and vestibular therapy be conducted at UIC. Dr. Moore concluded that the petitioner did not have any anatomic symptoms and did not meet the criteria for any recognized primary headache disorder. The prognosis was guarded. (Pet. Ex. #7, p. 38)

On August 15, 2021, Dr. Moore diagnosed the petitioner with monocular vision loss. Three days later, he noted that the petitioner's monocular vision blindness symptoms were unlikely related to his work injury and usually a stroke warning. (Pet. Ex. #7, p. 15)

On August 22, 2022, Dr. Moore issued a note that the petitioner was under his care for posttraumatic/post-concussion symptoms related to the accident at issue. The petitioner was to remain off of work and would be reassessed on two months. (Pet. Ex. #7, p. 336)

The petitioner's wife had a telemedicine health visit with Michelle Travina, RN at UIC on September 29, 2021. According to the chart notes, the petitioner's wife reportedly noted that all of the tests to rule out stroke were negative, but he was still having severe sharp pain. As a result of the call, the petitioner's next office visit was moved up to October.

On October 17, 2022, Dr. Moore issued a note that the petitioner was under his care for posttraumatic/post-concussion symptoms related to the accident at issue. The petitioner was to remain off of work and would be reassessed on three months. Dr. Moore noted that he started the petitioner on medication that might be helpful. (Pet. Ex.37, p.340)

The petitioner returned to Dr. Moore on October 25, 2021 for evaluation of generalized headaches. It was noted that the petitioner had a mildly antalgic gait, but no signs of ataxia. (Pet. Ex. #7, p. 202)

On November 12, 2021, the petitioner spoke to Brooke Johnson, D.O. on a telemedicine visit. It was noted that the petitioner had a history of headache with a concern for elevated intracranial pressure. A papilledema screening had been conducted previously to test intracranial

pressure. Both the right and left eye screenings were normal and negative for edema. (Pet. Ex. #7, p. 99) The petitioner was referred back to Dr. Deutsch for a general ophthalmology screening.

The office visit on February 14, 2022 references complaints of headaches and a diagnosis of cervico-occipital neuralgia on the right side. The petitioner was advised to follow up in three months around May 14, 2022. On February 24, 2022, the petitioner was seen by Khalid M. Malik, M.D. in the pain center at the recommendation of Dr. Moore. It appears that the petitioner's medications were monitored. (Pet. Ex. #7)

The petitioner made an office visit to the pain center on March 30, 2022, with complaints of headache. He was diagnosed with occipital neuralgia on the right side. A new patient evaluation note indicated that the petitioner was referred for occipital nerve blocks and his chief complaint was for headaches. It was noted that a previous occipital nerve block was done in 2021 and resulted in worsening of pain. The petitioner was diagnosed with right occipital neuralgia. Dr. Chovatiya noted the results of the petitioner's previous MRI. Injections were recommended. On examination, it was noted that the petitioner's gait was stable. (Pet. Ex. #7, p. 235) He was noted to have normal lordosis in the cervical and lumbar spines. Strength was normal in the extremities. The diagnosis was right occipital neuralgia and a right ONB injection was recommended. (Pet. Ex.#7, p. 236)

The petitioner returned to the pain clinic on April 22, 2022 with occipital nerve pain and received an occipital nerve block. The attending physicians were R. Chovatiya, Dr. Bhatia, and Dr. Dang. The petitioner was instructed to return to the clinic in one month. (Pet. Ex.#7, p.209)

The petitioner returned to see Dr. Moore in the Neurology Clinic on May 17, 2022. The petitioner's medications at that time included Riboflavin, Carbamezapine, Ibuprofen, Tramadol,

Acetaminophen, Veniafaxine, and Lidocaine patches. The petitioner's complaints included auditory changes, back pain, confusion, dizziness, headaches, light-headedness, neck pain, vertigo, and vomiting. No relief was reported from the various pain management medications. (Pet. Ex. #7, p. 179)

The petitioner had an in-person office visit at the pain clinic on May 24, 2022, at which time he complained of back pain and shooting pain in the left hip. He was diagnosed with occipital neuralgia and neuropathic pain. The treating physician that day was Rani Chovatiya, M.D. It was noted that Dr. Moore had prescribed pain patches. A pain questionnaire was also taken that day. (Pet. Ex.# 7)

The petitioner received an occipital nerve block on June 24, 2022. (Pet. Ex. # 7)

The petitioner returned for another in-person office visit on July 27, 2022. Chief complaint was headache and the diagnosis remained occipital neuralgia of the right side. It was noted that the occipital nerve block from May 24, 2022 did not provide relief although the previous nerve block did provide relief. (Pet. Ex. #7, p. 397) The petitioner was to follow up with Dr. Moore in the headache clinic. On examination, it was noted that the petitioner's gait was normal. (pet. Ex. # 7)

The petitioner was scheduled for a follow up visit at the neurology clinic but the record contains no notes from that visit. (Pet. Ex. #7, p. 420)

The petitioner sought chiropractic treatment from Mark Aleman, D.C. at Midway Pain Center in Chicago, Illinois. Treatment dates were January, 8, 11, 13, 15, 20, 22, 25, 27, 29, February 1, 3, 5, 8, 10, 15, 17 and 22. At the time of the petitioner's initial visit on January 8, 2022, he complained of head, neck, mid back, low back, and left hip pain. His pain rating was 8/10. The petitioner also complained of vertigo and throbbing head pain. Dr. Aleman observed

occipital neuralgia. Dr. Aleman focused his treatment on chiropractic manipulation and electric muscle stimulation. (Pet. Ex. #8, p. 2) Treatment was recommended three times per week for five weeks. The petitioner showed some improvement through early February at which time his pain rating reduced to 7/10 but it then regressed returning to 8/10 on February 8, 2022. Pain rating reduced further to 6/10 at the time of the final treatment note on February 22, 2022. The petitioner testified that the chiropractic treatment did not help. (R. p. 33)

At hearing on November 21, 2022, the petitioner testified that his symptoms have gotten progressively worse since the time of the injury at issue. (R. p. 27) He also testified that the medication, Topirmate, had provided some relief.

With respect to the petitioner's current symptoms at the time of hearing, he testified that he had head pain, neck pain, and back pain. According to the petitioner, he experiences pain every day. (R. p. 43) The petitioner also testified about his physical limitations which have impacted his ability to engage in activities of daily life. The petitioner testified that he is limited from operating machinery due to his medications. He is receiving Social Security Disability benefits. Petitioner would like to receive more treatment from Dr. Moore and injections from Dr. Kalin. (R. pp. 30 and 35)

On cross-examination, the petitioner acknowledged having undergone four brain scans, all of which were normal. (R. p. 49) The petitioner also affirmed having undergone a series of MRI studies of his brain, neck, and lower back.

With respect to pre-accident treatment, the petitioner agreed that he testified that his lower back was last treated six months before the accident at issue. Upon further questioning, the petitioner acknowledged that he had received lower back treatment less than two months before the accident at issue, not six months. (R. p. 52) The petitioner further acknowledged

reporting lower back pain with a 8/10 pain rating less than two months before the accident at issue.

Pursuant to Section 12 of the Act, the respondent had the petitioner evaluated by Dr. Jeffrey Kramer, a neurologist, on two occasions, May 27, 2021 and October 5, 2021. (Res. Ex. #'s 2 and 3)

Before conducting the first examination, Dr. Kramer reviewed the petitioner's medical records from Silver Cross Emergency Department, Dr. Danaher, Dr. Bokari, Dr. Sayeed, Dr. Hasan, Dr. Burgett, and physical therapy notes.

Dr. Kramer noted the petitioner's past medical history was notable for intermittent symptoms of 10 years visual aura with blurred vision without headaches and occasional dizziness. (Resp. Ex. #1, p. 2) Dr. Kramer noted that the petitioner had been diagnosed with post-concussion syndrome and occipital neuralgia. Dr. Kramer also noted the diagnostic studies including CT scans of the petitioner's head, an MRI of the head, and an EEG. MRIs of the cervical and lumbar spine were also noted by Dr. Kramer.

On examination, Dr. Kramer noted that the petitioner's cranial nerves were intact. Motor skills were normal. The petitioner's gait was also normal. No lumbar symptoms were noted at this exam.

Dr. Kramer diagnosed the petitioner with post-concussion syndrome and bilateral occipital neuralgia, more on the right. The petitioner was not at MMI and needed more treatment. He recommended six more sessions of vestibular therapy, home exercises, and some changes to his medications pursuant to the oversight of a neurologist. Facet joint blocks and therapy for cervical range of motion were also recommended. Dr. Kramer anticipated maximum

medical improvement by July 1, 2021, five weeks after his examination. The treatment to date was reasonable and necessary and causally related to the work injury. (Res. Ex.#2)

Dr. Kramer conducted a follow up Section 12 examination of the petitioner on October 5, 2021. He reviewed additional records from Dr. Moore and Dr. Hasan. He noted that the facet block injections administered by Dr. Hasan had minimal impact. Dr. Kramer also noted that the petitioner saw Dr. Bokhari for visual disturbances and a CT angiogram of the head and neck was reportedly negative. The petitioner reported shooting pain in the right occipital region and right temporal region. Upon examination, Dr. Kramer noted that the petitioner's cranial nerves were intact. Sensory examination was also normal. It was also noted that the petitioner presented with an antalgic gait with his left hip elevated.

Dr. Kramer diagnosed the petitioner with occipital neuralgia on the right, temporary aggravation of underlying degradation of the cervical region, and associated scalp tenderness. Dr. Kramer did not recommend any further testing to address the petitioner's neurological condition. He also found that the petitioner's complaints were markedly out of proportion to any objective findings. Dr. Kramer opined that the petitioner did not demonstrate any objective findings other than degenerative findings in the cervical spine. He also emphasized the fact that the petitioner did not present with an antalgic gait at the time of the first examination on May 27, 2021. Treatment through August 1, 2021 was appropriate. Dr. Kramer found that the petitioner had reached maximum medical improvement and needed no further treatment. (Res. Ex.#3)

The respondent also had the petitioner seen for a section 12 examination by Dr. Kern Singh, an orthopedic surgeon, on September 29, 2021, in order to address his orthopedic issues. (Res. Ex. # 1) At the time of Dr. Singh's examination, the petitioner rated his neck and mid-back pain at 7-8/10; his lower back pain was at 7-9/10. The petitioner complained of bilateral radiation

into his feet. Pain was aggravated by several activities of daily life. Physical therapy and injections reportedly provided no relief. On examination, the petitioner had full range of motion of the cervical and lumbar spine. Monofilament testing was symmetric with no loss of sensation. Upper and lower extremity strength and reflexes were all normal. Dr. Singh reviewed the petitioner's cervical MRI from February 18, 2021, which reportedly showed degenerative spondylolisthesis and C3-C4, degenerative cervical spondylosis without stenosis. Dr. Singh opined that the petitioner sustained a soft tissue muscle strain of the cervical and lumbar spine which had resolved. He stated that the petitioner had reached maximum medical improvement and could return to work full duty from an orthopedic standpoint. He also noted that he could not objectify the petitioner's pain complaints regarding the spine, which were nonanatomic in nature. (Res. Ex. #1)

CONCLUSIONS OF LAW

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

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between his employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

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

On the issue of whether the petitioner's current condition of ill-being is causally related to the work accident of November 19, 2020, the Arbitrator finds:

Petitioner's current condition of ill-being is, in part, causally related to the work injury of November 19, 2020. All of the petitioner's injuries related to the November 19, 2020 work injury have resolved and his current condition of ill-being is causally related to the accident as follows: Post-concussion syndrome – resolved; Occipital neuralgia – resolved; Cervical strain – resolved; Lumbar strain – resolved. Petitioner's visual disturbance issues and auditory hallucinations are not related to the work accident.

This finding is based on the opinions of Drs. Kramer and Singh, the medical records and Petitioner's testimony.

Throughout the course of the petitioner's post-accident treatment, he has been diagnosed with numerous conditions, been treated by several physicians, and is currently excused from work by his treating doctors. Petitioner is now receiving SSDI benefits. The pivotal issue on causal connection is to what degree are the petitioner's conditions related to his work accident and to what degree are his restrictions valid.

Petitioner underwent several diagnostic studies regarding his brain and spine, the results of which were largely benign. The diagnostic studies are as follows:

Head/Brain Scans:

November 20, 2020 – The first CT scan showed no acute intracranial hemorrhage. The study was said to be normal.

December 2, 2020 – The second CT scan showed no evidence of acute intracranial hemorrhage. The second study was also said to be normal.

December 10, 2020 – An EEG study was normal.

December 14, 2020 – An MRI demonstrated a tiny 6 mm focus of hyperintense signal that was possibly related to a pre-existing ischemic infarct. Other than the previous infarct, the study was normal.

September 15, 2021 – The third brain CT scan was normal.

September 22, 2021 – A second EEG was normal, other than what was described as a "very mild focal abnormality in the left frontotemporal region", showing focal disturbance of brain function. While this finding is troubling, there is nothing to indicate that it is the result of any trauma and there is nothing to indicate that it is related to the work accident of November 19, 2020.

Orthopedic Scans:

July 24, 2020 – An MRI of the lumbar spine done prior to the work accident showed mild dextroscoliosis and severe degenerative changes at L3-L4. Osteophytes and bulges were noted at L4-L5. No acute findings were noted on the report. No post-accident lumbar MRI was performed.

February 8, 2021 – An MRI of the cervical spine noted multilevel degenerative spinal spondylosis without stenosis or cord signal at any level. No bulges or herniations were noted. No acute findings were reported.

March 28, 2022 – An EMG of the bilateral upper extremities indicated a mild delay in the left forearm. There was no evidence for acute or active cervical radiculopathy affecting either extremity. Possible chronic nerve root involvement was noted at C7.

Overall, the petitioner had six diagnostic studies of the head/brain and three to his spine. The Arbitrator notes that the brain scans were normal, as well as the EEG studies, except for the March 28, 2022 EEG, which might show a degenerative finding consistent with the petitioner's age (the Arbitrator is surprised that a further study a year or so out to rule out progression was not suggested).

The Arbitrator finds that none of the six diagnostic studies of the petitioner's brain demonstrate any structural changes which can be said to be related to the accident at issue. The lack of objective evidence of brain trauma is noteworthy, especially considering to ongoing subjective complaints, the treatment records, and expert opinions. Further, the records of Silver Cross and Dr. Danaher do not show physical evidence of a significant trauma from the petitioner's head striking the floor or being hit by an 80 pound tire (per the medical records). There is no mention of tenderness, abrasion, contusion or swelling in the records regarding the 11/20 ER visit, the 11/24 PCP visit and the 12/2 ER visit.

The Arbitrator finds the opinions of Dr. Kramer to be persuasive regarding Petitioner's neurologic/head brain conditions. Petitioner had post-concussion syndrome, right occipital neuralgia and temporary aggravation of cervical spine DDD as a result of the accident. He was at MMI as of 10/5/2021 and treatment through 8/1/2021 was appropriate.

Treatment after 10/5/2021 for Petitioner's brain/occipital neuralgia/neurologic issues and cervical/lumbar spine issues is not causally related to the November 19, 2020 work accident.

The medical records do not support the conclusion that Petitioner's visual issues/detached retinas are causally related to the accident. He also had significant visual disturbances prior to the accident. There is nothing persuasive in the records relating his detached retina conditions and the transitory blindness issues to the work accident. The auditory hallucinations are not

related to the accident and do bring into question the accuracy of Petitioner's perceptions regarding all of his current complaints. A psych consult would have helped, but it was not pursued. Equally troubling is Petitioner's failure to follow through on the recommended eyeglass prescription. If the glasses might improve Petitioner's vision, why not pursue the recommendation? Petitioner did not offer any reason for not following up on Dr. Deutsch's recommendation. Finally, Petitioner's presentation to Dr. Kramer without the dramatically antalgic gait (inconsistent with contemporary and prior and subsequent medical records) leads the Arbitrator to question his credibility.

The Arbitrator finds Dr. Singh's opinions to be persuasive regarding Petitioner's spinal condition. He suffered a cervical strain and lumbar strain as a result of the accident and was at MMI as of the 9/29/2021 Dr. Singh exam.

On the issue of whether the petitioner is owed temporary total disability benefits, the Arbitrator finds as follows:

The Arbitrator notes that the petitioner was restricted from work by his treating physicians. However, the work releases are based upon the petitioner's subjective complaints. There is no objective testing to substantiate the petitioner's complaints. Moreover, the petitioner's testimony compared to what is found in the medical records establishes him as a non-credible witness. The Arbitrator further relies upon the reports of Dr. Kramer and Dr. Singh, both of whom released the petitioner to return to work. As a result, the Arbitrator denies temporary total disability compensation after October 19, 2021, the date that Respondent claimed TTD should stop. (Arb. Ex. #1)

On the issue of whether the petitioner is entitled to compensation for past medical benefits, the Arbitrator finds as follows:

The petitioner submitted a 132 page medical bill exhibit. (pet. Ex. # 9) The Arbitrator denies compensation for any medical bills after the date of Dr. Kramer's report on October 5, 2021. The Arbitrator finds that the respondent is liable for any medical treatment prior to October 5, 2021 pursuant to the limits of the Illinois Workers' Compensation Medical Fee Schedule. The respondent's obligations are as follows:

1. H&W Fund – Lien (Medical) – 11/20/20 through 10/05/21 - $6,075.36
2. H&W Fund – Lien (Pharmacy) – 11/24/20 through 05/04/21 - $74.39
3. DuPage Medical Group (Ryan Burgette) – 02/03/21 - $111.84
4. DuPage Medical Group (TP MRI) - $1,393.00
5. DuPage Medical Group (Przemyslaw Ilczyk) - $90.58
6. DuPage Medical Group (Maria Cesario) – 27.99
7. Silver Cross Hospital – 11/20/202 - $1,249.14
8. Silver Cross Hospital – 12/02/20 - $2,448.80
9. Silver Cross Hospital – 05/14/21 - $2,257.01
10. Silver Cross Hospital – 08/05/21 - $1,408.74
11. Dr. Khan – 07/09/21 - $136.21
12. Advanced Midwest Radiology – 11/11/20 - $170.00
13. Advanced Midwest Radiology – 12/02/20 - $170.00
14. IL Bone & Joint – 03/03/21 through 06/09/21 - $65.37
15. IL Bone & Joint – 08/11/21 - $56.79
16. UI Health – 07/20/21 - $158.54

17. UI Health – 07/20/21 - $201.47
18. UI Health – 08/12/21 - $128.84
19. UI Health – 08/12/21 – 36.71
20. Pain Management Specialists – 01//0/22 through 10/05/21 - $2,174.52
21. Out of Pocket –
    a. DuPage Medica - $150.00
    b. Oak Surgical Institute - $225.00
    c. Walgreens - $59.00

Total: $18,869.30

This award is pursuant to Sections 8(a) and 8.2 of the Act and Respondent is entitled to a credit for all awarded bills that it has paid or compromised.

On the issue of whether the petitioner is entitled to prospective medical treatment, the Arbitrator finds as follows:

Based upon the Arbitrator's findings above on the issue of causation, No prospective medical treatment is awarded.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC021157
Case Name	Jose Avila v. I Deliver Logistics
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0291
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Christopher Williams
Respondent Attorney	Colin Mills

DATE FILED: 6/17/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse: Accident, causal connection, temporary total disability, medical expenses, prospective medical care, and penalties and fees.	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSE AVILA,

Petitioner,

vs. NO: 23 WC 21157

I DELIVER LOGISTICS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, prospective medical care, and penalties and fees, being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

I. FINDINGS OF FACT

Petitioner's Testimony:

At trial, Petitioner, Jose Avila testified that on August 1, 2023, while working as a delivery driver he was injured during a physical altercation. Specifically, Petitioner testified that after making a delivery, he proceeded to start his route to the next delivery which was on a different block. Petitioner testified that as he drove the delivery truck away from his only stop on that block, an individual driving a black SUV turned in front of Petitioner's truck and pulled into a driveway. Petitioner testified that the SUV driver cut him off. Next to the driveway, there was a woman unloading groceries from her vehicle and a pedestrian across the street. Petitioner testified he beeped his truck horn to inform the driver of the black SUV that he had turned unsafely. Petitioner further explained that he beeped the horn because he was concerned the woman unloading groceries was going to get hit by the black SUV.

After he beeped his horn, Petitioner said there were three individuals yelling at him, including the woman unloading the groceries and the driver of the black SUV. Petitioner stated

the man driving the SUV exited the vehicle very aggressively and made a "beeline straight to me." Petitioner testified that he unbuckled his seatbelt and approached the driver of the SUV at the side of his truck. Petitioner testified that, "as soon as I stepped out, he swung at me, hit me. I tried my best to keep him away, but at the same time I had three other individuals coming towards me." Petitioner testified three people started physically attacking him. Petitioner stated it was the "lady that was unloading groceries" that calmed everybody down so that Petitioner could get away and get back into his truck. At that point, Petitioner had minor scratches.

In addition to Petitioner's testimony, the videos from the delivery truck dashboard camera, marked as Respondent's Exhibits ("RX") 2 through 7, were admitted into evidence. Petitioner viewed and answered questions about the videos during trial.

Petitioner testified that RX 2 showed the black SUV cutting him off and the woman unloading groceries from her vehicle parked close to the driveway. Petitioner testified that he did not have the ability to drive away because there was a pedestrian crossing the street as also depicted in RX 2. Petitioner initially testified that he did not say anything to threaten those individuals. However, Petitioner later conceded that RX 3 shows him making angry gestures at the men with his arm along with angry verbal cues while he was still inside his truck. In fact, Petitioner testified that RX 3 shows him talking at the driver of the black SUV and Petitioner confirmed that he said something to the SUV driver along the lines of " you're lucky that I can't beat your ass." Petitioner testified that rather than staying in his truck and driving away, he in fact stopped, exited the truck, and briefly exchanged words with the driver of the black SUV before the driver punched him. Petitioner testified that he was not looking for a fight and believed he was engaging in only a verbal argument.

Petitioner testified that RX 4-7 shows Petitioner re-entering his truck after the initial incident with the other driver and driving to his next stop two to three blocks away, which was approximately a three-to-four-minute drive. Petitioner got out of the truck to make the delivery and while he was taking a photo of the delivered package, he was approached again by four individuals. Specifically, the video shows a maroon sedan pull up and park in front of Petitioner's truck. Four individuals, one of which Petitioner identified was the driver of the black SUV, exited the sedan and began punching Petitioner on the front lawn. Petitioner testified that it was during this second incident that he sustained a laceration to the lip, concussion, bruising of the face, and injury to his two front teeth.

Video Evidence:

The Commission's review of RX 3 shows Petitioner driving the delivery truck and then stopping and gesturing with his arm and hand before honking the truck's horn. It is clear from the video that Petitioner angrily directed words to those outside of his delivery truck. Petitioner continues to talk to and gesture at the cars and people outside of the truck. Petitioner is clearly agitated. Petitioner pulls up slightly, just past the driveway and parked black SUV, and puts the break on. Petitioner continues to talk at and gesture aggressively to those outside of his truck. The driver of the black SUV exits his vehicle and walks up to the passenger side of the truck. Petitioner sees the man approaching and immediately takes off his seat belt and exits the delivery truck without hesitation. Petitioner exits the truck, there was a brief verbal exchange, and then the man punches Petitioner in the face with additional fight taking place just off-camera. A few

seconds later, another individual in a white shirt engages in the fight. The video also shows two women who appear to break up the fight. RX 4 shows Petitioner re-entering the delivery truck after the altercation. Petitioner waves off the people outside the truck and drives away. Petitioner's face is not injured.

The Commission reviewed RX 5, RX 6 and RX 7 which are videos that occur at Petitioner's next delivery stop about three to four minutes after the initial incident. Petitioner is seen walking from the truck to the front of a house to make a delivery. The videos also show a maroon sedan that pulls up in front of Petitioner's delivery truck and then four men jump out of the maroon sedan, without closing the car doors. The four men are then seen punching and kicking Petitioner near a tree before they run off. Petitioner re-enters the truck and his face is visibly bloody. Petitioner then exits the vehicle with his cell phone and when he comes back to the truck, he appears to fall near the passenger side of the truck.

II. CONCLUSIONS OF LAW

A. Accident

The Arbitrator found Petitioner met his burden and proved by a preponderance of evidence that he sustained "two accidents" on August 1, 2023 that arose out of and in the course of his employment. The Commission after reviewing the entirety of the evidence reaches a different conclusion.

The Illinois Workers' Compensation Act states that "to obtain compensation under this Act, an employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of employment." *820 ILCS305/1(d)*. *"*A finding that a claimant qualifies as a traveling employee does not relieve [that employee] of the burden of proving that his or her injury arose out of and in the course of employment." A traveling employee is deemed to be "in the course of" his employment from the time he leaves home until he returns. *Cox v. IWCC*, 406 Ill.App.3d 541, 545 (1st Dist. 2010). The test for determining whether an injury to a traveling employee arose out of the employment is the reasonableness of the conduct in which the employee was engaged and whether it might normally be anticipated or foreseen by the employer." *Wright v. Industrial Commission*, 62 Ill.2d 65, 70 (1975).

In addition, Illinois Supreme Court has consistently held that injuries suffered by employees resulting from assaults are not compensable if there was evidence to sustain a finding by the Commission that the motive was personal to the victim, rather than work-related, or if the injured employee was the aggressor. *Schultheis v. Indus. Comm'n*., 96 Ill. 2d 340, 346-47 (1983); *see also Franklin v. Indus. Comm'n*, 211 Ill. 2d 272, 279-80 (2004). Identifying the aggressor in a workplace altercation is a question of fact for the Commission. The principle known as the "aggressor defense" provides that, even if a fight is work related, an injury to the aggressor is not compensable. *Franklin v. Industrial Comm'n*, 211 Ill.2d 272, 279-282 (2004). The rationale is that the claimant's "own rashness" negates a causal connection between the employment and the injury so that the work is neither the proximate nor a contributing cause of the injury. *Id.* (citing *Triangle Auto Painting & Trimming Co. v. Industrial Comm'n*, 346 Ill. 609, 618 (1931)). In making this determination, the fact that one party made the first contact is not

decisive. Instead, the parties' conduct must be examined in light of the totality of the circumstances. *Ford Motor Co. v. Industrial Comm'n*, 78 Ill.2d 260, 263 (1980).

First, the Commission notes that at trial and on review before this panel, there is no dispute that Petitioner was a traveling employee at the time of the August 1, 2023 incidents. As such, this case turns on whether the altercations arose out of Petitioner's employment. The Commission finds the extensive video evidence overwhelmingly persuasive in this matter. Specifically, after review of the totality of the evidence, including the video evidence, the Commission finds that the initial incident was the result of Petitioner's own rashness and aggression in response to the irregular driving of another driver. The Commission further finds that the second incident during which Petitioner sustained injury would not have occurred without Petitioner's rashness and aggression in the first incident.

The fact that the driver of the black SUV threw the first punch is not decisive on the issue of whether Petitioner was an aggressor. As stated, the Commission finds the most persuasive evidence to be the videos of the incident, which show that Petitioner was the aggressor with his actions and words inciting the first incident. After the SUV cuts off the delivery truck, the video shows Petitioner in the truck aggressively talking and gesturing with a closed fist. Petitioner admitted to these actions. Even though the black SUV turned in front of Petitioner's delivery truck, there was no contact between the vehicles and the black SUV turned into a parking spot without blocking or otherwise impeding Petitioner's delivery truck from continuing down the street to the next delivery location. Contrary to Petitioner's testimony, the video shows that Petitioner would have been able to drive past the black SUV and the pedestrian's location would not have impeded his ability to continue with his delivery route. However, Petitioner chose to engage the SUV driver. After honking his horn and aggressively gesturing, Petitioner abruptly stops his truck and quickly unbuckles his seat belt at the same time the driver of the black SUV is exiting his vehicle. While Petitioner testified that he intended to engage in a verbal argument, his actions and gestures as depicted in RX 3 indicate otherwise. Petitioner clearly chose not to drive away and continue on his delivery route without incident.

The Commission finds that the totality of the evidence supports a finding that it was Petitioner's own rashness and anger that incited the initial incident which, in turn, resulted in the next incident wherein Petitioner was injured. Therefore, the Commission concludes that Petitioner has not proved by a preponderance of the evidence that either incident on August 1, 2023 arose out of his employment with Respondent. As such, Petitioner's claim is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 1, 2023 is hereby reversed and Petitioner's claim is denied. All awarded benefits are vacated.

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

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

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

June 17, 2024
o: 05/23/24
CMD/jjm
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC021157
Case Name	Jose Avila v. I Deliver Logistics
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Christopher Williams
Respondent Attorney	Colin Mills

DATE FILED: 11/1/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 31, 2023 5.32%

/s/Gerald Granada, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JOSE AVILA
Employee/Petitioner

v.

I DELIVER LOGISTICS
Employer/Respondent

Case # **23** WC **021157**

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 **GENEVA**, on **10/19/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **8/1/2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**44,720.00**; the average weekly wage was $**860.00**.

On the date of accident, Petitioner was **24** years of age, ***single*** with **0** dependent children.

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $14,719.00 to Rush Copley Medical Center, $1,908.88 to City of Aurora, $6,985.00 to Face2Face, $966.00 to Loyola, and $610.00 to SmileHub, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $573.33/week for 11 2/7 weeks, commencing 8/2/2023 through 10/19/2023, as provided in Section 8(b) of the Act.

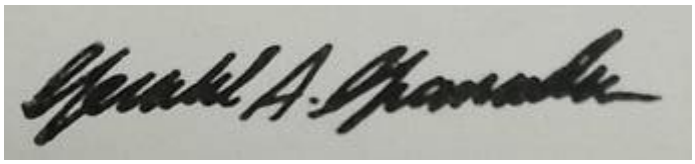
Respondent shall authorize and pay for any related prospective medical care as prescribed by Petitioner's treating doctors.

Respondent shall pay to Petitioner penalties of $**6,331.86**, as provided in Section 16 of the Act; $**15,829.66**, as provided in Section 19(k) of the Act; and $**0**, as provided in Section 19(l) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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



NOVEMBER 1, 2023

Signature of **Arbitrator Gerald Granada**

FINDINGS OF FACT

This case involves Petitioner Jose Avila, who alleges to have sustained injuries while working for Respondent I Deliver Logistics on August 1, 2023. Respondent disputes Petitioner's claim, with the issues being: 1) accident; 2) causation; 3) medical expenses; 4) TTD; 5) prospective medical; and 6) penalties and attorney fees. The primary issue in this case is whether Petitioner's injuries arose out of his employment.

Petitioner's Testimony

Petitioner testified that on August 1, 2023, he was employed by Respondent as a delivery driver (T. 11). He delivered packages for Amazon in an Amazon truck (T. 11-12). On August 1, 2023, Petitioner testified that he was making a delivery in Aurora, Illinois driving the Amazon truck when a vehicle turned sharply in front of him causing him to stop suddenly (T. 13-14). Petitioner testified that this vehicle almost hit a person who was unloading groceries on the side of the road (T. 14-15).

Petitioner testified that he honked his horn at the driver of the vehicle (hereinafter "driver") because the driver almost hit the neighbor unloading groceries (T. 15). He testified that he stopped his truck and notified the neighbor that he honked because she was almost struck by the car (T. 15). Petitioner testified that the driver pulled into a driveway and exited his vehicle in a threatening manner and approached the truck (T. 17-18). Petitioner believed he was going to be followed by the driver (T. 64). Petitioner also testified that a pedestrian was walking in front of his truck and thus he could not proceed forward at this moment (T. 34).

Petitioner testified that he felt threatened in his vehicle, so he removed the seatbelt and approached the driver (T. 18-19). Petitioner testified that he believed that he was going to have a conversation with the driver and never intended to engage in a physical altercation (T. 18). Petitioner testified that as he exited his truck, the driver punched him (T. 19). The driver threw the first punch (T. 43). He testified that two other individuals also began attacking him before the neighbor calmed everyone down (T. 19-20). Petitioner testified that he exited the truck because he believed he was going to have a verbal altercation with the driver about almost hitting his neighbor (T. 44). He also believed he was going to be attacked in the truck based on the driver's aggressive walk toward him (T. 58).

Petitioner testified that he was able to pick up his hat and return to his truck without injury besides a few scratches (T. 20). He testified that he returned to his route to make his next delivery (T. 20). Petitioner testified that as he was leaving, he did gesture to the individuals out of frustration, but not in a threatening manner (T. 46). He testified that before initially exiting his truck, he feared that he would be followed by the driver (T. 57).

Petitioner testified that he drove to his next delivery 2-3 blocks away (T. 20-21). As he was taking a photo for proof of delivery, four men attacked him from behind – one of which being the driver (T. 21-22). Petitioner testified that he was kicked and punched multiple times and that one of the individuals stole a chain he was wearing around his neck (T. 22, 31). Petitioner testified that the individuals stopped attacking him when the resident of the house to which he was delivering came outside (T. 22). Petitioner testified that he returned to his truck to get his cell phone to take a photo of the car's license plate before collapsing on the ground (T. 23). Petitioner testified that this second attack caused injuries to his head and face, including the loss of teeth (T. 23).

Petitioner testified that he was taken by ambulance to Rush Copley and had surgery for his face and mouth the following day (T. 23-24). He testified that he followed up with his primary care doctor at Loyola who took

Petitioner off of work and recommended counseling T. 24-25). Petitioner testified that he has started counseling (T. 25-26). Petitioner testified that at the time of trial he was not healed and still experiences headaches and migraines as well as facial pain and trouble breathing (T. 26). He was also experiencing flashbacks and was having nightmares and trouble sleeping (T. 27).

Petitioner testified that he gave a statement to an insurance adjuster a few days after the accident and told her that he was pulled out of the van, which did not happen, but he felt that he was pulled out of the van given the situation (T. 28-29). He testified that when he spoke with the adjuster, he was on pain medications, but not marijuana (T. 30).

Video evidence

Respondent introduced a series of videos of the incidents from August 1, 2023 which were recorded from various cameras on the Amazon truck, none of which contain audio (RX2-7). The first video, which begins at 3:12:50 PM depicts a front view of the truck and shows Petitioner's truck approaching a parked, dark colored SUV on his right side and a person standing near the back passenger door of the vehicle when another dark SUV is approaching from the opposite direction (RX2 0:00:08). The approaching SUV turns sharply in front of the Amazon truck and pulls into a residential driveway near where the other person was standing (RX2 0:00:11). The truck stops suddenly as the dark SUV pulls in front of it and then pulls up next to the parked vehicle (RX2 0:00:20). At this moment, a pedestrian can be seen at the crosswalk in front of the truck who eventually runs toward the truck (RX2 0:00:20). The next video, RX3, was taken concurrently with RX2 and shows the same period of time, but from a camera pointing toward the truck's interior and Petitioner as he was driving the truck (RX3).

In RX3, Petitioner is seen driving the truck when he begins to gesture with his hand just as he was stopping suddenly (see G-Force meter on the video) before honking the truck's horn (RX3 0:00:08). Petitioner then continues to talk and gesture towards those outside of the truck (RX3 0:00:15). He pulls up slightly and when stopped again, from a residential driveway, a man exits a black SUV from the driver's door without closing the driver's door and walks directly and deliberately towards the open door on the passenger side of the truck (RX3 0:00:24). Petitioner can be seen removing his seatbelt and approaching the open passenger side door as the man approached (RX3 0:00:28). Immediately as he steps outside of this truck, the man punches Petitioner in the face and an apparent fight takes place just off-camera (RX3 0:00:32). Roughly seven seconds later, another individual in a white hat and white shirt approaches the fight and begins to punch toward Petitioner with his right fist (RX3 0:00:39). A number of individuals appear to be walking and running around near the fight before the video ends (RX3).

The video in RX4 is from the same angle as RX3, but taken immediately after the events in RX3, beginning at 3:13:48 PM (RX4). As a number of individuals are standing near the passenger side open door of the Amazon truck, Petitioner can be seen re-entering the truck (RX4 0:00:11). Petitioner looks straight at the camera and it is clear that his teeth are in good condition and he has no apparent injuries to his head or face (RX4 0:00:13). Petitioner appears to wave off the people outside the truck and sit back in the driver's seat and drive away (RX4 0:00:21). Petitioner drives through an apparent residential neighborhood for another 40 seconds before the video ends (RX4).

The last three videos, RX5-7, all depict another period of time (approximately four minutes after the events of RX2-3) from various cameras positioned on the Amazon truck. RX5 is a side view of the truck and shows Petitioner walking from the passenger door towards the front of a house (RX4 0:00:01). The view of Petitioner

is blocked by the truck's side mirror, but the video shows that four individuals approach from the left side of the frame, the first of which as appears to be punching at Petitioner near the front door of the house (RX5 0:00:08). This is followed by the four individuals punching and kicking Petitioner while he lies on the ground beside a tree for approximately 20 seconds before the four people run away to the left (RX5 0:00:14). Petitioner can be seen running to the truck and then exiting and appearing to take photographs with his cell phone (RX5 0:00:45).

RX6 is the front view of the Amazon truck beginning at 3:17:48 PM (RX6). This is four minutes after Petitioner returned to his truck and drove away as evidenced in RX4. As the truck is stopped, a red sedan pulls up in front of the truck and four men jump out, without closing the car doors, of the sedan and run toward the truck (RX6 0:00:05). The four men run back to the red sedan at the end of the video (RX6 0:00:31).

RX7 is a video facing toward the inside of the truck taken during the events of RX5-6. To the side of the truck, Petitioner can be seen being punched and kicked by the four individuals near a tree before they run off (RX7 0:00:21). Petitioner re-enters the truck and the video clearly shows that his face is very bloody (RX7 0:00:44). He exits the vehicle with his cell phone and as he returns, Petitioner appears to collapse near the passenger side of the truck (RX7 0:00:57).

Respondent introduced a recorded statement (RX1) and transcript of that recorded statement (RX8) into evidence. During the recorded statement, which was taken by an adjuster, Amy Tuggle, for CCMSI at 11:15 AM on August 4, 2023, three days after the attack (RX8). During this interview, Petitioner identified that he was cut off by someone while driving for work and beeped at that person (RX8 p. 3). He notified Ms. Tuggle that this individual told him not to pull off or he would be followed (RX8 p. 3). Petitioner recalled that he pulled to the side to let him know there was a neighbor unloading groceries who he almost hit and then the driver of the vehicle got mad and pulled Petitioner out of the truck (RX8 p. 3). He noted that 4-5 people began to fight him before he returned to his truck to continue his deliveries when these people followed him and jumped him again (RX8 p. 3). Petitioner detailed his injuries to Ms. Tuggle and indicated that a police report had been filed (RX8 p. 4). He also indicated to Ms. Tuggle that he was taking pain medication at the time of the call (RX8 p. 5-6).

Medical Summary

Petitioner was taken from the scene of the assault by ambulance to Rush Copley Medical Center (PX1 p. 77-79). He reported being jumped by four people after honking at them and having a lip laceration and a lost tooth (PX1 p. 12). Petitioner lost consciousness and also had forearm pain (PX1 p. 12). He had swelling to the crown and occiput and multiple contusions to the face and head (PX1 p. 14). One of his teeth was loose and displaced while another was missing completely (PX1 p. 15). He had a 3cm full thickness lip laceration (PX1 p. 15). A CT scan revealed a broken nose (PX1 p. 32). He was released to primary care and oral surgery as soon as possible (PX1 p. 17). He was taken off work (PX1 p. 44).

Petitioner presented to Face2Face Maxlilofacial on August 2, 2023 (PX2). The history recorded showed that he was attacked while being robbed as an Amazon driver and that he had a loss of consciousness before presenting to Rush Copley (PX2 p. 2). He was experiencing nausea and vomiting that morning (PX2 p. 2). He was diagnosed with a fractured tooth #9 and a small buccal plate fracture at tooth #8 with concern for concussion (PX2 p. 2). He underwent an extraction of tooth #8 and root tip of #9 with the discussion of future implants needed PX2 p. 2-3). He returned on August 14, 2023 and was still experiencing pain, but healing normally (PX2 p. 4). Petitioner visited SmileHub to follow up on his dental concerns on August 15, 2023 (PX4 p. 1).

Due to his significant deep bite, Invisalign was recommended for proper healing, but Petitioner was unsure he could afford it (PX4 p. 1). Petitioner was sized for a temporary tooth replacement for a few months and he was fitted for an upper interim flipper, which he received on August 25, 2023 (PX4 p. 1).

Petitioner visited his primary care physician, Dr. Mark Hroncich, at Loyola on August 10, 2023 (PX3 p. 32-35). He reported being attacked as an Amazon driver and suffering multiple facial traumas, a nasal fracture, and had oral surgery the following day (PX3 p. 32). He complained of having facial pain and a headache and having great difficulty eating due to the pain from the trauma and oral surgery (PX3 p. 32). He was diagnosed with non-intractable headache and kept off of work (PX3 p. 34-35).

Petitioner returned to Dr. Hroncich on August 24, 2023 complaining of continued daily headaches since his assault (PX3 p. 78). Petitioner also explained that he was experiencing flashbacks of the events (PX3 p. 78). Petitioner was sent to the hospital to get a head CT by Dr. Hroncich which came back normal (PX3 p. 81). Petitioner was diagnosed with non-intractable headache and PTSD and Dr. Hroncich recommended that he see a psychologist (PX3 p. 81). He was kept off work (PX3 p. 169). Petitioner also visited Dr. Hroncich on September 21, 2023 and remained off work (PX3 p. 170).

Petitioner incurred the following medical bills, some of which have been paid by his group insurance plan through his family:

1) Rush Copley Medical Center: $14,719.00 (RX1 p.85-86);
2) City of Aurora: $1,908.88 (PX5);
3) Face2Face: $6,985.00 (PX2 p. 5);
4) Loyola: $966.00 (PX3 p. 12-13);
5) SmileHub: $610.00 (PX4 p. 3).

CONCLUSIONS OF LAW

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

Petitioner was employed as a delivery driver which, by its very nature, makes him a traveling employee. Petitioner traveled from one delivery to the next in Respondent's truck. At the time of both attacks, he was mid-delivery route. He was in the course of his employment when he was attacked.

The attacks also arose out of his employment with Respondent. As a traveling employee, Petitioner is exposed to street hazards to a greater degree than the general public and as such, these risks become risks of employment and injuries that result from such risks arise out of the employment. *C.A. Durham v. Industrial Comm*, 16 Ill.2d 102, 106 (1959). It is presumed that the traveling employee is exposed to risks of the street to a greater degree than had he not been employed in this position. *Metro. Water Reclamation Dist. Of Greater Chi. V. Ill. Workers' Comp. Comm.*407 Ill.App.3d 1010, 1015 (1st Dist. 2011). If the job requires that the employee be on the street to perform his duties, the risks of the street become the risks of the employment. *Id* at 1014.

Petitioner's job required him to move through his delivery route in a truck filled with packages to be delivered all over town. He was also confronted with other drivers and third parties on the road

throughout his daily schedule of deliveries. He was tasked with driving and coming into contact with other angry or dangerous drivers or potential attackers out in the public. Road rage is a risk of this job. The risk of being attacked in or around the truck was a street risk that Petitioner was exposed to as part of his job duties.

Furthermore, it is undisputed that Petitioner honked his horn and proceeded to stop the truck to respond to a woman's question in response to the attacker nearly hitting her with his car as he cut Petitioner's truck off. Petitioner's actions were meant to advise and protect a woman who was endangered by another driver. When an employee leaves his work duties to render aid and is injured doing so, that injury arises out of the employment if such aid could have been reasonably expected or foreseen. *Circuit City Stores v. Ill. Workers' Comp. Comm.*, 391 Ill.App.3d 913, 923 (2d. Dist. 2009). This is the "Good Samaritan Doctrine" as originally enumerated in *Ace Pest Control*, a case where an employee was driving his employer's truck when he stopped to assist a woman whose vehicle was immobilized and was killed providing assistance. *Ace Pest Control, Inc. v. Industrial Comm.*, 32 Ill.2d 386 (1965).

Petitioner's case is analogous to the employee from *Ace Pest Control* – he was offering assistance to a third party who was on the side of the road when he was attacked by an angry driver for doing so. Being attacked, by an obviously angry driver, was a risk of the street to which Petitioner was exposed. The actions taken by Petitioner to honk his horn at the dangerous driver to alert the driver and the neighbor was a reasonably expected action for someone in his position. The Respondent installed a horn on the truck. Petitioner was using it for its intended purpose – to notify third parties of traffic conditions. Had Respondent not expected the horn to be used, it would never have installed it in its trucks.

Lastly, Petitioner suffered two accidents. Assuming, arguendo, that the first assault did not arise out of his employment, the second assault is a completely different scenario. Petitioner was making a delivery 2-3 blocks away and four minutes after the first attack when he was ambushed by four assailants and robbed of his gold chain. The risk that four individuals would attack and rob him is certainly a "risk of the street" which becomes an employment risk for a traveling employee like Petitioner. In this case, Petitioner's injuries result entirely from the second assault (his condition is visible following each assault) and thus either way, the second assault arose out of and in the course of the employment and is compensable.

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

There does not appear to be a real dispute on whether Petitioner's current condition of ill-being is related to his injury since the crux of this case rests on the issue of accident and whether Petitioner's injuries arose out of his employment. This case has the unique characteristic that the accidents were video recorded and made part of the record. It is undisputed that Petitioner suffered a brutal attack when he was delivering a package and four men approached him from behind. He was punched and kicked multiple times. The injuries are clearly visible on the video following the second attack. The attack was also such as could reasonably create a psychological injury as testified to by Petitioner and identified by Dr. Hroncich. Petitioner's current condition, both his physical injuries to his head, face, mouth, and chest and his psychological injuries are causally related to his attack from August 1, 2023.

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?

Petitioner's medical has consisted of emergency care and follow-ups with his primary care doctor. All of this is reasonable and necessary. Respondent shall pay all outstanding medical bills pursuant to the fee schedule.

K. Is Petitioner entitled to any prospective medical care?

Petitioner's facial injuries have yet to heal, and both his testimony and records reveal that he requires additional dental work. The records and Petitioner's testimony also detail the ongoing psychological treatment he is receiving. The Petitioner is entitled to prospective medical care as ordered by his treating doctors.

L. What temporary benefits are in dispute? TTD?

Petitioner has been off work since the accident occurred and has been kept off work by his treating doctor. No evidence to the contrary was presented to refute this status. The arbitrator finds that Petitioner was temporarily totally disabled from August 2, 2023 – October 19, 2023, a period of 11 2/7 weeks.

M. Should penalties and fees be imposed on Respondent?

Section 19(k) provides that penalties may be imposed upon Respondent for any unreasonable or vexatious delay in payment of compensation under the Act. Respondent's defense that Petitioner was the aggressor in these series of altercations is not reasonable given the evidence presented at the hearing. Respondent did not call any witnesses who could possibly have rebutted Petitioner's testimony regarding the question of who was the aggressor in this matter. Respondent possessed the video which corroborates Petitioner's testimony and clearly showed the brutal attacks on Petitioner. There is no question that he was a traveling employee and was assaulted in the course of his employment. The refusal to pay benefits is unreasonable and vexatious. 810 ILCS 305/19(k).

Section 16 provides: "Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier has…been guilty of unreasonable or vexatious delay…within the purview of the provisions of paragraph (k) or Section 19 of this Act, the Commission may assess all or any part of the attorneys' fees and costs against such employer and his or her insurance carrier" 820 ILCS 305/16.

The arbitrator finds that Petitioner is entitled to penalties under Section 19(k) and Section 16 for the unreasonable and vexatious delay in paying TTD and medical expenses. Respondent shall pay 50% of the total amount of outstanding TTD and medical expenses pursuant to Section 19(k) and 20% of that total amount pursuant to Section 16.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC039041
Case Name	Wandzella King v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0292
Number of Pages of Decision	29
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas Seymour
Respondent Attorney	Elizabeth Meyer

DATE FILED: 6/17/2024

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0292

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WANDZELLA KING,

Petitioner,

vs. NO: 16 WC 039041

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses and permanent 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 affirms and adopts the Arbitrator's Statement of Facts, however, views the evidence differently than the Arbitrator. Thus, the Commission modifies the Arbitrator's Conclusions of Law as specified below.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury.

The Commission strikes paragraphs two, three and four under Issue F, and substitutes the following paragraphs:

The Commission notes Petitioner's medical histories contain various inconsistencies relative to the subject December 3, 2016, accident description and sequela. The initial histories confirm the bus was moving slowly (5 miles per hour per 12/5/16 Concentra record (PX3); Petitioner testified "not even 20 miles an hour." (T. 56)) and there was no crash, collision or trauma. The Respondent's Incident Detail Report notes that Petitioner complained of back, right

and left shoulder pains. (PX1, T. 97) She first reported to Community First Medical Center via EMS. The Chicago Fire Department Incident Report History states her complaint was shoulder pain. (PX2, T. 135) The "In summary" portion is not fully legible but, in part, states that she was driving her bus when something happened with the engine and she had to strong hold onto the steering wheel to control the bus. (PX2, T. 135) The Community First Medical Center History of Present Illness documents "stated reason for visit: pt brought by cfd per w/c. pt states while turning steering wheel of bus today, because of steering mechanics, she developed pain in neck, shoulder, back and legs." (PX2, T. 130) Nurse Ted May ED notes document, "Pt admitted to er with c/o pain to upper shoulder, right leg and general pain from steering power. [P]t had to turn wheel with excertion (sic) no collision no trauma to pt or bus a/ox3 ambulates with steady gait noted limb to right leg (sic) no loc no other distress noted." (PX2, T. 123) The PA-C, Bernadette Miszczyzyn documented the Diagnosis: 1) Muscle strain; 2) Acute bilateral low back pain without sciatica; 3) Cervical strain, initial encounter. The ED attending attestation Note, signed by Jared Marcucci MD states, "[p]atient interviewed and examined by me. My initial evaluation concurs with the APN's evaluation. " (PX2, T. 118)

Medical Decision Making and ED course states, "58 y.o. female here with muscular aches to bilateral neck and bilateral low back after power steering gave out CTA bus. [N]o neuro deficits on exam." X-rays C-spine negative; X-ray lumbar spine negative; Pain meds and muscle relaxers; Follow-up with occupational therapy. (PX2, T. 120) The History and Physical states, "[p]atient is 58 y.o. female h/o MRSA who presents with body aches. Pt states she works at (sic) CTA driver, states PTA the power steering gave out on the bus while she was driving. Patient states she had 2 (sic) use all of her strength to steer the bus axis of (sic) the road where she stopped. She complained of bilateral upper neck and shoulder pain and bilateral low back pain but denied weakness of any of her extremities, numbness or tingling to her extremities, head neck or back injury, LOC, nausea, vomiting, chest pain, shortness of breath, abdominal pain." (PX2, T. 118)

Two days later on December 5, 2016, Petitioner reported to Concentra that she was driving a bus for Respondent at about 5 mph, as she was stopping, the hydraulic system failed, and that she had to exert great force to keep the bus steady, and it finally stopped. Later she noted the onset of moderate pain in multiple areas including the wrists, hands, elbows, shoulders, neck, upper and lower back and the knees. (PX3) The Commission finds that Petitioner's inclusion of wrists, hands, elbows and knees is vastly different than Petitioner's initial complaints.

Approximately one month after Petitioner was discharged from physical therapy on February 21, 2017, Petitioner presented to the Emergency Department at Northwestern Lake Forest Hospital on March 24, 2017, complaining of chronic body spasms since a MVC in December. "Pt was a restrained city bus driver who hit a pothole and has been having spasm since." (PX5, 13, T. 395) She reported having had a CT and MRI at Vista already. *Id.* The ED notes confirm "Musculoskeletal symptoms: Back pain and Muscle pain." "Neurologic symptoms: Negative except as documented in HPI but no headache, no dizziness, no numbness, no tingling or no weakness." (PX5, 14, T. 396) Petitioner underwent CT scans of her cervical, thoracic and lumbar spine. (PX5, 16-17, T. 398-399) Petitioner was admitted to the hospital on March 24, 2017, and discharged on March 26, 2017. (PX5, 18, 21, T. 400, 403) The Narrative note stated, "MRI results discussed by Dr. Nagar with pt." (PX5, 22, T. 404)

The Clinical Notes Results, in the History of Present Illness (HPI) describes: "59yo w/no significant PMHx p/w diffuse body aches s/p MVA 3 mos ago. Pt endorses used to be CTA bus driver, on Dec 3, 2016, her bus wheel malfunctioned causing her to twist her body. Was evaluated at Vista. Per records CT L spine w/out acute findings…Since the accident pt endorses body aches & "muscle spasms" throughout her body "feels like ping-pong bouncing all around from muscle to muscle." Also endorses generalized HA & blurry vision since then, accompanied by lower neck "tightness." (PX5, 23. T. 405) The Commission finds this is the first mention of twisting her body in the histories and is inconsistent with the initial histories. Further, these ED notes reflect a MVA or MVC which connote an impact-type injury, and which should be differentiated for purpose of medical histories.

The OT profile documents, "[p]t demonstrating minimal AROM when asked to perform to assess AROM of shoulder, elbow, wrist and fingers, however spontaneous movement noted when distracted by other tasks. Inconsistent mobility noted in UE AROM." (PX5, 24, T. 406) Activities of Daily Living notes, "[p]t reporting she was able to eat breakfast this morning with setup provided however when asked to touch her face her mouth she is unable." *Id.* The Clinical Notes Assessment by the inpatient OT states, "Does not appear to be providing max effort." (PX5, 26, T. 408) The Clinical Notes Results from the physical therapist's Assessment notes that, "[p]t displays inconsistent stepping patterns with gait- at times able to advance L LE other times not." (PX5, 35, T. 417) The Commission finds these inconsistencies documented in the notes undermine the credibility of Petitioner's testimony regarding her condition of ill-being and comport with Dr. Goldberg's opinions discussed below.

A Consultation Report was authored by Dr. Charulatha Nagar on March 25, 2017, with yet a different accident description. The HPI, documents, "[t]he patient is a 59-year-old CTA bus driver, who was involved in an accident on 12/3/2016 when her bus rail malfunctioned, causing her to twist her body, who was then evaluated at Vista Hospital and had a CT of the spine without any acute findings. Over time she started noticing widespread body pain, has been seeing Dr. Arber, who recommended PT, but currently is admitted because she has widespread body pain and muscle cramps and stiffness. She feels like ping-pong balls bouncing all over, generalized headache and blurry vision, and also felt that during the time of the accident she lost her hearing in the left side and continues to deal with it, and over time has noticeably started using a cane, with a dragging sensation of the left side of the body… In the ER, she underwent CT here, cervical thoracic and lumbar, without acute findings." (PX5, 37, T. 419) Dr. Nagar's Impression, in pertinent part, stated that Petitioner was seen by a pain specialist and diagnosed with fibromyalgia. Dr. Nagar recommended "a full workup to include an MRI of the brain, MR of the cervical thoracic and lumbar spine, she has never had before. (PX5, 28, T. 420) Petitioner was referred for follow up to Dr. Nagar and a rheumatologist, Dr. Jennifer Capezio. (PX5, 45, T. 431)

Dr. Nagar testified on direct examination that she took a history from Petitioner at her first consult on March 25, 2017. (PX7, 13) When Dr. Nagar was asked on direct examination what was the mechanism of injury, she testified, "[t]hat this was related to an accident in the sense she was driving a bus which had some sort of a mechanical failure and she was trying to get the bus to a safer place and had tried to, you know, have the brakes, and resulted in muscle spasm and pain which led her to be taken to the local emergency room." *Id.*

Petitioner consulted Dr. Walsh on referral from Dr. Nagar for a neurological surgical evaluation on April 14, 2017. (PX5, 154, T. 536) Laura Bailey, APN, CNP, notes in the Chief Complaint section, that Dr. Nagar referred Petitioner to a rheumatologist and therapy at RIC. *Id.* Petitioner told CNP Bailey, "everything hurts." *Id.* Her past medical history was noted to include migraines, depression, anxiety, and fibromyalgia. *Id.* CNP Bailey noted Petitioner was very lethargic on exam but in no acute distress. CNP Bailey further noted that Petitioner did "not fully engage and participate in the exam, making my assessment of her difficult. She demonstrates overall weakness, but it is hard to fully grade her muscle strength given the fact that she does not fully engage in the exam." (PX5, 156, T. 538) CNP Bailey's Assessment refers to Dr. Walsh's Note for his further Neurosurgical evaluation of the patient. *Id.*

Dr. Walsh's notes indicate that he met with Petitioner in his neurosurgery clinic. (PX5, 157, T. 539) In the history/pertinent exam findings he noted that Petitioner's chief complaint was, "my whole body hurts." Dr. Walsh documented that on exam, Petitioner puts forth very poor effort with strength/sensory testing, making assessment very difficult. *Id.* The radiology review section documents Dr. Walsh reviewed the cervical, thoracic and lumbar spine MRIs dated March 24, 2017, and noted diffuse spinal degeneration. Dr. Walsh did not appreciate high grade neural compression or overt instability involving the cervical or thoracic spine, however, he noted some relatively advanced degeneration of the lumbar spine. *Id.* Dr. Walsh advocated for conservative treatment. (PX5, 158, T. 540)

Dr. Edward Goldberg authored an Opinion Report and an Addendum Opinion Report, both dated May 8, 2017. (RX1, RX2) In his first report, in the records review, Dr. Goldberg notes that Dr. Arber questions somatoform disorder. (RX1) Dr. Goldberg also notes that on March 6, 2017, Dr. Craig recommends pain management and considers a rheumatological workup for somatization. *Id.*

After examination of Petitioner and review of records, Dr. Goldberg requested all of the pertinent diagnostics to review. (RX1) Dr. Goldberg authored his addendum report after review of the diagnostics Petitioner underwent on March 24, 2017. According to Dr. Goldberg, the Petitioner's thoracic spine CAT scan shows no fracture. (RX2) Next, a CT scan of the lumbar spine, shows degenerative spondylolisthesis with minimal stenosis. *Id.* A cervical spine MRI shows a small central herniation at C4-5 without any stenosis or herniation and some moderate disc degeneration at C5-C6 and C6-7 with minimal stenosis. *Id.* Dr. Goldberg noted that there is no evidence of any significant nerve compression in any of these studies. *Id.*

Further, when Dr. Goldberg examined Petitioner he found "marked inconsistencies upon examination such as compression of the shoulders, rotation of the trunk, and palpation of the skin over the lumbar spine reproducing her pain. She had 3/5 strength at C5-T1 and L3-S1." *Id.* Dr. Goldberg could not account for her motor examination based on the diagnostic studies. She also had diminished sensation bilaterally at C5-T1 and L3-S1. Dr. Goldberg opined that this does not correspond with the MRI findings. *Id.*

Based upon the records, Dr. Goldberg opined that Petitioner "likely had an injury to her cervical and lumbar spine." Based upon the mechanism, Dr. Goldberg felt it was "likely just some aggravation of some preexisting degenerative disc disease of the cervical and lumbar spines as

well as cervical and lumbar strains. Her examination does not correlate with what is on the MRI." *Id.* In view of this, Dr. Goldberg found no contraindication from the spine point of view for her returning to work as a CTA bus driver. *Id.* He noted Petitioner subjectively reported to him that she developed deafness in her left ear and diffuse numbness from the left ear all the way to her left foot after the accident. Dr. Goldberg opined this does not correlate with the MRI findings and "[f]rom the spinal point of view, she is at MMI and can return to work full duty." *Id.* Dr. Goldberg refrained from commenting on whether there is a psychological component, noting it was beyond his expertise. Dr. Goldberg further deferred to the adjuster as to whether it was necessary to see if there was a psychological component to Petitioner's subjective complaints. *Id.*

The Commission notes that no psychiatric records are in evidence. The Commission also notes that Ed Steffan's vocational plan report identifies Petitioner's treating psychiatrist in the Medical Update portion of his report. According to the report, the psychiatrist is prescribing medication. (PX9DepX2, 5) Petitioner treated with various other doctors at the same time as her treatment with Dr. Nagar, although many of those records are not in evidence in addition to the missing records from her treating psychiatrist. Whether intentional or inadvertent, the Commission notes Petitioner did not offer these records.

The Commission finds the opinions of Respondent's Section 12 expert, Dr. Goldberg, an orthopedic surgeon and specialist at Midwest Orthopaedics at RUSH, and well-known to the Commission, to be more reliable regarding a spine injury than those of Dr. Nagar, a neurologist. (PX7, 5) In support of this finding, the Commission cites Dr. Nagar's curriculum vitae confirming her expertise in treating neuromuscular diseases, with no spinal specialty, surgical or orthopedic experience. (PX7, DepX1) Dr. Nagar's residency was in neurology and her fellowship was in clinical neuromuscular disease and EMG. *Id.* Dr. Nagar testified that her area of specialization is neuromuscular medicine. (PX7, 6, T. 781) The Commission also notes that Dr. Nagar referred Petitioner to Dr. Walsh, a neurosurgeon, for a surgical spine opinion. Dr. Walsh advocated for conservative treatment.

The Commission further finds that Dr. Goldberg's opinion regarding causal connection and Petitioner's ability to be able to work in 2017 is more persuasive than that of Dr. Nagar's opinions relating Petitioner's ongoing conditions to the subject accident. Dr. Nagar testified that she saw Petitioner only eleven times in person and twice telephonically. (PX7, 46, T. 791) On December 23, 2019, Dr. Nagar's office notes document that Petitioner had been seeing a psychiatrist and felt that had been "more beneficial in coping (sic) mechanisms of pain." (PX5, T. 721)

The Commission further notes Petitioner is not claiming brain injuries as a result of the subject work injuries. (PX7, 25) Dr. Nagar testified that Petitioner underwent a brain MRI on February 1, 2018. *Id.* Dr. Nagar further testified that "this MRI of February 2018 noted the presence of volume loss, which means that the brain had lost some of its volume bilaterally which is on both sides, in the frontal as well as temporal areas. And then also in the parietal area of the brain-it was mild, but it was evident on this scan…it did reveal predominant volume loss of the brain." *Id.* The February 1, 2018, brain MRI showed a change from her previous MRI, the significance of which, in Dr. Nagar's opinion, "the volume of the brain had started to shrink down. Although mild, it was a change." (PX7, 25-26) Dr. Nagar also testified she wrote a narrative report on June 15, 2020, and mentioned the MRI of the brain. (PX7, 41) Dr. Nagar testified she

was interested in the reason Petitioner's reflex time and responses to being asked to do the tasks in a neurological exam were slowing down. Dr. Nagar testified that there had been consistent slowing of the responses. *Id.* Dr. Nagar also testified that Petitioner's brain MRI showed bifronto-temporal parietal volume loss that Dr. Nagar believed "has something to do with Petitioner's capabilities in returning to a fully functional neurological cognitive, you know, conscious sort of light work." (Px7, 41-42)

Further, Dr. Nagar testified on cross-examination that Petitioner is probably at a new baseline, but Dr. Nagar conceded that she did not know what Petitioner's baseline was before she saw her in March 2017. (PX7, 55, T. 793) The Commission finds Dr. Nagar's opinion is therefore not credible and is entitled to little weight. *See*, *e.g.*, S*unny Hill of Will County v. Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 130028WC, 14 N.E.3d 16 (Expert opinions must be supported by facts and are only as valid as the facts underlying them.)

In reaching the conclusion that Dr. Goldberg's opinion was more reliable than Dr. Nagar's opinions, the Commission relies upon the afore-referenced reasons and the following:

- Dr. Nagar testified that the mechanism of injury was, "related to an accident in the sense she was driving a bus which had some sort of a mechanical failure and she was trying to get the bus to a safer place and had tried to, you know, have the brakes, and resulted in muscle spasm and pain which led her to be taken to the local emergency room." (Px7, 13, T. 782)
- Dr. Nagar did not have or review Petitioner's ER records from the date of accident, December 3, 2016. (P7, 50, T. 792)
- Dr. Nagar performed no Waddell testing. (PX7, 49, T, 791)
- Dr. Nagar did not provide psychiatric services to Petitioner. (PX7, 54, T. 793)
- Dr. Nagar testified that "the medications that initially were used, metazalone which helps with pain, also helps with arthritic pain. So it has definitely crossed my mind whether the widespread pain could be fibromyalgia or generalized inflammatory arthritis of a different kind…"

The Commission further reaches the conclusion that Dr. Goldberg's opinions regarding Petitioner's abilities as they are related to the work accident are more reliable than Dr. Nagar's opinions based upon the Petitioner's entire treatment record indicating a myriad of diagnoses and treatment that are unrelated to the subject accident including depression, anxiety, (PX5, T. 541) fibromyalgia (T. 1547) Sjogren's disease, (T. 1043, 1146), and rheumatoid arthritis. (T. 541, 1044, 1547) Petitioner reported to the vocational consultant, Ed Steffan, that she is treating with Dr. Denise Vergas, Rheumatologist, Lake Forest, Il for "rheumatology, Sjogren's syndrome, organs and fibromyalgia." (PX9DepX2, 22) The Commission notes that Dr. Vergas's records are not in evidence.

On May 25, 2021, Petitioner was diagnosed by Dr. Emily Gilley with very mild bilateral carpal tunnel syndrome, on review of an EMG Nerve Conduction Study. Dr. Gilley's Assessment and Plan, however, notes the majority of Petitioner's symptoms, a diffuse vague pain in the hands, may be consistent with her fibromyalgia symptoms. Dr. Gilley noted Petitioner was following up with her Rheumatologist the following month. (PX5, 384-388, T. 766- 770) The Commission

finds Petitioner's ongoing diffuse symptoms after May 8, 2017, are not related to the subject work accident.

The Commission further notes that Dr. Nagar's records are replete with documentation that Petitioner had hearing loss after the subject accident. However, Petitioner had cerumen impaction (earwax) removal that was removed from her bilateral ears on May 6, 2021. The Petitioner was better after cerumen impaction removal. (PX5, 379, T. 761)

The Commission also notes that Ed Steffan's March 30, 2021, report notes that Petitioner reported that she has a vehicle for transportation and possesses a valid Illinois Commercial Driver's License. (PX9DepX2, 26) Petitioner testified that she has never driven a car since the work accident. (T. 55) The Commission finds that Petitioner must have driven a car since 2016 in order to possess a valid Illinois Commercial Driver's license more than four years after the accident.

Based upon all of the afore-referenced reasons, the Commission concludes that Petitioner was at maximum medical improvement ("MMI") as of May 8, 2017, which is the date of Dr. Goldberg's Opinion Report and Addendum Opinion Reports. The Commission finds that any medical treatment thereafter is unrelated to the subject accident, including the lumbar fusion procedure of September 28, 2021, and subsequent in-patient rehabilitation, five years after the work accident. The Commission notes that the available medical records do not support a finding of causation as to the lumbar fusion or inpatient rehabilitation and the subject work accident.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services.

The Commission strikes the first paragraph under Issue J, and substitutes the following paragraph:

Consistent with the Commission's prior findings, the Commission finds that the medical services that were provided to Petitioner through May 8, 2017, the date of MMI, were reasonable and necessary. As the Commission has found that Petitioner's treatment was reasonable and necessary through May 8, 2017, the Commission further finds that all bills, as provided in PX13 and supported by a treatment record within the records offered, are awarded through May 8, 2017, and that Respondent is liable for payment of said bills pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act except bills for treatment of any concussion/brain-related injuries, bills for Advocate Condell Medical Center and Promedica Skilled Nursing Facility, bills for treatment of cerumen impaction and bilateral hands.

Issue K, whether Petitioner is entitled to TTD benefits and maintenance benefits.

The Commission strikes the second and third paragraphs and substitutes the following:

Based on the foregoing causation findings, the Commission finds that Petitioner is entitled to TTD benefits from December 4, 2016 through May 8, 2017, the date Dr. Goldberg opined

Petitioner was at MMI and able to return to full-duty work without restrictions. Petitioner did not return to work thereafter. Petitioner testified that she is receiving Social Security Disability Insurance (SSDI). (T. 63) Therefore, the issue of maintenance is moot.

Issue L, as to the nature and extent of the injury.

The Commission strikes paragraphs one through eight and substitutes the following paragraphs:

Based on the foregoing causation findings, Petitioner's admission that she has not looked for a job since the December 3, 2016 accident, and Petitioner seeking and receiving SSDI, the Commission finds that Petitioner is entitled to an award under §8(d)2 and that a wage-differential award is inappropriate.

According to Section 8.1b(b) of the Act, for injuries that occur after September 1, 2011, in determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) The reported level of impairment pursuant to AMA guidelines;
(ii) The occupation of the injured employee;
(iii) The age of the employee at the time of the injury;
(iv) The employee's future earning capacity; and
(v) Evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b(b)

In considering the degree to which Petitioner is permanently partially disabled as a result of the work-related accident, the Commission weighs the five factors in Section 8.1b(b) of the Act as follows:

(i) No AMA impairment rating was submitted by either party, so this factor is given no weight.

(ii) Petitioner was employed as a bus driver. Petitioner did not return to work for Respondent following the December 3, 2016, accident. Petitioner has not looked for employment since the December 3, 2016 accident. Thus, this factor is assigned greater weight.

(iii) Petitioner was 57 years old at the time of the accident, approaching the end of her work life. This factor is assigned some weight.

(iv) There is evidence in the record that Petitioner could return to work as a bus driver on May 8, 2017, with no restrictions according to Dr. Goldberg. Thus the evidence presented at the time of Dr. Goldberg's opinion reflected that Petitioner had no loss of future earning capacity as a result of the work accident. This factor is assigned some weight.

(v) Regarding evidence of disability corroborated by the treating medical records, Petitioner was diagnosed with a cervical and lumbar strain as a result of the work-

related accident of December 3, 2016. She was off work commencing December 4, 2016, and underwent conservative treatment until she was released to return to full duty work as a bus driver by Dr. Goldberg on May 8, 2017. Petitioner did not attempt to return to work and underwent additional medical treatment for unrelated conditions. Petitioner applied for and is receiving Social Security Disability Insurance.

The Commission infers Petitioner had unrelated health issues precluding her from returning to work at the time Dr. Goldberg opined that she was at MMI from her work injury on May 8, 2017. At arbitration, Petitioner testified that she has difficulty walking, that she cannot focus, that she cannot do her normal duties, and that she cannot walk without assistance. The Commission, however, notes that Petitioner's overall symptoms and treatment history is vague, the Commission is not privy to some of her treatment records and that unrelated conditions, including brain/cognitive issues, may be contributing to Petitioner's difficulty with walking and focus. The Commission again notes that Petitioner makes no claim that the accident brought about brain/cognitive issues and that the available medical records do not support a finding of causation as to the lumbar fusion she underwent five years after the accident.

Upon consideration of the foregoing evidence and factors, the Commission finds that Petitioner sustained permanent partial disability to the extent of 10% loss of the person as a whole, pursuant to Section 8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on June 23, 2023, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,104.00 per week for a period of 22-2/7 weeks, commencing December 4, 2016, through May 8, 2017, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall be given a credit of $36,906.48 for TTD paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $775.18 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of 10% person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services through May 8, 2017, as provided in Px13 and supported by a treatment record within the records offered, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Bills for treatment after May 8, 2017, and for any concussion/brain-related injuries, bills for Advocate Condell Medical Center and Promedica Skilled Nursing Facility, and bills for treatment of cerumen impaction and bilateral hands are denied. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including those reflected in Rx4, and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

IT IS FURTHER ORDERED BY THE COMMISSION Petitioner's request for penalties and attorney's fees under §19(k), §19(l) and §16 is denied.

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.

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 17, 2024
O041624
KAD/bsd
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/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	16WC039041
Case Name	Wandzella King v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Thomas Seymour
Respondent Attorney	Elizabeth Meyer

DATE FILED: 6/23/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 21, 2023 5.17%

/s/Ana Vazquez, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Wandzella King
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **16** WC **039041**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **November 30, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/3/2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**86,112.00**; the average weekly wage was $**1,656.00**.

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

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

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

Respondent shall be given a credit of $**36,906.48** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**36,906.48**.

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

ORDER

Respondent shall pay reasonable and necessary medical services through March 17, 2020, as provided in Px13 and supported by a treatment record within the records offered, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Bills for treatment of any concussion/brain-related injuries, bills for Advocate Condell Medical Center and Promedica Skilled Nursing Facility, and bills for treatment of cerumen impaction and bilateral hands are denied. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including those reflected in Rx4, and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

Respondent shall pay to Petitioner temporary total disability benefits of **$1,104.00/week** for **171 3/7 weeks**, commencing December 4, 2016 through March 17, 2020, as provided in Section 8(b) of the Act. Petitioner's claim for maintenance benefits is **denied**.

Respondent shall pay Petitioner permanent partial disability benefits of **$775.18/week** for **100 weeks**, because the injuries sustained caused the **20% loss of the person as a whole**, as provided in Section 8(d)(2) of the Act.

Petitioner's request for penalties/attorney's fees under Sections 19(k), 19(l) and 16 is **denied**.

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

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

Ana Vazquez

JUNE 23, 2023

Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to arbitration on November 30, 2022 in Chicago, Illinois before Arbitrator Ana Vazquez on Petitioner's Request for Hearing. The issues in dispute are (1) causal connection, (2) earnings/AWW, (3) unpaid medical bills, (4) temporary total disability ("TTD") benefits and maintenance benefits, (5) nature and extent of the injury, and (6) penalties/attorney's fees under Sections 19(k), 19(l), and 16. Arbitrator's Exhibit ("Ax") 1. All other issues are stipulated. The Parties stipulated that Respondent is entitled to a credit in the amount of $36,906.48 for TTD paid to Petitioner by Respondent. Ax1 at No. 9.

FINDINGS OF FACT

Petitioner testified that she was a bus driver for Respondent for 17 years. Transcript of Proceedings on Arbitration ("Tr.") at 13. Petitioner testified that her duties as a bus driver were "[n]othing but driving, driving to and from, you know, passengers. That's it." Tr. at 23.

Petitioner testified that in her 17 years of being a bus driver, she did not ever have any back problems. Tr. at 55.

Accident

Petitioner testified that on December 3, 2016 and while she was at work, the brakes and the hydraulics broke from underneath the bus. Tr. at 13. Petitioner testified that she was on Belmont going eastbound, traffic was crowded, and the bus was filled to capacity. Tr. at 13-14. Petitioner testified that the bus was going "not even 20 miles an hour." Tr. at 56. Petitioner testified that the first indication that there was an issue with the bus, was that "the brakes and stuff wouldn't apply all the way down and stuff and the bus was jumping." Tr. at 14. Petitioner explained that "jumping" meant the bus was bouncing, as if the shocks had given way. Tr. at 14. Petitioner testified that "when the buses bounce or whatever, you just grip the steering wheel tighter and then you try to apply the brakes." Tr. at 14. Petitioner testified that she tried to apply the brakes, and the brakes did not work. Tr. at 15. Petitioner testified that "I was holding onto the steering wheel, and then I was practically almost standing on the brakes trying to give it as much, you know, strength that I could with my foot, you know, to keep the pedals – you know, keep them all the way down." Tr. at 15. Petitioner testified that the steering wheel locked, it did not give or turn. Tr. at 16. Petitioner testified that the bus eventually stopped in the middle of the street. Tr. at 16. Petitioner then called "control" and a manager came out to the scene. Tr. at 18. A passenger stayed with Petitioner. Tr. at 16, 56-57.

Petitioner testified that while waiting for the manager to arrive and talking to "control," her body went into shock and started trembling. Tr. at 18. Petitioner testified that her back started pulsating. Tr. at 19. Petitioner does not know if the passenger or "control" called an ambulance. Tr. at 18-19.

On cross examination, Petitioner testified that she also hit her head, that she told her other doctors that she hit her head, and that she was diagnosed with a concussion at Community First Hospital. Tr. at 61-62.

Medical records summary

At Community First Medical Center, Petitioner was admitted through the emergency room. Petitioner's Exhibit ("Px") 2. Petitioner presented with body aches. Px2 at 17. Petitioner reported that she worked at Respondent as a bus driver, and that the power steering gave out on the bus while she was driving. Px2 at 17. Petitioner also reported that she had to use all of her strength to steer the bus axis. Px2 at 17. Petitioner complained of bilateral upper neck, bilateral shoulder, bilateral low back, and bilateral leg pain. Px2 at 17, 29. Petitioner denied weakness of any of her extremities, numbness or tingling to her extremities, head, neck, or back injury, loss of consciousness, nausea or vomiting, shortness of breath, or abdominal pain. Px2 at 17. X-rays were obtained. Px2 at 19. The impressions of the lumbosacral x-rays were (1) slight (grade I) anterior spondylolisthesis of L4 in relation to L5, and an MRI was suggested to assess the extent of not infrequently associated subarticular spinal stenosis, (2) degenerative changes of the lumbar spine, most pronounced at L2-3 and L4-5, and (3) minimal degenerative changes of the bilateral hips. Px2 at 19-20. The x-rays of the cervical spine revealed degenerative changes of the cervical spine. Px2 at 20. Petitioner's diagnoses were muscle strain, acute bilateral low back pain without sciatica, and acute cervical strain. Px2 at 20. Petitioner was prescribed ibuprofen, acetaminophen, and Robaxin. Px2 at 21. Petitioner was discharged from Community First Medical Center's Emergency Department on December 3, 2016, with the mobility at departure noted as "wheelchair." Px2 at 45. Petitioner testified that she was not able to walk out of the hospital and that she left Community First Hospital in a wheelchair given to her by the hospital. Tr. at 21. Petitioner also testified that Respondent had a supervisor pick her up from the hospital. Tr. at 21. Petitioner testified that she next went to Concentra, and that "[t]hey had somebody take me to Concentra," and that Respondent told her to go to Concentra. Tr. at 22.

Petitioner presented at Concentra on December 5, 2016 and was seen by Dr. Daniel Paloyan. Px3 at 8-13. Petitioner reported that she was driving a bus for Respondent at about five miles per hour, and that as she was stopping, the hydraulic system failed, and she had to exert great force to keep the bus steady, and it finally stopped. Petitioner also reported that she later noted pain in multiple areas, including the wrists, hands, elbows, shoulders, neck, upper and lower back, and knees. Petitioner reported 10/10 pain. Petitioner's diagnoses were sprains of the bilateral wrists and bilateral hands, strains of the thoracic region, lumbar region, bilateral knees, bilateral shoulders, and left biceps, and acute strain of neck muscle. Petitioner was referred for physical therapy, and no medications were prescribed. Petitioner was allowed to return to modified work with restrictions including sitting 98% of the time, no climbing, and no operating a bus. Petitioner testified that Respondent did not accommodate the restrictions from December 5, 2016. Tr. at 24.

Petitioner followed up with Dr. Paloyan at Concentra on December 7, 2016 and December 14, 2016. Px3 at 15-17, 28-33. On December 7, 2016, Petitioner's symptoms, diagnoses, and restrictions were unchanged. On December 14, 2016, Petitioner reported some improvement, and Dr. Paloyan noted that Petitioner was walking with a cane and remained flexed forward when standing. Dr. Paloyan also noted that Petitioner's symptoms were unchanged. Petitioner's diagnoses were unchanged, and Petitioner was prescribed Ibuprofen, metaxalone, and Point Relief 30% roll on. Petitioner was allowed to return to modified work with the restrictions of sitting 90% of the time, no climbing, no operating a bus, no reaching above shoulders, and no reaching above head.

Petitioner participated in 4 physical therapy sessions at Concentra from December 7, 2016 to December 14, 2016. Px3 at 18-28. Petitioner testified that the physical therapy sessions at Concentra "made matters worse." Tr. at 25.

Petitioner participated in 24 sessions of physical therapy at ATI Physical Therapy from December 14, 2016 through February 21, 2017. Px4. Pain, tightness, and spasms were noted throughout the records. Px4. At discharge, Petitioner's assessment noted that Petitioner continued to have muscle spasms, cramping, tightness, and pain throughout the lower and upper extremities, and torso, especially the biceps and hamstrings. Px4 at 78. It was also noted that Petitioner was unable to grip and hold things due to decreased strength and spasms. It was also noted that Petitioner was having pain and spasms bad enough that Petitioner and the treating physical therapist could not move Petitioner's arms or legs and if attempted, it would cause increased pain. It was noted that Petitioner had made little to no progress over the course of therapy and that she would benefit from an EMG to determine the severity and source of her muscle spasms that had been limiting her ability to participate in upper and lower extremities activities. Px4 at 78.

On March 24, 2017, Petitioner presented to the emergency room at Northwestern Lake Forest Emergency Department with body spasms. Px5 at 2. Petitioner testified that she went to the Northwestern Emergency Room because she was still in pain, her pain was worse, and that "[m]y whole body was just, like, out of whack, you know, from the nerves, you know, the muscles. Everything had, like, locked up and stuff. The spasms was just, like, swelling up everywhere." Tr. at 28. Petitioner's diagnoses were back pain and diffuse body pain. Px5 at 18. Petitioner was admitted and was discharged on March 26, 2017. Px5 at 21. Petitioner's cervical, thoracic, and lumbar spines CT impressions were (1) multi-level, age-uncertain, but probably chronic, minimal-to-mild asymmetric vertebral body height loss, most notable right anterolaterally at C6, followed by adjacent levels, contributing to mild diffuse levo-kyphosis of the cervical spine and mild Grade I right anterolisthesis of L4 and L5 further contributing to a mild lumbosacral dextro-lordosis with minimal compensatory thoracic multi-apex scoliosis, (2) multilevel degenerative disc disease and facet arthropathy, with associated central spinal canal stenosis and neural foraminal narrowing, and (3) bilateral sacroiliac joint osteoarthritic degenerative disease. Px5 at 45, 80-85. Petitioner's brain CT scan of March 24, 2017 revealed no acute intracranial abnormality. Px5 at 38. The impressions of Petitioner's cervical, thoracic, and lumbar spines MRIs of March 24, 2017 were (1) extensive midline posterior subcutaneous soft tissue edema of the lumbar spine, probably related to Petitioner's recent trauma, (2) degenerative changes, (3) Grade I anterolisthesis of L4 on L5, and (4) no acute bone marrow edema or acute ligamentous injury. Px5 at 48, 236-242. Petitioner was seen by Dr. Charulatha Nagar on March 25, 2017 for consultation. Px5 at 56. Dr. Nagar noted that Petitioner had undergone CT scans of the cervical, thoracic, and lumbar spines without any acute findings. Px5 at 57. Regarding laboratory data, Dr. Nagar noted that the CT of the thoracic and lumbar spines revealed right anterolisthesis of the L4-5, with mild lumbosacral dextro-lordosis, with some compensatory scoliosis. Px5 at 58. Dr. Nagar also noted that the CT scan done at Vista in December 2016 showed no abnormalities; however, marginal osteophytic complex and foraminal narrowing at C6 and C7 were seen. Px5 at 58. Dr. Nagar's impressions noted that Petitioner had been seen by a pain specialist and diagnosed with fibromyalgia. Px5 at 58. Dr. Nagar recommended a full work up, including an MRI of the brain and MRIs of the cervical, thoracic, and lumbar spines. Px5 at 58. Petitioner's diagnoses at discharge were concussion and edema of cervical spinal cord and fibromyalgia. Px5 at 59. A concern for a possible malingering component was noted at discharge. Px5 at 60. Petitioner was given a Medrol dose pack and referred to a post-concussive rehabilitation program. Px5 at 60.

Petitioner saw Dr. Lynn Piest on April 3, 2017 for follow up after admission for back pain and extensive body aches. Px5 at 577. Petitioner's diagnoses were body aches and anemia. Px5 at 577.

Petitioner followed up with Dr. Nagar on April 4, 2017. Px5 at 245, 585-589. At that time, Petitioner's diagnoses were (1) motor vehicle accident, with widespread skeletal pain and MRI evidence of paraspinal muscle edema, (2) gait instability, (3) dysphagia, (4) hearing loss, left, and (5) cognitive deficit as late effect of traumatic brain injury. Px5 at 245. Dr. Nagar recommended an ENG evaluation, physical therapy, speech therapy, and dysphagia therapy. Dr. Nagar also noted that Petitioner was urged not to drive, operate heavy machinery, or lift heavy objects.

Petitioner saw Dr. Michael Walsh on April 14, 2017 for a chief complaint of "my whole body hurts." Px5 at 624-634. Dr. Walsh noted that on exam, Petitioner put forth very poor effort with strength/sensory testing, making an assessment very difficult. Px5 at 624. Dr. Walsh noted that he reviewed MRIs of March 24, 2017 and noted that they demonstrated diffuse spinal degeneration and some relatively advanced degeneration of the lumbar spine at L4-5, where there was a mild grade I spondylolisthesis and a moderate degree of central canal stenosis. Px5 at 625. Dr. Walsh noted that Petitioner presented with diffuse body pain in the setting of lumbar stenosis and spondylolisthesis, and that at that time, it was difficult to correlate any particular symptoms with her lumbar stenosis. Px5 at 626. Dr. Walsh noted that he advocated for extensive conservative treatment and Petitioner was given a pain management referral. Px5 at 626.

Petitioner was seen by Dr. Vidya Ramanavarapu on April 26, 2017 for evaluation and treatment of her low back pain. Px5 at 315. Dr. Ramanavarapu noted that it was difficult to conduct a full examination on Petitioner given her deconditioning and inability to cooperate with the exam due to her pain. Px5 at 317. Dr. Ramanavarapu noted that Petitioner had diffuse body aches and myofascial pain as a result of the accident in December 2016. Dr. Ramanavarapu agreed with conservative management and agreed that Petitioner would benefit from a rehabilitation program. Dr. Ramanavarapu also recommended Petitioner increase her gabapentin to 600 mg. She also noted that Petitioner was a candidate for a lumbar epidural steroid injection at either L4-5 or L5-S1 to help address some of her low back pain and left lumbar radicular symptoms. Px5 at 317.

Petitioner returned to Dr. Piest on May 4, 2017, at which time Dr. Piest noted that Petitioner continued to have diffuse body aches and questionable fibromyalgias. Px5 at 660. Dr. Piest also noted that Petitioner was still unable to work because she could not sit for an hour. Px5 at 660.

Petitioner underwent a lumbar epidural steroid injection at the L4-5 level targeted towards the left side on May 11, 2017. Px5 at 329-330. Petitioner returned to Dr. Nagar on May 14, 2017 and returned to Dr. Piest on May 19, 2017. Px5 at 666-674. On May 19, 2017, Dr. Piest noted that Petitioner did not report any improvement following the epidural steroid injection. Px5 at 674.

Petitioner underwent a second epidural steroid injection on June 12, 2017. Px5 at 365.

Petitioner next saw Dr. Nagar on July 13, 2017. Px5 at 679-681. Petitioner's Zanaflex was decreased. Dr. Nagar also recommended physical therapy for vestibular and balance. Petitioner also followed up with Dr. Walsh on July 13, 2017. Px5 at 691. She was seen by Laura Bailey, APN. CNP. It was noted that Petitioner reported that each of the steroid injections helped with pain for one day, but the pain returned. Petitioner reported being most bothered by headaches and muscle spasms in her neck, down her arms and shoulders, in her torso, chest, low back, and down her legs. She also complained of low back pain, and pain and tingling that ran down her left buttocks to her posterior leg and wrapped around her left ankle region. She also complained of bilateral foot numbness and bilateral leg weakness. It was also noted that Petitioner stood upright with no obvious gait disturbances and was able to get into and

out of a chair without any difficulty, and that on exam, Petitioner put forth little effort making it hard to judge her overall strength. Physical therapy for Petitioner's overall body pain was recommended. Petitioner also saw Dr. Piest on July 13, 2017. Px5 at 695-696. Dr. Piest noted that Petitioner was still unable to work.

Petitioner followed up with Dr. Piest on August 28, 2017 and with Laura Bailey, APN, CPN on August 29, 2017. Px5 at 702-703, 709-710. On August 29, 2017, it was noted that there was nothing on MRI that indicated that Petitioner needed surgery at that time, and conservative treatment was again recommended. Petitioner followed up with Dr. Nagar on September 13, 2017. Px5 at 716-718.

Petitioner underwent a lumbar spine MRI on September 28, 2017, which demonstrated (1) Grade I anterolisthesis of L4 and L5, stable since prior study, and (2) degenerative changes of the lumbar spine, mildly worsened at L2-3 and L3-4 level since prior study, and the worst level noted at L4-5 with significant spinal canal stenosis and left-sided neural foramina narrowing. Px5 at 377- 378.

On January 22, 2018, Petitioner followed up with Dr. Nagar. Px5 at 728-733. Dr. Nagar noted that Petitioner continued to have significant unsteadiness of gait and pain. Dr. Nagar recommended continued physical therapy and repeat imaging. Petitioner was urged to not drive again, to not operate heavy machinery, and to not lift heavy objects.

On January 29, 2018, Petitioner was seen by Dr. Ramanavarapu and underwent a lumbar epidural steroid injection at the L5-S1 level targeted towards the right side. Px5 at 753-755. Dr. Ramanavarapu noted that Petitioner reported that the injection of June 2017 helped with her left-sided pain symptoms and that her right-sided back pain and radicular pain was bothering her more. Dr. Ramanavarapu also noted that the repeat MRI of September showed progression of stenosis of the L4-5 level and worsening narrowing at the L5-S1 level.

Petitioner underwent cervical and lumbar spine MRIs on February 1, 2018. The MRIs demonstrated (1) slightly limited exam, (2) mildly exaggerated thoracic kyphosis and nonspecific straightening of the cervical spine in the sagittal plane and mild Grade I anterolisthesis of L4 on L5 grossly unchanged, (3) multilevel degenerative disc disease and facet arthropathy, with associated central spinal canal stenosis, neural foraminal narrowing, and mass effect upon neural elements. In the cervical region, the overall most significant findings were noted at C5-6 and C6-. In the thoracic region, the overall most significant findings were noted at T7-8, lessening through T5-6. Lumbar vertebral column curvature/alignment abnormalities and degenerative disease were grossly unchanged, again overall most significant at L4-5, and (4) probable bilateral sacroiliitis was only incidentally demonstrated, left worse than right and not significantly changed. Px5 at 757-763.

Petitioner followed up with Dr. Nagar on February 3, 2018, at which time Dr. Nagar recommended repeat MRIs and continued physical therapy. Px5 at 728-730. Petitioner's restrictions were unchanged.

Petitioner returned to Dr. Piest for follow up on February 13, 2018. Px5 at 768-769. Dr. Piest recommended Petitioner follow up with Dr. Walsh.

Petitioner followed up with Dr. Nagar and with Dr. Piest on April 23, 2018. Px5 at 775-778, 796.-799. Dr. Nagar noted that Petitioner had not made progress and continued to have difficulty with unsteady balance and pain. Dr. Nagar continued to recommend that Petitioner not drive, operate heavy machinery,

or lift heavy objects. Dr. Piest noted that Petitioner continued with difficulty with gait and use of a walker. Dr. Piest recommended Petitioner continue with physical therapy.

Petitioner next saw Dr. Nagar on August 20, 2018, at which time Dr. Nagar noted that Petitioner had cervical degenerative disc disease and widespread degenerative disc disease throughout the cervical, thoracic, and lumbar spines. Px5 at 802-806. She also noted that Petitioner was wheelchair-bound. Dr. Nagar's diagnosis was motor vehicle accident with sequelae with extensive paraspinal muscle edema on MRI done in March.

On August 29, 2018, Petitioner underwent a right interlaminar epidural steroid injection at L5-S1. Px5 at 807-808.

Petitioner returned to Dr. Nagar on March 4, 2019 and June 4, 2019. Px5 at 839-843, 869-873. On June 4, 2019, Dr. Nagar noted that Petitioner's symptoms were unchanged, and that Petitioner continued to have chronic pain disorder and gait instability. Dr. Nagar also noted that Petitioner was making little progress with disrupted physical therapy because of lack of insurance, and that Petitioner had made some recovery where she could sit for an extended period. Dr. Nagar noted that Petitioner remained disabled from work.

Petitioner participated in 8 sessions of therapy, including aquatic therapy, at Northwestern Medicine from July 8, 2019 through August 22, 2019. Px5 at 890-972.

On August 14, 2019, Dr. Nagar noted that Petitioner reported that she walked with a walker more steadily and felt that her balance was improved. Dr. Nagar also noted that Petitioner continued with widespread pain and discomfort.

On September 30, 2019, Petitioner underwent a right interlaminar epidural steroid injection at L4-L5. Px5 at 973-977. Petitioner testified that when she saw Dr. Ramanavarapu on September 30, 2019, the one-year gap in treatment was because "COVID had hit. They weren't allowing nobody to come into the hospital," and because she was not able to schedule appointments because she did not have insurance. Tr. at 43-44. Petitioner testified that she did not have insurance after she was let go. Tr. at 41. Petitioner testified that she applied for public aid in August 2018 and was able to continue treatment. Tr. at 41.

Petitioner again saw Dr. Nagar on October 15, 2019, at which time Dr. Nagar's assessment was chronic pain musculoskeletal secondary to motor vehicle accident with gait abnormalities, slow and minimal, with continued improvement with supportive care physical therapy. Px5 at 314-317. Dr. Nagar noted that Petitioner endorsed a 10% to 15% improvement.

Petitioner participated in physical therapy, including aquatic therapy, from November 2019 through February 2020. Px5 at 996-1089.

Petitioner followed up with Dr. Nagar on December 23, 2019 and March 17, 2020. Px5 at 1036-1039, 1092-1093.

On December 30, 2020, Petitioner underwent a left interlaminar epidural steroid injection at L5-S1. Px5 at 1099-1100.

Petitioner testified that Dr. Nagar referred her to Dr. Juan Alzate in August 2021. Tr. at 46.[1] On September 28, 2021, Petitioner presented at Advocate Condell Medical Center and underwent an L4-5 bilateral laminectomy, bilateral facetectomy, foraminotomies, L4-5 microdiscectomy, interbody fusion using a titanium graft Magnifuse and autologous bone fusion with transpedicular screws between L4-5, correction of spondylolisthesis, fusion with autologous bone and Magnifuse with intraoperative microscope, fluoroscope, MEP, and SSEP of the upper and lower extremities throughout the case. Px10 at 153. The procedure was performed by Dr. Juan Alzate. Petitioner's postoperative diagnoses were lumbar spondylosis, spondylolisthesis, and spinal foraminal stenosis at L4-5. Petitioner was discharged from Advocate Condell Medical Center on October 7, 2021 and transferred to Promedica Skilled Nursing Facility Libertyville, where she was discharged on November 20, 2021. Px10 at 139, Px11. Petitioner testified that the surgery relieved some of her pain. Tr. at 47.

Independent Medical Examination ("IME") Report and IME Addendum Report by Respondent's Section 12 examiner, Dr. Edward J. Goldberg

Dr. Goldberg prepared an IME Report dated May 8, 2017. Respondent's Exhibit ("Rx") 1.

Dr. Goldberg summarized the records he reviewed and his physical examination findings. Rx1 at 1-3. Dr. Goldberg reviewed the cervical MRI report of December 19, 2016, the lumbar spine CT scan report of February 8, 2017, and the cervical, thoracic, and lumbar spine CT scan reports of March 24, 2017. Rx1 at 2. Dr. Goldberg noted that the films for these particular studies were not available. Rx1 at 2. On physical examination, Dr. Goldberg noted that Petitioner needed his and her son's help getting out of the wheelchair that she arrived in and onto the exam table. He further noted that Petitioner's physical examination revealed (1) 5 degrees of cervical flexion, extension, and bilateral rotation, (2) a 3/5 motor exam from C5-T1 and L3-S1, (3) diminished sensation C5-T1 and L3-S1 bilaterally to pinprick, (4) biceps, triceps, Achilles, and patellar reflexes were +2, (5) no atrophy, (6) no clonus or Hoffman's, (7) she held her lumbar spine in 30 to 40 degrees of forward flexion when ambulating with a cane, (8) compression of the shoulders, rotation of trunk, palpation of the skin and lumbar spine reproduced increasing pain, and (9) her lumbar motion could not be tested because she reported too much pain. Rx1 at 2-3.

Dr. Goldberg noted that at that time, he could not arrive at a diagnosis of her cervical and lumbar spines without reviewing all MRIs and CTs. Rx1 at 3. He opined that Petitioner had an injury to her cervical and lumbar spines, but that Petitioner's examination did not appear consistent with any nerve compression type symptoms. Rx1 at 3. He noted that he believed that Petitioner's treatment to date, including the workup, had been appropriate. Rx1 at 3. He noted that he could not comment upon any additional treatments until he reviewed the diagnostic films. Rx1 at 3. He noted that Petitioner could not work full duty and that Petitioner was not at MMI. Rx1 at 3. He further noted that the degree of disability at that time was moderate, and that in essence, Petitioner had multiple complaints and anatomically, he did not see a clear neurological picture and needed to review the diagnostic films.

Dr. Goldberg prepared an IME Addendum Report dated May 8, 2017. Rx2. Dr. Goldberg noted that he had reviewed the actual films of multiple diagnostic studies. Dr. Goldberg noted that based upon the records, he felt that Petitioner had an injury to her cervical and lumbar spine, and that based upon the mechanism, it was likely some aggravation of some preexisting degenerative disc disease of the cervical and lumbar spines, as well as cervical and lumbar strains. He noted that Petitioner's examination did not

[1] Records for treatment with Dr. Nagar after March 17, 2020 were not offered.

correlate with what was seen on MRI, and that he found no contraindication from the spine point of view for Petitioner returning to work as a bus driver. Dr. Goldberg noted that Petitioner reported that she developed deafness in her left ear and diffuse numbness from the left ear all the way to her left foot after the accident, which did not correlate with the MRI findings. He noted that from a spinal point of view, Petitioner was at MMI and could return to work full duty. He did not comment on whether there was a psychological component as it was beyond his expertise.

Earnings/TTD

Petitioner testified that she gave a copy of Dr. Goldberg's IME Report to Mr. Hernandez, her supervisor. Tr. at 50. Petitioner testified that she was not offered any modified duty by Mr. Hernandez or by anyone at Respondent. Tr. at 53. Petitioner did not hear of any follow-up from Respondent after giving her supervisor a copy of Dr. Goldberg's IME Report. Tr. at 53.

Petitioner testified that she was earning $33.00 or $34.00 per hour while working at Respondent. Tr. at 54. Petitioner testified that she worked "12, 14 hours" shifts. Tr. at 38.

Petitioner testified that at the time of arbitration, she was not an employee of Respondent. Tr. at 40. Petitioner testified that she never received a separation notice from Respondent. Tr. at 40-41. Petitioner testified that she has not looked for other jobs since December 3, 2016. Tr. at 62, 63.

Vocational rehabilitation

Petitioner testified that she recalled speaking with Mr. Edward Steffan, a vocational rehabilitation counselor, regarding job opportunities. Tr. at 48-49. On cross examination, Petitioner testified that she spoke with Mr. Steffan twice.

Petitioner testified that prior to working at Respondent, she worked for Pepsi as an end cap distributor, setting up displays. Tr. at 54. Petitioner testified that she was in her second year of college when asked about her highest level of education. Tr. at 54.

Current condition

Petitioner testified that she has not been able to drive any motor vehicle since December 3, 2016. Tr. at 32.

Petitioner testified that at the time of arbitration, it was difficult for her to walk, she could not focus, she could not do her normal duties, and that she had to rely on someone else to take her places and do things. Tr. at 54. Petitioner testified that she cannot walk without assistance. Petitioner also testified that she was still treating and had last seen a doctor two weeks prior to arbitration, and had a visit scheduled for the month following arbitration. Tr. at 62-63.

Testimony of Dr. Charulatha Nagar

Dr. Charulatha Nagar testified on behalf of Petitioner by way of evidence deposition taken on September 11, 2020. Px7. Dr. Nagar is a neurologist with a specialty in neuromuscular medicine. Px7 at 5-6.

Dr. Nagar testified that the lumbar spine MRI of March 24, 2017 revealed the presence of degenerative changes with foraminal narrowing. Px7 at 8. Dr. Nagar testified that the cervical spine MRI of March 24, 2017 showed mild to moderate degree changes from C3 to C7, with annular bulges, osteophytes, and mild spinal canal stenosis, as well as a small disc that was posteriorly herniated at C4 and C5. Px7 at 9-10. Dr. Nagar explained that the moderate/severe central spinal canal stenosis would cause Petitioner pain. Px7 at 10. Regarding the annular bulges, Dr. Nagar further explained that the bony changes along with the disc bulges narrowed the nerve exits of the foramina, which often caused pain clinically and could cause widespread pain and weakness depending on the combination in the levels and sensory changes such as numbness, pins and needles, or tingling. Px7 at 10. Regarding the effacement of the left L4 nerve root seen on the cervical spine MRI, Dr. Nagar explained that the disc and intervertebral disc seemed to be dried out and had arthritis or facet arthropathy and it was pushed out to the far left of the center resulting in the exiting left-sided nerve root to be effaced or "squished." Px7 at 12. There was also right-sided foramina narrowing of the L4 nerve root, which together with the left-sided effacement, resulted in moderate to severe degree of spinal canal stenosis. Px7 at 12. Dr. Nagar testified that canal stenosis causes pain and weakness for Petitioner and affects her ability to ambulate. Px7 at 12, 16. Dr. Nagar agreed that the soft tissue edema seen on MRI of the lumbar spine was probably related to Petitioner's trauma. Px7 at 12. Dr. Nagar agreed that it was her opinion that the trauma Petitioner suffered on December 3, 2016 caused the aggravation of the degenerative changes. Px7 at 13. Dr. Nagar testified that the aggravation of degenerative changes caused pain, sensory abnormalities such as numbness or tingling, motor weakness depending on the level, and may lead to experiencing abnormal levels of sensation of pain, especially when laying down. Px7 at 13.

Dr. Nagar testified that the lumbar spine MRI of March 2017 showed changes from the previous MRI that indicated worsening. Px7 at 23. Dr. Nager explained that the spinal stenosis appeared to be worse along with the neural foramina that exited the right-sided and left-sided nerve roots that seemed to be compromised. Px7 at 24. Dr. Nagar testified that it was her opinion that the worsening of Petitioner's condition on MRI was related to the December 3, 2016 accident. Px7 at 24.

Dr. Nagar testified that the cervical spine MRI of February 2018 showed degenerative changes, an osteophyte complex at C4 and C5, right-sided foraminal narrowing at C4-5, and similar changes seen at C5-6, and C6-7 causing mild central canal narrowing. Px7 at 26. These findings would produce pain for Petitioner. Px7 at 26. Dr. Nagar testified that the thoracic spine MRI of February 2018 showed an annular disc torn at T7 and T8 that was touching the interior aspect of the spinal cord, but was not causing cord compression or signal changes. Px7 at 26-27. These findings were pain producing for Petitioner. Px7 at 27. Dr. Nagar testified that the lumbar spine MRI of February 2018 showed arthritic changes similar to the previous ones and remained grossly unchanged. Px7 at 27. The findings were again significant at L4 and L5, which had previously shown mild to moderate spinal stenosis. Px7 at 27. These findings would produce pain for Petitioner and are related to the aggravation of Petitioner's degenerative changes that occurred on December 3, 2016. Px7 at 27.

Dr. Nagar testified that she believes that Petitioner regressed during the period between November 26, 2018 and when she next saw Dr. Nagar on March 4, 2019. Px7 at 31-32.

Dr. Nagar testified that widespread degenerative disc disease and disc bulges cause intermittent pain and significant difficulties with walking, which Petitioner managed with physical therapy and intermittent steroid injections. Px7 at 39. Dr. Nagar testified that in her opinion, the December 3, 2016 work accident aggravated Petitioner's degenerative changes in her lumbar spine, cervical spine, and thoracic spine. Px7 at 39. Dr. Nagar testified that the aggravation of Petitioner's degenerative changes had not resolved. Px7

at 39. Dr. Nagar disagreed with Dr. Goldberg's opinion that Petitioner had sustained lumbar and cervical strains and testified that "…[b]ut certainly the cervical and lumbar strains I respectfully say are more radicular pain, meaning the nerve root pain, which is more than the strain as well as the cervical and lumbar spinal stenosis that we see. And I think that in itself prevents her from maximal return to work capacity based off of her balance, based off of her motor capabilities on exam that I find, and also with the slowed responses that I have gone on to see over time." Px7 at 41. Regarding the brain MRI, Dr. Nagar testified that it showed bifronto-temporal parietal volume loss, and that she believed it had something to do with Petitioner's capabilities in returning to a fully functional neurological cognitive conscious light work. Px7 at 41-42. Dr. Nagar testified that Petitioner would need pain management and intermittent physical therapy to help with motor skills and ambulation. Px7 at 42. Dr. Nagar testified that there was also a PTSD component that would warrant care from trained physicians. Px7 at 42. When asked if Petitioner's back injury was a temporary or permanent aggravation, Dr. Nagar responded that she believed "that this is probably going to be her baseline." Px7 at 44. Dr. Nagar testified that she believed that Petitioner was permanently and totally disabled from returning to work as a bus driver with Respondent. Px7 at 44. Dr. Nagar testified that she believed that Petitioner's treatment had been reasonable and necessary. Px7 at 45.

On cross examination, Dr. Nagar testified that she reviewed the MRI films, including those of the initial MRIs. Px7 at 47. Dr. Nagar testified that the annular tear, foraminal compression, and muscle edema seen on MRI seemed acute and of a more recent onset. Px7 at 48. Dr. Nagar testified that Petitioner could have had mild arthritis, like Dr. Goldberg alluded to in his report, and it was aggravated by the 2016 accident. Px7 at 48-49. Dr. Nagar testified that she had not ever done any Waddell testing. Px7 at 49. Dr. Nagar testified that she was hesitant to attribute Petitioner's instability issues to Petitioner's brain problems. Px7 at 53.

Testimony of Lauren Baumann

Lauren Baumann testified on behalf of Petitioner by way of evidence deposition taken on January 21, 2021. Px8. Ms. Baumann testified that she is the director of the FIRST work hardening and work conditioning program at ATI Physical Therapy. Px8 at 6, 10. She is a licensed athletic trainer. Px8 at 6. Ms. Baumann testified as to her credentials as an athletic trainer. Px8 at 6-10.

Ms. Baumann testified that she completed the functional capacity assessment on Petitioner and that she wrote the report that was offered as Baumann Exhibit 2. Px8 at 12. Ms. Baumann testified that the statement "client's full capability" means that the patient terminates their activity when they feel they have completed the activity to their fullest capabilities. Px8 at 14. Ms. Baumann testified that Petitioner's assessment results for the bilateral above-the-shoulder lift and desk/chair bilateral lift did not reach the medium physical demand level. Px8 at 17. Ms. Baumann testified that she did not terminate Petitioner's assessment, and that Petitioner terminated the assessment. Px8 at 19. Ms. Baumann agreed that she also tested one component of balance, and that she was concerned that Petitioner would fall. Px8 at 24-25. Ms. Baumann testified that during the sitting tolerance test, Petitioner was shifting positions frequently, grimacing, and shifting onto her right side, and that at that point, the left side of Petitioner's low back was causing her increased pain. Px8 at 26-27. Ms. Baumann was only able to complete set one of the grip dynamometer, and they were consistent. Px8 at 28. Petitioner's resistance dynamometer results were consistent. Px8 at 30. Ms. Baumann testified that the discharge summary of February 21, 201 corresponded with the FCA report of November 13, 2020 in that Petitioner was having muscle spasms throughout the upper and lower extremities and pain throughout the upper and lower extremities. Px8 at 31-32. Ms. Baumann testified that there was not a

lack of effort by Petitioner during the functional capacity assessment. Px8 at 33. Ms. Baumann testified that she did not observe any other health conditions that would have affected Petitioner's functional capacity assessment performance and that she did not observe any self-limiting behaviors by Petitioner. Px8 at 34. Ms. Baumann testified that Petitioner's FCA was indeterminate because they were not able to finish the test to get all of the necessary components to determine validity. Px8 at 36-37. Ms. Baumann testified that for the objective measures that she had, she would say that Petitioner was putting in her full effort. Px8 at 37.

On cross examination, Ms. Baumann testified that she did not request a job description from Respondent or Petitioner's attorney. Px8 at 38. Ms. Baumann testified that once Petitioner almost fell during the balance activity, she felt that Petitioner was a fall risk, and the assessment was terminated at that point. Px8 at 38-39. Ms. Baumann testified that the discharge summary of February 21, 2017 was not authored by her and that she did not know about it beforehand. Px8 at 39.

On redirect examination, Ms. Baumann testified that she does not make return-to-work decisions or any restriction decisions. Px8 at 40.

Testimony of Edward Steffan

Mr. Edward Steffan testified on behalf of Petitioner by way of evidence deposition taken on May 13, 2021. Px9. Mr. Steffan is a certified vocational rehabilitation counselor. Px9 at 6, 9. Mr. Steffan testified as to his education and credentials as a vocational rehabilitation counselor. Px9 at 6-10.

Mr. Steffan testified that he became involved in this claim in February 2021 at the request of Petitioner's attorney. Px9 at 11. Mr. Steffan testified that Petitioner's attorney provided him with records, and that he reviewed the records and interviewed Petitioner on two different calls to obtain the necessary information to produce his report of March 30, 2021. Px9 at 11. Mr. Steffan testified that he relied on Dr. Nagar's June 15, 2020 correspondence and Dr. Nagar's September 11, 2020 deposition. Px9 at 12. Mr. Steffan testified that while he reviewed the November 13, 2020 functional capacity assessment and the December 23, 2020 operative report, he did not predicate his opinions on those documents. Px9 at 12-13.

Mr. Steffan testified that given Dr. Nagar's opinion that Petitioner could not work, he made no recommendations for vocational placement assistance as Petitioner was not released with identified physical capacities to be able to return to work. Px9 at 16. Regarding Dr. Nagar's mention of Petitioner's reduction in cognitive abilities in her letter of June 15, 2020, Mr. Steffan testified that if physical capacities to work were provided, that Petitioner would be able to pursue entry level nonskilled work with a renumeration between $11.00 and $14.00 per hour. Px9 at 17.

On cross examination, Mr. Steffan testified that he did not have an opinion as to whether the injury Petitioner suffered was related to the work accident. Px9 at 19. Mr. Steffan also testified that he did not have an opinion as to whether Petitioner's ability or inability to look for a job, hold a job, return to work as bus driver, or work somewhere else entirely was related to any work accident. Px9 at 19.

CONCLUSIONS OF LAW

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

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

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

In the case at hand, the Arbitrator observed Petitioner's behavior and conduct during the hearing and compared Petitioner's testimony with the totality of the evidence submitted. While the Arbitrator acknowledges some inconsistencies between Petitioner's testimony and the evidence submitted, the Arbitrator did not find any material contradictions that would deem the witness so unreliable as to defeat her claim.

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

Petitioner is claiming injuries to her cervical spine, thoracic spine, and lumbar spine. Petitioner is not claiming any brain-related injuries. Px7 at 25.

The Arbitrator finds that Petitioner's current conditions of ill-being as to her cervical spine, thoracic spine, and lumbar spine are causally related to the December 3, 2016 injury. The Arbitrator relies on the following in support of her findings: (1) the records of Community First Medical Center, (2) the records of Concentra, (3) the records of Northwestern Medicine, including those of Dr. Piest and Dr. Ramanavarapu, (4) the records and testimony of Dr. Nagar, (5) Petitioner's credible testimony that she had not had any back problems in her 17 years as a bus driver, and (6) the fact that none of the records in evidence reflect any cervical spine, thoracic spine, or lumbar spine issues or treatment prior to December 3, 2016. The Arbitrator notes that the evidence demonstrates that Petitioner was in condition of good health and was able to work full duty and without restrictions immediately prior to the work accident.

The Arbitrator has considered the opinions of Respondent's Section 12 examiner, Dr. Goldberg and finds his opinions less persuasive than those of Dr. Nagar. The Arbitrator finds that the record overall supports Dr. Nagar's opinion that the December 3, 2016 accident caused the aggravation of degenerative changes in Petitioner's cervical spine, thoracic spine, and lumbar spine, which caused Petitioner intermittent pain and difficulties with walking, which Petitioner managed with physical therapy and intermittent steroid injections. The Arbitrator notes that Dr. Goldberg also opined that Petitioner's injury

was likely some aggravation of some preexisting degenerative disc disease of the cervical and lumbar spines.

The Arbitrator further finds that Petitioner was at maximum medical improvement ("MMI") as of March 17, 2020, which is the last record offered of Petitioner's treatment with Dr. Nagar. The Arbitrator acknowledges that Petitioner underwent a left laminar epidural steroid injection at L5-S1 on December 30, 2020, but notes that there is an unexplained nine-month gap in treatment between Petitioner's March 17, 2020 visit with Dr. Nagar and the December 30, 2020 procedure. Accordingly, the Arbitrator finds that treatment provided to Petitioner after March 17, 2020 is unrelated to the December 3, 2016 injury, including the lumbar fusion procedure of September 28, 2021 and subsequent in-patient rehabilitation. The Arbitrator notes that the available medical records do not support a finding of causation as to the lumbar fusion or inpatient rehabilitation.

Issue G, as to what were Petitioner's earnings, the Arbitrator finds as follows:

Petitioner claims that her earnings during the year preceding the injury were $79,528.71 and that her average weekly wage was $1,712.75. Arbitrator's Exhibit ("Ax") 1. Respondent disputes Petitioner's claims, and Respondent claims that Petitioner's earnings during the year preceding the injury were $86,112.00 and that her average weekly wage was $1,656.00. Ax1.

Petitioner testified that she earned $33.00 or $34.00 per hour and that she worked 12-hour or 14-hour shifts. That was the extent of Petitioner's testimony regarding her earnings while working at Respondent. Respondent offered Rx5, Petitioner's wage statement for the year preceding the injury. The Arbitrator has considered the evidence regarding Petitioner's earnings and finds that Rx5 provides a more reliable representation of Petitioner's earnings during the year preceding the injury. Accordingly, the Arbitrator finds that Petitioner's average weekly wage, calculated pursuant to Section 10 of the Act, was $1,656.00.

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

Consistent with the Arbitrator's prior findings, the Arbitrator finds that the medical services that were provided to Petitioner through March 17, 2020, the date of MMI, were reasonable and necessary, and that Respondent has not paid all appropriate charges. As the Arbitrator has found that Petitioner's treatment was reasonable and necessary through March 17, 2020, the Arbitrator further finds that all bills, as provided in Px13 and supported by a treatment record within the records offered, are awarded and that Respondent is liable for payment of said bills pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Bills for treatment of any concussion/brain-related injuries, bills for Advocate Condell Medical Center and Promedica Skilled Nursing Facility, and bills for treatment of cerumen impaction and bilateral hands are denied.

Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses, including those reflected in Rx4, and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

Issue K, whether Petitioner is entitled to TTD benefits and maintenance benefits, the Arbitrator finds as follows:

Petitioner claims that she is entitled to TTD benefits from December 3, 2016 through September 11, 2020 and that she is entitled to maintenance benefits from September 12, 2020 through November 30, 2022, the date of arbitration. Ax1 at No. 8. Respondent disputes Petitioner's claims and claims that Petitioner is entitled to TTD benefits from December 4, 2016 through May 8, 2017 and that maintenance benefits are not owed.

Based on the foregoing causation findings, the Arbitrator finds that Petitioner is entitled to TTD benefits from December 4, 2016 through March 17, 2020, the date of MMI, where the evidence demonstrates that Respondent did not accommodate Petitioner's restrictions or return Petitioner to work, following Petitioner's attempt to return to work at Respondent after Dr. Goldberg's IME.

Based on the foregoing causation findings and noting the "indeterminate" FCE and Petitioner's admission that she has not looked for a job since the December 3, 2016 accident, the Arbitrator finds it inappropriate to award maintenance benefits.

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

The Arbitrator acknowledges Petitioner's request for a wage differential award based on the opinions of Ms. Lauren Baumann and Mr. Edward Steffan. The Arbitrator notes that Ms. Baumann testified that Petitioner's FCE was "indeterminate," as she was not able to obtain all the necessary components to determine validity. Mr. Steffan testified that he made no recommendations for vocational placement assistance because Petitioner had not been released with identified physical capacities to be able to return to work. Mr. Steffan then testified that *if* physical capacities to work *were* provided, Petitioner would be able to pursue entry level nonskilled work earning between $11.00 and $14.00 per hour. (emphasis added). The Arbitrator finds Mr. Steffan's opinions speculative and unreliable, where they are based on unidentified physical capacities and in response to a question regarding Petitioner's unrelated reduced cognitive abilities. Based on the record as whole, the Arbitrator finds that a wage differential award is inappropriate.

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

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

Regarding criterion (ii) and criterion (iii), the Arbitrator notes that at the time of the accident, Petitioner was 57 years of age and was employed by Respondent as a bus driver. The Arbitrator notes that Petitioner did not return to work at Respondent following the December 3, 2016 accident and has not looked for employment since the December 3, 2016 accident. The Arbitrator notes that while Petitioner testified that she continued to treat at the time of arbitration, the last treatment date reflected in the

records is Petitioner's March 17, 2020 visit with Dr. Nagar. As there is no evidence as to Petitioner's work status after March 17, 2020, the Arbitrator assigns less weight to this factor.

Regarding criterion (iv), the Arbitrator notes that the record is vague as to Petitioner's earning capacity, where the Arbitrator has found Mr. Steffan's opinions unreliable and speculative, Petitioner's FCE was "indeterminate," and Petitioner's work status after March 17, 2020 is unknown. The Arbitrator assigns less weight to this factor.

Regarding criterion (v), Petitioner sustained an aggravation of degenerative changes in her cervical spine, thoracic spine, and lumbar spine, which caused intermittent pain and difficulty with walking, which Petitioner managed with physical therapy and intermittent steroid injections. While Petitioner testified that she was still treating at the time of the hearing, the last treatment date reflected in the records is Petitioner's visit with Dr. Nagar on March 17, 2020.

At arbitration, Petitioner testified that she has difficulty walking, that she cannot focus, that she cannot do her normal duties, and that she cannot walk without assistance. The Arbitrator, however, notes that Petitioner's overall treatment history is vague, and that unrelated conditions, including the lumbar fusion and brain/cognitive issues, may be contributing to Petitioner's difficulty with walking and focus. The Arbitrator again notes that Petitioner makes no claim that the accident brought about brain/cognitive issues and that the available medical records do not support a finding of causation as to the lumbar fusion. The Arbitrator assigns more weight to this factor.

Upon consideration of the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of the person as a whole, pursuant to Section 8(d)2 of the Act.

Issue M, whether penalties/attorney's fees should be imposed upon Respondent, the Arbitrator finds as follows:

Petitioner's claim for penalties and attorney's fees is denied. The record does not support an award of Section 19(l) penalties and the Arbitrator finds that Respondent's disputes in this case are not vexatious or in bad faith, such that Section 19(k) penalties and/or Section 16 attorney's fees are merited.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC030653
Case Name	Roland Johnson v. UPS & State Treas. and Ex-Officio Custodian of the Second Injury Fund
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0293
Number of Pages of Decision	20
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Charlene Copeland, Adam Cox

DATE FILED: 6/17/2024

/s/Amylee Simonovich, Commissioner

Signature

24IWCC0293

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rolan Johnson,

Petitioner,

vs. NO: 13 WC 30653

UPS and Ill. State Treasurer as ex-officio Custodian of the Second Injury Fund,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Respondents herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical expenses, temporary disability benefits, permanent disability, and the liability of the Second Injury Fund, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

In the interest of efficiency, the Commission relies on the detailed recitation of facts provided in the Decision of the Arbitrator. The Commission affirms the Arbitrator's conclusion that Petitioner's condition of ill-being regarding the left eye is causally related to the August 19, 2011, work accident. The Commission also affirms the Arbitrator's award of medical expenses, and the award of future reasonable and necessary expenses for specialized devices or equipment prescribed by a medical provider for Petitioner's vision impairment. However, the Commission modifies the Arbitrator's conclusions regarding temporary disability benefits, permanent disability, and the liability of the Second Injury Fund. Finally, the Commission makes certain corrections to the Arbitration Decision.

Corrections to the Arbitration Decision

In the first paragraph of the Order section of the Arbitration Decision, the Arbitrator mistakenly wrote that Petitioner's "current conditions is causally related to the August 19,2011 work-related accident." The Commission strikes "conditions" and replaces it with "condition" and strikes "August 19,2011" and replaces it with "August 19, 2011." Any additional errors in the Order section of the Arbitration Decision Form have been corrected by the Commission's

modifications to the Decision herein.

On page five (5) of the Decision, the Arbitrator wrote "…pintle hook to replace it he Calvin was assisting…" The Commission strikes "he" from this sentence. The Commission also strikes the final paragraph on that same page and replaces it with the following:

> Petitioner was trying to hold the wrench, but it slipped off the bolt and hit him on the top of his safety glasses and pulled them down. (T30). Petitioner identified the inner corner of his left eye close to the bridge of his nose as the area of impact. (T31). Petitioner initially could not see anything with the left eye after the wrench hit him. However, after a few seconds, he was able to see only lights and shadows with the left eye. Petitioner testified that he finished installing the pintle hook before he sought help. He did not realize that the vision in his left eye was significantly affected until he stood up.

In the first paragraph on page fourteen (14) of the Decision, the Commission strikes the following language: "and the Illinois State Treasurer shall also pay 100% loss of the use of the right eye or 162 weeks of disability at the PPD rate of $638.41." The Commission also strikes the final paragraph on that same page, and replaces it with the following:

> The Arbitrator has read the transcript of the November 22, 2019, hearing regarding the Second Injury Fund's Motion to Dismiss. After considering the evidence, the Arbitrator denies the Fund's motion. As Petitioner had previously sustained 100% loss of the right eye and, as a result of this accident, has sustained 100% loss of the left eye, Petitioner is eligible for statutory permanent total disability benefits of $709.34/week for life, commencing April 2, 2013, as provided in Section 8(e)18 of the Act.
>
> Respondent shall pay Petitioner $638.41/week for 162 weeks, commencing April 2, 2013, for the loss of the left eye, as provided in Section 8(e) of the Act. During that period, the Second Injury Fund shall pay Petitioner $70.39/week, to equal the total permanent total disability rate, as provided in Section 8(f) of the Act. Commencing May 10, 2016, the Second Injury Fund shall pay Petitioner $709.34/week for life.

Temporary Disability Benefits

The Arbitrator concluded that Petitioner proved an entitlement to temporary total disability (TTD) benefits from August 22, 2011, through April 1, 2013, a period of 84-1/7 weeks. The Commission affirms the Arbitrator's conclusion that Petitioner reached maximum medical improvement (MMI) on April 1, 2013. However, after considering the totality of the evidence, the Commission finds Petitioner proved an entitlement to TTD benefits from August 22, 2011, through October 17, 2011, a period of 8-1/7 weeks, and from August 24, 2012, through April 1, 2013, a period of 31-4/7 weeks.

To prove an entitlement to TTD benefits, a claimant must prove they did not work and that

they were unable to work. *Freeman United Coal Mining Co. v. Indus. Comm'n.*, 318 Ill. App. 3d 170, 177 (2000). A claimant is temporarily and totally disabled from the time a work injury incapacitates them from work until such time that they are "…as far recovered or restored as the permanent character of [their] injury will permit." *Shafer v. Ill. Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC at ¶ 45.

Respondent's Exhibit 2 contains Petitioner's wages from December 26, 2010, through December 29, 2012. It shows that Petitioner did not work from August 22, 2011, through October 17, 2011. The exhibit also shows that Petitioner returned to work on October 18, 2011, and continued to work until August 23, 2012. Finally, it shows that Petitioner was off work from August 24, 2012, through April 1, 2013, the date Petitioner reached MMI. Thus, the Commission finds Petitioner was entitled to TTD benefits from August 22, 2011, through October 17, 2011, and from August 24, 2012, through April 1, 2013, a total period of 39-5/7 weeks.

Permanent Disability

The Commission agrees with the Arbitrator's conclusion that Petitioner is entitled to permanent total disability benefits as a result of the August 19, 2011, work accident. However, the Commission modifies certain aspects of the Arbitrator's award.

The credible evidence proves that before this work accident, Petitioner suffered from uncontrolled advanced diabetes that significantly affected the health of his eyes. The medical records consistently show that in the months before the August 19, 2011, work accident, Petitioner's vision in his right eye was reduced to light perception only. Light perception only vision acuity is less than 20/200, which constitutes legal blindness in Illinois. (PX 12). Thus, Petitioner lost 100% of the right eye before this work accident.

While Petitioner underwent treatment on the left eye before the work accident, Dr. Hariprasad testified credibly that this was preventative treatment due to Petitioner's uncontrolled diabetes. The credible evidence shows that approximately three weeks before this work accident, Petitioner's vision in the left eye was 20/50. Dr. Hariprasad credibly testified that Petitioner sustained a new vitreous hemorrhage in the left eye. Ultimately, despite undergoing multiple surgical procedures in an attempt to preserve the vision in his left eye, by October 2012 Petitioner only had light perception vision in the left eye. In late November 2012, Dr. Squier assessed Petitioner's low vision impairment. Notably, the doctor determined that Petitioner's visual acuity in both eyes was light perception only. Dr. Squier determined Petitioner's visual impairment in both eyes was near total and recommended he explore vision rehabilitation services, training, and counseling.

Petitioner eventually began treatment at the local VA hospital. Petitioner applied to the VA blindness rehabilitation training program, and an evaluation determined that he met the criteria for catastrophic disability due to his blindness. In July 2013, an optometrist determined that Petitioner was legally blind in both eyes and that his visual acuity in both eyes was less than light perception. Petitioner attended the blindness rehabilitation program at least three times. As part of his rehabilitation, the VA provided accessible technology and devices including a cell phone and typing keyboard. Furthermore, Petitioner testified that he is no longer able to drive and can no

longer independently cook or grill. He testified that the VA provided home modifications that included making his toilets and showers accessible. He testified that his wife and a cousin help him perform various activities of daily living, including performing daily hygiene, cooking, and cleaning.

Section 8(e)18 of the Act, states: "The specific case of loss of both hands, both arms, or both feet, or both legs, or both eyes, or of any two thereof, or the permanent and complete loss of the use thereof, constitutes total and permanent disability…" After carefully considering the evidence, the Commission finds Petitioner is permanently totally disabled pursuant to Sections 8(e)18 and 8(f) of the Act. It is also clear that Petitioner is entitled to compensation from the Second Injury Fund as he suffered a pre-accident 100% loss of the right eye, and sustained a 100% loss of the left eye due to the August 19, 2011, work accident.

As Petitioner had previously sustained 100% loss of the right eye and, as a result of this accident, has sustained 100% loss of the left eye, Petitioner is eligible for statutory permanent total disability benefits of $709.34/week for life, commencing April 2, 2013, as provided in Section 8(e)18 of the Act.

Respondent UPS shall pay Petitioner $638.41/week for 162 weeks, commencing April 2, 2013, for the loss of the left eye, as provided in Section 8(e)13 of the Act. During that period, the Second Injury Fund shall pay Petitioner $70.39/week, to equal the total permanent total disability rate, as provided in Section 8(f) of the Act. Commencing May 10, 2016, the Second Injury Fund shall pay Petitioner $709.34/week for life.

Maintenance Benefits

The Arbitrator awarded maintenance benefits from April 2, 2013, though February 9, 2023, the date of hearing. Pursuant to Section 8(a) of the Act, maintenance benefits are only appropriate while a claimant engages in vocational rehabilitation. *See, e.g., W.B. Olson, Inc. v. Ill. Workers' Comp. Comm'n*, 2012 IL App (1st) 113129WC. However, due to the extent of his injury, Petitioner is entitled to statutory permanent total disability benefits beginning April 2, 2013, pursuant to Section 8(e)18 of the Act. Therefore, an award of maintenance benefits is inappropriate. Thus, the Commission strikes in its entirety the discussion regarding maintenance benefits within Section K of the Decision on page thirteen. The Commission also vacates the award of maintenance benefits.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 8, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent UPS shall pay Petitioner temporary total disability benefits of $709.34/week for 39-5/7 weeks commencing August 22, 2011, through October 17, 2011, and from August 24, 2012, through April 1, 2013, as provided in Section 8(b)

of the Act.

IT IS FURTHER ORDERED that the award of maintenance benefits is vacated.

IT IS FURTHER ORDERED that Respondent UPS shall pay all reasonable and necessary medical charges, as provided in Sections 8(a) and 8.2 of the Act. Respondent UPS shall receive a credit for medical benefits that have been paid, and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, including Petitioner's group health insurer, Medicaid, and Medicare, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED that because Petitioner had previously sustained 100% loss of the right eye and, as a result of this accident, has sustained 100% loss of the left eye, Petitioner is eligible for statutory permanent total disability benefits of $709.34/week for life, commencing April 2, 2013, as provided in Section 8(e)18 of the Act.

Respondent UPS shall pay Petitioner $638.41/week for 162 weeks, commencing April 2, 2013, for the loss of the left eye, as provided in Section 8(e)13 of the Act. During that period, the **Second Injury Fund** shall pay Petitioner $70.39/week, to equal the total permanent total disability rate, as provided in Section 8(f) of the Act. Commencing May 10, 2016, the Second Injury Fund shall pay Petitioner $709.34/week for life.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the **Rate Adjustment Fund**, as provided in Section 8(g) of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondents is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 17, 2024

o: 4/16/24

AHS/jds

51

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Maria E. Portela*

Maria E. Portela

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC030653
Case Name	Roland Johnson v. UPS; and State Treas. and Ex-Officio Custodian of the Second Injury Fund
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Christopher Gibbons, Charlene Copeland

DATE FILED: 5/8/2023

THE INTEREST RATE FOR THE WEEK OF MAY 2, 2023 4.90%

/s/William McLaughlin, Arbitrator

Signature

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

X **SECOND INJURY FUND (8 (E)18)**
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Rolan Johnson
Employee/Petitioner
v.

Case # **13** WC **030653**

Consolidated cases:

UPS; and State Treas. and Ex-Officio-Custodian of the Second Injury Fund
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Cook**, on **2/9/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. Was there an employee-employer relationship?
C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. What was the date of the accident?
E. __ Was timely notice of the accident given to Respondent?
F. **X** Is Petitioner's current condition of ill-being causally related to the injury?
G. __ What were Petitioner's earnings?
H. __ What was Petitioner's age at the time of the accident?
I. __ What was Petitioner's marital status at the time of the accident?
J. **X** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. **X** What temporary benefits are in dispute?
☐ TPD X Maintenance X TTD
L. **X** What is the nature and extent of the injury?
M. Should penalties or fees be imposed upon Respondent?
N. Is Respondent due any credit?
O. **X** Other **2nd Injury Fund**

FINDINGS

On **8/19/2011**, the Respondents-UPS and the State Treasurer, Ex-Officio Custodian of the Second Injury Fund ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**28,728.28**; the average weekly wage was $**1,064.01**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **0** dependent children.

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

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

Respondent-UPS shall be given a credit of $**5,168.05** for TTD paid between 8/22/2011 to 10/12/2011, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

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

ORDER

The Arbitrator finds the Petitioner's current conditions of ill being is causally related to the August 19,2011 work-related accident.

The Arbitrator finds that the Respondent- UPS, shall pay the Petitioner reasonable and necessary medical services pursuant to the Medical Fee Schedule, as provided in Section 8(a) of the Act. Respondent- UPS, shall hold Petitioner harmless from any claims by any providers of the services that have been paid by Petitioner's group health insurance, Medicaid, or Medicare.

Respondent-UPS shall be given a credit for medical benefits that have been paid, and Respondent- UPS shall hold Petitioner harmless from any claims by any providers of the services paid to date.

The Respondent-UPS shall pay for all prospective reasonable, necessary, and related medical expenses, including but not limited to, visual rehabilitation adaptive devises and other visual impairment equipment as recommend by the Petitioner's physician.

The Arbitrator finds that the Petitioner is entitled to temporary total disability benefits and Respondent- UPS, shall pay temporary total disability benefits at the rate of $709.27 per week for the period of August 22, 2011 through April 1, 2013 for a total of 84 weeks as provided in Section 8(b) of the Act.

The Arbitrator finds that Petitioner is awarded permanent total disability benefits under Section 8(e)(18) and Section 8(f) of the Act because he has suffered the permanent and complete loss of use of the right and left eyes. As of April 2, 2013, statutory permanent total disability benefits under Section 8(e)(18) and 8(f) of the Act shall commence and continuing thereafter, the Arbitrator finds that Petitioner is statutorily permanent and totally disabled and is entitled to $709.27 per week pursuant to Section 8(f). Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

The Arbitrator finds that the Respondent-UPS, is liable to pay compensation for the loss or permanent and complete loss of use of the left eye. (This Respondent is still liable for all benefits under Section 8(a) and 8(b) of the Act) The Respondent-UPS, shall pay 100% loss of use of the left eye to the Petitioner at the PPD rate of $638.41 per week for 162 weeks.

The Illinois State Treasurer, ex-officio custodian of the Second Fund, a co-respondent in this matter was represented by the Office of the Illinois Attorney General. Because Petitioner had previously sustained 100% loss of the ***right eye*** and, as a result of this accident, has sustained 100% loss of the ***left eye***, Petitioner is eligible for statutory permanent total disability benefits of $709.27 /week for life, commencing **April 2, 2013**, as provided in Section 8(e)18 of the Act and the Illinois State Treasurer shall also pay 100% loss of use of the right eye or 162 weeks of disability at the PPD rate of $638.41.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

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

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

MAY 8, 2023

Signature of Arbitrator

FINDINGS OF FACT

Petitioner, Rolan Johnson, date of birth is July 29, 1962. He was 49 years old when the work injury occurred. Petitioner testified that he lives with his wife Sheila in Chicago, Illinois. Prior to his employment with Respondent, Petitioner served in the Marines from 1980 to 1987, and then with the Army. (T14).

Petitioner began working for UPS in March of 2006 and remained employed by UPS for six and a half years. (T18). He was a trailer mechanic who was eventually elevated to foreman. (T18-19). He described his daily job activities as typically finishing up the previous mechanic's work from the first shift, and then he would start on a new trailer. (T19). On the new trailer he would start PMI, or primary maintenance inspection. (T19). As he inspected he would be doing both maintenance and preventative maintenance. (T20). Part of his job required him to work on pintle hooks. (T21). A pintle hook is a way to attach one trailer to another trailer. (T21). Prior to the injury of August 19, 2011, he did not have any other injuries while with UPS. (T22).

Around April or May 2011, Petitioner sustained damage or had a condition in his right eye, leading to him only having light perception in the right eye. (T23). Petitioner was diagnosed with diabetes prior to 2011 and received treatment for it at Mercy Hospital. (T47). From April 2, 2011 through July 2011, he took a leave from UPS for the right eye procedures on May 11th and July 11th of 2011 with Dr. Seenu Hariprasad. (T49-50). (T23). Before the August 19, 2011 left eye injury, he had laser surgery on his right eye. (T24). On May 11, 2011, Petitioner underwent right eye vitrectomy, membrane peel and endolaser for traction detachment of the right eye retina. (PX3). On June 22, 2011, he underwent a repeat surgery with oil injection into the right eye. *Id.* At the time he had no problems with his left eye.

Prior to the work accident, vision in his right eye was never restored to anything better than light perception. (T25;38). After the wrench incident and during an ophthalmology exam at University of Chicago, his right eye is noted as "LP" with the left eye at 20/150. (PX3, p. 102).

On August 19, 2011, Petitioner's shift was from 2:30 to 11:00 at UPS. Prior to his injury, he was changing a pintle hook with foreman Calvin Grayson. (T26). Petitioner testified that while he was cutting off the old pintle hook to replace it he Calvin was assisting him. (T26-27) Petitioner testified when Calvin started to tighten up the bolt the wrench clipped off the bolt and hit him in the eye. (T27). During his testimony, Petitioner was given a brass or gold colored bolt, which Petitioner described as being the bolt he would put though the pintle hook. (T27). He would start fastening the nut to the bolt on one side and then put a 1/8 inch combination wrench wrench onto the nut while the guy on the outside would take the impact and tighten the bolt. (T27-28). The one inch impact has to be held to tighten the bolt. (T28). It is the same wrench used to take the lug nuts off to change truck tires. (T28). Petitioner was working with the combination wrench and the other [Calvin] with the impact. (T28). Petitioner was laying on his back under the pintle hook and tightening, holding the bolt that he [Calvin] is tightening on the other side. (T29-30).

Petitioner was trying to hold it [wrench] but it slipped off the bolt and hit him on the top of his safety glasses and pulled them down. (T30). Petitioner pointed to the corner of his left eye closer to his bridge and not the outer end of his eye. (T31). After it hit him he couldn't see anything. (T31). He could only see lights and shadows out of his left eye. (T32). A couple of seconds passed between the impact to when he could not see anything. (T32). After the impact he was able to see blood on the inside of his eye, the blood vessel inside of his eye. (T45, 62; RX6). When he was down on the ground he kept working, but when he stood up that's when he really couldn't see too good. (T62). He could only see lights and shapes. (T63). He finished the job with the pintle hook before he went to get help. (T55).

Petitioner testified that after the accident the Supervisor Genesis Alvetchy, took Petitioner to the Clearing Clinic. (T33). Records indicate that Petitioner complained that he could not see from both eyes after changing a pinacle hook. (PX1). Petitioner was diagnosed with a retinal hemorrhage. *Id.* His vision exam noted 20/0 across the report on both eyes. *Id.* Despite Petitioner unable to see from both eyes he was discharged to regular duty. *Id.* Genesis drove him back to the HUB, where Petitioner's daughter and ex-wife picked him up and took him home. (T34). Two days later on Monday, Petitioner talked to Dr. Seenu Hariprasad. (T34). Petitioner told the Dr. about what happened and that he couldn't see. (T35). Records indiciate that Dr. Hariprasad ordered him to avoid the work environment. (PX3). The record on September 1, 2011 with Dr. Hariprasad's Illinois Eye Institute clinic indicated there was a laser procedure done on August 22nd, and Petitioner now complained of noticing blood post laser treatment on the left eye. *Id.* The Dr. suggested the Petitioner would likely need surgical intervention in the coming months following this wrench injury. *Id.* During his testimony, Petitioner thought he had a procedure on that eye a couple months later, but returned to work at UPS. (T36). During his statement taken by Ladochie Simmons, Petitioner told Simmons he had some kind of laser procedure to seal off the blood vessel that was busted. (RX6).

Petitioner was paid his workers compensation wage of two-thirds wages while he was off work for the left eye injury. (T37). Petitioner underwent an independent medical examination on September 30, 2011 with Dr. Golden-Brenner, M.D. (RX1). He was scheduled for a left eye procedure on September 14th but didn't have a ride so he cancelled. (T56; PX3). On October 12, 2011, Petitioner underwent another surgery on his right eye. (PX3). In the surgical report, Dr. Hariprasad noted that in his left eye he had a traction retinal detachment exacerbated recently by an injury at work by a wrench. *Id.* At his follow up visit with the clearing clinic on October 18, 2011, he's given a full duty release (PX1).

Petitioner returned to work around October 16, 2011 through September 1, 2012. (T58). His eye was progressing but getting worse. (T66). In February of 2012, Petitioner returned to Dr. Hariprasad to whom he complained of blurry vision in the left eye that would not be corrected with glasses. (PX3). Petitioner had a left eye laser surgery on May 18, 2022. *Id.* He was told to return around August for the surgery with oil injection. *Id.* Petitioner recalled having a procedure done on his left eye in September 2012, but it only helped for about a week. (T38-39; 57). On September 12, 2012, Petitioner underwent a vitrectomy, membrane peel, endo laser and oil injection in the left eye. (PX3). In his operative report, Dr. Hariprasad noted the macula detached in the left eye due to a rhegmatagenous component (presumably from trauma). *Id.* On September 26, 2012, Dr. Hariprasad brought him in for the oil removal due to Petitioner's insistence with pain complaints. *Id.* During the operation it was found that the patient had silicone oil in the anterior chamber due to zonular dehiscence supposedly from trauma from the wrench. *Id.*

Petitioner testified that after surgery on his left eye his left eye got worse. (T39). After that he received treatment at the VA. (T40). His doctor suggested he try the VA given his military background since insurance wasn't going to cover a lot of stuff. (T40). At a follow up appointment with Dr. Hariprasad on November 28, 2012, Petitioner's eyesight was rated at "LPerc" for both eyes. (PX2). By January 21, 2013, Petitioner is reporting that he does not see anything. (PX3). Dr. Hariprasad begins the referral to social work and low vision therapy. *Id.* On March 8, 2013, he presented to the Jesse Brown VAMC clinic to establish care as a veteran. (PX5). At his next appointment with Dr. Hariprasad, it is determined that the best course of treatment for Petitioner is to continue with the VA. (PX3).

Through the VA, Petitioner went to school to help with his blindness. (T40-41; PX5). Petitioners visual skills were noted as totally blind, no light perception. (PX5). Petitioner Required and received training in the I-phone, computer, teach how to type, give devices to use, a cane, some eye treatments and glasses. (T41; PX5). He was also given a talking watch, a blind ID cane, and audible labeling system and talking alarm clock. (PX5).

Petitioner is on Medicare but does not utilize it but instead he goes to the VA for treatment. (T41-42) Petitioner is receiving Social Security Disability. (T41, 65). Petitioner is no longer able to drive or cook food. (T43). He has had renovations done to his home to accommodate his Disability (T44). Petitioner relies on his wife and his cousin Derek help him with daily hygiene, cooking, cleaning etc.. (T44). At the time of the hearing, Petitioner testified he cannot see out of left or right eyes. (T65). He had not had any treatment for his eyes in the two to three years prior to the hearing. (T66).

Witness Courtney Jones:

Petitioner called Courtney Jones as a witness to assist with support on some of the visual evidence used, though Courtney was not present when Petitioner was injured. (T76). Courtney worked as a trailer mechanic at UPS with Rolan from 2005 up to at least the day of Petitioner's injury. (T68-69). He did panel work, roof work, rear doors, brake jobs, tires, pintle hooks, air brakes, and electrical work. (T69). Courtney understood that at the time of his injury, Petitioner was removing and installing a pintle hook. (T70). Referring to PX 11, Courtney explained that the pintle hook is located on the rear of a trailer. (T71). To remove and install the hook, the rear of the trailer would be jacked up, you'd cut the bolts off with a torch and remove the bolts from the inside of the frame, take the pintle hook out, and it is a two-man job. (T72). You have a guy underneath, which was Rolan, who has the wrench and you have another guy that was installing with the air impact. (T72). He identified the air impact as the image shown on PX 8. (T72). The impact has maybe 1500 to 2000 pounds of torque behind it. (T73). There is a trigger and another handle to hold because there is so much torque with one arm it will snap your arm. (T73). Courtney identified the safety glasses, nut and bolt, and combination wrench shown during Petitioner's testimony as the tools they would use for the pintle hook job. (T74-75).

Deposition of Dr. Seenu Hariprasad, M.D.:

Dr. Seenu Hariprasad, M.D. testified that he is part of the Department of Ophthamology and Visual Sciences at the University of Chicago. *Id.* at 7. He is the chief of the vitreoretinal service, endowed professor of the Sui-Chin Professorship in ophthalmology and director of the clinical research program and vitreoretinal fellowship program. *Id.* He is board certified in ophthalmology with a subspecialty in vitreoretinal surgery. *Id.* at 8.

Dr. Hariprasad started seeing Petitioner in 2011 and treated him through December 2013. *Id.* at 10. When he first saw him he had diabetic retinopathy in both eyes. *Id.* at 11. The right eye had surgery done for very advanced proliferative diabetic retinopathy tractional detachment, and did laser treatment in the left eye. He had stable proliferative diabetic retinopathy and reasonably good vision in the left eye at that time. *Id.* He believed the left eye laser surgery was successful, because if it was not he would have done it again. *Id.* at 12. Prior to August 19, 2011, Petitioner's left eye was stable. *Id.* On August 22, 2011 he saw Petitioner, who reported complaints of injury to the left eye due to a wrench hitting his left eye. *Id.* at 15. He was unable to see in the left eye due to leaking blood vessel in the left eye. He had pain and floaters in the left eye. Dr. Hariprasad saw little hash signs in his eye, which meant he had done laser in that eye. *Id.* He noted that the blood is new vitreous hemorrhage and that "VH" new vitreous hemorrhage, meant that that's blood that was not there before this day. *Id.* at 16.

He testified within a reasonable degree of medical certainty that the wrench injury caused the vitreous hemorrhage. *Id.* He based his opinion on that new vitreous hemorrhage, that he was lasered and stable prior, and there was an acute event that caused him to have acute vision loss, and his retina was damaged. *Id.* On examination, he was able to see blood in the left eye very clearly. In the area where the vitreous hemorrhage occurs, underneath the retina, to cause the bleed, one presumes there's damage to cause the bleed because it doesn't come from nowhere. *Id.* at 17-18. On October 10, 2011, he recommended surgical intervention and

Petitioner refused. On October 12, 2011, he performed right eye surgery to repair a tractional retinal detachment, which was not related to the August 19, 2011 event. *Id.* at 20. After the right eye virectomy surgery done prior to the left eye injury, he put silicone into the eye to hold the retina in place, and this October 12th surgery was to remove the oil from the eye. *Id.*

Dr. Hariprasad differentiated the eye conditions, testifying that he had diabetic eye disease in both eyes with tractional retinal detachment and proliferative retinopathy and a retinal detachment in the right eye, which was repaired. And in the left he had vitreous hemorrhage, proliferative diabetic retinopathy and a small tractional retinal detachment which was exacerbated by the injury at work by a wrench. *Id.* at 21.

He continued to treat Petitioner, and between the right eye procedure on October 12, 2011 through May 18, 2022, Petitioner was in the postoperative period for the right eye. *Id.* at 23. On August 2012, Petitioner started to have a vision drop in the left eye, so Dr. Hariprasad recommended left eye surgery to help decrease the change of permanent vision loss. *Id.* at 24-25. On September 12, 2012 he performed a vitrectomy surgery with a membrane to remove all the scar tissue from the surface of the retina as well as laser, and put oil in his eye, and did a temporal retinectomy. *Id.* at 25. Dr. Hariprasad explained that when a person has trauma, you have rhegmatogenous component where the retina is ripped. *Id.* at 27. He opined that the diabetes did not help his condition, but the wrench injury definitely pushed the eye over the edge and made the surgery much more complex because of the traumatized retina. *Id.* at 27-28. He testified that we know as a fact that the workplace accident on August 19, 2011 exacerbated Petitioner's left eye condition. *Id.* at 28. Petitioner's eye was stable, and then there was an acute event which caused a bleed in the eye. *Id.*

On September 27, 2012, Petitioner developed severe visual disability bad enough that he felt he could not function and wanted the silicone oil removed sooner than Dr. Hariprasad would have normally preferred. *Id.* at 31. He testified that the need for these procedures was without a doubt caused by or contributed to by the accident. *Id.* at 32. The oil is very very very unlikely to come forward unless Petitioner had zonular dehiscence and that occurs from trauma. *Id.* at 32-33.

When he initially presented to Dr. Harisprasad, Petitioner could see 20/50 out of the left eye, but when he did the surgery a year later, the retina was tacked down to the wall of the eye, which is not usually seen in diabetics. *Id.* at 37. The right suffered advanced tractional retinal detachments and ischemia to the retina. Surgery was a Hail Mary type of situation to try to save that eye and unfortunately he was not successful. *Id.* at 37-38. As for the June 22, 2011 right eye surgery, Petitioner's right eye condition was so severe there was nothing he could do except go back in, peel off those membranes, put the oil back in the eye, and hope for the best. *Id.* at 47. He had such severe ischemia that the macula probably didn't even get blood and that's probably why he couldn't see. *Id.* at 48.

Dr. Hariprasad also commented that physical contact with a foreign object doesn't have to be in contact, but somewhere in the region of the eyes or forehead. *Id.* at 52. He explained that the bony orbit can protect the eyeball from direct injury, but there's secondary injury which the shock waves of that trauma, such as in motor vehicle accidents when the airbag hits the face you see retinal detachments but there's no direct contact with the eye, but that a shock to the forehead, face and eye can cause a retinal tear. *Id.* at 54. That there might not have been any physical evidence of trauma around the eyes after the first examination would not change his opinion because of the shock-wave type injuries that can cause the vitreous hemorrhage. *Id.* at 69. He noted that he was focusing on a much bigger problem than whether he had scratches or edema or swelling around the eyelid. *Id.* at 70.

He described the history taken and that he's taking Petitioner's word that a wrench hit him in the head, and when he sees a new blood, it is bright red. *Id.* at 66. When you see old blood, it is brown or white. *Id.* And

when he says new vitreous hemorrhage, that indicates that there was something acute that happened. *Id.* For proliferative vitreous retinopathy there are four risk factors. Number one is a bleed in the eye; number two is a tear in the retina; and number three is trauma. Petitioner had all of these. *Id.* at 66. He didn't say that Petitioner's diabetes was not related; but the wrench injury pushed his eye over the edge. *Id.* There are two types of retinal detachments; one is a tractional retinal detachment where the scar tissues are tenting up the retina. Rhegmatogenous injuries are with trauma. *Id.* at 72.

Deposition of IME Carrie Golden-Brenner, M.D.:

Dr. Carrie Golden-Brenner, M.D. (hereinafter "Dr. Brenner") is an Ophthalmologist licensed since 1983. (RX1, 4). Over the course of her career she has done cataract surgeries mostly, some oculoplastic surgeries, and a little bit of glaucoma. *Id.* at 7. Dr. Golden-Brenner saw Petitioner on September 26, 2011. *Id.* at 8. Petitioner told the Dr. he was changing a hook on the back of a truck when the wrench hit him in the front of his face, he thinks on his left eye, and that he was wearing safety glasses. *Id.* Dr. Brenner found that his vision was finger counting at 4 foot in the right eye and 20/50 in the left eye and that it was not able to correct it better than uncorrected vision. *Id.* at 12-13. Dr. concluded that the Petitioner was not able to see light with his right eye. *Id.* at 14.

In the right he had cataract and his retina was detached. *Id.* at 16. In the left eye there was no conjunctival injection, no bruising, no inflammation in the front of the eye; his cornea was clear, and there was no scarring. *Id.* There was a small vitreous hemorrhage and the retina displayed areas of hemorrhage and proliferative diabetic retinopathy. *Id.* at 17. There might have been small early traction retinal detachment but it was hard to tell because of the blood. *Id.* Dr. Brenner said a retinal detachment is due to diabetes, and it can be due to the blood vessels that grow on the surface of the retina and that can be called a traction retinal detachment. *Id.* at 19.

Dr. Golden-Brenner indicated the left eye was not nearly as severe as the right eye. *Id.* at 20. She felt he needed additional surgery in the right eye for repair of his retinal detachment and additional laser treatment and possible vitrectomy for the diabetic retinopathy and vitreous hemorrhage present in the left eye. *Id.* at 20-21.

Dr. Golden-Brenner opined that Petitioner's left eye condition was more likely than not not related to the incident. *Id.* at 23. This was based on her finding there was no bruising, no ecchymosis, no abrasion, and no subconjunctival hemorrhage. *Id.* at 23. Had Petitioner's eye been pierced by glass or metal or plastic of some foreign object that would have produced visible evidence. *Id.* at 24. However, Dr. Golden-Brenner did say that it was possible to sustain an impact on the head and the force of that impact then traveling to the eye and causing an injury. *Id.* If the head was shaken violently like a whiplash kind of injury, there's acceleration/deceleration forces that can transmit to the vitreous inside the eye and cause either the vitreous to detach from the retina, or in a diabetic it could cause a little hemorrhage. *Id.* at 25. She then said Petitioner's vitreous hemorrhage was most likely due to the diabetes. *Id.* at 27. The possibility of a little bit of swelling or macular edema in the left eye was definitely due to diabetes and the small peripheral traction retinal detachment was definitely due to his diabetes. *Id.* at 27.

She then said that retinal detachments can occur as the result of trauma, but that they occur at the time of trauma and there's a tear in the retina. *Id.* at 27-28. Sometimes that can progress over the course of a couple of weeks to a month or so, where that fluid goes through that hole that causes that retina to come off the back of the eye. *Id.* at 28. She did not see any retinal tears in Petitioner's eye. *Id.* Dr. Golden- Brenner did say there is a small possibility that the hemorrhage could have been caused or aggravated if the eye was hit, which does not appear from the records, or if the eye was shaken as discussed, it could have caused a small vitreous hemorrhage. *Id.* at 29. She testified that trauma does not cause new blood vessels to grow, so it was preexisting. *Id.* at 35. He would not have developed traction retinal detachment in three days and trauma does not cause a traction retinal

detachment. *Id.* When reviewing Dr. Hariprasad's September 26, 2012 operative report, with regard to the rhegamatogenous component, Dr. Brenner said what Dr. Hariprasad seems to be saying is that there was a tear in addition to the traction, but that if he had a rhegmatogenous retinal detachment it was not due to the trauma. *Id.* at 36-37.

CONCLUSIONS OF LAW

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

To establish causation under the Act, a claimant must show by a preponderance of the evidence that some act or phase of her employment was a causative factor in her ensuing injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2d Dist. 2005), citing Illinois Supreme Court case *Sibro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193 (2003). An accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Id.* It is axiomatic that when the injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment. *Caterpillar, Inc. v. Industrial Comm'n*., 228 Ill. App. 3d 288 (3d Dist. 1992).

Arbitrator finds the Petitioner's testimony to be credible regarding the mechanism of injury and consistent the medical records reflecting that he sustained an injury at work which necessitated medical treatment. Petitioner testified that he was under a truck holding the large wrench onto the nut connected to the bolt that his co-worker was fastening with the impact driver. That is when the impact drive caused his wrench to slip off the nut and strike him in the left eye just above the left eye and closer toward the bridge of his nose. He could not be certain if the wrench hit his eye or if the wrench struck the glasses which then struck the area around his left eye.

He also brought the safety glasses he was wearing, along with the wrench, bolt and nut he was working to affix the new pintle hook onto the trailer. He brought a photo of the impact wrench used by his co-worker Mr. Grayson. Courtney Jones, Petitioner's co-worker who was not present at the time of injury, was called as a witness to corroborate testimony regarding the pictures and hard evidence that Petitioner could not entirely identify due to his blindness. Courtney Jones identified the air impact as the image shown on PX 8. The impact has maybe 1500 to 2000 pounds of torque behind it. There is a trigger and another handle to hold because there is so much torque with one arm it will snap your arm. Courtney identified the safety glasses, nut and bolt, and combination wrench shown during Petitioner's testimony as the tools they would use for the pintle hook job.

Given the mechanism of injury paired with the size and power of the impact wrench and size of the combination wrench held by Petitioner, Arbitrator is convinced that a wrench struck Petitioner's left orbital area around Petitioner's eye with such great force and impact so as to cause a shockwave injury.

Arbitrator believes that prior to the August 19, 2011, Petitioner's left eye was stable, and he had 20/50 vision in his left eye. Dr. Harisprasad did a laser treatment on his left eye three days after the injury which provided some relief, though he indicated that further invasive surgery was indicated. Petitioner then has another right eye surgery on October 12, 2011, which does nothing to restore his eyesight. Arbitrator notes that the Independent Medical Examination was done September 26, 2011, and benefits were terminated October 12, 2011. Which ultimately led to Petitioner returning to work before he began to suffer from increased loss of vision.

Petitioner had a left eye laser surgery on May 18, 2022. On September 12, 2012, Petitioner underwent a vitrectomy, membrane peel, endo laser and oil injection in the left eye. In his operative report, Dr. Hariprasad notes the macula detached in the left eye due to a rhegmatagenous component (presumably from trauma). On September 26, 2012, Dr. Hariprasad brought him in for the oil removal due to Petitioner's insistence with pain complaints. During the operation it was found that the patient had silicone oil in the anterior chamber due to zonular dehiscence supposedly from trauma from the wrench.

Arbitrator gives great weight to the evidence deposition of Dr. Hariprased when testified that Petitioner unable to see in the left eye due to leaking blood vessel in the left eye, and had pain and floaters in the left eye. He noted that the blood is new vitreous hemorrhage and that "VH" new vitreous hemorrhage, meant that that's blood that was not there before this day. Dr. Hariprased described the history taken and that he's taking Petitioner's word that a wrench hit him in the head, and when he sees a new blood, it is bright red. The Dr. noted a hemorrhage, that indicates that there was something acute that happened. He testified within a reasonable degree of medical certainty that the wrench injury caused the vitreous hemorrhage. On examination, he was able to see blood in the left eye very clearly. Arbitrator finds Dr. Hariprasad testimony to be credible when the Dr. differentiated the eye conditions, testifying that Petitioner had diabetic eye disease in both eyes with traction retinal detachment and proliferative retinopathy and a retinal detachment in the right eye, which was repaired. And in the left he had vitreous hemorrhage, proliferative diabetic retinopathy and a small traction retinal detachment which was exacerbated by the injury at work by a wrench.

On September 27, 2012, Petitioner developed severe visual disability bad enough that he felt he could not function and wanted the silicone oil removed sooner than Dr. Hariprasad would have normally preferred. Dr. Hariprasad testified that the oil is unlikely to come forward unless Petitioner had zonular dehiscence and that occurs from trauma.

Dr. Hariprasad also commented that physical contact with a foreign object doesn't have to be in contact, but somewhere in the region of the eyes or forehead. He explained that the bony orbit can protect the eyeball from direct injury, but there's secondary injury which the shock waves of that trauma, such as in motor vehicle accidents when the airbag hits the face you see retinal detachments but there's no direct contact with the eye, but that a shock to the forehead, face and eye can cause a retinal tear.

He opined that for proliferative vitreous retinopathy there are four risk factors. Number one is a bleed in the eye; number two is a tear in the retina; and number three is trauma. Petitioner from all three. Arbitrator also takes into consideration Dr. Hariprased opinion that Petitioner's diabetes was not related; but the wrench injury pushed his eye over the edge. There are two types of retinal detachments; one is a tractional retinal detachment where the scar tissues are tenting up the retina. Rhegmatogenous injuries are with trauma.

The Arbitrator finds Dr. Golden-Brenner's testimony and conclusions to be less persuasive when it comes to Petitioners condition to the mechanism of injury.

The Arbitrator finds that while the diabetes played a role in Petitioner's left eye condition, the wrench was a factor that brought about the exacerbation of that condition, and under *Land & Lakes Co.* and S*ibro, Inc.*, an accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being.

Based upon the greater weight of the evidence, the Arbitrator finds that the Petitioner's condition of ill-being regarding his left eye is causally connected to the work accident of August 19, 2011.

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

Section 8(a) of the Illinois Workers' Compensation Act mandates that the Respondent shall provide and pay for all the necessary surgical services which are reasonably required to cure or relieve from the effects of the accidental injury. 820 ILCS 305/8(a). Medical care under Section 8(a) is continuous as long as such care is required to relieve the effects of the injury. *Freeman United Coal Mining Co. v. Industrial Commission*, 81 Ill.2d 335 (1980).

Based on the evidence presented the Arbitrator finds that all claimed medical services provided to Petitioner were reasonable and necessary, and further finds that the Petitioner is entitled to payment of all related medical expenses contained in Petitioner's exhibit PX7 to be satisfied by Respondent pursuant to the fee schedule of the Workers' Compensation Act., and that medical shall remain open as long as Petitioner shall be stricken with his blindness.

Further, Respondent shall pay for all prospective reasonable, necessary and related medical expenses, including but not limited to, visual rehabilitation adaptive devises and other visual impairment equipment as recommend by the Petitioner's physician. The Arbitrator also awards reimbursement of any group insurance liens/subrogation for any and all reasonable, necessary and related medical expenses to be satisfied by Respondent pursuant to the fee schedule of the Workers' Compensation Act. Additionally, Petitioner shall be held harmless from claims arising therefrom, specifically, from any subrogation claims for payments previously made by other parties, for payments made since the last date of treatment contained in Petitioner's medical bills submitted, and for future payments made by third parties for treatment related to Petitioner's left eye.

K. What Temporary Benefits are in dispute? TTD / Maintenance:

In his request for hearing, Petitioner claims he is entitled to temporary total disability benefits at the rate of $709.27 per week for the period of August 22, 2011 through April 1, 2013 for a total of 84 weeks as provided in Section 8(b) of the Act, subject to a reduction for those dates when Petitioner returned to work as provided in Respondent's time sheets. April 1, 2013 would be the time that Petitioner's active treatment with Dr. Hariprasad ceased, and his rehabilitation therapy for the blind with the VA started. It is at this point his medical state of temporary total disability transitioned into a state of permanent and total disability.

Evidence that the employee has been or is able to earn occasional wages or to perform certain useful services neither precludes a finding of total disability nor requires a finding of partial disability. *Smallwood v. Industrial Comm'n*, 53 Ill. 2d 151, 156 (Ill. 1972). In *E.R. Moore Co. v. Industrial Comm'n.*, the Court held that for the purposes of section 8(f) [section 19(b)], a person is totally disabled when he cannot perform any services except those for which no reasonably stable labor market exists. *E.R. Moore Co. v. Industrial Comm'n.* 71 Ill. 2d 353, 361-62 (Ill. 1978).

Petitioner started working for UPS March 2006 and remained employed by UPS for six and a half years. He has not earned income since his last date of employment with UPS. He testified that he has been receiving Social Security Disability benefits for 10 years as of the date of the hearing.

He has been a mechanic/laborer his whole life. Given his age (60), and considering the petitioner is fully blind, with no college degree, Arbitrator concludes that is unlikely that Petitioner will be able to return to some form of gainful employment. For these reasons, and based upon the greater weight of evidence, Petitioner has been permanently totally disabled since April 1, 2013. Therefore, Petitioner is entitled to temporary total disability benefits at the rate of $709.27 per week for the period of August 22, 2011 through April 1, 2013 for a

total of 84 weeks, subject to a reduction for those periods when Petitioner did return to work October 22, 2011 through August 25, 2012, as shown on Respondent's pay logs (RX2).

Maintenance:

Employers are responsible for paying not only TTD, but also maintenance for the time period during which they are disputing the need for vocational rehabilitation pursuant to section 8(a). 820 ILCS 305/8(a). The claimant need not request vocational rehabilitation before maintenance may be awarded. *Roper v. Contracting v. Industrial Comm'n*., 349 Ill. App. 3d 500, 506 (5th Dist. 2004). A claimant is generally entitled to vocational rehabilitation when he sustains a work-related injury which causes a reduction in his earning power and there is evidence that rehabilitation will increase his earning capacity. *Euclid Bev. v. Ill. Workers' Comp. Comm'n*, 2019 IL App (2d) 180090WC ¶ 29. The Act permits maintenance benefits if the claimant is engaged in some type of "rehabilitation" such as physical rehabilitation. *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1019 (2005).

Petitioner's blindness appears to have been irreversible as of April 1, 2013. Petitioner continues to rehabilitate himself, and his need for additional rehabilitation is not in question. Therefore Arbitrator finds, based upon the greater weight of evidence, Petitioner is entitled to maintenance benefits from April 2, 2013 through the date of the hearing, February 9, 2023, representing 514 2/7 weeks.

L. What is the nature and extent of the injury?

Petitioner was injured while working in the scope of his employment with the Respondent. Prior to the accident, Petitioner had diabetic retinopathy in both eyes. The right eye had surgery done for very advanced proliferative diabetic retinopathy traction detachment. His vision in the right eye was never restored beyond light perception. He had stable proliferative diabetic retinopathy and reasonably good vision in the left eye and was stable prior to August 19, 2011. The injury caused a new vitreous hemorrhage, where Petitioner saw blood in his eye, as did his physician. His physician testified that he had a new vitreous hemorrhage, proliferative diabetic retinopathy and a small traction retinal detachment which was exacerbated by the injury at work by a wrench. He testified that we know as a fact that the workplace accident on August 19, 2011 exacerbated Petitioner's left eye condition.

The Illinois Appellate Court provided a legal analysis in *Contour Designs Inc. v. Industrial Commission*, 255 Ill. App. 3d 816, 818 (5th Dist. 1994) relevant to the instant case, *Citing Ceco Corp. v. Industrial Commission*, 95 Ill. 2d 278, 286-87 (Ill. 1983). The Appellate Court stated: "This court has frequently held that an employee is totally and permanently disabled when he is unable to make contribution to the work force sufficient to justify the payment of wages. *Contour Designs Inc.,* 255 Ill. App. 3d at 817-818. The claimant need not, however, be reduced to total physical incapacity before a permanent total disability award may be granted. *Id.* Rather, a person who totally disabled when he is incapable of performing services except those for which there is no reasonable stable job market. *Id.* Conversely, an employee is not entitled to total and permanent disability compensation if he is qualified for and capable of obtaining gainful employment without serious risk to his life. *Id.* In determining a claimant's employment potential, his age, training, education, and experiences should be taken into account. *Id.*

The Arbitrator finds that the Respondent-UPS, is liable to pay compensation for the loss or permanent and complete loss of use of the left eye. (This Respondent is still liable for all benefits under Section 8(a) and 8(b) of the Act) The Respondent-UPS, shall pay 100% loss of use of the left eye to the Petitioner at the PPD rate of $638.41 per week for 162 weeks.

The Illinois State Treasurer, ex-officio custodian of the Second Fund, a co-respondent in this matter was represented by the Office of the Illinois Attorney General. Because Petitioner had previously sustained 100% loss of the *right eye* and, as a result of this accident, has sustained 100% loss of the *left eye*, Petitioner is eligible for statutory permanent total disability benefits of $709.27 /week for life, commencing April 2, 2013, as provided in Section 8(e)18 of the Act and the Illinois State Treasurer shall also pay 100% loss of use of the right eye or 162 weeks of disability at the PPD rate of $638.41

O. Whether the Second Injury Fund Applies

On August 7, 2019, Petitioner amended his Application for Adjustment of Claim adding Respondent, Second Injury Fund. (PX6)

The pertinent section of the Act states as follows:

> 820 ILCS 305/8(f) provides that "if an employee who had previously incurred the loss or the permanent and complete loss of use of one member, through the loss or the permanent and complete loss of the use of one hand, one arm, one foot, one leg, or one eye, incurs permanent and complete disability through the loss or the permanent and complete loss of the use of another member, he shall receive, in addition to the compensation payable to the employer and after such payments have ceased, an amount from the Second Injury Fund provided for in paragraph (f) of Section 7, which, together with the compensation payable from the employer in whose employ he was when the last accidental injury was incurred, will equal the amount payable for permanent and complete disability as provided in this paragraph of this Section."
> ….
> 820 ILCS 305/7(f) also provides, "The State Treasurer, or his duly authorized agent shall be named as a party to all proceedings in all cases involving claim for the loss of, or the permanent and complete loss of the use of one eye, one foot, one leg, one arm, or one hand."

Arbitrator has read the prior transcript of a hearing on a motion to dismiss the second injury fund and has considered all of the evidence that was presented at trial. The Arbitrator denies Respondents motion to dismiss and finds Respondent is liable for the injury to Petitioner's left eye, Petitioner will still be blind in his right eye, which makes him totally and permanently disabled. The Respondent will be liable for the entire loss. And the Second Injury liable for the right eye.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC030653
Case Name	Roland Johnson v. UPS & State Treas. and Ex-Officio Custodian of the Second Injury Fund
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0293
Number of Pages of Decision	30
Decision Issued By	Kathryn Doerries, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Charlene Copeland, Adam Cox

DATE FILED: 6/24/2024

/s/Amylee Simonovich, Commissioner

Signature

DISSENT

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0293

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rolan Johnson,

Petitioner,

vs. NO: 13 WC 30653

UPS and Ill. State Treasurer as ex-officio Custodian of the Second Injury Fund,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Respondents herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical expenses, temporary disability benefits, permanent disability, and the liability of the Second Injury Fund, and being advised of the facts and law, modifies the Decision of the Arbitrator. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

In the interest of efficiency, the Commission relies on the detailed recitation of facts provided in the Decision of the Arbitrator. The Commission affirms the Arbitrator's conclusion that Petitioner's condition of ill-being regarding the left eye is causally related to the August 19, 2011, work accident. The Commission also affirms the Arbitrator's award of medical expenses, and the award of future reasonable and necessary expenses for specialized devices or equipment prescribed by a medical provider for Petitioner's vision impairment. However, the Commission modifies the Arbitrator's conclusions regarding temporary disability benefits, permanent disability, and the liability of the Second Injury Fund. Finally, the Commission makes certain corrections to the Arbitration Decision.

Corrections to the Arbitration Decision

In the first paragraph of the Order section of the Arbitration Decision, the Arbitrator mistakenly wrote that Petitioner's "current conditions is causally related to the August 19,2011 work-related accident." The Commission strikes "conditions" and replaces it with "condition" and strikes "August 19,2011" and replaces it with "August 19, 2011." Any additional errors in the Order section of the Arbitration Decision Form have been corrected by the Commission's

modifications to the Decision herein.

On page five (5) of the Decision, the Arbitrator wrote "…pintle hook to replace it he Calvin was assisting…" The Commission strikes "he" from this sentence. The Commission also strikes the final paragraph on that same page and replaces it with the following:

> Petitioner was trying to hold the wrench, but it slipped off the bolt and hit him on the top of his safety glasses and pulled them down. (T30). Petitioner identified the inner corner of his left eye close to the bridge of his nose as the area of impact. (T31). Petitioner initially could not see anything with the left eye after the wrench hit him. However, after a few seconds, he was able to see only lights and shadows with the left eye. Petitioner testified that he finished installing the pintle hook before he sought help. He did not realize that the vision in his left eye was significantly affected until he stood up.

In the first paragraph on page fourteen (14) of the Decision, the Commission strikes the following language: "and the Illinois State Treasurer shall also pay 100% loss of the use of the right eye or 162 weeks of disability at the PPD rate of $638.41." The Commission also strikes the final paragraph on that same page, and replaces it with the following:

> The Arbitrator has read the transcript of the November 22, 2019, hearing regarding the Second Injury Fund's Motion to Dismiss. After considering the evidence, the Arbitrator denies the Fund's motion. As Petitioner had previously sustained 100% loss of the right eye and, as a result of this accident, has sustained 100% loss of the left eye, Petitioner is eligible for statutory permanent total disability benefits of $709.34/week for life, commencing April 2, 2013, as provided in Section 8(e)18 of the Act.
>
> Respondent shall pay Petitioner $638.41/week for 162 weeks, commencing April 2, 2013, for the loss of the left eye, as provided in Section 8(e) of the Act. During that period, the Second Injury Fund shall pay Petitioner $70.39/week, to equal the total permanent total disability rate, as provided in Section 8(f) of the Act. Commencing May 10, 2016, the Second Injury Fund shall pay Petitioner $709.34/week for life.

Temporary Disability Benefits

The Arbitrator concluded that Petitioner proved an entitlement to temporary total disability (TTD) benefits from August 22, 2011, through April 1, 2013, a period of 84-1/7 weeks. The Commission affirms the Arbitrator's conclusion that Petitioner reached maximum medical improvement (MMI) on April 1, 2013. However, after considering the totality of the evidence, the Commission finds Petitioner proved an entitlement to TTD benefits from August 22, 2011, through October 17, 2011, a period of 8-1/7 weeks, and from August 24, 2012, through April 1, 2013, a period of 31-4/7 weeks.

To prove an entitlement to TTD benefits, a claimant must prove they did not work and that

they were unable to work. *Freeman United Coal Mining Co. v. Indus. Comm'n.*, 318 Ill. App. 3d 170, 177 (2000). A claimant is temporarily and totally disabled from the time a work injury incapacitates them from work until such time that they are "…as far recovered or restored as the permanent character of [their] injury will permit." *Shafer v. Ill. Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC at ¶ 45.

Respondent's Exhibit 2 contains Petitioner's wages from December 26, 2010, through December 29, 2012. It shows that Petitioner did not work from August 22, 2011, through October 17, 2011. The exhibit also shows that Petitioner returned to work on October 18, 2011, and continued to work until August 23, 2012. Finally, it shows that Petitioner was off work from August 24, 2012, through April 1, 2013, the date Petitioner reached MMI. Thus, the Commission finds Petitioner was entitled to TTD benefits from August 22, 2011, through October 17, 2011, and from August 24, 2012, through April 1, 2013, a total period of 39-5/7 weeks.

Permanent Disability

The Commission agrees with the Arbitrator's conclusion that Petitioner is entitled to permanent total disability benefits as a result of the August 19, 2011, work accident. However, the Commission modifies certain aspects of the Arbitrator's award.

The credible evidence proves that before this work accident, Petitioner suffered from uncontrolled advanced diabetes that significantly affected the health of his eyes. The medical records consistently show that in the months before the August 19, 2011, work accident, Petitioner's vision in his right eye was reduced to light perception only. Light perception only vision acuity is less than 20/200, which constitutes legal blindness in Illinois. (PX 12). Thus, Petitioner lost 100% of the right eye before this work accident.

While Petitioner underwent treatment on the left eye before the work accident, Dr. Hariprasad testified credibly that this was preventative treatment due to Petitioner's uncontrolled diabetes. The credible evidence shows that approximately three weeks before this work accident, Petitioner's vision in the left eye was 20/50. Dr. Hariprasad credibly testified that Petitioner sustained a new vitreous hemorrhage in the left eye. Ultimately, despite undergoing multiple surgical procedures in an attempt to preserve the vision in his left eye, by October 2012 Petitioner only had light perception vision in the left eye. In late November 2012, Dr. Squier assessed Petitioner's low vision impairment. Notably, the doctor determined that Petitioner's visual acuity in both eyes was light perception only. Dr. Squier determined Petitioner's visual impairment in both eyes was near total and recommended he explore vision rehabilitation services, training, and counseling.

Petitioner eventually began treatment at the local VA hospital. Petitioner applied to the VA blindness rehabilitation training program, and an evaluation determined that he met the criteria for catastrophic disability due to his blindness. In July 2013, an optometrist determined that Petitioner was legally blind in both eyes and that his visual acuity in both eyes was less than light perception. Petitioner attended the blindness rehabilitation program at least three times. As part of his rehabilitation, the VA provided accessible technology and devices including a cell phone and typing keyboard. Furthermore, Petitioner testified that he is no longer able to drive and can no

longer independently cook or grill. He testified that the VA provided home modifications that included making his toilets and showers accessible. He testified that his wife and a cousin help him perform various activities of daily living, including performing daily hygiene, cooking, and cleaning.

Section 8(e)18 of the Act, states: "The specific case of loss of both hands, both arms, or both feet, or both legs, or both eyes, or of any two thereof, or the permanent and complete loss of the use thereof, constitutes total and permanent disability…" After carefully considering the evidence, the Commission finds Petitioner is permanently totally disabled pursuant to Sections 8(e)18 and 8(f) of the Act. It is also clear that Petitioner is entitled to compensation from the Second Injury Fund as he suffered a pre-accident 100% loss of the right eye, and sustained a 100% loss of the left eye due to the August 19, 2011, work accident.

As Petitioner had previously sustained 100% loss of the right eye and, as a result of this accident, has sustained 100% loss of the left eye, Petitioner is eligible for statutory permanent total disability benefits of $709.34/week for life, commencing April 2, 2013, as provided in Section 8(e)18 of the Act.

Respondent UPS shall pay Petitioner $638.41/week for 162 weeks, commencing April 2, 2013, for the loss of the left eye, as provided in Section 8(e)13 of the Act. During that period, the Second Injury Fund shall pay Petitioner $70.39/week, to equal the total permanent total disability rate, as provided in Section 8(f) of the Act. Commencing May 10, 2016, the Second Injury Fund shall pay Petitioner $709.34/week for life.

Maintenance Benefits

The Arbitrator awarded maintenance benefits from April 2, 2013, though February 9, 2023, the date of hearing. Pursuant to Section 8(a) of the Act, maintenance benefits are only appropriate while a claimant engages in vocational rehabilitation. *See, e.g., W.B. Olson, Inc. v. Ill. Workers' Comp. Comm'n*, 2012 IL App (1st) 113129WC. However, due to the extent of his injury, Petitioner is entitled to statutory permanent total disability benefits beginning April 2, 2013, pursuant to Section 8(e)18 of the Act. Therefore, an award of maintenance benefits is inappropriate. Thus, the Commission strikes in its entirety the discussion regarding maintenance benefits within Section K of the Decision on page thirteen. The Commission also vacates the award of maintenance benefits.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 8, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent UPS shall pay Petitioner temporary total disability benefits of $709.34/week for 39-5/7 weeks commencing August 22, 2011, through October 17, 2011, and from August 24, 2012, through April 1, 2013, as provided in Section 8(b)

of the Act.

IT IS FURTHER ORDERED that the award of maintenance benefits is vacated.

IT IS FURTHER ORDERED that Respondent UPS shall pay all reasonable and necessary medical charges, as provided in Sections 8(a) and 8.2 of the Act. Respondent UPS shall receive a credit for medical benefits that have been paid, and shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, including Petitioner's group health insurer, Medicaid, and Medicare, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED that because Petitioner had previously sustained 100% loss of the right eye and, as a result of this accident, has sustained 100% loss of the left eye, Petitioner is eligible for statutory permanent total disability benefits of $709.34/week for life, commencing April 2, 2013, as provided in Section 8(e)18 of the Act.

Respondent UPS shall pay Petitioner $638.41/week for 162 weeks, commencing April 2, 2013, for the loss of the left eye, as provided in Section 8(e)13 of the Act. During that period, the **Second Injury Fund** shall pay Petitioner $70.39/week, to equal the total permanent total disability rate, as provided in Section 8(f) of the Act. Commencing May 10, 2016, the Second Injury Fund shall pay Petitioner $709.34/week for life.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the **Rate Adjustment Fund**, as provided in Section 8(g) of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondents is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 17, 2024

o: 4/16/24

AHS/jds

51

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Maria E. Portela*

Maria E. Portela

Rolan Johnson v. UPS and Illinois State Treasurer as Custodian of the Second Injury Fund
13WC030653

DISSENT

I respectfully dissent from the majority opinion and instead would find the Petitioner failed to prove that he had 100% loss of vision in his right eye prior to this work accident. I would further find that the Respondent Second Injury Fund was denied due process when they were not allowed to cross-examine the expert witnesses regarding the condition of Petitioner's right eye at the time of the work accident. Further, I would find Petitioner failed to prove that after September 30, 2011, Petitioner's left eye condition is causally related to his work accident that occurred on August 19, 2011. Based upon these conclusions, I would find Petitioner sustained a 50% loss of use of the left eye, based upon the reasons set forth below.

Petitioner's Right Eye Condition on August 19, 2011

Dr. Seenu Hariprasad testified that Petitioner was under his care prior to the August 19, 2011, accident, and that Petitioner suffered from diabetic retinopathy in both eyes. (Px4, 10, T. 590) Petitioner was on disability leave from January 20, 2011, through March 28, 2011, and again from April 3, 2011, through June 26, 2011. (T. 48-49) While Petitioner was off work between April 3, 2011, and July 2, 2011, he was under Dr. Hariprasad' s care and receiving treatment for his eyes, specifically right eye surgery. (T. 49) Dr. Hariprasad testified that he had performed surgery on the right eye for a very advanced proliferative diabetic retinopathy tractional detachment. *Id.* Dr. Hariprasad testified that he thought he did laser treatment in the left eye. *Id.* Petitioner then worked from July 3, 2011, to the date of the work accident, August 19, 2011. In his testimony, Dr. Hariprasad described Petitioner's pre-injury condition as "stable proliferative diabetic retinopathy, a little bleeding, but really had reasonably good vision at that time." (Px4, T. 590) There is no evidence that there was any accommodation made to Petitioner for loss of vision in his right eye on July 3, 2011, weeks before the left eye work accident on August 19, 2011.

The Illinois Supreme Court explained that a prior loss is a question of fact:

> Recovery under the Second Injury Fund requires a finding that prior to the most recent industrial accident, the claimant had suffered the complete loss of or loss of use of one member. That loss may have resulted in a prior award, or it may have occurred outside the Workmen's Compensation Act, but it "must have been of a physical quality capable of supporting an award if the other elements of compensability were present." (2 A. Larson, Workmen's Compensation sec. 59.32, at 10 -- 296 (1976). The analysis of the first injury must meet the standards applicable to an industrial injury, and the "loss of use of the eye is a question of fact in each case and is not one to be determined by a mechanical measurement as to corrected vision or uncorrected vision." (*Walker v. Industrial Comm'n.* (1978), 72 Ill. 2d 408, 413; see also *Lambert v. Industrial Comm'n.* (1952), 411 Ill. 593.) *State Treasurer of Illinois v. Industrial Comm'n*., 75 Ill. 2d 240, 244-245, 388 N.E.2d 419, 421.

Prior to the subject work accident, the University of Chicago Hospitals PreOp dated May 6, 2011, the ASA Overview, confirms Petitioner was admitted one month prior for seizure due to hypoglycemia. (PX3, T. 262) Petitioner reported not returning to work due to problems seeing in his eye. *Id.* The Medical Problems section notes he had Diabetes Type II for 15 years and he had a seizure because his blood sugar was too low. *Id.* A Preoperative Consultation with the Department of Anesthesia and Critical Care notes Petitioner was taking insulin for one year but suffered a hypoglycemic episode in May 2011, and was in the hospital for one week at Little Company of Mary, and insulin had since been discontinued. The medication list notes Petitioner was advised he may take Metformin 500 B.I.D. when glucose is elevated greater than 150 at night. (PX3, T. 203)

Petitioner also told the Respondent UPS Section 12 expert, Dr. Carrie Golden-Brenner, that he had a hypoglycemic seizure in April 2011. (RX1, 11) Petitioner testified, however, he did not recall having a seizure. (T. 50) Dr. Hariprasad's July 25, 2011, office note documents Petitioner had diabetes more than 20 years. (PX3, T. 233) Petitioner told Dr. Golden-Brenner that he had diabetes for 10 years. (RX1, 11) Petitioner testified that he was first diagnosed with diabetes in his thirties. (T. 47) Some of these inconsistencies can be attributed to Petitioner being a poor historian, some are credibility issues.

Petitioner testified that his vision was 20/20 for maybe the first four years he worked for Respondent UPS. (T. 22) Petitioner testified that he had no problems with his left eye before the subject accident. (T. 23) This is contradicted by Dr. Hariprasad's testimony. Dr. Hariprasad testified that he had treated the left eye prior to the accident, in particular, he noted that he would have performed a left eye laser procedure after doing the right eye surgery in May of 2011. (PX4, 10-11, T. 590-591) He stated that "(t)ypically patients present with one eye that's worse than the other, and the right eye was much worse than the left eye." (Px4, 100, T. 591) Then they do surgery on the one eye, and laser on the other eye that is not as severe to decrease the chance it will become more like the more severe eye. *Id.* He also testified that when he first saw Petitioner, he saw physical evidence of prior left eye laser treatment. (Px4, 14-15, T. 594-595) According to Dr. Hariprasad's records, Petitioner's past ocular history included a laser procedure to the left eye in April of 2011. (Px3, T. 269) Petitioner did not introduce medical records regarding any left eye treatment before the accident, nor the records documenting the referral to Dr. Hariprasad, nor any prior ophthalmology records. Nonetheless, based on the records in evidence, I find the Petitioner was not credible when he testified regarding the history of his left eye prior treatment.

After April or May 2011, Petitioner testified that his right eye vision deteriorated and reduced his right eye vision to "perception." (T. 23, 25) Petitioner testified that he "didn't have any real vision in the right eye. I couldn't really see out of my right eye." (T. 25) Petitioner later testified that he never gained any kind of vison in the right eye before the left eye injury. (T. 38) Petitioner's testimony regarding both his left and right eye pre-accident conditions does not comport with the medical records or Dr. Hariprasad's testimony.

The records confirm that on May 10, 2011, Petitioner underwent a repair of the retinal detachment and pars plana vitrectomy with membrane stripping, (peeling) and endolaser on the

right eye on May 11, 2011 for a tractional retinal detachment, proliferative diabetic retinopathy, and vitreous hemorrhage. (PX3, T.244, 253, 283, 285)

On June 22, 2011, Petitioner underwent a right eye 23-gauge pars plana vitrectomy with membrane peeling, endolaser, and silicone oil injection. (PX3, 307) The operative procedure identified Petitioner noting he had severe diabetes and diabetic eye disease. (PX3, 308)

On June 28, 2011, Dr. Hariprasad examined primarily Petitioner's right eye. However, one of Petitioner's complaints was that the right interior corner of the left eye was teary. On July 25, 2011, Petitioner's vision in the left eye was noted to be decreased, although slightly illegible, at 20/50. This further undermines Petitioner's testimony regarding his left eye condition prior to the subject work accident.

Petitioner testified that after he underwent the surgeries in May and June 2011, he could not really see out of the right eye, except light perception, when, in fact, the University of Chicago Ophthalmology Chart record authored by Dr. Hariprasad on July 25, 2011, noted his vision was 20/CF (counting fingers) @ 6" indicating that Petitioner could see fingers at six feet or six inches. (PX3, T. 233) The eye exam on August 22, 2011, three days after the date of the work accident shows the right eye could see at "CF 2 ft." and the left eye at 20/50. (PX3, T. 226) The diagnosis states "Proliferative Diabetic Retinopathy." Petitioner also underwent left eye laser surgery on August 22, 2011. (PX2, T. 150)

After the laser eye surgery on August 22, 2011, Petitioner was scheduled for another left eye procedure on September 14, 2011. (PX2, T. 217) On September 16, 2011, the office note documents that Petitioner "refused further intervention in this eye." (PX2, T. 218) Petitioner testified that he did not have a ride, so he cancelled. (T. 56). Petitioner's misrepresentation, or poor memory, regarding his medical treatment noncompliance further confirms Petitioner's testimony is unreliable.

Petitioner underwent an independent medical examination on September 26, 2011, with Dr. Golden-Brenner, M.D. (RX1). Dr. Golden-Brenner authored a report dated September 30, 2011. (RX1, p. 9) Dr. Golden-Brenner testified that Petitioner had told her that everything was blurry with the left eye after the accident and that he had decreased vision in the right eye (RX2, p. 12). Her examination revealed finger counting at 4 feet in the right eye and 20/50 vision in the left eye. (RX1, p. 12)

On October 12, 2011, Petitioner underwent a right eye surgery. (PX3, T. 356) Petitioner was released to return to work on October 18, 2011, and he could perform his essential job functions per the medical records. (PX1, T. 117) Further, eye exam reports that day confirm Fundi in Petitioner's bilateral eyes were normal, the pupil in the right eye was "larger status post surgery last week", and finally his visual acuity in the left and right eyes, (both) was 20/50. (PX1, T. 118-119) If Petitioner's visual acuity in the right eye, three days after the work accident, was counting fingers at 2 feet and on September 26, 2011 was counting fingers at 4 feet, and on October 18, 2011, his visual was acuity was 20/50, I find it virtually impossible for the Petitioner to be legally blind on the date of accident.

Dr. Hariprasad's records do not indicate that Petitioner had total vision loss in his right eye prior to the work accident. Dr. Golden-Brenner's vision test results comport with Dr. Hariprasad's records from July and August 2011 as discussed above. Dr. Golden-Brenner diagnosed Petitioner with right eye status post vitrectomy with silicone oil and that he had proliferative diabetic retinopathy and a retinal detachment.

At his follow up visit with the clearing clinic on October 18, 2011, Petitioner was given a full duty release (PX1). Petitioner also requested a full-duty release from Dr. Hariprasad on October 18, 2011. (PX3, T. 194) In fact, Petitioner worked more than ten months, full duty as a mechanic from October 19, 2011, until August 23, 2012, after the work accident. (RX2) At that time, besides working as a mechanic, Petitioner obviously still drove a vehicle, both before the accident and for more than ten months after the work accident, thus comporting with the fact that Petitioner was still actively treating and had some vision in his right eye. There is evidence that he was actively treating for his diabetic retinopathy in both eyes. However, there is no evidence, and no expert opinion in the record, supporting the conclusion that Petitioner's right eye had 100% vision loss prior to the work accident. I would find that Petitioner failed to prove he had a 100% loss of use of his right eye before the subject work accident.

Due Process

It should also be noted that Petitioner filed his second Amened Application for Adjustment of Claim on August 7, 2019, naming the Second Injury Fund as an additional party-Respondent five years after the first Application for Adjustment of Claim was filed, and seven years after the accident. (PX6, Arb.X1) Respondent Second Injury Fund filed a Motion to Withdraw/Dismiss the Second Injury Fund shortly thereafter on October 2, 2019. *Id.* A hearing on Respondent Second Injury Fund's Motion was conducted by Arbitrator Robert Harris on November 22, 2019. The parties' arguments primarily centered around the issue of whether or not the Petitioner had 100% vision loss in his right eye prior to the work accident, however, the Second Injury Fund's Motion averred that the deposition of both experts had been taken before the Second Amended Application for Adjustment of Claim naming the Second Injury Fund as a party was filed. *Id.* Certainly, the Second Injury Fund could have explicitly made a due process argument, but I would find that the argument was implicit in the Motion.

The Arbitrator's final declaration on the record on November 22, 2019, stated that the Second Injury Fund would be given time to review all the records and the trial might be the following January (2020) and without addressing the fact that the expert deposition testimony was taken prior to naming the Second Injury Fund. (PX6) While the Second Injury Fund was deflecting the actual right eye condition at the November Hearing on the Motion, the underlying argument was a due process one. However, the case never went to trial for three years, not until the Arbitration Hearing took place on February 9, 2023. It is obvious that the Arbitrator who heard the motion in November 22, 2019, could have immediately issued a ruling on the Respondent's Motion and *sua sponte* could have ordered the parties to reopen the evidence depositions to afford Respondent Second Injury Fund the right to cross-examine the witness, while denying that part of the Second Injury Fund's Motion to Withdraw/Dismiss. The Arbitrator who presided over the

November 2019 hearing on Respondent Second Injury Fund's Motion was not the Arbitrator who presided over the Arbitration Hearing in 2023.

The majority opinion denies the Second Injury Fund's Motion to Dismiss under section, "O. Whether the Second Injury Fund Applies" and Orders the Second Injury Fund to pay for statutory permanent total disability benefits for the duration of Petitioner's life and the differential between the amount Respondent UPS is liable commencing April 2, 2013, for the 100% loss of use of the vision in the left eye and the permanent total disability amount, without affording the Second Injury Fund the right to cross-examine the expert witnesses.

This conclusion significantly prejudices the Second Injury Fund as it is clear from the record the issue of Petitioner's vision in his right eye on the date of accident was not expressly addressed by either of the experts at their respective evidence depositions and the Second Injury Fund was not present at either of those depositions. The Second Injury Fund marked "Other" on the Petition for Review and raised the issue of Second Injury Fund liability on review. Implicit in that "Other" issue of liability is the ability of the Second Injury Fund to cross-examine the two experts. In my opinion, the Arbitrator in 2019 should have allowed the evidence depositions to be reopened for cross-examinations by the newly named party Respondent, Second Injury Fund.

Our Appellate Court has issued the following opinion on the issue of due process:

> Further, the United States Supreme Court has held that administrative agencies, in exercising their adjudicatory functions, are bound by the due process clause of the 14th Amendment to the United States Constitution to give the parties before them a fair and open hearing. See, e.g., *Ohio Bell Telephone Co. v. Public Utilities Comm'n,* 301 U.S. 292, 57 S. Ct. 724, 730, 81 L. Ed. 1093, 1102. Moreover, the Illinois Appellate Court in *Hazelton v. Zoning Bd. of Appeals*, 48 Ill. App. 3d 348, 351, 6 Ill. Dec. 515, held that due process of law requires that all parties, in proceedings before administrative agencies, have an opportunity to cross-examine witnesses and to offer evidence in rebuttal. *Hazelton,* 48 Ill. App. 3d at 351. Professor Larson states in his treatise:
>
> > "Nothing is more repugnant to our traditions of justice than to be at the mercy of witnesses one cannot see or challenge, or to have one's rights stand or fall on the basis of unrevealed facts that perhaps could be explained or refuted." Larson, *Workmen's Compensation Law*, sec 79.83(b), pages 15-497-99. *Paoletti v. Industrial Comm'n*, 279 Ill. App. 3d 988, 998, 665 N.E.2d 507, 513.

Alternatively, when the 2023 Arbitrator addressed Respondent Second Injury Fund's Motion in the subject Decision, he had the opportunity to deny the motion to withdraw/dismiss in part, but in the interest of due process, order, *sua sponte*, bifurcation of the trial and to give Respondent Second Injury Fund the opportunity to reopen the proofs. Given that the Second Injury Fund was not added as a party until five years after the first Application was filed, allowing the evidence depositions to be taken a second time to allow for cross-examination of the experts by the Second Injury Fund, would have provided additional evidence needed to adjudicate the question of Petitioner's right eye condition at the time of the subject accident, because Petitioner

was clearly actively treating for the right eye at the time of the accident, underwent a surgical procedure to the right eye post-accident, and, again, worked full-duty and drove a car for almost a year after the accident. In the absence of the Arbitrator's taking the initiative to afford the Second Injury Fund the right to cross-examine the expert witnesses, I would remand the case to the Arbitrator to do so.

Left Eye Condition Causation

I would further find that Petitioner's left eye condition was at MMI on September 30, 2011, as it related to the work accident and that the remainder of Petitioner's left eye treatment was solely related to his proliferative diabetic retinopathy (PDR) based upon the following discussion.

Dr. Hariprasad examined Petitioner on August 22, 2011, three days after the accident. Petitioner reported a history of right eye surgery in June 2011 and stated he injured his left eye when "a wrench hit his eye." He reported he was unable to see in the left eye due to a leaking blood vessel in the eye, and complained of pain and floaters in the eye. Petitioner's vision in the left eye was noted at 20/50. The doctor diagnosed a new VH (vitreous hemorrhage) in the left eye and determined intervention was needed immediately. Dr. Hariprasad performed a Panretinal Photocoagulation (PRP) in the left eye that day and diagnosed Petitioner with proliferative diabetic retinopathy.

Petitioner returned to Dr. Hariprasad on September 1, 2011, with complaints of "…blood post laser in the left eye (8-22-2011) after wrench to OS." (PX 2). The exam revealed that the left pupil was round, reactive, and no APD (afferent pupillary defect). The confrontational visual fields exam revealed in the right eye, Petitioner was unable to see fingers, but in the left eye the confrontation fields were full to finger counting. The left eye had a vitreous hemorrhage 3+ and a new TRD (tractional retinal detachment), while the right eye was flat without hemorrhages, exudates, or pigmentary changes. Dr. Hariprasad diagnosed traction detachment of retina in both eyes. The right eye was stable post op, but would likely need intervention in the upcoming months. He wrote that the left eye had an evolving TRD and VH after wrench injury. PRP was performed, but Dr. Hariprasad noted that the situation was still worsening. He recommended a PPV (pars plana vitrectomy) with MP (membrane peeling or macular pucker) and EL (endolaser) in the left eye.

On September 16, 2011, the doctor noted that PPV for the left eye was scheduled for September 14, but Petitioner missed the surgery. Dr. Hariprasad noted Petitioner's left eye vision was 20/60. Regarding the left eye, the doctor wrote that Petitioner "refuses further intervention in this eye. R/B/A (risks/benefits/alternatives) were discussed and pt understands risks of non-intervention." (PX 3).

Dr. Golden-Brenner saw Petitioner at Respondent's request on September 26, 2011 and authored her report on September 30, 2011. (RX1, pp. 8-9) Dr. Golden-Brenner explained PDR consistently with Dr. Hariprasad's explanation in that there are abnormal blood vessels growing in the retina from the diabetes. (RX1, pp.18-19) Dr. Golden-Brenner testified that Petitioner's initial exam on the date of the injury showed that there was no bruising, no ecchymosis, no abrasion and no subconjunctival hemorrhage, which means that there was nothing around the eye, no evidence whatsoever of being hit. Further, Dr. Golden-Brenner testified that the record also noted the lid

and adnexa, which is around the eye, and the eyelids to be normal; the conjunctiva, the cornea, and the anterior chamber and iris were all normal for the left eye, with no evidence of any kind of trauma. (RX1, p. 23) The records on the date of accident did not reflect any physical trauma to the eye and when she examined him, Dr. Golden-Brenner did not observe any evidence of physical trauma to the eye. *Id.* Dr. Golden-Brenner further testified that in the left eye, the PDR was definitely due to his diabetes. The vitreous hemorrhage was most likely due to the diabetes. The need for the laser photocoagulation was due to his diabetes and diabetic retinopathy. The possibility of a little bit of swelling or macular edema in the left eye was definitely due to the diabetes. And the possible small peripheral traction retinal detachment was definitely due to his diabetes. (RX1, p. 27)

Dr. Hariprasad testified that he recommended intervention on October 10, 2011, but Petitioner refused. (PX 4, 18, T. 598)

However, on October 12, 2011, Petitioner underwent surgery on his right eye, consisting of 23-gauge pars plana vitrectomy with membrane peeling, endolaser, and silicone oil removal, and SF6 16% gas-fluid exchange. The operative report notes that Petitioner "has extraordinarily severe diabetic eye disease in both eyes with a tractional retinal detachment and proliferative vitreoretinopathy retinal detachment in the right eye which I had repaired some time ago. He re-proliferated and detached in the right eye. In the left eye, he has a vitreous hemorrhage, proliferative diabetic retinopathy, and a small tractional retinal detachment which was exacerbated recently by an injury at work by a wrench." (PX3, T. 356) The operative report notes Petitioner's history of noncompliance with his visits, with the recommendations and missed preoperative anesthesia clinic appointments as well as a scheduled surgery in the left eye. *Id.*

Petitioner testified that he returned to work around October 16, 2011 through September 1, 2012. (T. 58). The actual date Petitioner returned to work was on October 18, 2011, and he continued to work ten months until August 23, 2012. (RX2) Petitioner testified that his left eye was progressing but getting worse. (T. 66). In February of 2012, Petitioner returned to Dr. Hariprasad to whom he complained of blurry vision in the left eye that would not be corrected with glasses. (PX3). He underwent laser treatment surgery again on May 18, 2012. Dr. Hariprasad testified between the May 18, 2012 and August 31, 2012 office visits, Petitioner had a drop in vision and the "diabetes started to ramp up in the left eye. The right eye was stable, and so I made the recommendation to do a surgery in the left eye to help decrease the chance of permanent vision loss in the left eye." (PX4, 23-24, T. 603-604)

On September 12, 2012, Petitioner underwent surgery on his left eye, consisting of 23-gauge pars plana vitrectomy with membrane peeling, endolaser, temporal retinectomy and silicone oil injection. The operative report notes at that time of the surgery, the following history:

> Mr. Johnson is a 50-year old, African American male with extraordinarily severe diabetic eye disease in both eyes. He underwent vitrectomy surgery in the past for tractional retinal detachment of the right eye but unfortunately due to uncontrolled diabetes the retina had recurrent detachment and has become very ischemic. He has a cataract in the right eye, which may be addressed at a later point. It was explained

> to the patient that the right eye had severe retinal ischemia and recurrent TRD so even with cataract extraction, vision potential is limited and very guarded. In the left eye, the patient has had very severe eye disease from diabetes but also has a history of trauma from a wrench as he is a mechanic and had job-related injuries to this eye with severe vitreous hemorrhages and tractional retinal detachments in the left eye. Also there is a history of noncompliance with visits as well as poor compliance with instructions and unfortunately presented with advanced disease. These issues have all contributed to his very advanced disease in both eyes. Most recently, the macula had detached in the left eye due to a rhegmatogenous component (presumably from trauma) and the patient had an incredibly guarded visual prognosis in the left eye. (PX3)

Dr. Hariprasad operated on Petitioner's left eye again on September 26, 2012 consisting of 23-gauge pars plana vitrectomy with silicone oil removal, chamber washout and air fluid exchange. This surgery was done at Petitioner's insistence. Dr. Hariprasad noted the patient had done quite well intraoperatively after the recent case three weeks prior, however, postoperatively it was found the patient had silicone oil in the anterior chamber due to zonular dehiscence "supposedly from the trauma from the wrench." He had developed severe visual disability which was minimally worse than at the time of presentation, however, bad enough that the patient wanted the silicone oil removed sooner than Dr. Hariprasad would have liked. (PX3, T. 477) Furthermore, the Petitioner insisted the cataract in the right eye be removed. He was to see Dr. Hariprasad's partner for this. The Commission finds this yet another instance where Petitioner did not comply with his treating doctor's recommendations.

Dr. Golden-Brenner testified that the rhegmatogenous retinal detachment noted in this operative report was due to the amount of time that had passed and was not due to trauma. (RX1, 36, T. 2345) Dr. Golden-Brenner testified that Petitioner had the vision to return to work. (RX1, 37-38, T. 2346-2347)

Petitioner testified that after surgery on his left eye his left eye got worse. (T. 39). After that he received treatment at the VA. (T. 40).

Dr. Hariprasad testified that the most common cause of vitreous hemorrhage is diabetic retinopathy. (PX4, p. 58) He explained that vitrectomy surgery is performed when the inside of the eye is filled with blood. Dr. Hariprasad explained that Petitioner had extraordinarily severe diabetic disease in both eyes. (PX4, pp. 20, 21) However, the vitreous hemorrhage resolved in Petitioner's left eye after treatment and he returned to work two months later without any further treatment until more than ten months later.

While Dr. Hariprasad testified that the hemorrhage in the left eye was caused by an "acute" event, he admits that Petitioner also experienced a vitreous hemorrhage in his right eye absent any "acute" event. (PX4, p. 47) Dr. Hariprasad testified that he was under the presumption Petitioner told him the truth about the accident, "that he got hit with a wrench in the eye." (PX4, 27, T. 607) He went on to say, "[a]nd if you take that at face value, then there was an acute event which caused a bleed in the eye." *Id.* Dr. Hariprasad's causal opinion is based on a premise that is patently false

despite his later attempt at explaining a "shockwave" theory. While the hit to the safety glasses might have caused a vitreous hemorrhage, it healed and there is no testimony specific as to how after working for almost one year, the advancement of the diabetic retinopathy is not the sole cause of the degeneration of Petitioner's left eye condition.

I would find that Dr. Hariprasad's presumption that Petitioner was hit in the eye with a wrench renders his opinion regarding causation not credible. The *Gross* Court held: "Expert opinions must be supported by facts and are only as valid as the facts underlying them." (citation omitted) *Gross v. Ill. Workers' Comp. Comm'n*, 2011 IL App (4th) 100615WC, 24, 960 N.E.2d 587, 594. As further evidence that Dr. Hariprasad was treating for the same condition bilaterally, Petitioner underwent the same surgeries in both eyes; a vitrectomy was performed in June 2011 to Petitioner's right eye and a vitrectomy was performed in September 2012 to Petitioner's left eye.

Dr. Hariprasad testified that Petitioner has ischemia. Blood is not getting to his eye and oxygen is not getting to his eye. He has tractional retinal detachments. It is a bilateral condition, but sometimes it can be asymmetric. In this case, Dr. Hariprasad testified that at the time he first examined Petitioner, his right eye was so far advanced and the left eye clearly had enough diabetic retinopathy—proliferative diabetic retinopathy that it warranted a laser surgery prior to the trauma. (PX4, 37-38, T. 617-618) Dr. Hariprasad further testified that what he was seeing in the eye is a manifestation of some imbalance in the body, typically diabetes, and the combination with hypertension is the worst. What he was seeing in Petitioner's eyes was "clearly a symptom of what's going on systemically with the diabetes." (PX4, 41, T. 621) Dr. Hariprasad assumed Petitioner had high blood pressure looking at his eyes. *Id.* The medical records from the surgeries and at the VA confirm Petitioner has high blood pressure. (PX3, PX5) Thus, I would find Petitioner's left eye condition after September 30, 2011, is ultimately caused solely by his diabetic condition.

Nature and Extent of Left Eye Injury

In 2012, Dr. Hariprasad added the notation of "tractional retinal detachment with a rhegmatogenous component." However, he did not testify, how this rhegmatogenous component or trauma affected the progression of the diabetic retinopathy. He also did not testify that this trauma changed Petitioner's course of treatment or caused the loss of his vision. In fact, he did not testify that there was any permanent damage caused by the wrench incident. Furthermore, the records show that Dr. Hariprasad did the exact same treatment for the right eye as he did for the left eye, and the records show that his treatments were effective for periods of time.

Following the accident, Dr. Hariprasad recommended the exact same procedures to the left eye as he had done to Petitioner's right eye, however, the Petitioner did not agree to undergo the second left eye surgery in September 2011, insisting that his right eye needed more urgent surgery. Dr. Hariprasad also emphasized that the right eye worsening had nothing to do with the trauma. (Px4, Tr. 600). Petitioner was released to return to full duty in October 2011 following the August 2011 accident and he worked as a mechanic for ten months until August 2012, which is a significant amount of time. Therefore, I would find treatment to the left eye subsequent to September 30, 2011, was due strictly to the progression of the diabetic retinopathy.

Thus, based upon the entire record including the evidence and testimony, I respectfully disagree with my colleagues and would find Petitioner failed to sustain his burden of proving that he had a 100 percent vision loss in his right eye prior to this accident. I would further find that despite the work accident, the ultimate loss of use of Petitioner's vision in his left eye was caused by his proliferative diabetic retinopathy which he had equally in both eyes, and noncompliance with treatment. Dr. Hariprasad testified that Petitioner had been noncompliant with his visits, noncompliant with Dr. Hariprasad's recommendations and missed preoperative anesthesia clinic appointments as well as scheduled surgery in his left eye. (PX4, p. 21) This non-compliance is subject to the provisions under Section 19(d) of the Act regarding self-injurious practice. I would reduce Petitioner's compensation for benefits based on this self-injurious practice. Since the accident date is prior to September 2011, permanency is not determined by the 2011 reform or Section 8.1b(b) of the Act. Thus, I would find Petitioner sustained 50% loss of use of his left eye.

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

JUNE 24, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC030653
Case Name	Roland Johnson v. UPS; and State Treas. and Ex-Officio Custodian of the Second Injury Fund
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	Christopher Gibbons, Charlene Copeland

DATE FILED: 5/8/2023

THE INTEREST RATE FOR THE WEEK OF MAY 2, 2023 4.90%

/s/William McLaughlin, Arbitrator

Signature

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

X **SECOND INJURY FUND (8 (E)18)**
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Rolan Johnson
Employee/Petitioner
v.

Case # **13** WC **030653**

Consolidated cases:

UPS; and State Treas. and Ex-Officio-Custodian of the Second Injury Fund
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Cook**, on **2/9/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. Was there an employee-employer relationship?
C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. What was the date of the accident?
E. __ Was timely notice of the accident given to Respondent?
F. **X** Is Petitioner's current condition of ill-being causally related to the injury?
G. __ What were Petitioner's earnings?
H. __ What was Petitioner's age at the time of the accident?
I. __ What was Petitioner's marital status at the time of the accident?
J. **X** Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. **X** What temporary benefits are in dispute?
☐ TPD X Maintenance X TTD
L. **X** What is the nature and extent of the injury?
M. Should penalties or fees be imposed upon Respondent?
N. Is Respondent due any credit?
O. **X** Other **2nd Injury Fund**

FINDINGS

On **8/19/2011**, the Respondents-UPS and the State Treasurer, Ex-Officio Custodian of the Second Injury Fund ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**28,728.28**; the average weekly wage was $**1,064.01**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **0** dependent children.

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

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

Respondent-UPS shall be given a credit of $**5,168.05** for TTD paid between 8/22/2011 to 10/12/2011, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

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

ORDER

The Arbitrator finds the Petitioner's current conditions of ill being is causally related to the August 19,2011 work-related accident.

The Arbitrator finds that the Respondent- UPS, shall pay the Petitioner reasonable and necessary medical services pursuant to the Medical Fee Schedule, as provided in Section 8(a) of the Act. Respondent- UPS, shall hold Petitioner harmless from any claims by any providers of the services that have been paid by Petitioner's group health insurance, Medicaid, or Medicare.

Respondent-UPS shall be given a credit for medical benefits that have been paid, and Respondent- UPS shall hold Petitioner harmless from any claims by any providers of the services paid to date.

The Respondent-UPS shall pay for all prospective reasonable, necessary, and related medical expenses, including but not limited to, visual rehabilitation adaptive devises and other visual impairment equipment as recommend by the Petitioner's physician.

The Arbitrator finds that the Petitioner is entitled to temporary total disability benefits and Respondent- UPS, shall pay temporary total disability benefits at the rate of $709.27 per week for the period of August 22, 2011 through April 1, 2013 for a total of 84 weeks as provided in Section 8(b) of the Act.

The Arbitrator finds that Petitioner is awarded permanent total disability benefits under Section 8(e)(18) and Section 8(f) of the Act because he has suffered the permanent and complete loss of use of the right and left eyes. As of April 2, 2013, statutory permanent total disability benefits under Section 8(e)(18) and 8(f) of the Act shall commence and continuing thereafter, the Arbitrator finds that Petitioner is statutorily permanent and totally disabled and is entitled to $709.27 per week pursuant to Section 8(f). Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

The Arbitrator finds that the Respondent-UPS, is liable to pay compensation for the loss or permanent and complete loss of use of the left eye. (This Respondent is still liable for all benefits under Section 8(a) and 8(b) of the Act) The Respondent-UPS, shall pay 100% loss of use of the left eye to the Petitioner at the PPD rate of $638.41 per week for 162 weeks.

The Illinois State Treasurer, ex-officio custodian of the Second Fund, a co-respondent in this matter was represented by the Office of the Illinois Attorney General. Because Petitioner had previously sustained 100% loss of the ***right eye*** and, as a result of this accident, has sustained 100% loss of the ***left eye***, Petitioner is eligible for statutory permanent total disability benefits of $709.27 /week for life, commencing **April 2, 2013**, as provided in Section 8(e)18 of the Act and the Illinois State Treasurer shall also pay 100% loss of use of the right eye or 162 weeks of disability at the PPD rate of $638.41.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

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

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

MAY 8, 2023

Signature of Arbitrator

FINDINGS OF FACT

Petitioner, Rolan Johnson, date of birth is July 29, 1962. He was 49 years old when the work injury occurred. Petitioner testified that he lives with his wife Sheila in Chicago, Illinois. Prior to his employment with Respondent, Petitioner served in the Marines from 1980 to 1987, and then with the Army. (T14).

Petitioner began working for UPS in March of 2006 and remained employed by UPS for six and a half years. (T18). He was a trailer mechanic who was eventually elevated to foreman. (T18-19). He described his daily job activities as typically finishing up the previous mechanic's work from the first shift, and then he would start on a new trailer. (T19). On the new trailer he would start PMI, or primary maintenance inspection. (T19). As he inspected he would be doing both maintenance and preventative maintenance. (T20). Part of his job required him to work on pintle hooks. (T21). A pintle hook is a way to attach one trailer to another trailer. (T21). Prior to the injury of August 19, 2011, he did not have any other injuries while with UPS. (T22).

Around April or May 2011, Petitioner sustained damage or had a condition in his right eye, leading to him only having light perception in the right eye. (T23). Petitioner was diagnosed with diabetes prior to 2011 and received treatment for it at Mercy Hospital. (T47). From April 2, 2011 through July 2011, he took a leave from UPS for the right eye procedures on May 11th and July 11th of 2011 with Dr. Seenu Hariprasad. (T49-50). (T23). Before the August 19, 2011 left eye injury, he had laser surgery on his right eye. (T24). On May 11, 2011, Petitioner underwent right eye vitrectomy, membrane peel and endolaser for traction detachment of the right eye retina. (PX3). On June 22, 2011, he underwent a repeat surgery with oil injection into the right eye. *Id.* At the time he had no problems with his left eye.

Prior to the work accident, vision in his right eye was never restored to anything better than light perception. (T25;38). After the wrench incident and during an ophthalmology exam at University of Chicago, his right eye is noted as "LP" with the left eye at 20/150. (PX3, p. 102).

On August 19, 2011, Petitioner's shift was from 2:30 to 11:00 at UPS. Prior to his injury, he was changing a pintle hook with foreman Calvin Grayson. (T26). Petitioner testified that while he was cutting off the old pintle hook to replace it he Calvin was assisting him. (T26-27) Petitioner testified when Calvin started to tighten up the bolt the wrench clipped off the bolt and hit him in the eye. (T27). During his testimony, Petitioner was given a brass or gold colored bolt, which Petitioner described as being the bolt he would put though the pintle hook. (T27). He would start fastening the nut to the bolt on one side and then put a 1/8 inch combination wrench wrench onto the nut while the guy on the outside would take the impact and tighten the bolt. (T27-28). The one inch impact has to be held to tighten the bolt. (T28). It is the same wrench used to take the lug nuts off to change truck tires. (T28). Petitioner was working with the combination wrench and the other [Calvin] with the impact. (T28). Petitioner was laying on his back under the pintle hook and tightening, holding the bolt that he [Calvin] is tightening on the other side. (T29-30).

Petitioner was trying to hold it [wrench] but it slipped off the bolt and hit him on the top of his safety glasses and pulled them down. (T30). Petitioner pointed to the corner of his left eye closer to his bridge and not the outer end of his eye. (T31). After it hit him he couldn't see anything. (T31). He could only see lights and shadows out of his left eye. (T32). A couple of seconds passed between the impact to when he could not see anything. (T32). After the impact he was able to see blood on the inside of his eye, the blood vessel inside of his eye. (T45, 62; RX6). When he was down on the ground he kept working, but when he stood up that's when he really couldn't see too good. (T62). He could only see lights and shapes. (T63). He finished the job with the pintle hook before he went to get help. (T55).

Petitioner testified that after the accident the Supervisor Genesis Alvetchy, took Petitioner to the Clearing Clinic. (T33). Records indicate that Petitioner complained that he could not see from both eyes after changing a pinacle hook. (PX1). Petitioner was diagnosed with a retinal hemorrhage. *Id.* His vision exam noted 20/0 across the report on both eyes. *Id.* Despite Petitioner unable to see from both eyes he was discharged to regular duty. *Id.* Genesis drove him back to the HUB, where Petitioner's daughter and ex-wife picked him up and took him home. (T34). Two days later on Monday, Petitioner talked to Dr. Seenu Hariprasad. (T34). Petitioner told the Dr. about what happened and that he couldn't see. (T35). Records indiciate that Dr. Hariprasad ordered him to avoid the work environment. (PX3). The record on September 1, 2011 with Dr. Hariprasad's Illinois Eye Institute clinic indicated there was a laser procedure done on August 22nd, and Petitioner now complained of noticing blood post laser treatment on the left eye. *Id.* The Dr. suggested the Petitioner would likely need surgical intervention in the coming months following this wrench injury. *Id.* During his testimony, Petitioner thought he had a procedure on that eye a couple months later, but returned to work at UPS. (T36). During his statement taken by Ladochie Simmons, Petitioner told Simmons he had some kind of laser procedure to seal off the blood vessel that was busted. (RX6).

Petitioner was paid his workers compensation wage of two-thirds wages while he was off work for the left eye injury. (T37). Petitioner underwent an independent medical examination on September 30, 2011 with Dr. Golden-Brenner, M.D. (RX1). He was scheduled for a left eye procedure on September 14th but didn't have a ride so he cancelled. (T56; PX3). On October 12, 2011, Petitioner underwent another surgery on his right eye. (PX3). In the surgical report, Dr. Hariprasad noted that in his left eye he had a traction retinal detachment exacerbated recently by an injury at work by a wrench. *Id.* At his follow up visit with the clearing clinic on October 18, 2011, he's given a full duty release (PX1).

Petitioner returned to work around October 16, 2011 through September 1, 2012. (T58). His eye was progressing but getting worse. (T66). In February of 2012, Petitioner returned to Dr. Hariprasad to whom he complained of blurry vision in the left eye that would not be corrected with glasses. (PX3). Petitioner had a left eye laser surgery on May 18, 2022. *Id.* He was told to return around August for the surgery with oil injection. *Id.* Petitioner recalled having a procedure done on his left eye in September 2012, but it only helped for about a week. (T38-39; 57). On September 12, 2012, Petitioner underwent a vitrectomy, membrane peel, endo laser and oil injection in the left eye. (PX3). In his operative report, Dr. Hariprasad noted the macula detached in the left eye due to a rhegmatagenous component (presumably from trauma). *Id.* On September 26, 2012, Dr. Hariprasad brought him in for the oil removal due to Petitioner's insistence with pain complaints. *Id.* During the operation it was found that the patient had silicone oil in the anterior chamber due to zonular dehiscence supposedly from trauma from the wrench. *Id.*

Petitioner testified that after surgery on his left eye his left eye got worse. (T39). After that he received treatment at the VA. (T40). His doctor suggested he try the VA given his military background since insurance wasn't going to cover a lot of stuff. (T40). At a follow up appointment with Dr. Hariprasad on November 28, 2012, Petitioner's eyesight was rated at "LPerc" for both eyes. (PX2). By January 21, 2013, Petitioner is reporting that he does not see anything. (PX3). Dr. Hariprasad begins the referral to social work and low vision therapy. *Id.* On March 8, 2013, he presented to the Jesse Brown VAMC clinic to establish care as a veteran. (PX5). At his next appointment with Dr. Hariprasad, it is determined that the best course of treatment for Petitioner is to continue with the VA. (PX3).

Through the VA, Petitioner went to school to help with his blindness. (T40-41; PX5). Petitioners visual skills were noted as totally blind, no light perception. (PX5). Petitioner Required and received training in the I-phone, computer, teach how to type, give devices to use, a cane, some eye treatments and glasses. (T41; PX5). He was also given a talking watch, a blind ID cane, and audible labeling system and talking alarm clock. (PX5).

Petitioner is on Medicare but does not utilize it but instead he goes to the VA for treatment. (T41-42) Petitioner is receiving Social Security Disability. (T41, 65). Petitioner is no longer able to drive or cook food. (T43). He has had renovations done to his home to accommodate his Disability (T44). Petitioner relies on his wife and his cousin Derek help him with daily hygiene, cooking, cleaning etc.. (T44). At the time of the hearing, Petitioner testified he cannot see out of left or right eyes. (T65). He had not had any treatment for his eyes in the two to three years prior to the hearing. (T66).

Witness Courtney Jones:

Petitioner called Courtney Jones as a witness to assist with support on some of the visual evidence used, though Courtney was not present when Petitioner was injured. (T76). Courtney worked as a trailer mechanic at UPS with Rolan from 2005 up to at least the day of Petitioner's injury. (T68-69). He did panel work, roof work, rear doors, brake jobs, tires, pintle hooks, air brakes, and electrical work. (T69). Courtney understood that at the time of his injury, Petitioner was removing and installing a pintle hook. (T70). Referring to PX 11, Courtney explained that the pintle hook is located on the rear of a trailer. (T71). To remove and install the hook, the rear of the trailer would be jacked up, you'd cut the bolts off with a torch and remove the bolts from the inside of the frame, take the pintle hook out, and it is a two-man job. (T72). You have a guy underneath, which was Rolan, who has the wrench and you have another guy that was installing with the air impact. (T72). He identified the air impact as the image shown on PX 8. (T72). The impact has maybe 1500 to 2000 pounds of torque behind it. (T73). There is a trigger and another handle to hold because there is so much torque with one arm it will snap your arm. (T73). Courtney identified the safety glasses, nut and bolt, and combination wrench shown during Petitioner's testimony as the tools they would use for the pintle hook job. (T74-75).

Deposition of Dr. Seenu Hariprasad, M.D.:

Dr. Seenu Hariprasad, M.D. testified that he is part of the Department of Ophthamology and Visual Sciences at the University of Chicago. *Id.* at 7. He is the chief of the vitreoretinal service, endowed professor of the Sui-Chin Professorship in ophthalmology and director of the clinical research program and vitreoretinal fellowship program. *Id.* He is board certified in ophthalmology with a subspecialty in vitreoretinal surgery. *Id.* at 8.

Dr. Hariprasad started seeing Petitioner in 2011 and treated him through December 2013. *Id.* at 10. When he first saw him he had diabetic retinopathy in both eyes. *Id.* at 11. The right eye had surgery done for very advanced proliferative diabetic retinopathy tractional detachment, and did laser treatment in the left eye. He had stable proliferative diabetic retinopathy and reasonably good vision in the left eye at that time. *Id.* He believed the left eye laser surgery was successful, because if it was not he would have done it again. *Id.* at 12. Prior to August 19, 2011, Petitioner's left eye was stable. *Id.* On August 22, 2011 he saw Petitioner, who reported complaints of injury to the left eye due to a wrench hitting his left eye. *Id.* at 15. He was unable to see in the left eye due to leaking blood vessel in the left eye. He had pain and floaters in the left eye. Dr. Hariprasad saw little hash signs in his eye, which meant he had done laser in that eye. *Id.* He noted that the blood is new vitreous hemorrhage and that "VH" new vitreous hemorrhage, meant that that's blood that was not there before this day. *Id.* at 16.

He testified within a reasonable degree of medical certainty that the wrench injury caused the vitreous hemorrhage. *Id.* He based his opinion on that new vitreous hemorrhage, that he was lasered and stable prior, and there was an acute event that caused him to have acute vision loss, and his retina was damaged. *Id.* On examination, he was able to see blood in the left eye very clearly. In the area where the vitreous hemorrhage occurs, underneath the retina, to cause the bleed, one presumes there's damage to cause the bleed because it doesn't come from nowhere. *Id.* at 17-18. On October 10, 2011, he recommended surgical intervention and

Petitioner refused. On October 12, 2011, he performed right eye surgery to repair a tractional retinal detachment, which was not related to the August 19, 2011 event. *Id.* at 20. After the right eye virectomy surgery done prior to the left eye injury, he put silicone into the eye to hold the retina in place, and this October 12th surgery was to remove the oil from the eye. *Id.*

Dr. Hariprasad differentiated the eye conditions, testifying that he had diabetic eye disease in both eyes with tractional retinal detachment and proliferative retinopathy and a retinal detachment in the right eye, which was repaired. And in the left he had vitreous hemorrhage, proliferative diabetic retinopathy and a small tractional retinal detachment which was exacerbated by the injury at work by a wrench. *Id.* at 21.

He continued to treat Petitioner, and between the right eye procedure on October 12, 2011 through May 18, 2022, Petitioner was in the postoperative period for the right eye. *Id.* at 23. On August 2012, Petitioner started to have a vision drop in the left eye, so Dr. Hariprasad recommended left eye surgery to help decrease the change of permanent vision loss. *Id.* at 24-25. On September 12, 2012 he performed a vitrectomy surgery with a membrane to remove all the scar tissue from the surface of the retina as well as laser, and put oil in his eye, and did a temporal retinectomy. *Id.* at 25. Dr. Hariprasad explained that when a person has trauma, you have rhegmatogenous component where the retina is ripped. *Id.* at 27. He opined that the diabetes did not help his condition, but the wrench injury definitely pushed the eye over the edge and made the surgery much more complex because of the traumatized retina. *Id.* at 27-28. He testified that we know as a fact that the workplace accident on August 19, 2011 exacerbated Petitioner's left eye condition. *Id.* at 28. Petitioner's eye was stable, and then there was an acute event which caused a bleed in the eye. *Id.*

On September 27, 2012, Petitioner developed severe visual disability bad enough that he felt he could not function and wanted the silicone oil removed sooner than Dr. Hariprasad would have normally preferred. *Id.* at 31. He testified that the need for these procedures was without a doubt caused by or contributed to by the accident. *Id.* at 32. The oil is very very very unlikely to come forward unless Petitioner had zonular dehiscence and that occurs from trauma. *Id.* at 32-33.

When he initially presented to Dr. Harisprasad, Petitioner could see 20/50 out of the left eye, but when he did the surgery a year later, the retina was tacked down to the wall of the eye, which is not usually seen in diabetics. *Id.* at 37. The right suffered advanced tractional retinal detachments and ischemia to the retina. Surgery was a Hail Mary type of situation to try to save that eye and unfortunately he was not successful. *Id.* at 37-38. As for the June 22, 2011 right eye surgery, Petitioner's right eye condition was so severe there was nothing he could do except go back in, peel off those membranes, put the oil back in the eye, and hope for the best. *Id.* at 47. He had such severe ischemia that the macula probably didn't even get blood and that's probably why he couldn't see. *Id.* at 48.

Dr. Hariprasad also commented that physical contact with a foreign object doesn't have to be in contact, but somewhere in the region of the eyes or forehead. *Id.* at 52. He explained that the bony orbit can protect the eyeball from direct injury, but there's secondary injury which the shock waves of that trauma, such as in motor vehicle accidents when the airbag hits the face you see retinal detachments but there's no direct contact with the eye, but that a shock to the forehead, face and eye can cause a retinal tear. *Id.* at 54. That there might not have been any physical evidence of trauma around the eyes after the first examination would not change his opinion because of the shock-wave type injuries that can cause the vitreous hemorrhage. *Id.* at 69. He noted that he was focusing on a much bigger problem than whether he had scratches or edema or swelling around the eyelid. *Id.* at 70.

He described the history taken and that he's taking Petitioner's word that a wrench hit him in the head, and when he sees a new blood, it is bright red. *Id.* at 66. When you see old blood, it is brown or white. *Id.* And

when he says new vitreous hemorrhage, that indicates that there was something acute that happened. *Id.* For proliferative vitreous retinopathy there are four risk factors. Number one is a bleed in the eye; number two is a tear in the retina; and number three is trauma. Petitioner had all of these. *Id.* at 66. He didn't say that Petitioner's diabetes was not related; but the wrench injury pushed his eye over the edge. *Id.* There are two types of retinal detachments; one is a tractional retinal detachment where the scar tissues are tenting up the retina. Rhegmatogenous injuries are with trauma. *Id.* at 72.

Deposition of IME Carrie Golden-Brenner, M.D.:

Dr. Carrie Golden-Brenner, M.D. (hereinafter "Dr. Brenner") is an Ophthalmologist licensed since 1983. (RX1, 4). Over the course of her career she has done cataract surgeries mostly, some oculoplastic surgeries, and a little bit of glaucoma. *Id.* at 7. Dr. Golden-Brenner saw Petitioner on September 26, 2011. *Id.* at 8. Petitioner told the Dr. he was changing a hook on the back of a truck when the wrench hit him in the front of his face, he thinks on his left eye, and that he was wearing safety glasses. *Id.* Dr. Brenner found that his vision was finger counting at 4 foot in the right eye and 20/50 in the left eye and that it was not able to correct it better than uncorrected vision. *Id.* at 12-13. Dr. concluded that the Petitioner was not able to see light with his right eye. *Id.* at 14.

In the right he had cataract and his retina was detached. *Id.* at 16. In the left eye there was no conjunctival injection, no bruising, no inflammation in the front of the eye; his cornea was clear, and there was no scarring. *Id.* There was a small vitreous hemorrhage and the retina displayed areas of hemorrhage and proliferative diabetic retinopathy. *Id.* at 17. There might have been small early traction retinal detachment but it was hard to tell because of the blood. *Id.* Dr. Brenner said a retinal detachment is due to diabetes, and it can be due to the blood vessels that grow on the surface of the retina and that can be called a traction retinal detachment. *Id.* at 19.

Dr. Golden-Brenner indicated the left eye was not nearly as severe as the right eye. *Id.* at 20. She felt he needed additional surgery in the right eye for repair of his retinal detachment and additional laser treatment and possible vitrectomy for the diabetic retinopathy and vitreous hemorrhage present in the left eye. *Id.* at 20-21.

Dr. Golden-Brenner opined that Petitioner's left eye condition was more likely than not not related to the incident. *Id.* at 23. This was based on her finding there was no bruising, no ecchymosis, no abrasion, and no subconjunctival hemorrhage. *Id.* at 23. Had Petitioner's eye been pierced by glass or metal or plastic of some foreign object that would have produced visible evidence. *Id.* at 24. However, Dr. Golden-Brenner did say that it was possible to sustain an impact on the head and the force of that impact then traveling to the eye and causing an injury. *Id.* If the head was shaken violently like a whiplash kind of injury, there's acceleration/deceleration forces that can transmit to the vitreous inside the eye and cause either the vitreous to detach from the retina, or in a diabetic it could cause a little hemorrhage. *Id.* at 25. She then said Petitioner's vitreous hemorrhage was most likely due to the diabetes. *Id.* at 27. The possibility of a little bit of swelling or macular edema in the left eye was definitely due to diabetes and the small peripheral traction retinal detachment was definitely due to his diabetes. *Id.* at 27.

She then said that retinal detachments can occur as the result of trauma, but that they occur at the time of trauma and there's a tear in the retina. *Id.* at 27-28. Sometimes that can progress over the course of a couple of weeks to a month or so, where that fluid goes through that hole that causes that retina to come off the back of the eye. *Id.* at 28. She did not see any retinal tears in Petitioner's eye. *Id.* Dr. Golden- Brenner did say there is a small possibility that the hemorrhage could have been caused or aggravated if the eye was hit, which does not appear from the records, or if the eye was shaken as discussed, it could have caused a small vitreous hemorrhage. *Id.* at 29. She testified that trauma does not cause new blood vessels to grow, so it was preexisting. *Id.* at 35. He would not have developed traction retinal detachment in three days and trauma does not cause a traction retinal

detachment. *Id.* When reviewing Dr. Hariprasad's September 26, 2012 operative report, with regard to the rhegamatogenous component, Dr. Brenner said what Dr. Hariprasad seems to be saying is that there was a tear in addition to the traction, but that if he had a rhegmatogenous retinal detachment it was not due to the trauma. *Id.* at 36-37.

CONCLUSIONS OF LAW

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

To establish causation under the Act, a claimant must show by a preponderance of the evidence that some act or phase of her employment was a causative factor in her ensuing injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2d Dist. 2005), citing Illinois Supreme Court case *Sibro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193 (2003). An accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Id.* It is axiomatic that when the injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment. *Caterpillar, Inc. v. Industrial Comm'n*., 228 Ill. App. 3d 288 (3d Dist. 1992).

Arbitrator finds the Petitioner's testimony to be credible regarding the mechanism of injury and consistent the medical records reflecting that he sustained an injury at work which necessitated medical treatment. Petitioner testified that he was under a truck holding the large wrench onto the nut connected to the bolt that his co-worker was fastening with the impact driver. That is when the impact drive caused his wrench to slip off the nut and strike him in the left eye just above the left eye and closer toward the bridge of his nose. He could not be certain if the wrench hit his eye or if the wrench struck the glasses which then struck the area around his left eye.

He also brought the safety glasses he was wearing, along with the wrench, bolt and nut he was working to affix the new pintle hook onto the trailer. He brought a photo of the impact wrench used by his co-worker Mr. Grayson. Courtney Jones, Petitioner's co-worker who was not present at the time of injury, was called as a witness to corroborate testimony regarding the pictures and hard evidence that Petitioner could not entirely identify due to his blindness. Courtney Jones identified the air impact as the image shown on PX 8. The impact has maybe 1500 to 2000 pounds of torque behind it. There is a trigger and another handle to hold because there is so much torque with one arm it will snap your arm. Courtney identified the safety glasses, nut and bolt, and combination wrench shown during Petitioner's testimony as the tools they would use for the pintle hook job.

Given the mechanism of injury paired with the size and power of the impact wrench and size of the combination wrench held by Petitioner, Arbitrator is convinced that a wrench struck Petitioner's left orbital area around Petitioner's eye with such great force and impact so as to cause a shockwave injury.

Arbitrator believes that prior to the August 19, 2011, Petitioner's left eye was stable, and he had 20/50 vision in his left eye. Dr. Harisprasad did a laser treatment on his left eye three days after the injury which provided some relief, though he indicated that further invasive surgery was indicated. Petitioner then has another right eye surgery on October 12, 2011, which does nothing to restore his eyesight. Arbitrator notes that the Independent Medical Examination was done September 26, 2011, and benefits were terminated October 12, 2011. Which ultimately led to Petitioner returning to work before he began to suffer from increased loss of vision.

Petitioner had a left eye laser surgery on May 18, 2022. On September 12, 2012, Petitioner underwent a vitrectomy, membrane peel, endo laser and oil injection in the left eye. In his operative report, Dr. Hariprasad notes the macula detached in the left eye due to a rhegmatagenous component (presumably from trauma). On September 26, 2012, Dr. Hariprasad brought him in for the oil removal due to Petitioner's insistence with pain complaints. During the operation it was found that the patient had silicone oil in the anterior chamber due to zonular dehiscence supposedly from trauma from the wrench.

Arbitrator gives great weight to the evidence deposition of Dr. Hariprased when testified that Petitioner unable to see in the left eye due to leaking blood vessel in the left eye, and had pain and floaters in the left eye. He noted that the blood is new vitreous hemorrhage and that "VH" new vitreous hemorrhage, meant that that's blood that was not there before this day. Dr. Hariprased described the history taken and that he's taking Petitioner's word that a wrench hit him in the head, and when he sees a new blood, it is bright red. The Dr. noted a hemorrhage, that indicates that there was something acute that happened. He testified within a reasonable degree of medical certainty that the wrench injury caused the vitreous hemorrhage. On examination, he was able to see blood in the left eye very clearly. Arbitrator finds Dr. Hariprasad testimony to be credible when the Dr. differentiated the eye conditions, testifying that Petitioner had diabetic eye disease in both eyes with traction retinal detachment and proliferative retinopathy and a retinal detachment in the right eye, which was repaired. And in the left he had vitreous hemorrhage, proliferative diabetic retinopathy and a small traction retinal detachment which was exacerbated by the injury at work by a wrench.

On September 27, 2012, Petitioner developed severe visual disability bad enough that he felt he could not function and wanted the silicone oil removed sooner than Dr. Hariprasad would have normally preferred. Dr. Hariprasad testified that the oil is unlikely to come forward unless Petitioner had zonular dehiscence and that occurs from trauma.

Dr. Hariprasad also commented that physical contact with a foreign object doesn't have to be in contact, but somewhere in the region of the eyes or forehead. He explained that the bony orbit can protect the eyeball from direct injury, but there's secondary injury which the shock waves of that trauma, such as in motor vehicle accidents when the airbag hits the face you see retinal detachments but there's no direct contact with the eye, but that a shock to the forehead, face and eye can cause a retinal tear.

He opined that for proliferative vitreous retinopathy there are four risk factors. Number one is a bleed in the eye; number two is a tear in the retina; and number three is trauma. Petitioner from all three. Arbitrator also takes into consideration Dr. Hariprased opinion that Petitioner's diabetes was not related; but the wrench injury pushed his eye over the edge. There are two types of retinal detachments; one is a tractional retinal detachment where the scar tissues are tenting up the retina. Rhegmatogenous injuries are with trauma.

The Arbitrator finds Dr. Golden-Brenner's testimony and conclusions to be less persuasive when it comes to Petitioners condition to the mechanism of injury.

The Arbitrator finds that while the diabetes played a role in Petitioner's left eye condition, the wrench was a factor that brought about the exacerbation of that condition, and under *Land & Lakes Co.* and S*ibro, Inc.*, an accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being.

Based upon the greater weight of the evidence, the Arbitrator finds that the Petitioner's condition of ill-being regarding his left eye is causally connected to the work accident of August 19, 2011.

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

Section 8(a) of the Illinois Workers' Compensation Act mandates that the Respondent shall provide and pay for all the necessary surgical services which are reasonably required to cure or relieve from the effects of the accidental injury. 820 ILCS 305/8(a). Medical care under Section 8(a) is continuous as long as such care is required to relieve the effects of the injury. *Freeman United Coal Mining Co. v. Industrial Commission*, 81 Ill.2d 335 (1980).

Based on the evidence presented the Arbitrator finds that all claimed medical services provided to Petitioner were reasonable and necessary, and further finds that the Petitioner is entitled to payment of all related medical expenses contained in Petitioner's exhibit PX7 to be satisfied by Respondent pursuant to the fee schedule of the Workers' Compensation Act., and that medical shall remain open as long as Petitioner shall be stricken with his blindness.

Further, Respondent shall pay for all prospective reasonable, necessary and related medical expenses, including but not limited to, visual rehabilitation adaptive devises and other visual impairment equipment as recommend by the Petitioner's physician. The Arbitrator also awards reimbursement of any group insurance liens/subrogation for any and all reasonable, necessary and related medical expenses to be satisfied by Respondent pursuant to the fee schedule of the Workers' Compensation Act. Additionally, Petitioner shall be held harmless from claims arising therefrom, specifically, from any subrogation claims for payments previously made by other parties, for payments made since the last date of treatment contained in Petitioner's medical bills submitted, and for future payments made by third parties for treatment related to Petitioner's left eye.

K. What Temporary Benefits are in dispute? TTD / Maintenance:

In his request for hearing, Petitioner claims he is entitled to temporary total disability benefits at the rate of $709.27 per week for the period of August 22, 2011 through April 1, 2013 for a total of 84 weeks as provided in Section 8(b) of the Act, subject to a reduction for those dates when Petitioner returned to work as provided in Respondent's time sheets. April 1, 2013 would be the time that Petitioner's active treatment with Dr. Hariprasad ceased, and his rehabilitation therapy for the blind with the VA started. It is at this point his medical state of temporary total disability transitioned into a state of permanent and total disability.

Evidence that the employee has been or is able to earn occasional wages or to perform certain useful services neither precludes a finding of total disability nor requires a finding of partial disability. *Smallwood v. Industrial Comm'n*, 53 Ill. 2d 151, 156 (Ill. 1972). In *E.R. Moore Co. v. Industrial Comm'n.*, the Court held that for the purposes of section 8(f) [section 19(b)], a person is totally disabled when he cannot perform any services except those for which no reasonably stable labor market exists. *E.R. Moore Co. v. Industrial Comm'n.* 71 Ill. 2d 353, 361-62 (Ill. 1978).

Petitioner started working for UPS March 2006 and remained employed by UPS for six and a half years. He has not earned income since his last date of employment with UPS. He testified that he has been receiving Social Security Disability benefits for 10 years as of the date of the hearing.

He has been a mechanic/laborer his whole life. Given his age (60), and considering the petitioner is fully blind, with no college degree, Arbitrator concludes that is unlikely that Petitioner will be able to return to some form of gainful employment. For these reasons, and based upon the greater weight of evidence, Petitioner has been permanently totally disabled since April 1, 2013. Therefore, Petitioner is entitled to temporary total disability benefits at the rate of $709.27 per week for the period of August 22, 2011 through April 1, 2013 for a

total of 84 weeks, subject to a reduction for those periods when Petitioner did return to work October 22, 2011 through August 25, 2012, as shown on Respondent's pay logs (RX2).

Maintenance:

Employers are responsible for paying not only TTD, but also maintenance for the time period during which they are disputing the need for vocational rehabilitation pursuant to section 8(a). 820 ILCS 305/8(a). The claimant need not request vocational rehabilitation before maintenance may be awarded. *Roper v. Contracting v. Industrial Comm'n*., 349 Ill. App. 3d 500, 506 (5th Dist. 2004). A claimant is generally entitled to vocational rehabilitation when he sustains a work-related injury which causes a reduction in his earning power and there is evidence that rehabilitation will increase his earning capacity. *Euclid Bev. v. Ill. Workers' Comp. Comm'n*, 2019 IL App (2d) 180090WC ¶ 29. The Act permits maintenance benefits if the claimant is engaged in some type of "rehabilitation" such as physical rehabilitation. *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1019 (2005).

Petitioner's blindness appears to have been irreversible as of April 1, 2013. Petitioner continues to rehabilitate himself, and his need for additional rehabilitation is not in question. Therefore Arbitrator finds, based upon the greater weight of evidence, Petitioner is entitled to maintenance benefits from April 2, 2013 through the date of the hearing, February 9, 2023, representing 514 2/7 weeks.

L. What is the nature and extent of the injury?

Petitioner was injured while working in the scope of his employment with the Respondent. Prior to the accident, Petitioner had diabetic retinopathy in both eyes. The right eye had surgery done for very advanced proliferative diabetic retinopathy traction detachment. His vision in the right eye was never restored beyond light perception. He had stable proliferative diabetic retinopathy and reasonably good vision in the left eye and was stable prior to August 19, 2011. The injury caused a new vitreous hemorrhage, where Petitioner saw blood in his eye, as did his physician. His physician testified that he had a new vitreous hemorrhage, proliferative diabetic retinopathy and a small traction retinal detachment which was exacerbated by the injury at work by a wrench. He testified that we know as a fact that the workplace accident on August 19, 2011 exacerbated Petitioner's left eye condition.

The Illinois Appellate Court provided a legal analysis in *Contour Designs Inc. v. Industrial Commission*, 255 Ill. App. 3d 816, 818 (5th Dist. 1994) relevant to the instant case, *Citing Ceco Corp. v. Industrial Commission*, 95 Ill. 2d 278, 286-87 (Ill. 1983). The Appellate Court stated: "This court has frequently held that an employee is totally and permanently disabled when he is unable to make contribution to the work force sufficient to justify the payment of wages. *Contour Designs Inc.,* 255 Ill. App. 3d at 817-818. The claimant need not, however, be reduced to total physical incapacity before a permanent total disability award may be granted. *Id.* Rather, a person who totally disabled when he is incapable of performing services except those for which there is no reasonable stable job market. *Id.* Conversely, an employee is not entitled to total and permanent disability compensation if he is qualified for and capable of obtaining gainful employment without serious risk to his life. *Id.* In determining a claimant's employment potential, his age, training, education, and experiences should be taken into account. *Id.*

The Arbitrator finds that the Respondent-UPS, is liable to pay compensation for the loss or permanent and complete loss of use of the left eye. (This Respondent is still liable for all benefits under Section 8(a) and 8(b) of the Act) The Respondent-UPS, shall pay 100% loss of use of the left eye to the Petitioner at the PPD rate of $638.41 per week for 162 weeks.

The Illinois State Treasurer, ex-officio custodian of the Second Fund, a co-respondent in this matter was represented by the Office of the Illinois Attorney General. Because Petitioner had previously sustained 100% loss of the *right eye* and, as a result of this accident, has sustained 100% loss of the *left eye*, Petitioner is eligible for statutory permanent total disability benefits of $709.27 /week for life, commencing April 2, 2013, as provided in Section 8(e)18 of the Act and the Illinois State Treasurer shall also pay 100% loss of use of the right eye or 162 weeks of disability at the PPD rate of $638.41

O. Whether the Second Injury Fund Applies

On August 7, 2019, Petitioner amended his Application for Adjustment of Claim adding Respondent, Second Injury Fund. (PX6)

The pertinent section of the Act states as follows:

> 820 ILCS 305/8(f) provides that "if an employee who had previously incurred the loss or the permanent and complete loss of use of one member, through the loss or the permanent and complete loss of the use of one hand, one arm, one foot, one leg, or one eye, incurs permanent and complete disability through the loss or the permanent and complete loss of the use of another member, he shall receive, in addition to the compensation payable to the employer and after such payments have ceased, an amount from the Second Injury Fund provided for in paragraph (f) of Section 7, which, together with the compensation payable from the employer in whose employ he was when the last accidental injury was incurred, will equal the amount payable for permanent and complete disability as provided in this paragraph of this Section."
> ….
> 820 ILCS 305/7(f) also provides, "The State Treasurer, or his duly authorized agent shall be named as a party to all proceedings in all cases involving claim for the loss of, or the permanent and complete loss of the use of one eye, one foot, one leg, one arm, or one hand."

Arbitrator has read the prior transcript of a hearing on a motion to dismiss the second injury fund and has considered all of the evidence that was presented at trial. The Arbitrator denies Respondents motion to dismiss and finds Respondent is liable for the injury to Petitioner's left eye, Petitioner will still be blind in his right eye, which makes him totally and permanently disabled. The Respondent will be liable for the entire loss. And the Second Injury liable for the right eye.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC013055
Case Name	Lorella Plenary Labud (Guardian of Michael Labud a Disabled Person) v. L.A. Truck Leasing Company, Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0294
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Stephen Smalling
Respondent Attorney	James Kelly

DATE FILED: 6/18/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lorella Labud, as plenary guardian of
Michael Labud, a disabled person,

Petitioner,

vs. NO: 19WC013055

L.A. Truck Leasing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of benefit rates, permanent partial disability, evidentiary issues, 5(b) credit and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

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

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

IT IS FURTHER ORDERED BY THE COMMISSION Respondent shall pay the petitioner the sum of $**735.90** /week for life, commencing March 31, 2019, as provided in Section 8(f) of the Act, because the injury caused the permanent and total disability of the petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION Commencing on the second July 15th after the entry of this award, the petitioner may become eligible for cost-of-living adjustments, paid by the **Rate Adjustment Fund**, as provided in Section 8(g) of the Act.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 18, 2024
CMD/ypv
O: 061124
045

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

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

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC013055
Case Name	Lorella Labud as plenary guardian of Michael Labud a disabled person, v. L.A. Truck Leasing,
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Stephen Smalling
Respondent Attorney	James Kelly

DATE FILED: 1/25/2023

THE INTEREST RATE FOR THE WEEK OF JANUARY 24, 2023 4.68%

/s/ Jeffrey Huebsch, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Lorella LaBud, as plenary guardian of Michael LaBud, a disabled person, Case # **19** WC **013055**
Employee/Petitioner

v.

L.A. Truck Leasing,
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **August 16, 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 **Amount owed for payment of PTD benefits based upon settlement of Third-Party case/stipulation as to the payment of TTD and medical expenses and agreement regarding qualifying Section 8(j) benefits.**

FINDINGS

On **11/22/2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner, Michael LaBud, 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 $**57,400.00**; the average weekly wage was $**1,103.85**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**170,400.12** for TTD, $**0** for TPD, $**0** for maintenance, and $**1,064,196.94** for other benefits, for a total credit of $**1,234,637.06**, per the agreement of the Parties.

Respondent is entitled to a credit under Section 8(j) of the Act, as set forth below.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $735.90/week for 1 week, commencing March 25, 2019 through March 31, 2019, per the agreement of the Parties, and as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services set forth in PX 3, pursuant to the Medical Fee Schedule, and as set forth below.

Respondent shall pay Petitioner permanent and total disability benefits of $735.90/week for life, commencing March 31, 2019, as provided in Section 8(f) of the Act. Respondent to receive credit against this portion of the award for indemnity payments made after March 31, 2019.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

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

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

JANUARY 25, 2023

Signature of Arbitrator

STATEMENT OF FACTS:

Michael LaBud "Petitioner" sustained catastrophic injuries in a truck accident in Indiana arising out of and in the course of his employment by Respondent on November 22, 2017. Petitioner was initially transported to Carle Foundation Hospital on that date and diagnosed with the following injuries, among others, as a result of the subject accident: Peritoneal hematoma, traumatic cerebral intraparenchymal hemorrhage, basilar skull fracture, acute kidney injury, pelvic and lumbar vertebrae fractures, acute respiratory failure and a diaphragmatic rupture. Brain imaging revealed diffuse edema with bleeding and axonal shearing.

Petitioner's injuries necessitated treatment including language therapy, physical therapy, occupational therapy and life skills training. On December 19, 2018, Petitioner came under the care of Dr. Bonita Alexander at Shirley Ryan Ability Lab/Alexian Brothers Day Rehabilitation. As of February 27, 2019, Petitioner was noted to not be independent in transfer and in need of further training. It was felt he would benefit from continued skilled physical therapy to address functional limitations and impairments. Petitioner remains under the care of Dr. Alexander who continues to prescribe rehabilitative therapy including speech and occupational therapy. (PX 5)

To date, Petitioner has not regained the ability to return to employment. The Parties stipulated that Petitioner is permanently and totally disabled.

Petitioner filed a third-party case for the subject accident in the United States District Court for the Northern District of Indiana captioned LaBud v. J&C Styck Farms Inc., and Colton J. Styck, Cause No.: 4:18-CV-42-JEM. Petitioner's wife, Lorella LaBud, filed a claim for her loss of consortium. Respondent, through its attorneys herein, filed an intervening Petition in the third-party case asserting its lien rights under Section 5(b) of the Act. The lien was said to be in excess of $1.5 Million as of 12/11/2020. (PX 1)

On December 6, 2021, the Parties in the third-party case, including counsel for Intervenor/Respondent, filed a Joint Consent to Magistrate and Stipulation to Dismiss executed by Counsel for each party. (PX 1, p.1) This Joint Consent was entered in accordance with the agreed terms of settlement memorialized in the Transcript of the Judicial Settlement proceedings conducted on September 23, 2021. (PX 1, pp.5-31) On December 9, 2021, the Federal Court entered an Order incorporating the agreed terms of the settlement and dismissed the third-party case with prejudice. (PX 1, pp.3-4)

Third-party Defendant Styck Farms maintained liability limits of $1 Million applicable to the subject accident. (PX 1, p.12) Prior to settlement, approximately $10,000.00 of the policy had been exhausted for environmental cleanup of the accident site, leaving a balance of $991,546.63. (PX 1, p.13) Styck Farms' carrier agreed to tender the balance of the policy as part of the settlement. Defendant, Styck Farms, personally agreed to pay an additional sum of $250,000.00 pursuant to a promissory note. (RX 4, ex.A)

Pursuant to the Agreed terms of Settlement between all parties to the third-party case, as approved by the Trial Court, the proceeds of the settlement were allocated as follows:

- Intervenor/Respondent L.A. Truck Leasing, Inc. accepted the sum of $540,000.00 in full and complete satisfaction of its Section 5(b) lien rights asserted against the third-party claim. All remaining rights of Respondent and Petitioner as they related to the ongoing workers' compensation claim (Medical, TTD, PTD benefits) were reserved to the Commission.
- The remaining proceeds of the settlement totaling $451,546.00, were allocated to Lorella LaBud in settlement of her Loss of Consortium claim and for payment of attorney's fees.
- The Defendant's promissory note in the amount of $250,000.00 was payable to Lorella LaBud as further consideration of the settlement of her Loss of Consortium claim.
- Petitioner, Michael LaBud, personally received no monies from the settlement of the Third-Party action. (PX 1, pp. 3-4)

All parties to the third party case, through their respective Counsel, stipulated that they agreed to the terms of the settlement as placed on the record in the civil case and that all parties were fully bound going forward. Counsel for Respondent represented to the Court that he was Counsel and Representative of the Intervenor/Respondent and had authority to speak for and bind that entity to any settlement. The third party parties further agreed that all prior motions and responses thereto were withdrawn in light of the settlement. (PX 1, pp.20-26)

The Parties herein stipulated that Petitioner's Average Weekly Wage was $1,103.85 resulting in a TTD/PTD rate of $735.90. (Arb. X 1) It was further stipulated that on February 7, 2022, Respondent reduced Petitioner's weekly lost time benefits to $189.76.

The Parties stipulated that Respondent would pay the medical expenses itemized in PX 3 pursuant to the fee schedule. The Parties stipulated that Respondent is entitled to a credit for any

qualifying payments pursuant to the terms of section 8(j) of the Act. Respondent further stipulated that it would pay Petitioner the sum of $735.90, representing one-week of unpaid TTD benefits for the period 03/25/2019 through 03/31/2019.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to ("L") What is the nature and extent of the injury, ("N") is Respondent due any credit, and ("O") Stipulation as to payment of TTD and Medical Expenses and Stipulation regarding any qualifiying payments pursuant to the terms of Section 8(j), the Arbitrator finds the following:

The Arbitrator adopts the above Statement of Facts in support of the Conclusions of Law set forth below. Decisions of an Arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

On November 22, 2017, Michael LaBud suffered devastating injuries from a truck accident while working for Respondent. He has never returned to work and the Parties stipulated that he is permanently and totally disabled. It is further stipulated that his Average Weekly Wage was $1,103.85. Accordingly, Petitioner is entitled to receive the sum of $735.90 per week for the remainder of his life, in accordance with Section 8(f) of the Act.

Respondent commenced the payment of weekly benefits following the subject accident. On February 7, 2022, Respondent reduced the amount of the weekly benefit to the sum of $189.76. The issue before the Arbitrator as framed by the Parties is the "amount owed for permanent total disability benefits based upon Petitioner's settlement not fully reimbursing Respondent's Section 5(b) lien." (Arb. X 1) The question is whether Respondent is entitled to any ongoing credit against the ongoing weekly PTD benefits owed, pursuant to Section 5(b) of the Act.

Section 5(b) provides that where the injury for which compensation is payable under the Act is under circumstances creating a legal liability for the damages on the part of some person other than the employer, legal proceedings may be taken against such other person to recover damages notwithstanding

employer's payment of benefits. If the employee brings such an action and settlement is made with such other person, then from the amount received by the employee, there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee. (820 ILCS 305/5(b)

When such actions are commenced by the employee, the employer may join in the action upon motion so that all Orders of Court after hearing shall be made for the employer's protection. No release or settlement of such a claim for damages by reason of such injury shall be valid without the written consent of both employer and employee, except in the case of the employers, such consent is not required where the employer has been fully indemnified or protected by Court Order**.** (820 ILCS 305/5(b) The plain meaning of Section 5(b) imposes the duty of protecting the employer's lien upon the Court.

In those circumstances where the third-party claim is settled prior to the conclusion of a pending worker's compensation claim, the employer is entitled to a lien against the recovery to the extent of all benefits paid to date. Harder v. Kelly, 369 Ill. App.3d 937 (1st. Dist. 2007) If the amount recovered by the employee exceeds the amount of the accrued lien, the employer is then entitled to a credit against future payments owed to the extent of the employee's excess recovery over and above the amount of the lien satisfied at the time of settlement. Zuber v. Illinois Power, 135 Ill. 2d 407 (1990) The "credits against future payments owed by the employer" are only available until the amount of the settlement or the judgment obtained by the worker have been exhausted. Bayer v. Panduit Corp., 2016 Il 119553 (2016). See also: Selleck v. The Industrial Commission, 233 Ill App. 3d 17 (4th Dist. 1992) "The credit against future compensation to the claimant is based on the claimant's recovery against the third-party tortfeasor." **Id.** at 21.

In the event the recovery in the third-party action is less than the existing lien, employer is only entitled to the monies recovered. "The Act does not require a workers' compensation settlement

agreement to fully compensate the employer in order to be valid". In Re Estate of Dierkes, 191 Ill. 2d. 326 (2000).

Enforcement of the lien and allowing credits against future benefits owed, prohibits an employee from receiving a double recovery, one from the third party and the other from his employer. Continental Casualty Company v. Sweda 113 Ill. App. 2d 423 (1st. Dist. 1969)

Lorella LaBud instituted a claim for loss of consortium in the third-party case. (PX 1) Illinois Courts have recognized that a claim for loss of consortium is essentially an independent right of recovery and an employer will not be entitled to a Section 5(b) reimbursement from an employee's spouse's recovery. Page v. Hibbard 119 Ill.2d 41 (1987) Accordingly, an employer's lien rights arising under Section 5(b) do not attach to any portion of a settlement allocated to a claim for loss of consortium.

A claim for loss of consortium will be given legal effect only when fully and fairly determined by an impartial trier of fact, or when the insurance carrier is invited to participate in the settlement negotiations. Blagg v. Illinois F.W.D. 143 Ill. 2d 188 (1991) citing Dearing v. Perry, 499 N.E.2d 268 (Ind.App.1968)

During the pendency of the third-party case, a Motion to Approve Settlement was filed on behalf of the LaBuds, proposing an allocation of the settlement proceeds. (RX 4) Respondent/ Intervenor filed a Response to the motion contending: 1) No Order could be entered without its consent or fully protecting Respondent's lien rights and 2) The proposed allocation of the settlement as it relates to Lorella's claim for loss of consortium was without evidentiary basis. (RX 5) Thereafter, the Response and all other pending motions were withdrawn by consent, given the ultimate settlement of the claim and allocation of the settlement proceeds, by agreement of all of the parties to the third party case, as memorialized by Order of the Court. (PX 1, pp.3-4, 15-16)

The parties in the third-party case, including Respondent, were represented by Counsel and agreed to the settlement of the claim as set forth in the Order entered therein. With the consent of counsel, Respondent accepted the sum of $540,000.00 in full and complete satisfaction of the 5(b) lien asserted against that recovery. All remaining settlement proceeds were allocated to Lorella LaBud for her loss of consortium and attorney's fees. Michal LaBud received no proceeds of the third-party case settlement as agreed to by the parties therein and approved by the Court per its Order. (PX 1)

The effect of this settlement is to determine and limit Respondent's Section 5(b) recoverable lien in the third-party case to $540,000.00. Respondent would subsequently be entitled to a lien for payment of ongoing medical and indemnity benefits paid thereafter if there were any legal liability for damages of some person other than Respondent and the parties released via the settlement of the third-party case. There was no evidence of the viability of any such claim adduced.

After the settlement order was entered in the third-party case, Respondent reduced Petitioner's weekly lost time benefits to $189.76. It would appear Respondent is attempting to take a credit against future/ongoing PTD benefits as the monies recovered in the Third-party action were less than its accrued and ongoing lien. Assuming this to be accurate and based on the foregoing, the Arbitrator finds that Respondent is not entitled to any ongoing 5(b) credit against the Permanent Total Disability benefits due and owing and awarded to Petitioner. There is no double recovery by Michael LaBud under these circumstances.

The fact that the third-party recovery was less than the existing 5(b) lien is not probative. The settlement agreement entered herein was valid, as Respondent received all monies allocated to the Petitioner by its agreement. In Re Estate of Dierkes, 191 Ill. 2d 326 (2000) Respondent consented to the allocation of the proceeds and to its ongoing rights and obligations in the pending workers' compensation case and agreed to the withdrawal of its objections to the settlement allocations as a part of the settlement of the third-party case.

Respondent has failed to set forth a legal basis for the reduction in Petitioner's weekly benefits and there is no evidence in support thereof. It appears to be taking a credit for monies never recovered by the Petitioner. Given that all the funds allocated to Michael LaBud were ordered paid to the Respondent, no recovery was realized by Michael LaBud in excess of Respondent's lien. There was no recovery by Petitioner such that an offset to ongoing benefits would be proper, such as in the Bayer v. Panduit Corp., 2016 IL 119553 (2016) case. The Section 5(b) recovery was less than the total lien amount and Respondent accepted $540,000.00 in satisfaction of its Section 5(b) lien to date.

The bottom line is that Respondent's rights under Sec. 5(b) were protected by its intervention into the third-party case and its agreement to the Order of Settlement entered therein. The settlement as allocated, does not result in a double recovery to Petitioner as he has not and will not realize any recovery from the third-party case. Respondent cannot take an ongoing credit for monies never recovered by Petitioner. Respondent cannot now be absolved of its obligation to pay ongoing PTD benefits based on issues properly reserved to the Commission.

Petitioner has never returned to work following the subject accident. The medical records establish that he is permanently and totally disabled. (PX 5) The Parties stipulated that temporary total disability benefits were owed through March 31, 2019. The Arbitrator finds that Petitioner reached maximum medical improvement as of that date and that PTD benefits are due thereafter.

For the foregoing reasons, Respondent shall pay Petitioner permanent and total disability benefits of $735.90 per week for life, commencing March 31, 2019. Respondent is to receive credit for all payments made since that date. Respondent is not entitled to ongoing credits against the PTD benefits based on the settlement of the third-party case, as explained above.

Pursuant to the stipulation of the Parties, Respondent to shall pay the medical expenses identified in PX 3, pursuant to the fee schedule. Respondent shall pay Petitioner the sum of $735.90 for the unpaid period of temporary total disability of March 25, 2019

through March 31, 2019. Respondent is entitled to a credit for any qualifying payments pursuant to the terms of Section 8(j) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015586
Case Name	Marcus Dixon v. TBC Corporation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0295
Number of Pages of Decision	12
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Mark Connolly
Respondent Attorney	Martin T. Spiegel

DATE FILED: 6/18/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Marcus Dixon,

Petitioner,

vs. NO: 22 WC 015586

TBC Corporation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, prospective medical, causal connection between accident and cervical condition and need for treatment for that condition and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 3, 2023 is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $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.

June 18, 2024
CMD/ypv
O: 061124
045

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

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

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015586
Case Name	Marcus Dixon v. TBC Corporation
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Mark Connolly
Respondent Attorney	Martin T. Spiegel

DATE FILED: 8/3/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 1, 2023 5.27%

/s/Frank Soto, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Marcus Dixon
Employee/Petitioner

v.

TBC Corporation
Employer/Respondent

Case # **22** WC **015586**

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 **Soto**, Arbitrator of the Commission, in the city of **Wheaton**, on **07/06/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **06/03/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**39,520.00**; the average weekly wage was $**760.00**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **1** dependent children.

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

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

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

ORDER

The Arbitrator finds that Petitioner's current cervical condition is causally related to his work injury, as set forth in the Conclusions of Law attached hereto.

Respondent shall pay for the surgery recommended by Dr. Singh consisting of C5-6 hemi corpectomy, hardware removal with total disk replacement versus a re-arthrodesis with instrumentation including of reasonable pre and post surgery radiographic imaging, post-operative care, post-operative therapy, medication pursuant to Sections 8.2 and 8 (a) of the Act and subject to the fee schedule, as set forth in the Conclusions of Law attached hereto.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

By: /o/ Frank J. Soto
Arbitrator

AUGUST 3, 2023

Procedural History

This case proceeded to trial on July 6, 2023 pursuant to Sections 19(b) and 8(a) of the Act. The disputed issues are whether Petitioner's current condition of ill-being is causally connected to his June 3, 2022 work accident and whether Petitioner is entitled to prospective medical treatment consisting of a cervical revision fusion surgery. (Arb. Ex. #1).

Findings of Fact

Marcus Dixon (hereinafter referred to as "Petitioner") testified he underwent cervical fusion surgery at C5-C6 on March 4, 2022, was released to return to work full duty on April 12, 2022 and returned to full duty work as a truck driver for TBC Corporation (hereinafter referred to as "Respondent") and continued to work full duty until being involved a motor vehicle accident on June 3, 2022. (TR p. 15 - 16).

Petitioner testified he was injured on June 3, 2022 while making a tire delivery. Petitioner testified his vehicle struck a wall after swerving out of the way of another vehicle. (TR p. 9). Petitioner described the impact as heavy. (TR p. 9). Petitioner testified immediately after the accident he began to experienced neck pain on the right side of his neck. (TR p. 10). Petitioner testified prior to the motor vehicle accident he was experiencing some soreness on the left side but after the accident he began to experience right sided neck pain which was more severe. (TR. P. 16). The Arbitrator found Petitioner's testimony to be credible regarding the onset of his symptoms after the June 3, 2022 motor vehicle accident.

On June 8, 2022, Petitioner sought medical treatment at Gottlieb Memorial Hospital. X-rays were taken and Petitioner was told to follow up with his doctor. On June 14, 2022, Petitioner presented to Concentra Medical Center reporting neck and right shoulder pain and physical therapy was recommended. (TR p. 10; PX. 1). Thereafter, Petitioner started treating with Dr. Singh for his neck and Dr. Verma for his right shoulder at Midwest Orthopedics. (PX. 2).

Petitioner underwent a cervical MRI, CT scan and x-rays. Dr. Singh's August 29, 2022 medical records state that Petitioner underwent a C5-6 ADCF in March of 2022 and after returning to work he was injured in June of 2022 and since that time Petitioner has experienced significant difficulty with the right upper extremity pain. Petitioner reported dexterity issues and weakness in the right upper extremity. Dr. Singh's examination showed a positive Spurling's sign on the right. Dr. Singh reviewed the cervical CT scan which, he said, showed post C5-6 ACDF with incomplete body consolidation while the x-ray showed possible cage subsidence at C4-5. Dr. Singh indicated

Petitioner has significant weakness with lifting and dropping items and the CT and MRI scans confirm a pseudoarthrosis at C5-6 with residual right greater than left neuroforaminal stenosis consistent with Petitioner's symptomatology. (PX. 2).

Petitioner returned to Dr. Singh on November 7, 2022 reporting persistent neck pain, right greater than left trapezial pain, numbness and tingling into the upper deltoid and intermittent numbness and tingling along the biceps and forearm on the right side. At this time, Dr. Singh recommended surgery consisting of a C5-6 hemicorpectomy, hardware removal with possible disk replacement versus rearthrodesis with instrumentation. Dr. Singh opined Petitioner's complaints were consistent with C6 radiculopathy and that the radiographic findings confirm a nonunion at C5-6 with residual right greater than left neuroforaminal stenosis consistent with Petitioner's symptomatology. (PX. 2).

On February 3, 2023, Petitioner was examined by Dr. Tibor Boco, pursuant to Section 12 of the Act. At that visit, Petitioner reported during the accident he felt his neck shaken and that the accident led to the onset of neck pain and right upper extremity pain which radiated down to his right middle and ring finger. Dr. Boco noted Petitioner previously underwent an anterior cervical discectomy and fusion surgery which improved his condition. (RX. 1).

The examination of the cervical spine noted a positive Spurling's Test centrally, decreased sensation to pin circumferentially in the right upper extremity relative to the left and decreased sensation to light tough circumferentially in the right upper extremity relative to the left. Dr. Boco reviewed an intraoperative fluoroscopic image of the cervical spine, dated March 4, 2022, showing proper hardware placement and an x-ray of the cervical spine, dated March 15, 2022, showing properly positioned hardware. The Arbitrator notes that Dr. Boco did not review any diagnostic studies taken after Petitioner's June 3, 2022 motor vehicle accident including the cervical CT, MRI, and x-rays taken on August 29, 2022.

Dr. Boco diagnosed strains of the muscle, fascia, and tendon at the neck level. Dr. Boco opined Petitioner suffered a musculoskeletal strain of the cervical spine in the setting of the prior anterior cervical discectomy and fusion at C5-6. Dr. Boco further opined the motor vehicle accident caused a temporary exacerbation of Petitioner's pre-existing cervical issues. Dr. Boco said the natural history of a musculoskeletal strains of the neck usually leads to resolution of symptoms within 6-12 weeks and that Petitioner should have reached MMI on September 3, 2022 at the latest. Dr. Boco said there was absolutely no objective evidence to suggest any aggravation

of Petitioner's prior C5-6 anterior cervical discectomy and fusion based on the subjective account provided and the objective evidence gathered. Dr. Boco also did not believe work restrictions were needed based upon his cervical strain diagnosis. Dr. Boco further opined surgical intervention was not indicated for the treatment of musculoskeletal strains of the cervical spine. (RX. 1).

On February 28, 2023 Dr. Singh authored a letter responding to the Dr. Boco's opinions. Dr. Singh believed Dr. Boco should review the cervical CT to confirm whether the fusion had healed. Dr. Singh disagreed with Dr. Boco's assessment stating that Petitioner's neck pain with upper extremity dysesthesias following the June 3, 2022 work accident aggravated his underlying condition requiring surgical intervention. Dr. Singh said his examination showed a positive Spurling's sign with weakness along the biceps wrist extension consistent with a C6 radiculopathy. Dr. Singh further said the cervical CT scan showed a clear nonunion at C5-6 with neuroforaminal stenosis, right greater than left consistent with Petitioner's symptomatology and causally connected to Petitioner's June 3, 2022 injury. Requesting approval for the recommended surgery (*i.e*. C5-6 hemi corpectomy, hardware removal with total disk replacement versus a re-arthrodesis with instrumentation) Dr. Singh said Petitioner's neurological deficit, correlating subjective complaints of pain, and CT imaging demonstrates a clear surgical non-union. (PX. 2).

Conclusions of Law

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

With respect to issue "F", whether Petitioner's current condition of ill-being is causally related to her employment injury, the Arbitrator finds as follows*:*

In pre-existing condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of a pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n,* 92 Ill.2d 30, 36-37. When an employee with a preexisting condition is injured in the course and of his employment the Commission must decide whether there was an accidental injury which arose out of the employment, whether the accidental injury aggravated or accelerated the preexisting condition or whether the preexisting condition alone was the cause of the injury. *Sisbro, Inc. Industrial*

Comm'n, 207 Ill.2d 193, 278 Ill.Dec. 70,797 N.E.2d 665, (2003). A work activity is a sufficient cause of the aggravation of a pre-existing condition if the work activity presented risks greater than those to which the general public is exposed. *Twice Over Clean, Inc. v. The Industrial Commission*, 809 N.E.2d 778 (Ill.App.3 Dist. 2004). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982). Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before the accident and decreased ability to still perform immediately after an accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill.2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96-97, 197 Ill. Dec. 502, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 666, Ill. Dec. 347, 442 N.E.2d 908 (1982).

The Arbitrator has carefully reviewed and considered all medical evidence along with all testimony. The Arbitrator concludes Petitioner has proven by the preponderance of the evidence that his current cervical condition is causally related to his work accident of June 3, 2020. Because this hearing sought approval for surgery involving the cervical spine the Arbitrator makes no finding regarding Petitioner's low back and right shoulder conditions.

The Arbitrator finds the opinions of Dr. Singh more persuasive than the opinions of Dr. Boco. The examinations by both Drs. Singh and Boco noted positive Spurling's Test and neurological deficits in Petitioner's right upper extremity. Dr. Singh also reviewed Petitioner's post-motor vehicle accident diagnostic studies including the cervical CT scan which showed a clear nonunion at C5-6 with neuroforaminal stenosis, right greater than left. Dr. Singh opined the CT scan shows "*a clear nonunion at C5-6 with neuroforaminal stenosis, right greater than left consistent with symptomatology and causally connected by the date of injury of June 3, 2022*." Dr. Singh further opined that, "*The claimant reported neck pain with upper extremity dysesthesias following his June 3, 2022 work accident which I believe aggravated his underlying condition for which I am recommending surgical intervention*." (PX. 2).

The only diagnostic studies Dr. Boco reviewed were taken prior to Petitioner's June 3, 2022 motor vehicle accident and those studies showed properly positioned hardware without any evidence of complications. The Arbitrator finds Petitioner's pre-motor vehicle accident diagnostic

studies showing properly positioned hardware without any evidence of complications supports Dr. Singh's causation opinions. The Arbitrator finds Dr. Boco's opinions are based upon incomplete and insufficient information causing his opinions to be unpersuasive. Dr. Boco did not request to review the post-motor vehicle accident diagnostic studies nor does he address the positive neurological deficits identified during the examination. Dr. Boco renders his opinions but states that his opinions are "*based on the subjective account provided and the objective evidence gathered*". (RX. 1).

Dr. Boco opined Petitioner reached MMI based upon the natural history of musculoskeletal strains of the neck which usually leads to resolution of symptoms within 6-12 weeks. Dr. Boco also opined the motor vehicle accident only caused a temporary exacerbation of Petitioner's pre-existing cervical issues but Dr. Boco failed to identify which pre-existing cervical issues existed, if any, the nature of Petitioner's preexisting cervical condition, and when Petitioner returned to his pre-motor vehicle condition. Dr. Boco also opined Petitioner reached MMI in 6-12 weeks or by September 3, 2022 at the latest. Dr. Boco failed to proffer any support that Petitioner's condition resolved by September 3, 2022. The Arbitrator finds Dr. Boco's opinions nothing more than guess, surmise or conjecture. It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill.App.3d 507, 514-15 (First Dist. 2000).

The Arbitrator also finds Petitioner sustained his burden of proof under the Chain of Event's Analysis. Prior to the motor vehicle accident, Petitioner was able to perform his job duties and soon after the accident he could not. Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before the accident and decreased ability to still perform immediately after an accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill.2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96-97, 197 Ill. Dec. 502, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 666, Ill. Dec. 347, 442 N.E.2d 908 (1982).

With respect to issue "K" whether Petitioner is entitled to prospective medical care, the Arbitrator finds as follows:

The Arbitrator finds Petitioner proved by the of the preponderance evidence that he is entitled to prospective medical treatment. Respondent denied the recommended treatment based upon causation. As stated above, the Arbitrator found Petitioner's condition was caused by his work accident. As such, Respondent shall pay for the surgery recommended by Dr. Singh consisting of C5-6 hemi corpectomy, hardware removal with total disk replacement versus a re-arthrodesis with instrumentation including of reasonable pre and post surgery radiographic imaging, post-operative care, post-operative therapy, medication pursuant to Sections 8.2 and 8 (a) of the Act and subject to the fee schedule.

By: /o/ Frank J. Soto — August 2, 2023

Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC019065
Case Name	Kiesha Stutts v. University of Illinois Hospital
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0296
Number of Pages of Decision	19
Decision Issued By	Christopher Harris, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Gerald Connor
Respondent Attorney	Pankhuri Parti

DATE FILED: 6/18/2024

/s/Christopher Harris, Commissioner

Signature

DISSENT: /s/Marc Parker, Commissioner

Signature

24IWCC0296

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KIESHA STUTTS,

Petitioner,

vs. NO: 20 WC 19065

UNIVERSITY OF ILLINOIS HOSPITAL,

Respondent.

DECISION AND OPINION ON REVIEW

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

For reasons stated below, the Commission modifies the Arbitrator's decision and finds that Petitioner's right foot condition reached maximum medical improvement ("MMI") as of December 31, 2021, the date of Dr. Candido's Section 12 examination. The Commission further finds that Petitioner is entitled to TTD benefits from July 10, 2020 through December 31, 2021, and vacates the award of maintenance benefits as Petitioner was capable of returning to full duty work as of December 31, 2021. Finally, the Commission finds that the Petitioner sustained 20% loss of use of the right foot. All else is affirmed and adopted.

It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980). After reviewing the evidence, the Commission finds Petitioner's claimed level of disability is contradicted by the record. The Petitioner testified that her pain levels reached a 10 out of 10 and that she had to use a cane or a CAM boot and that her

pain limited her ability to function.

Dr. Kodros and Dr. Candido questioned Petitioner's claimed level of disability. Dr. Kodros appreciated no skeletal injury to Petitioner's foot and noted that her subjective injury was not supported by the objective evidence. Similarly, Dr. Candido noted that Petitioner's symptoms were inconsistent with his clinical examination and he was unable to explain why Petitioner had such severe levels of pain. Dr. Candido stated this was a sign of symptom magnification. Dr. Candido also noted that Petitioner's foot was so tender that he could only place a cotton pledget on her foot. Despite this, he noted Petitioner had a fresh pedicure, which he stated was unlikely given her complaints of pain. Dr. Candido placed Petitioner at MMI as of December 31, 2021 and stated she was capable of full duty, unrestricted work.[1]

Additionally, Respondent's Exhibit 9, which includes publicly published photographs of Petitioner during the pendency of this case, does not lend credence to Petitioner's alleged injuries to the same extent she reported to her treating physicians. None of the images include a cane or CAM boot, and reflect activities which do not convincingly align with the extent of Petitioner's disability she alleged at arbitration. Analyzed in tandem with the medical opinions described above, the Commission finds that Petitioner reached MMI and was capable of returning to full duty, unrestricted work as of December 31, 2021.

In order to prove entitlement to TTD benefits, a claimant must establish not only that she did not work, but that she was unable to work. *Sharwarko v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 131733WC, ¶ 49, 390 Ill. Dec. 293, 28 N.E.3d 946. Once an injured employee's physical condition stabilizes or she has reached MMI, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118, 561 N.E.2d 623, 149 Ill. Dec. 253 (1990). Factors to be considered in determining whether a claimant has reached MMI include whether she has been released to return to work, medical evidence, and testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072, 820 N.E.2d 570, 289 Ill. Dec. 794 (2004). The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Archer Daniels Midland*, 138 Ill. 2d at 119-20.

As noted above, per Dr. Candido's findings, the Commission modifies the TTD award and finds Petitioner is entitled to TTD benefits from July 10, 2020 through December 31, 2021. As Petitioner was capable of working full duty, the Commission vacates the award of maintenance benefits.

Next, the Commission modifies the Arbitrator's Decision related to PPD benefits. The Commission weighs the five factors under Section 8.1b of the Act as follows:

[1] The Commission acknowledges that part of Dr. Candido's opinion was premised upon videos of the Petitioner and that those videos were not offered into evidence. The Commission assigns no weight to his statements relating to the videos not offered into evidence.

(i) Impairment Rating: The parties did not offer an impairment rating into evidence. The Commission gives this factor no weight.

(ii) Occupation of Injured Employee: The Petitioner worked for the Respondent as an operating room nurse technician for 9 years. She is required to be on her feet throughout the day. While she was released to work full duty, she will encounter the effects of her foot injury throughout her workday. The Commission gives this factor some weight.

(iii) Petitioner's Age: The Petitioner was 33-years old at the time of the injury and has a longer work life expectancy remaining. The Commission gives this factor some weight.

(iv) Petitioner's Future Earning Capacity: There is no evidence in the record as to a reduced earning capacity. The Commission gives this factor no weight.

(v) Evidence of Disability: Dr. Candido diagnosed Petitioner with a crush injury to the dorsum of the right foot. She received two injections and was returned to work full duty. Petitioner's pain complaints, however, are not supported by the record. Both Dr. Candido and Dr. Kodros noted that her subjective complaints were not supported by the objective evidence. Further, the Facebook photos directly contradict her complaints of pain. The Commission gives this factor less weight.

In light of the foregoing, with no single enumerated factor being the sole determinant of disability, the Commission finds that Petitioner is entitled to 20% loss of use of the right foot.

Lastly, the Commission corrects the clerical error under the findings section of the Arbitrator's decision. The date of injury was July 9, 2020, not July 20, 2020 as noted by the Arbitrator. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed June 30, 2023, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $478.18 per week for a period of 77-1/7 weeks, July 10, 2020 through December 31, 2021, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of maintenance benefits from July 17, 2021 through October 28, 2022 is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $426.76 per week for a period of 33.4 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 20% loss of use of the right foot.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $22,971.57 for medical expenses under §8(a) of the Act and subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall be given a credit for payments made by the group medical plan and shall hold Petitioner harmless from any and all claims by any provider of the services for which Respondent is receiving this credit, as provided in Section 8(j) 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.

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

June 18, 2024

O: 5-23-24
CAH/tdm
052

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

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

DISSENT

I respectfully dissent from the Decision of the Majority. I would have affirmed and adopted the Arbitrator's decision in its entirety, for the reasons stated therein.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC019065
Case Name	Kiesha Stutts v. University of Illinois Hospital
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Gerald Connor
Respondent Attorney	Pankhuri Parti

DATE FILED: 6/30/2023

/s/Crystal Caison, Arbitrator
Signature

INTEREST RATE WEEK OF JUNE 27, 2023 5.21%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kiesha Stutts
Employee/Petitioner

v.

University of Illinois Hospital
Employer/Respondent

Case # **20** WC **019065**

Consolidated cases: **-**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago**, on **10/28/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

Case No. 20WC019065

FINDINGS

On **07/20/2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**36,986.04**; the average weekly wage was $**711.27**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **3** 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 $**$39,966.66** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0** for other benefits, for a total credit of $**39,966.66**.

Respondent is entitled to a credit of $**28,937.13** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner has met her burden of proving that her current condition of ill-being is causally related to the work accident of July 9, 2020.

The Arbitrator orders the Respondent to pay all reasonable and necessary medical services as set forth under issue "J". Respondent shall pay directly to Petitioner $22,971.57 in remaining unpaid medical benefits pursuant to section 8(a) of the Act per the Illinois fee schedule. 8(j) credit is inapplicable.

The Arbitrator finds that Respondent shall pay Petitioner Temporary Total Disability from 7/9/20 to 7/16/21 or 53 and 2/7 weeks at the TTD rate of $478.18 pursuant to section 8(b) of the Act. Further, Respondent shall pay Petitioner maintenance benefits from 7/17/21 to 10/28/22 representing 67 weeks at a rate of $478.18.

The Arbitrator finds, awards and orders Respondent to pay Petitioner 50% loss of use person as a whole or 250 weeks in permanent partial disability benefits at the PPD rate of $426.76 based on a loss of occupation pursuant to section 8(d)(2) of the Act.

The Arbitrator declines to impose penalties.

Case No. 20WC019065

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

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

Crystal L Caison

Signature of Arbitrator

June 30, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Kiesha Stutts Petitioner, v. University of Illinois Hospital Respondent.	)	Case No. 20WC019065

PROCEDURAL HISTORY

This matter proceeded to hearing on October 28, 2022 before Arbitrator Crystal L. Caison. Issues in dispute include causal connection, medical bills, maintenance benefits, TTD benefits, nature and extent/loss of occupation and penalties. (AX 1)

Over Petitioner's objections, the Respondent moved to admit two exhibits into evidence, RX 5, and RX 9. The Arbitrator overruled the objections and allowed RX 5 and RX 9 into evidence. RX 5 is an IME Addendum and RX 9 is a report on a social media investigation carried out on Petitioner.

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

Petitioner testified she was employed with the University of Illinois Hospital on July 9, 2020 as an operating room nurse technician and had done so for nine years. (T.33) Petitioner testified that she was pulling an over 500 lbs. Neptune suction on July 9, 2020 and it ran over her right foot. (T.23-24) She testified that part of her daily job duties as a nurse technician was to pull heavy medical machinery to help patients. (*Id*. at 24)

Petitioner testified she felt pain after the July 9, 2020 work accident in her right foot radiating up to her right leg, to the right hip, and lower back. (T.25) She testified that following the work accident she immediately went to the ER of University of Illinois Hospital and explained the work accident. *Id.*

Petitioner testified that by October 2020 she was getting temporary total disability benefits and medical benefits from Respondent. (T.28-29)

Petitioner testified that she attempted to return to work with Respondent but was terminated. Petitioner continued to receive TTD during this time.

Petitioner testified that she worked as an operated room nurse technician for nine years. Petitioner was 33 years old at the time of the accident. Petitioner testified that it is not possible to work as a nurse technician with permanent desk only restrictions. Petitioner has no experience working desk only worked. Petitioner's only job experience is labor based. Petitioner has no higher education.

Medical

7/9/20- Petitioner presented to the Emergency Room of University of Illinois Hospital. (PX 1). Petitioner provided a history of the work accident to the ER doctors. Following the hospital visit, the physicians kept Petitioner off work. Petitioner underwent an x-ray of the right foot and was prescribed crutches and an orthopedic shoe. Petitioner followed up with University of Illinois hospital doctors throughout July. Petitioner was then advised to follow up with a specialist. *Id*.

8/12/20-Petitioner presented to a specialist, Dr. Najera recommended an MRI of the right foot, advised Petitioner to remain off work, and suggested a course of physical therapy and pain management.

8/14/20 -Petitioner underwent the MRI and the scan did not reveal any evidence of acute pathology; however, there was evidence of a mild hallux valgus deformity with evidence of degenerative osteoarthropathy of the first metatarsophalangeal joint. (PX 3)

8/18/20- Dr. Najera referred Petitioner to an orthopedic foot specialist based on these MRI results.

8/21/20- Petitioner followed up with Dr. Peterson at Suburban Orthopedics. Dr. Peterson reviewed the MRI and continued her off work. Dr Peterson opined that Petitioner's right foot injury and complex regional pain syndrome was causally related to work accident of 7/9/20. Petitioner continued a course of physical therapy with Jackson Park Medical Center. Petitioner was advised to remain on an off-work status. (PX. 4).

10/20/20- Petitioner underwent a nerve block injection. (PX 5).

10/21/20- Petitioner presented to Dr. Steven Kodros for a Section 12 exam at the request of Respondent. Dr. Kodros noted that Petitioner reported pain in her right foot and ankle. (RX. 1) Petitioner presented for the evaluation in a wheelchair with a Cam Walker boot on the right lower extremity. *Id.* Dr. Kodros further noted that while Petitioner's symptoms were consistent with the diagnosis of complex regional pain syndrome type 1, she did not manifest objective clinical cardinal findings to support this diagnosis. *Id.* Furthermore, Dr. Kodros noted that the subjective complaints were not supported by objective findings on the current physical exam or the imaging studies. *Id.* While Dr. Kodros believed Petitioner's current right foot and ankle problem was causally related to the July 2020 work accident, there was no indication for further orthopedic/podiatric treatment. *Id.* Petitioner could, however, benefit from evaluation and treatment with a pain management specialist. *Id.* There were no indications for local injections, orthotic managements, or surgical treatment. *Id.*

Dr. Kodros also opined Petitioner needed to be restricted to sedentary duty with limited standing and walking; however, he clarified that the need for the restrictions was based on Petitioner's subjective complaints as opposed to objective findings. *Id.*

3/2/22-Respondent requested a record only addendum report from IME Dr. Candido. Based on alleged video surveillance, Dr. Candido changed his opinion and opined Petitioner could return to work full duty. (RX 5). The addendum report states, "The surveillance videos have each been reviewed." However, no "videos" were presented at trial by Respondent, only photos.

Additional Findings of Fact

On 3/28/22, Respondent cut off TTD benefits and Petitioner began a job search log to secure employment elsewhere based on her permanent light duty restrictions. At that time, Petitioner began a comprehensive job search log and recorded the names, address, date applied, and whether the application was filled out online or in person. Petitioner did the job search log from 3/28/22 to 9/29/22 and authenticated the document at hearing. Petitioner was unable to get employment elsewhere within her permanent restrictions. Petitioner has been off work without income since 3/28/22. (PX 6)

Respondent presented one witness, Emily Dolata, a surveillance monitor. Respondent's witness introduced photographs of Petitioner at her wedding and with her husband.

Petitioner testified that none of the photographs showed her doing anything outside of her permanent work restrictions as issued by her treating orthopedic, Dr. Peterson. No videos were introduced by Respondent as the IME addendum indicated.

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

The Arbitrator personally observed Petitioner and found that she answered all questions asked of her and with no apparent attempt to evade the questions. Petitioner was sincere, credible, and her statements were consistent with medical records and history.

The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. Therefore, the Arbitrator finds the Petitioner to be a credible witness.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator finds that Petitioner's current condition of right foot injury with permanent restrictions is causally related to the accident on July 9, 2020.

In the present case, Dr. Najera (the initial MD), Petitioner's treating orthopedic, Dr. Peterson, and both of Respondent's Independent Medical Examiners Dr. Kodros and Dr. Candido all opined and agreed on causation. Dr. Peterson released Petitioner MMI with permanent restrictions of light duty/desk duty only. Dr. Peterson opined that the permanent restrictions were due to the work injury. (PX 4).

The only dispute is the IME addendum report of Dr. Candido based on "video surveillance" where the IME Dr. Candido changed his opinion. (RX 5) Respondent did not present the video surveillance that Dr. Candido based his second opinion. Thus, the Arbitrator finds Dr. Candido's addendum IME report to be unpersuasive.

Based on the above, as well as the credible evidence, the Arbitrator further finds the medical records and opinions of Dr. Peterson most persuasive.

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

Section 8(a) of the Act states a Respondent is responsible …"for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Having found the Petitioner's current condition of ill-being as it relates to her right foot is causally related the injuries sustained on July 9, 2020, the Arbitrator finds the Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary medical services for causally related treatment Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act and more specifically as follows:

Provider	**Amount**
ADCO Billing Solutions	$1,213.18
AMCI Jackson Park Medical	$5,672.00
EqMD Inc.	$1,276.79
Illinois Orthopedic Network	$750.00
Metro Anesthesia Consultants	$5,612.28
Midwest Specialty Pharmacy	$786.00
Preferred Open MRI	$3,000.00
Preferred Prescriptions Pharmacy	$2,330.09
Suburban Orthopaedics	$2,331.23
Total	**$22,971.57**

Any other bills not submitted or those without reflecting a balance due and owing are denied.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

The Petitioner has proven by the preponderance of the credible evidence that she was temporarily totally disabled from July 9, 2020 through July 16, 2021. The medical records of University of Illinois Hospital, AMCI Jackson Park Medical Center and Suburban Orthopedics put Petitioner on a total off-work status or restricted work status from 7/9/20 (initial visit date) to 7/16/21 (the date of the MMI permanent restrictions release from Dr. Peterson). (PX 1; 2 & 4). These exhibits support the weekly benefits awarded below.

The Arbitrator finds that Respondent shall pay Petitioner temporary total disability benefits of $478.18/week for 53 and 2/7-weeks commencing July 9, 2020 to July 16, 2021, as provided in Section 8(b) of the Act.

The Arbitrator further finds Respondent shall pay Petitioner maintenance benefits from July 17, 2021 to October 28, 2022 representing 67 weeks at a rate of $478.18/week, given that Petitioner introduced a job log showing an unsuccessful effort at gaining employment per her permanent work restrictions (PX 6). This would total 120 2/7 weeks of weekly benefits owed. Respondent shall receive credit for any TTD benefits already paid, or 7/10/20 to 2/19/22 or 84 weeks. The remainder of 36 2/7 weeks are owed by Respondent.

Issues L & O, the nature and extent of the injury & loss of occupation, the Arbitrator finds as follows:

Pursuant to Section 8.1b of the Act, five factors are considered when nature and extent of an injury is considered.

With regard to subsection (i), the Arbitrator gives no weight to this factor as no AMA impairment report was done.

With regard to subsection (ii), the occupation of the employee, the Arbitrator notes the Petitioner works as an operating room nurse technician. This is a physical labor position involving pulling machines over 500lbs, pushing/pulling medical devices, and constantly being on her feet. Petitioner has worked in this occupation for the last nine years. Petitioner's job experience is limited to labor-based employment, and Petitioner's highest level of education is high school. The Arbitrator gives the greatest weight to this factor.

With regard to subsection(iii), the age of the employee, the Arbitrator notes Petitioner was 33 years old at the time of the accident and has a longer work life expectancy. *See Flexible Staffing Services v. Illinois Workers' Compensation Comm'n*, 68 N.E 3d 846 (1st Dist. 2016). The Arbitrator gives greater weight to this factor.

With regard to subsection (iv) future earnings capacity, the Arbitrator gives greater weight to this factor. After being released MMI with permanent desk only/light duty restrictions by the treating orthopedic Dr. Peterson, Petitioner introduced a job log showing that she was unable to secure employment based on the permanent restrictions. On 3/28/22, Respondent cut off TTD benefits and Petitioner began a job search log to secure employment elsewhere based on her permanent light duty restrictions. At that time, Petitioner began a comprehensive job search log and recorded the names, address, date applied, and whether the application was filled out online or in person. Petitioner did the job search log from 3/28/22 to 9/29/22 and authenticated the document at hearing. Petitioner was unable to get employment elsewhere within her permanent restrictions. Petitioner has been off work without income since 3/28/22.(PX 6).

With regard to subsection (v), evidence of disability corroborated by medical records, the Arbitrator notes that Petitioner's testimony was corroborated by the medical records. right foot injury and complex regional pain syndrome with permanent restrictions are causally related to the accident. As stated above, all doctors that examined Petitioner agreed on diagnosis and causal connection. Dr. Najera (the initial MD), Petitioner's treating orthopedic Dr. Peterson, and both of Respondent's Independent Medical Examiners Dr. Kodros and Dr. Candido all opined and agreed on causation. As noted above, the Arbitrator does not find the addendum report issued by Dr. Candido to be persuasive given that the addendum report was based on video surveillance, and no video surveillance was introduced at trial.

Based upon the foregoing evidence and factors, the Arbitrator awards and orders the Respondent shall pay Petitioner 50% loss of use person as a whole or 250 weeks in permanent partial disability benefits at the PPD rate of $426.76 based on a loss of occupation pursuant to section 8(d)(2) of the Act.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

The Arbitrator declines to impose any penalties and fees.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC027286
Case Name	Yolanda Leon v. Labor Network
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0297
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Adam Rosner
Respondent Attorney	Robert Smith

DATE FILED: 6/18/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Yolanda Leon,

Petitioner,

vs. NO: 22 WC 27286

Labor Network,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability (TTD) benefits and prospective medical treatment, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission,* 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

The Commission modifies the Arbitrator's decision on causation and finds Petitioner's ongoing back pain and radicular symptoms are causally related to the work accident. In support, the Commission relies on the opinions of Dr. Pelinkovic over those of Section 12 examiner, Dr. Ghanayem. Dr Pelinkovic opined Petitioner has subjective complaints (low back pain/numbness/tingling) that correlate with her physical exam findings (pain when bending forward/positive straight leg test/decreased sensation in the L4/L5 dermatomal pattern) and are corroborated by her January 12, 2023 MRI. Both Dr. Pelinkovic and the interpreting radiologist note a disc bulge with nerve compression at L4/5. In support of his finding, Dr. Pelinkovic attached specific images to his medical records highlighting the L4/5-disc bulge and stenosis, which the Commission finds persuasive.

The Commission also finds Dr. Ghanayem's opinion an outlier and the basis of his opinion flawed. He is the only provider to record a normal physical examination and find no nerve

compression on MRI. Dr. Ghanayem opined Petitioner's radicular complaints were not related to the work incident because she did not report them for several months. However, the record reflects that Petitioner complained of bilateral lower extremity paresthesia and tingling into her posterior lower extremities to Dr. Chunduri as early as October 12, 2022. (PX2 at 105). Petitioner further reported tingling into her lower extremities during physical therapy on October 18, 2022, (PX3 at 183), November 2, 2022 (PX3 at 193), and November 16, 2022 (PX3 at 227). Both Dr. Pelinkovic and Dr. Ghanayem testified numbness and tingling were radicular symptoms. (RX1 at 447; PX6 at 363). Despite Dr. Ghanayem's testimony that he reviewed Petitioner's previous medical records, it is clear from his testimony that he did not undertake a thorough review of Petitioner's medical records – notably the aforementioned physical therapy records reflecting Petitioner's radicular complaints. Dr. Ghanayem performed one evaluation and found Petitioner at maximum medical improvement with no additional treatment required. Conversely, all of Petitioner's treating providers noted positive exam findings and recommended treatment over the course of several months to help alleviate her pain.

Furthermore, Petitioner was working full duty without pain prior to the undisputed work accident. Immediately after the accident, Petitioner experienced neck/low back pain and sought treatment. She continues to consistently treat for her low back pain and radicular symptoms. Although her radicular symptoms were not present or identical at every medical appointment, she continues to complain of numbness and tingling. Dr. Pelinkovic testified radiculopathy can wax and wane depending on a person's activities. (PX6 at 399, 400). Petitioner continues to have difficulty with daily activities. Accordingly, the Commission finds Petitioner's ongoing radicular complaints causally related to the work accident.

Based on the Commission's finding of causal connection for Petitioner's condition of ill-being, the Commission further finds that Petitioner is entitled to the reasonable and necessary medical expenses incurred in connection with the care and treatment of her causally related conditions.[1] Petitioner continues to have symptoms after January 30, 2023, and continues to treat. Petitioner underwent all recommended treatment to alleviate her ongoing symptoms, including an epidural injection at L4/5. Although Dr. Pelinkovic recommended a surgical decompression at L4/5, he testified an epidural injection was also reasonable to treat Petitioner's symptoms.

The Commission finds Petitioner is entitled to temporary total disability payments from September 30, 2022, through August 29,2023 (trial date). The employer's obligation to pay temporary total disability benefits continues until the employee's medical condition has stabilized. *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 149, 923 N.E. 2d 266, 276 (2010). Petitioner continued to treat and remained symptomatic after January 20, 2023. Petitioner has been off work, per her providers since October 12, 2022. Petitioner's June 23, 2023, medical note placed her off work until her follow-up six weeks later. The Commission finds Petitioner's condition has not stabilized and she is entitled to temporary total disability benefits through the trial date of August 29, 2023.

Last, the Commission awards the decompression at L4/5 recommended by Dr. Pelinkovic. Petitioner had radicular symptoms shortly after the work accident and continued to have

[1] Metro Anesthesia Bill, marked as Petitioner's Exhibit 5, in the amount of $5,640.00, does not name Petitioner but a different patient who is not a party to this case. Respondent is not liable for payment of this bill.

intermittent radicular complaints throughout her treatment. Petitioner reported numbness and tingling in her bilateral thighs and occasionally into her shins to Dr. Pelinkovic. She reported intermittent tingling in her posterior legs down to her ankles to Dr. Chunduri. She reported tingling into her lower extremities in physical therapy. Dr. Ghanayem testified the L4 nerve root traveled down the back of the thigh and could cross around the knee and into the shin. Dr. Pelinkovic testified the L5 distribution would travel down the lateral thigh and into the big toe. Although Petitioner did not complain of radicular pain into her big toe, her remaining radicular complaints followed the nerve paths as described by Dr. Ghanayem and Dr. Pelinkovic. Petitioner underwent physical therapy, medications, and an injection. She continues to be symptomatic and would like the prescribed surgery. Dr. Pelinkovic testified the recommended surgery was the best treatment option to alleviate Petitioner's axial back pain and radicular symptoms.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 9, 2023, is modified. The Commission finds Petitioner has proven her ongoing lumbar and radicular symptoms are causally related to the work incident and is entitled to payment of all causally related medical expenses, temporary total disability benefits from September 30, 2022- August 29, 2023, and the prospective medical treatment as outlined by Dr. Pelinkovic.

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

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay all reasonable, necessary, and causally related medical expenses through August 29, 2023, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner the sum of $346.67 per week for 47 4/7 weeks, commencing September 30, 2022 through August 29, 2023, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall authorize and pay for the surgical decompression at L4/5 as recommended by Dr. Pelinkovic and all attendant care pursuant to Sections 8 and 8.2 of the Act.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $32,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 18, 2024
MP: ns
o 5/23/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC027286
Case Name	Yolanda Leon v. Labor Network
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	James McHargue
Respondent Attorney	Robert Smith

DATE FILED: 11/9/2023

/s/Michael Glaub, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 7, 2023 5.26%

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

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

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

Leon, Yolanda
Employee/Petitioner

v.

Labor Network
Employer/Respondent

Case # **22** WC **027286**

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 **Geneva**, on **August 29, 2023**. After reviewing all-of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **September 30, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**27,040.00**; the average weekly wage was $**520.00**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**1,840.00 (PPD advance)** for other benefits, for a total credit of $**1,840.00**

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

ORDER

Petitioner proved that her cervical condition and her lumbar strain condition of ill-being are causally related to her work injuries. Petitioner failed to prove her radicular condition and her current lumbar medical care are causally related to her work injuries.

Respondent is ordered to pay petitioner temporary total disability benefits in the amount of $346.67 per week for a period of 16 weeks representing the period from September 30, 2002, through January 19, 2023.

Respondent is ordered to pay the petitioner's medical bills through January 30, 2023, pursuant to Illinois Medical Fee Schedule.

Petitioner failed to prove she is entitled prospective medical care under Section 8(a) of the Act.

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

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

Michael Glaub
Signature of Arbitrator
November 9, 2023

STATE OF ILLINOIS)

)SS.

COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Leon, Yolanda
Employee/Petitioner

Case # **22** WC **027286**

v.

Consolidated cases:

Labor Network
Employer/Respondent

This case was heard by Honorable Michael Glaub, Arbitrator of the Workers' Compensation Commission, in the city of Geneva, Illinois, on August 29, 2023. After hearing the testimony and reviewing all the evidence presented, the Arbitrator hereby makes findings on the disputed issues below and includes those findings in this document.

I. FINDINGS OF FACT

Petitioner, Yolanda Leon, testified via an interpreter that on September 30, 2022, she was working for Labor Network, on placement at a cosmetic factory. (Tr. 10-11). She testified that her job duties included working on a line as a packager, putting items into a box and sealing the box. (Tr. 10-11).

On September 30, 2022, Petitioner testified that she was working the line, placing labels on a pallet, and stepped backwards, falling on a pallet that was behind her. (Tr. 11-12). She testified that she hit her mid to low back on the pallet. (Tr. 12-13). She testified that she did not continue working and presented to Advocate Sherman Hospital. (Tr. 13-14).

Petitioner testified that she never experienced any pain whatsoever in her neck and pain prior to September 30, 2022. (Tr. 36). She testified that she never had to take over-the-counter pain medications for any reason. (Tr. 36).

Advocate Sherman

On September 30, 2022, Petitioner presented to Advocate Sherman for an evaluation of her neck and back pain. She reported that she was putting labels on boxes at work and tripped over a pallet causing injury to her upper neck and low back. She reported diffuse tenderness over the soft tissues of the back, pain worse in the cervical and lumbar region. She denied any numbness, tingling, or focal weakness.

However, Petitioner testified that after the accident, she had pain in her neck, mid-back, and low back, radiating down the right leg. (Tr. 30-31).

Range of motion was noted to be limited in all planes. The assessment was soft tissue contusions and a muscular strain and/or contusion secondary to the fall. There was no indication of any skeletal injury. She was prescribed an anti-inflammatory, muscle relaxer, and pain medication. She was provided restrictions of no lifting more than 5 pounds with no overhead work.

On October 4, 2022, Petitioner presented for a follow-up, noting slight improvement in her symptoms, reporting that he has not been working as her employer was unable to follow the restrictions. Physical examination revealed limited rotation and extension with pain noted over the entire spine. She was diagnosed with thoracolumbar pain and provided with a 10-pound lifting restriction. She was also instructed to start therapy.

Petitioner returned for a follow-up of her upper back pain on October 11, 2022. She reported she had been working light duty with no significant improvement and pain at 7/10. Tenderness to palpation was noted in the upper back and lower back. The assessment was acute back pain and Petitioner was restricted to sitting, alternating positions, and no lifting. She was also provided with a ketorolac injection.

Illinois Orthopedic Network / Dr. Murtaza

Petitioner then chose to transfer her medical care to Illinois Orthopedic Network. She presentd for an initial evaluation with Dr. Chunduri on October 12, 2022. She advised she tripped over pallet and fell backward on a hard surface. She reported pain at 10/10 and denied any radiating symptoms in the neck and upper extremities but reported weakness in the arms. She also denied radiating low back pain but did report intermittent tingling in the posterior legs to her ankles, typically in the evening. She also denied paresthesias. She was assessed with neck pain, thoracic pain, a right rib strain, low back pain with bilateral radiculitis, and a lumbar strain. Therapy was recommended and Petitioner was authorized to be off work.

On November 1, 2022, Petitioner presented to Dr. Murtaza. She reported that she was given medications by Advocate Sherman reporting pain up to 10/10. She reported that she underwent six (6) sessions of therapy which was helping, more so in the upper back. She denied any significant radicular symptoms into the upper and lower extremities. Tenderness was noted and she was assessed with thoracic and lumbar pain/strain with paraspinal spasms. The recommendation was to continue therapy and medications, as well as remain off work. An MRI would be considered if she continued to have significant pain.

On November 22, 2022, Petitioner returned to Dr. Murtaza for a follow-up (phone consult). She reported that her pain was reduced since the last visit. The recommendation was to obtain MRIs of the thoracic and lumbar spine. Petitioner was to continue with current treatment regimen and remain off work.

At the December 29, 2022, therapy visit, she noted improvement with overall pain to the low back and that her neck pain had mostly subsided. Petitioner testified at trial that her neck pain remained the same as it was after the accident. (Tr. 32).

Petitioner underwent a total of twenty-one (21) sessions of therapy from October 18, 2022, to December 29, 2022. Petitioner testified that she was provided massages and instructions on exercise but could not perform the exercises because of pain. (Tr. 17-18).

Petitioner underwent an MRI of the cervical spine on January 11, 2023. The radiologist impression was: (1) C3-C4: 2.0 mm disc osteophyte complex causing narrowing of lateral recess and neural foramen bilaterally resulting in compression on exiting nerve roots, (2) C4-C5: 2.9 mm central disc osteophyte complex causing mild indentation on anterior thecal sac, without causing significant compression on the spinal cord and exiting nerve roots, (3) C5-C6: 2.7 mm central and right paracentral disc osteophyte complex indenting the anterior thecal sac and causing narrowing of the right lateral recess and right neural foramen, resulting in compression on right exiting nerve roots, (4) C6-C7: 2.2 mm disc osteophyte complex indenting the anterior thecal sac and causing narrowing of lateral recesses and neural foramina bilaterally more on left side resulting in compression on the exiting nerve roots.

Petitioner also underwent an MRI of the lumbar spine. The radiologist impression was: (1) L1-L2: 1.7 mm diffuse disc bulge indenting the anterior thecal sac and causing bilateral lateral recess and neural foraminal narrowing resulting in compression on exiting nerve roots, (2) L2-L3: 1.2 mm bilateral paracentral disc bulge without causing significant neural encroachment, (3) L4-L5: 3.8 mm diffuse disc bulge with central disc protrusion associated with hypertrophic ligamentum flavum and facet joint arthrosis causing moderate spinal canal stenosis, narrowing of lateral recesses and neural foramina bilaterally resulting in compression on exiting nerve roots.

Petitioner returned to Dr. Murtaza on January 30, 2023, for a follow-up (phone consult). She reported pain in the right low back and buttock, radiating throughout the low back, buttock, and right lower extremity with numbness and tingling in the leg at night. Dr. Murtaza noted that the MRI of the lumbar spine revealed a L4-5 3.8 mm diffuse disk bulge, central disk protrusion associated with hypertrophic ligamentum flavum, facet joint arthrosis causing moderate spinal canal stenosis and bilateral lateral recess stenosis with compression of the exiting nerve root. A lumbar epidural steroid injection at L4-5 was recommended.

Petitioner returned to Dr. Murtaza for a follow-up on February 14, 2023. He noted that Petitioner continued to have functionally limiting pain in the lower back with intermittent radiation into the right lower extremity, associated with numbness and tingling. Petitioner felt that overall, she was

not improved with therapy, and had not had any type of injections. Dr. Murtaza's diagnosis was amended to L4-5 herniated nucleus pulposus. He stated that Petitioner continued to have functionally limiting pain and recommended proceeding with a right L4-5 interlaminar epidural steroid injection to see if it provided any significant relief prior to proceeding with surgery.

Petitioner presented for another follow-up on March 23, 2023, with PA Synder at ION. She reported feeling the same since the last visit, continuing to experience persistent right lower extremity pain. Petitioner was again authorized to be off work, pending authorization of the epidural injection.

On May 18, 2023, Petitioner underwent a right-sided intralaminar epidural steroid injection at L4-5. Off work authorization was continued.

Suburban Orthopedics / Dr. Pelinkovic

Petitioner presented to Dr. Pelinkovic with Suburban Orthopedics on February 10, 2023, for a surgical consultation. Petitioner reported that her neck pain radiates down to her bilateral shoulders and that her back pain was constant but denied any radiating back pain. She reported numbness and tingling in the bilateral thighs and occasionally down her bilateral shins. Tenderness was noted throughout the spine, and Petitioner had a positive straight leg raise on the right. Dr. Pelinkovic's impression was L4-5 disc protrusion resulting in spinal stenosis, right lower extremity radiculopathy, and a neck strain. He recommended a surgical decompression at L4-5. He disagreed with Dr. Ghanayem's opinion noting that a disc bulge and stenosis at L4-5 was well documented and that Petitioner's condition was related to the September 30, 2022, work incident. Petitioner was instructed to remain off work.

Dr. Pelinkovic presented for an evidence deposition on April 28, 2023. He testified that he is a board-certified orthopedic surgeon specializing in spine surgery. He testified that 80% of his practice is dedicated to the spine, with the other 20% to the extremities. He performs surgeries on the entire spine.

Petitioner advised Dr. Pelinkovic that her neck pain comes and goes, pinching down to both of her shoulders, with constant back pain. She also reported numbness and tingling in both thighs and occasionally the bilateral shins. Dr. Pelinkovic testified that the numbness and tingling would signify radiculopathy, or pain in a certain nerve root. He testified that Petitioner's report of decreased sensation in the L4, L5 region on the right raises suspicion that the L4 and L5 nerve root on the right may be compromised.

Regarding the cervical spine MRI, Dr. Pelinkovic agreed with the radiologist notation regarding degenerative findings. He noted that she did not really have dermatomal pain or radiculopathy in the neck, mostly axial neck pain. He diagnosed her with a neck strain. He testified that she reported a whiplash-type of injury which correlates with the diagnosis of a neck strain.

Regarding the lumbar spine, he testified that the MRI showed a disk protrusion at L4-5 compromising the spinal canal, decreasing the space for the neurological structures to function properly. He also agreed with Dr. Ghanayem that the MRI showed age-appropriate changes. Dr. Pelinkovic believed that Petitioner had pain at the L4-5 dermatomal distribution. He testified that the pain was related to the work incident because there was an impact on the low back leading to a disk protrusion, not the result of a degenerative process. On cross-exanimation, he testified that she aggravated a pre-existing degenerative process beyond her natural history.

Dr. Pelinkovic also testified on cross-examination that the radiologist noted compression on the nerve roots at L1 and L2, but there were no dermatomal symptoms with respect to L1 and L2. He testified that a finding of nerve compression on an MRI does not necessarily correlate with symptoms. He testified that the L5 distribution goes down the buttock, along the lateral side of the leg, into the front of the foot and then over onto the big toe. He testified the L4 distribution goes across the front of the shin. He testified that the back of the leg is more the S1 distribution.

Dr. Pelinkovic testified that Petitioner had already completed three (3) months of therapy and was taking medications with persistent low back and leg pain with activities of daily living and difficulty working, along with the MRI findings, therefore, he recommended a surgical decompression at L4-5. He testified that the epidural injection recommended by Dr. Murtaza

would only provide temporary relief. He also testified that the physical therapy did not help Petitioner, based on what Petitioner told him. Petitioner testified that the only treatment Dr. Pelinkovic recommended was the surgery. (Tr. 33).

On cross-examination, Dr. Pelinkovic testified that he was not sure when Petitioner returned to work. Petitioner testified that she had not returned to work since September 30, 2022. (Tr. 23). Dr. Pelinkovic was also not sure how many sessions of therapy Petitioner had undergone.

Regarding the IME with Dr. Ghanayem, Dr. Pelinkovic testified that he disagreed with Dr. Ghanayem, noting that the spinal canal was compromised at L4-5.

Dr. Pelinkovic testified that depending on the type of activity being performed, radicular symptoms can wax and wane, but he was unsure whether this could occur with inactivity. He testified that activity could affect the waxing and waning of radicular symptoms, but sometimes it may be due to deconditioning from inactivity. He also testified that physical therapy is performed to condition the patient, and acknowledged that Petitioner was undergoing therapy.

Petitioner then returned to Dr. Pelinkovic for a follow-up on June 23, 2023. She reported that her pain was reduced following the injection and that it slowly came back again, noting numbness in the back. Petitioner testified that the injection did not help. (Tr. 22). She had increased sensation at L4-5 and a positive straight leg raise test on the right. Spine surgery was again recommended, and the diagnosis was amended to herniated lumbar disc.

Dr. Ghanayem/ Section 12 Examination and Deposition Testimony

Petitioner was examined by Dr. Alexander Ghanayem for an Independent Medical Examination (IME) on January 19, 2023. (RX 1, p. 71). Dr. Ghanayem is an Illinois licensed, board certified spinal surgeon with a focus on conditions of the spine; cervical, thoracic, and lumbar. (RX 1, p. 2). He is the Chief Medical Officer at Loyola Medical Group. (RX 1, p. 2). He is also the Chairman of the Department of Orthopedic Surgery since December 2021, and a faculty member in the School of Medicine, as a professor in both orthopedic and neurologic surgery. (RX 1, p. 2).

In addition to his academic work, he also sees patients for spinal issues. (RX 1, p. 3). Prior to his appointment as the Chief Medical Officer and Chair of the Department of Orthopedic Surgery, he performed approximately 200 surgeries per year. (RX 1, p. 3).

Approximately 10% of the patients he sees are for IMEs. (RX 1, p. 3). Regarding the difference between an IME and evaluating a regular patient, Dr. Ghanayem noted that the physical examination is the same and one reviews the same diagnostic studies, but with an IME, one also reviews medical records and provides an opinion regarding diagnosis, treatment, causation, and future treatment. (RX 1, p. 3).

At the examination, Petitioner provided a history of an incident wherein she was injured on September 30, 2022, when she tripped on a pallet that was placed behind her, landing on her back. (RX 1, p. 4). Following the incident, she reported no radicular pain, or pain from a pinched nerve, into her legs. (RX 1, p. 4). Dr. Ghanayem testified that the L4 nerve root goes into the back of the thigh, over the knee, to the front of the shin, then to the top of the foot or inner aspect of the foot. (RX 1, p. 4).

Dr. Ghanayem performed a physical examination of the Petitioner. (RX 1, p. 4). He noted that there was no cord compression in the neck and that her lower extremity neurological exam was normal with respect to motor, sensory, and reflex function. (RX 1, p. 4-5). He also noted that she had a negative straight leg raise test for radicular and back pain. (RX 1, p. 5). Straight leg raise tests are used for identifying nerve tension signs. (RX 1, p. 5). He also did not see any indication of malingering or symptom magnification. (RX 1, p. 8).

Dr. Ghanayem also reviewed MRI diagnostic imaging studies. (RX 1, p. 5). He noted that the cervical MRI was normal, and the lumbar scan showed some minor degenerative changes as well as age-appropriate degenerative scoliosis. (RX 1, p. 5). He did not see anything “traumatic or neurologically compressive” on either of the scans. (RX 1, p. 5). There was nothing compressing anything, no pinched nerves or herniated disks or bone spurs. (RX 1, p. 6). He disagreed with the radiologist and Dr. Pelinkovic’s impression of moderate spinal canal stenosis, reiterating that there was no compression on the scans. (RX 1, p. 9).

Dr. Ghanayem stated that a disk bulge alone would not typically cause compression on the nerves, that there would need to also be something else going on. (RX 1, p. 8). He also noted that nerve compression would result in constant numbness and tingling in a nerve distribution or path. (RX 1, p. 9).

He indicated that an acute traumatic event could exacerbate a preexisting degenerative condition but did not believe that this was the case with Petitioner. (RX 1, p. 10). He further noted that if a person presents with no radicular complaints for four (4) months after an acute event, then the person has radiculopathy, then it would not be related to the acute traumatic event. (RX 1, p. 10). He stated that people can develop radiculopathy without an injury, and four (4) months later is too far removed from the injury to be causally related. (RX 1, p. 10).

Dr. Ghanayem diagnosed Petitioner with a soft tissue injury of the neck and back, or a sprain. (RX 1, p. 6, 8). He noted that a sprain is when there is no structural damage to the integrity of the spine. (RX 1, p. 6). The tissues were overworked or bruised from hitting the ground. (RX 1, p. 6). Petitioner's muscles and ligaments were tightened and hurting as a result. (RX 1, p. 6).

The course of treatment for a back sprain is variable; some will resolve without treatment over the course of a couple days, some will require physical therapy, some will have residual symptoms that linger but are benign. (RX 1, p. 6). Dr. Ghanayem found that Petitioner's treatment, including therapy and a workup were appropriate. (RX 1, p. 6). He also did not believe that Petitioner required any work restrictions at the time of the examination, and she could return to her preinjury work status. (RX 1, p. 6).

In terms of further medical care, Dr. Ghanayem did not believe that Petitioner required any further care and was at maximum medical improvement. (RX 1, p. 7). He noted that she would have been at maximum medical improvement after completing therapy in December 2022. (RX 1, p. 72). In terms of a microdiscectomy or lumbar decompression surgery, Dr. Ghanayem stated that regardless of causation, even if there was not a work injury, Petitioner had no surgical lesions. (RX 1, p. 7).

II. CONCLUSIONS OF LAW

In support of the Arbitrator's Decision relating to (F), whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

The Arbitrator finds that the petitioner's cervical condition including the diagnosis of a cervical strain superimposed on her pre-existing degenerative condition including a disc osteophyte complex is causally related to her accidental injuries of September 30, 2022.

The Arbitrator notes petitioner's cervical complaints commenced at the time of her accident, and she received medical care for this condition on the same date as the accident. She continued to receive care and conservative treatment for her cervical condition, including physical therapy through December 29, 2022. Petitioner also underwent an MRI of the cervical spine on January 11, 2023.

The Arbitrator further finds that the petitioner's lumber condition of a lumber strain superimposed on her pre-existing degenerative condition including scoliosis is causally related to her accidental injuries of September 30, 2023. Again, petitioner immediately complained of lumbar pain after the accident. Petitioner received medical care for her lumbar condition of the date of the accident. She received relatively consistent conservative medical care including physical therapy thorough December 29, 2022. Petitioner also underwent an MRI of the lumbar spine on January 11, 2023.

The Arbitrator however finds that the petitioner's radicular complaints of pain which commenced four months after the accident on January 30, 2023, are not causally related to her accidental injuries of September 30, 2023. The Arbitrator adopts the medical opinions of Dr. Ghanayem on this issue.

According to Dr. Ghanayem, Petitioner suffered strains to the neck and back. He noted that the cervical spine MRI was essentially normal and that the lumbar scan showed minor degenerative

changes as well as age-appropriate degenerative scoliosis. He did not see anything traumatic on the scans, noting that there was no nerve compression.

Regarding Petitioner's radicular complaints, Dr. Ghanayem found that the complaints would not be related to Petitioner's alleged work incident, given the delay and inconsistency in presentation. The Arbitrator also notes that Petitioner's radicular complaints were inconsistent. Petitioner initially denied any radicular pain complaints when she presented to medical care with ION on October 12, 2022, and November 1, 2022, as well as when she presented to Advocate Sherman. Her first indication of radiating pain was not until January 30, 2023, approximately four (4) months after the alleged incident.

Further, the complaints were noted to be intermittent and not along a specific nerve distribution or path, which Dr. Ghanayem indicated would be inconsistent with nerve compression at the L4-5 level. Petitioner initially noted intermittent tingling in the posterior legs to her ankles. Dr. Pelinkovic noted that the back of the leg would correspond to S1 distribution but did not indicate any significant pathology at the S1 nerve root.

She also reported to Dr. Pelinkovic that her numbness and tingling was in the bilateral thighs and shins. Dr. Pelinkovic believed that Petitioner had pain along the L4-5 dermatomal distribution but noted that the L5 distribution goes along the lateral (side) of the leg, not the thigh. Dr. Ghanayem testified that the L4 distribution goes along the back of the leg. Petitioner also reported no radicular complaints when she presented to Dr. Ghanayem. Despite these inconsistencies, Dr. Pelinkovic did not order an EMG to diagnostically confirm the presence of a true radiculopathy and to locate the actual source (lumbar level) of any diagnostically confirmed radiculopathy.

In support of the Arbitrator's Decision relating to (J), whether claimed, unpaid medical services provided to Petitioner were reasonable and necessary, the Arbitrator finds the following:

The Arbitrator has separately decided on the issue of causal connection. Accordingly, the Arbitrator concludes Respondent is ordered to pay the petitioner's medical charges through January 30, 2023.

Specifically, the Arbitrator found petitioner sustained cervical and lumbar strains superimposed on pre-existing degenerative changes in those areas of the spine. The petitioner received conservative treatment for these conditions through December 29, 2022. The petitioner also underwent prescribed diagnostic on January 11, 2023, for these two areas of her spine. The Arbitrator finds that this diagnostic testing was reasonable and necessary given the medical facts in this case and the petitioner's course of treatment to that date. The Arbitrator also finds that the medical consultation with her treating physician on January 30, 2023, to discuss the results of her diagnostic testing was reasonable and necessary.

However, the Arbitrator finds petitioner failed to prove her medical condition after January 30, 2023, is causally related to her accidental injuries and those medical bills are denied.

In support of the Arbitrator's Decision relating to (K), prospective medical treatment pursuant to Section 8(a) of the Act, the Arbitrator finds the following:

Dr. Pelinkovic recommended that Petitioner proceed with a lumbar decompression surgery at L4-5.

The Arbitrator has rendered a Decision, separately, on casual connection. In that opinion, the Arbitrator found that the petitioner's radicular complaints are not causally related to her accidental injuries of September 30, 2023.

Notwithstanding, regarding the necessity for prospective medical treatment proposed by Dr. Pelinkovic, the Arbitrator finds that Petitioner has not established her required burden of proof that

the necessity of obtaining the requested surgery is causally connected to any work-related injury. The Arbitrator also finds the recommended surgery is neither medically reasonable nor necessary here. Surgery is not indicated in this case.

Again, the Arbitrator adopts the medical findings and testimony of Dr. Ghanayem. Specifically, Dr. Ghanayem indicated that there was no nerve root compression noted on the MRIs. According to Dr. Ghanayem, Petitioner did not have a lumbar surgical lesion. Additionally, Petitioner's reports of radiculopathy were inconsistent and did not follow the L4 or L5 dermatomal distribution. Petitioner does not have valid radiculopathy.

The Arbitrator concludes that Petitioner has not established her required burden of proof that the necessity of obtaining the requested surgery is causally connected to any work-related injury. Furthermore, the Arbitrator finds the recommended surgery is neither medically reasonable nor necessary here.

In support of the Arbitrator's Decision relating to (L), whether Petitioner is entitled temporary total disability, the Arbitrator finds the following:

Petitioner claims she is entitled to temporary total disability covering September 30, 2022, through August 29, 2023. The Arbitrator notes that the parties stipulated that Respondent paid $1,840.00 in temporary disability benefits.

The Arbitrator finds that the petitioner is entitled temporary total disability benefits from September 30, 2022, through January 19, 2023. The Arbitrator finds the petitioner failed to prove she is entitled to temporary total disability benefits after January 19, 2023.
Again, the Arbitrator adopts the medical findings and testimony on this issue. Specifically, Dr. Ghanayem felt petitioner could return to regular duty work as of the date of his examination on January 19, 2023. Further, the Arbitrator has also found the petitioner's medical condition after January 30, 2023 is not causally related to her accidental injuries of September 30, 2023.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC034317
Case Name	Philip Sieger v. International Paper Co.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0298
Number of Pages of Decision	11
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Tyler Berberich
Respondent Attorney	Lona Sayej

DATE FILED: 6/20/2024

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DuPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PHILIP SIEGER,

Petitioner,

vs. NO: 21 WC 034317

INTERNATIONAL PAPER COMPANY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary disability, medical expenses and prospective medical, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 1, 2023, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 20, 2024
O052124
KAD/bsd
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC034317
Case Name	Philip Sieger v. International Paper Co.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Tyler Berberich
Respondent Attorney	Lona Sayej

DATE FILED: 11/1/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 31, 2023 5.32%

/s/Gerald Granada, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Philip Sieger
Employee/Petitioner

v.

International Paper Co.
Employer/Respondent

Case # **21** WC **34317**

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 29, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ 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, **December 2, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**72,293.52**; the average weekly wage was $**1,390.26**.

On the date of accident, Petitioner was **59** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**1,263.87** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**1,263.87**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $926.84/week for 81 5/7 weeks, commencing December 2, 2021 through December 15, 2021 and from March 21, 2022 through September 29, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $11,262.00, as provided in Sections 8(a) and 8.2 of the Act.

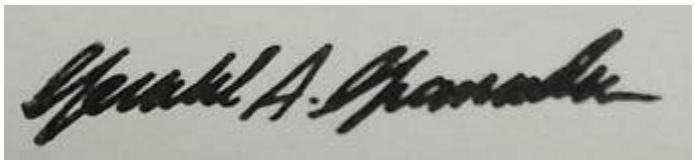
Respondent shall approve and pay the costs of the surgical procedure recommended by Dr. Templin, as well as all post-surgical treatment costs.

The Petition for penalties and attorney fees is denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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



NOVEMBER 1, 2023

Signature of **Arbitrator Gerald Granada**

FINDINGS OF FACT

This case involves Petitioner Philip Sieger, who alleges to have sustained injuries while working for Respondent International Paper Company on December 2, 2021. Respondent disputes Petitioner's claim, with the issues being: 1) causation; 2) medical expenses; 3) TTD; 4) prospective medical care; and 5) penalties and attorney fees.

On December 2, 2021, Petitioner, Philip Sieger, was employed by Respondent, International Paper, as a roll handler. (TA @ 8-9, Arb. Ex. 1). As a roll handler, Petitioner was tasked with driving a clamp truck to unload rolls of paper from trucks and railroad cars and moving those rolls into the corrugator machine. (TA @ 9). Petitioner would use the clamp truck to pick up a 7,000 pound roll of paper, then drive the clamp truck backward to the corrugator machine. Petitioner testified that when the paper was on the truck, you could not see forward, so he had to drive with his left hand on the steering wheel while looking backward over his right shoulder and operating the additional vehicle controls with his right hand. (TA @ 10).

On December 2, 2021, Petitioner sustained a work-related accident when he drove the clamp truck into a pole that had been installed that morning. Petitioner testified that he had driven in that aisle of the facility for 35 years and that they had just installed that new pole the morning of his accident. (TA @ 12-13). When his machine struck the pole, Petitioner felt a "big shock" within his body. Petitioner immediately informed his supervisor who referred him to get medical care. (TA @ 14).

That same day, December 2, 2021, Petitioner was seen at Physician's Immediate Care. Petitioner reported pain in the right nape of his neck, his right upper trapezius and lower back, with numbness and tingling over his right shoulder due to his December 2, 2021 work accident. Petitioner was diagnosed with a possible fracture of the fifth cervical vertebra, a strain of his right upper arm, cervicalgia and low back pain. He was referred for a cervical CT scan. (PX 5).

Petitioner underwent a cervical CT scan on December 8, 2021 and followed up with Physicians Immediate Care on December 10, 2021. (PX 3, PX 5). A review of the CT scan did not show a cervical fracture. Petitioner was experiencing tingling from the neck to the lateral aspect of his right arm and right thumb. He was also having pain over his anterior right shoulder and under his clavicle. Petitioner was referred to pain management for a possible cervical epidural steroid injection and recommended that Petitioner do only light duty, sit down work. (PX 5).

On December 15, 2021, Petitioner was seen at Hinsdale Orthopedics by Kelly Burgess, the physician's assistant for Dr. Cary Templin. Petitioner complained of pain in his neck with some tingling down his right arm. The December 8, 2021 CT scan was reviewed, which showed multilevel degenerative disc disease, most prominent at C5-6, C6-7 and C7-T1 with anterolisthesis noted at C7-T1. There was also multilevel facet arthropathy with foraminal stenosis most notable on the right at C5-6 and C6-7. Petitioner was diagnosed with cervical spondylosis and cervical radiculopathy. An MRI of the cervical spine was ordered and Petitioner was limited to sedentary work restrictions with a specific note that he could not drive his plant truck. (PX 1).

Petitioner was offered light duty work by Respondent and performed that work. (TA @ 16-17).

From December 21 through December 2023, 2021, Respondent had surveillance performed on Petitioner. The Arbitrator has reviewed the video surveillance as well as the reports. (RX 4, RX 5). The video and the reports generally detail Petitioner going about his day after work. In one portion, Petitioner gets gas at a gas station. In another portion, Petitioner stands outside to smoke a cigarette. Petitioner is also seen assisting his son in loading some materials, including a ladder, into the back of his pickup truck. (TA @ 18). The Arbitrator notes that while performing this task, Petitioner is primarily using his left arm. He only lifts with his left side and left arm, while providing minimal balance with his right arm. His son appears to be performing the more physical portions of the tasks, which is consistent with Petitioner's testimony. (TA @ 40-41, 43). At arbitration, Petitioner testified that his pain following the accident was only in his cervical spine and into his right shoulder and arm. He never experienced pain or symptoms on his left side and never treated for the left side. Petitioner is also left-handed. (TA @ 17-18).

Petitioner underwent a cervical MRI on December 27, 2021. (PX 4). This MRI was reviewed on January 4, 2022 at Hinsdale Orthopedics and it was noted to show disc degeneration and foraminal narrowing on the right most prominent at C5-6 and C6-7. Petitioner was referred to pain management for injections. (PX 5).

On January 18, 2022, Petitioner was seen at Pain & Spine Institute for pain management treatment. Petitioner's accident and MRI were reviewed. It was noted that Petitioner also had a positive Spurling's maneuver for neck pain and right arm radiculopathy. It was recommended that Petitioner undergo a C5-6 transforaminal epidural steroid injection. (PX 2).

On February 14, 2022, Petitioner underwent an IME with Dr. Harel Deutsch at Rush University Medical Center. Dr. Deutsch's opinions are detailed further in his deposition summary below. However, the Arbitrator does note Petitioner's description of this examination. Petitioner testified that the appointment with Dr. Deutsch was approximately 10 minutes long and the Dr. Deutsch never physically touched Petitioner or examined him in any way. Petitioner never even removed his coat during the examination. (TA @ 20-21, 38-40).

On February 28, 2022, Petitioner underwent a right C5-C6 transforaminal epidural steroid injection, performed by Dr. Sharma. Petitioner followed up with Dr. Sharma on March 21, 2022. It was noted that the first injection had given Petitioner 60% symptomatic relief with improvement in his neck range of motion and right arm pain. (PX 2).

On March 21, 2022, Petitioner reported to work with Respondent and was informed that light duty work would no longer be available to him. They told Petitioner that he had to drive the clamp truck again. Petitioner was still under restrictions from Dr. Templin and Dr. Sharma and informed Respondent that he could not drive the clamp truck. Respondent sent him home. For the next three days, Petitioner went to work and asked for light duty. He was sent home each of those times. (TA @ 23-24). Petitioner later formally applied for light duty accommodation via an ADA application. That application was denied by Respondent. (PX 11). No further light duty work was ever offered.

On March 29, 2022, Petitioner underwent a second C5-C6 transforaminal epidural steroid injection, performed by Dr. Sharma. Petitioner followed with Dr. Sharma on April 18, 2022, where it was noted that the second injection had provided 65-70% symptomatic relief with improved arm pain and numbness. (PX 2).

On April 26, 2022, Petitioner was seen by Dr. Templin, who recommended that Petitioner undergo a C5-7 cervical discectomy and fusion. Petitioner was placed on restrictions of no lifting over 10 pounds, no overhead work and no driving a clamp truck, pending surgery. (PX 1).

On August 2, 2022, Dr. Templin drafted a narrative report detailing his opinion in this case. In that report, he opined, "there is clear evidence of causal relation in patient's case. This gentleman suffered an injury while backing up his forklift and suffered onset of neck pain and radicular symptoms extending into the right arm. Those symptoms are manifest by continued pain as well as paresthesias extending into the appropriate distribution, as would be expected based on the imaging findings. He did not have these symptoms prior to the injury of December 2, 2021. Therefore, there is clear causal connection." Dr. Templin's opinions are further detailed in his deposition testimony summarized below. (PX 6).

On November 1, 2022, while still under work restrictions from Dr. Templin and while awaiting surgical approval, Petitioner was terminated by Respondent. (PX 12, TA @ 25-26).

On July 25, 2023, Petitioner returned to Dr. Templin. At that time, Dr. Templin recommended an updated MRI and continued to recommend surgery. He also kept Petitioner on restrictions of no lifting over 10 pounds, no overhead work and no driving a clamp truck. (PX 1).

Petitioner underwent the updated MRI on August 1, 2023 and followed up with a phone call to Dr. Templin's office on September 5, 2023. Dr. Templin reviewed the MRI and noted, "It shows that there is continued foraminal stenosis most notable at C5-6 and C6-7 which are consistent with his ongoing symptoms of radiculopathy. We discussed by telephone the continued need for a C5-6, C6-7 anterior cervical discectomy and fusion." (PX 1).

Prior to December 2, 2021, Petitioner had never had any injury or restrictions related to his cervical spine. (TA @ 27, 28, 29).

Petitioner does wish to undergo the surgery recommended by Dr. Templin. (TA @ 29-30).

As Petitioner goes about his day-to-day activities, he gets swelling in his neck and right shoulder. He cannot pick up anything heavy with his right arm, as he does not have strength in that arm anymore. (TA @ 30). Petitioner continues to experience stiffness in the neck as well. If he wants to look back over his shoulder, he has to rotate his entire upper body, as he does not have the ability to move his neck that far. (TA @ 31). Petitioner confirmed that the movement he can no longer perform, looking back over his shoulder with his neck turned, is the exact position he would have to be in to drive his clamp truck while holding the wheel with his left hand and looking over his right shoulder. (TA @ 32).

Petitioner continues to perform some activities, such as fishing. But he has had to change the type of rod he uses to one that he can cast with only with his left hand, while right arm low and using it to reel. (TA @ 33-34).

Deposition of Dr. Cary Templin – 1/27/23

Dr. Cary Templin is a board-certified orthopedic spine surgeon who has been Petitioner's treating spine doctor. (PX 7 @ 5, 7).

Dr. Templin began treating Mr. Sieger in December of 2021. Petitioner described his accident to Dr. Templin who reviewed Petitioner's cervical CT on December 15, 2021 and recommended a cervical MRI. (PX 7 @ 8). That MRI was performed on December 27, 2021. Dr. Templin reported that the MRI showed neuroforaminal stenosis at C5-6 and C6-7. (PX 7 @ 8).

After reviewing the MRI, Dr. Templin referred Petitioner for cervical injections to treat the pain extending into Petitioner's right arm, which was consistent with a C6-7 radiculopathy. (PX 7 @ 9). Petitioner followed up with Dr. Templin after undergoing two cervical injections. Dr. Templin testified that Petitioner's temporary symptomatic improvement after those injections showed that C6-7 was the pain generator for him. (PX 7 @ 10).

Dr. Templin recommended that Petitioner undergo a C5-6 and C6-7 anterior cervical discectomy and fusion. (PX 7 @ 11).

Dr. Templin reviewed the IME report from Dr. Deutsch. Dr. Templin noted that Dr. Deutsch did not mention the C5-6 or C6-7 foraminal stenosis and stated that Dr. Deutsch's diagnosis of a cervical strain would not present with pain and numbness radiating into the right arm. (PX 7 @ 12, 15).

Dr. Templin opined that Petitioner's December 2, 2021 work accident aggravated his underlying cervical condition and caused it to become symptomatic, specifically causing his right sided radiculopathy. (PX 7 @ 13).

On cross-examination, Dr. Templin testified that while he did not know whether the spondylitic changes in Petitioner's cervical spine were acute or chronic, he did know that the symptoms were acute. (PX 7 @ 21-22). The underlying findings on the MRI could have been degenerative. (PX 7 @ 23). But it was Dr. Templin's opinion that Petitioner's condition became symptomatic after his work accident. (PX 7 @ 25-26).

Deposition of Dr. Harel Deutsch – 3/15/23

Dr. Deutsch is a board-certified neurosurgeon who specializes in spine surgery. (RX 3 @ 6-7). Dr. Deutsch performs about 100 IMEs per year for Respondents. (RX 3 @ 8-9).

Dr. Deutsch saw Petitioner for an IME on February 14, 2022. (RX 3 @ 11). He reviewed Petitioner's accident history and medical records that were provided to him by Respondent. (RX 3 @ 12-13).

Dr. Deutsch opined that Petitioner's CT scan and MRI did not show any evidence of trauma but did show degenerative changes. (RX 3 @ 14). Dr. Deutsch diagnosed a cervical strain based on Petitioner's December 2, 2021 accident. He based this diagnosis on the low speed of the accident and Petitioner's delayed complaints of neck pain. (RX 3 @ 15-16). Dr. Deutsch also opined that cervical sprain was consistent with the MRI not showing disc herniation or other injuries and what Dr. Deutsch described as Petitioner's pain complaints resolving on their own. (RX 3 @ 16). Dr. Deutsch further opined that Petitioner did not aggravate any pre-existing condition because Petitioner "denies any pre-existing cervical spine condition." (RX 3 @ 16).

Dr. Deutsch did not agree with the reasonableness or necessity of spinal injections or fusion and opined that Petitioner had reached MMI without any work restrictions. (RX 3 @ 17).

Dr. Deutsch agreed that prior to his work accident, Petitioner had no history of cervical spine symptoms, while after the accident he had stiffness in his neck and pain and numbness radiating into his right upper extremity. (RX 3 @ 20-21).

There was no indication of any malingering or symptom magnification on Mr. Sieger's part. (RX 3 @ 22).

Dr. Deutsch disagreed that temporary relief from cervical injections would have revealed anything. (RX 3 @ 22-23). Dr. Deutsch did agree that a positive Spurling's maneuver would suggest that a patient had nerve root compression and that they have radiculopathy. (RX 3 @ 23).

CONCLUSIONS OF LAW

I. On the issues of whether Petitioner's current condition of ill being is causally related to his December 2, 2021 work accident, and Petitioner's claim for prospective medical, the Arbitrator hereby finds:

After reviewing all evidence and testimony in the record, the Arbitrator hereby finds that the current condition of ill-being in the Petitioner's cervical spine is causally related to his December 2, 2021 work accident.

At arbitration, Petitioner credibly testified that prior to December 2, 2021, he had no injury or symptoms related to his cervical spine. (TA @ 27, 28, 29). After his accident on December 2, 2021, the records reflect that Petitioner has consistently suffered from stiffness in his neck, pain in his right shoulder, as well as numbness, tingling and weakness in his right arm. (PX 1, PX 2, PX 5).

Petitioner's cervical MRI revealed foraminal stenosis at C5-6 and C6-7. (PX 7 @ 8). Dr. Templin credibly testified that Petitioner's symptoms were consistent with a symptomatic aggravation of the preexisting C5-6 and C6-7 foraminal stenosis in Petitioner's cervical spine and opined that Petitioner's December 2, 2021 work accident aggravated his underlying cervical condition and caused it to become symptomatic, specifically causing his right sided radiculopathy. (PX 7 @ 10, 13).

Respondent disputes causation in this case based on the IME report from Dr. Harel Deutsch. Dr. Deutsch opined that Petitioner's December 2, 2021 work accident caused only a cervical strain. (RX 3 @ 15-16). However, it is evident from a review of Dr. Deutsch's opinions that he was either unaware of, or completely dismissed, Petitioner's radicular pain. Dr. Deutsch's sole focus seemed to be Petitioner's lack of localized cervical spine pain. This is despite the multiple instances of right upper extremity radicular pain and numbness complaints in Petitioner's medical records, in addition to the positive Spurling's maneuvers found by Dr. Templin's office and by the physicians at Pain and Spine Institute (PX 1, PX 2) and the report of right arm numbness Petitioner gave Dr. Deutsch during his examination. (RX 2).

Based on all evidence in this case, the Arbitrator finds Dr. Templin's opinion persuasive on this issue. Accordingly, the Arbitrator concludes that Petitioner's cervical spine condition, specifically an aggravation of C5-6 and C6-7 foraminal stenosis leading to neck stiffness, right shoulder pain, right arm tingling and numbness, and right arm weakness is causally related to Petitioner's December 2, 2021 work accident.

II. On the issue of unpaid medical bills, the Arbitrator hereby finds:

After reviewing all evidence and testimony in this case, consistent with the Arbitrator's findings on the issue of causation, the Arbitrator further finds that the care and treatment rendered to Petitioner for his cervical spine has been reasonable, necessary and causally related to his December 2, 2021 work accident. Accordingly, the Arbitrator hereby orders Respondent to pay $13,052.89 in unpaid medical expenses, pursuant to Section 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

III. On the issue of temporary total disability benefits, the Arbitrator hereby finds:

Based on the findings above, the Arbitrator further finds that the Petitioner was temporarily totally disabled from December 2, 2021 through December 15, 2021 and from March 21, 2022 through September 29, 2023. Following his December 2, 2021 work accident, Petitioner was off work from December 2, 2021 through December 15, 2021 per the restrictions from Physicians Immediate Care. Beginning on December 16, 2021, Respondent offered him light duty work within the restrictions set by Dr. Templin. Petitioner did perform that light duty work for Respondent. (TA @ 16-17). However, following the IME by Dr. Deutsch, Respondent insisted that Petitioner return to full duty work on March 21, 2022 and refused any further accommodation. (TA @ 23-24). At that time, Petitioner was on light duty restrictions per Dr. Templin and Dr. Sharma and was physically unable to perform full duty work, so Respondent sent him home. (PX 1, PX 2, TA @ 23-24). Respondent never again offered light duty work and later terminated Petitioner from his employment. (PX 11, 12). Petitioner has remained on light duty restrictions per Dr. Templin through the date of arbitration, while he awaits cervical spine surgery. (PX 1). Therefore, the Arbitrator hereby orders Respondent to pay temporary total disability benefits of $926.84 per week from December 2, 2021 through December 15, 2021 and from March 21, 2022 through September 29, 2023, a period of 81 5/7 weeks, pursuant to Section 8(b) of the Act.

IV. On the issue of prospective medical care, the Arbitrator hereby finds:

Regarding the issue of prospective medical care and consistent with the findings above, the Arbitrator further finds the that the Petitioner's request for prospective medical treatment is both reasonable and necessary in addressing his work-related neck condition stemming from his December 2, 2021 work accident. Based on 1) the MRI findings showing C5-6 and C6-7 neuroforaminal stenosis, 2) Petitioner's radicular pain that was consistent with C6-7 nerve impingement, 3) temporary relief from his radicular symptoms with injections at these levels and 4) a positive Spurling's sign, which confirmed pain due to the C5-6 and C6-7 levels of the cervical spine, Dr. Templin recommended a C5-6 and C6-7 anterior discectomy and fusion. The Arbitrator finds this recommendation to be reasonable and in line with the evidence in this case. Therefore, the Arbitrator hereby orders Respondent to pay the costs associated with the surgical procedure recommended by Dr. Templin, as well as any post-surgical follow up care, subject to the Fee Schedule and in accordance with the provisions of Section 8 and 8.2 of the Act.

V. On the issue of whether the Petitioner is entitled to penalties and attorney fees, the Arbitrator hereby finds:

The Arbitrator finds the assessment of penalties and attorneys' fees in this case is unwarranted. The Arbitrator notes that there were valid issues that became evident during the hearing – including, whether Petitioner's condition is causally connected to his work injury, whether Petitioner needed further medical treatment, and whether Petitioner could return to work. As such, the denial or non-payment of benefits were not unreasonable or vexatious. Accordingly, the petition for penalties and attorneys' fees is hereby denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002667
Case Name	Michael Connelly v. Nova Fire Protection Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0299
Number of Pages of Decision	12
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Kenneth J. Barrish, Cecil E. Porter, III

DATE FILED: 6/20/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Connelly,

Petitioner,

vs. NO. 20WC002667

Nova Fire Protection,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues wage calculations/benefit rates, causal connection, medical expenses, temporary disability, maintenance, vocational rehabilitation, penalties, attorney fees, and evidentiary rulings, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 30, 2023, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 20, 2024
SJM/sj
o-6/5/2024
44

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC002667
Case Name	Michael Connelly v. Nova Fire Protection Inc
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Kevin Veugeler
Respondent Attorney	Kenneth J. Barrish

DATE FILED: 6/30/2023

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 27, 2023 5.21%

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

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

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

Michael Connelly
Employee/Petitioner
v.
Nova Fire Protection, Inc.
Employer/Respondent

Case # **20** WC **002667**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **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. ☐ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☒ Other **Vocational Rehabilitation**

FINDINGS

On the date of accident, **November 19, 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 $**105,872.00**; the average weekly wage was $**2,036.00**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **0** dependent children.

Respondent shall be given a credit of $**136,316.75** for TTD, $**10,339.89** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**146,656.64**.

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

ORDER

Respondent shall pay Petitioner maintenance benefits of $1,357.83 per week for 85 & 4/7 weeks, commencing February 6, 2021, through September 27, 2022, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $1.357.83 per week for 63 & 4/7 weeks, commencing November 19, 2019, through February 5, 2021, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $136,316.75 for temporary total disability benefits that have been paid and a credit of $10,339.89 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of $11,687.69, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for vocational rehabilitation services as recommended by Lisa Byrne of the Eval Center, pursuant to Section 8(a) of the Act.

Respondent shall pay to Petitioner penalties of $13,493.43, as provided in Section 16 of the Act; $33,733.57, as provided in Section 19(k) of the Act; and $10,000.00, as provided in Section 19(l) of the Act.

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

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

Elaine Llerena
Signature of Arbitrator

ICArbDec19(b) **June 30, 2023**

FINDINGS OF FACTS

Petitioner has worked as a sprinkler fitter for 26 years as a member of Sprinkler Fitters and Apprentices Union Local No. 281. (T. 6-7) On November 19, 2019, and for five years before, Petitioner was a foreman with Respondent. (T. 7) Sprinkler fitters install overhead fire protection systems, using wrenches and drills to install pipes, valves, sprinkler heads, and fire pumps. (T. 8-10) Photographs entered into evidence depict the size and type of materials used by Petitioner as a sprinkler fitter. (T. 9, PX7) The material and equipment used weigh from several pounds to more than one hundred pounds. (T. 8-9, PX7) Petitioner's description of the sprinkler fitter job conforms to the job description prepared by Sprinkler Fitters and Apprentices Union Local No. 281. (PX7) The job description indicates that sprinkler fitters will bend over and pick up a piece of pipe, average length of twelve feet, and hold it overhead while attaching it to a fitting. Further, a hanger is attached to the ceiling using a Hilti drill and a pipe wrench is used to tighten the pipe sufficiently to hold 200 p.s.i. of water pressure. According to the job description, this process is repeated 80-125 times in an average workday.

Petitioner is left-handed. (T. 11) Petitioner testified that on November 19, 2019, he did not have any problems with, nor had any prior treatment to his left shoulder. (T. 11-12)

On November 19, 2019, Petitioner was working at a church installing a sprinkler system. (T. 10) Petitioner was breaking apart a fitting using two pipe wrenches when he felt a sharp pain in his left shoulder and collar bone. (T. 11-12)

Petitioner was initially seen at the emergency department of Little Company of Mary Hospital on November 19, 2019. (T. 13, PX1) Petitioner underwent an x-ray of the left shoulder and was taken off work. (PX1) On November 29, 2019, Petitioner underwent a left shoulder MRI which revealed a full thickness tear of the rotator cuff along with a labral tear. (PX1)

On December 13, 2019, Petitioner was evaluated by Dr. Adam Meisel. (PX3) Dr. Meisel diagnosed Petitioner as having a left shoulder full-thickness traumatic rotator cuff tear, SLAP tear, AC joint arthrosis with impingement that was worsened, and SC joint sprain status post work injury. (PX3). Dr. Meisel ordered surgery and placed Petitioner on light duty with occasional lifting, reaching, pushing and pulling of 3-5 pounds and no overhead work. Petitioner was also fitted with a shoulder abduction-immobilization sling.

On January 7, 2020, Dr. Meisel performed a left shoulder arthroscopy with extensive debridement, subacromial decompression with acromioplasty, biceps tenodesis, rotator cuff repair, and greater tuberosity microfracture for creation of bone marrow vents. (PX3)

After surgery, Petitioner participated in physical therapy and was taken off work. (PX3) Due to continued complaints of pain, Petitioner had a cortisone injection in his left shoulder on July 22, 2020.

Petitioner had post-surgical MRIs of the left shoulder on May 14, 2020, and October 30, 2020, both of which were positive for impingement, edema and fluid in the bursa. (PX3) Petitioner also underwent an MRI of the left humerus on October 30, 2020, the results of which were normal.

On January 5, 2021, Petitioner underwent a functional capacity evaluation (FCE), the results of which indicated that Petitioner could not return to work as a sprinkler fitter with restrictions of no lifting above the shoulder. (PX3)

Petitioner returned to Dr. Meisel on January 8, 2021. (PX3) Dr. Meisel diagnosed a recurrent biceps tear that was not amenable to surgical repair and recommended Petitioner seek a second opinion to see if there was

any way Petitioner could avoid permanent restrictions and return to work. (PX3) On January 25, 2021, Dr. Jawad Hussain of Hinsdale Orthopedics agreed that Petitioner's tear of the long head tendon was not repairable. (PX4) As a result, Dr. Meisel ordered permanent work restrictions of no working overhead and no lifting greater than 30 pounds on February 5, 2021. (PX3)

Respondent was not able to accommodate Petitioner's restrictions. (T. 23)

Petitioner submitted job logs reflecting a self-directed job search since February 2021. (PX12, T. 32-33) Petitioner has been unsuccessful in securing a job. (T. 34-35)

Respondent initiated vocational rehabilitation efforts on March 11, 2021. (RX2) Petitioner was interviewed by Kari Stafseth-Zamora from Vocamotive. Ms. Stafseth-Zamora issued an April 8, 2021, report stating Petitioner can no longer work as a sprinkler fitter as a result of his work injuries, that he would benefit from vocational rehabilitation and that his expected earning potential would be $13.00-$17.00 an hour. Ms. Stafseth-Zamora recommended further vocational testing and computer training.

The vocational testing was not completed by Vocamotive, nor was the vocational plan implemented. (T. 28) Petitioner subsequently underwent vocational rehabilitation testing with Lisa Byrne of The Eval Center. (PX8)

Ms. Byrne issued a series of reports dated September 24, 2021, November 15, 2021, and December 14, 2021, outlining her vocational efforts and plan. (PX8, PX9, PX10) Respondent did not authorize the vocational plan put forth by Ms. Byrne, nor did they implement the vocational plan put forth by their own vocational counselor. (T. 28, 31)

On July 18, 2022, Ms. Byrne's evidence deposition was taken. (PX11) Ms. Byrne testified that she performed a vocational assessment of Petitioner. Ms. Byrne interviewed Petitioner, reviewed medical records, took an education and employment history, and reviewed vocational reports of Respondent's vocational counselor. Ms. Byrne identified Petitioner's vocational challenges as his injury to his shoulder and the resulting light duty restrictions of no overhead lifting and no lifting greater than 30 pounds which precludes him from returning to work as a sprinkler fitter, Petitioner's lack of computer skills and lack of broad work experience. Ms. Byrne performed vocational testing which indicated that Petitioner had the aptitude for college. Ms. Byrne also performed a transferable skills analysis, identified various positions to maximize Petitioner's earning potential, and put forth a vocational rehabilitation plan recommending retraining to achieve a position in the medical field as a radiologic technologist or similar position, along with computer training. The expected entry level wage for a radiology technician would be $24.09 an hour. Ms. Byrne noted that while Vocamotive recommended vocational testing, no testing was done. Ms. Byrne testified that Vocamotive sends individuals to her to do vocational testing. Ms. Byrne also noted that the jobs recommended by Vocamotive were lower paying jobs than the vocational plan she recommended. Ms. Byrne testified that retraining to obtain a position within the medical field as an x-ray tech would maximize Petitioner's earning potential with the most cost-effective training. Ms. Byrne also explained that Vocamotive's recommendation for a position as a building inspector would also require additional schooling, but would be outside Petitioner's physical restrictions.

Respondent terminated maintenance benefits on February 2, 2022. (T. 31) Since that time Respondent has paid Petitioner $313.33 per week. (T. 31) Petitioner testified that the year prior to his work injury he worked 40-hour work weeks. (T. 119)

Ms. Stafseth-Zamora testified at the arbitration hearing. Ms. Stafseth-Zamora testified that she is a vocational counselor employed by Vocamotive and that she was retained by Respondent. (T. 46) She testified that she performs vocational assessments, not vocational testing. (T. 46) Ms, Stafseth-Zamora testified she recommended a position as a building inspector with the training provided by Vocamotive. (T. 60-61, 109, 113) Ms. Stafseth-Zamora agreed that Petitioner needed vocational rehabilitation and counseling as a result of his work injury. (T. 72) She also confirmed that her company uses Lisa Byrne to perform vocational testing. (T. 79,84, 95-96)

On cross-examination, Ms. Stafseth-Zamora confirmed Petitioner's preinjury earnings of $52.00 per hour and that he worked 40 hours a week. (T. 77-78) She also conceded that she previously noted inspection related positions were inappropriate for Petitioner given his physical restrictions and that a position as a radiology tech would be within his restrictions. (T. 79, 105-106)

Petitioner testified he still experiences pain in his left shoulder and is still limited with activities of daily living. (T. 23, PX1)

Petitioner testified he attended Stagg High School in Palos Hills, but did not graduate, instead obtaining a GED. (T. 23-24) He attended an apprentice program though L.U. 281. (T. 24) Petitioner also attended Moraine Valley Junior College, without obtaining a degree. (T. 24) Petitioner has never had any computer training. (T. 30) At the time of his work injury, the rate of pay for a sprinkler fitter foreman was $52.65 an hour and at the time of hearing the rate of pay for a sprinkler fitter foreman was $56.25 an hour. (PX15, T. 25-26)

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner earned $52.65 an hour, working a forty-hour work week. Petitioner testified that he did not miss any time off during the fifty-two-week period before his work injury. The parties stipulated to earnings of $105,872.00. (AX1) Petitioner's earnings divided by fifty-two weeks is $2,036.00.

Based on the above, the Arbitrator finds that Petitioner's average weekly wage is $2,036.00.

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

Petitioner submitted the following medical bills:

Exhibit 5 – MidAmerica Orthopaedics: $11,043.50
Exhibit 6 – Hinsdale Orthopaedics: $57.19
Exhibit 13 – Little Company of Mary Hospital: $587.00

The Arbitrator finds the charges of MidAmerica Orthopaedics, Hinsdale Orthopaedics and Little Company of Mary Hospital to be supported by corresponding medical records and related to treatment for the November 19, 2019, work accident. Therefore, the Arbitrator finds that Respondent shall pay reasonable and necessary medical expenses of $11,687.69, as provided in Sections 8(a) and 8.2 of the Act.

Petitioner also provided the bill from Ms. Byrne from the Eval Center for $2,858.66. The Arbitrator notes that while Ms. Byrne performed vocational testing and evaluations for Petitioner and made vocational recommendations for Petitioner, she did not provide actual vocational services helping Petitioner find a job. The reports provided by Ms. Byrne provide expert opinions regarding Petitioner's vocational abilities and opportunities used for litigation. The job search logs provided by Petitioner show a self-directed job search. Therefore, the Arbitrator does not award the $2,858.66 balance due to the Eval Center.

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

Petitioner testified that he was paid temporary total disability benefits and maintenance benefits up to and including February 2, 2022, when Respondent stopped paying benefits. The Arbitrator notes that Petitioner was provided permanent restrictions by Dr. Meisel on February 5, 2021, the last time Petitioner saw Dr. Meisel, and that the job logs prepared by Petitioner show he has conducted a self-directed job search from February 2021 through September 27, 2022, the date of hearing. The Arbitrator further notes that while Respondent hired Vocamotive to provide Petitioner with vocational services, no vocational services were provided, and no vocational plan implemented.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from November 19, 2019, through February 5, 2021, and maintenance benefits from February 6, 2021, through September 27, 2022. The Arbitrator notes that Petitioner testified he has received $313.33 a week since February 2, 2022, therefore, the Arbitrator awards Respondent a credit of $313.33 a week for the period of February 2, 2022, through September 27, 2022.

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

Medical Expenses

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

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

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

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

It is well-settled that a Respondent's good faith basis for disputing a claim will not subject it to an award of penalties and fees. The reliance on the opinions of a qualified Section12 examiner may demonstrate a good faith denial of benefits. For purposes of assessment of penalties and fees, Respondent bears the burden to show that it had a reasonable belief that the delay in paying Petitioner his benefits was justifiable. *Gallegos v. Rollex Corp.*, 03 IIC 0173 (Mar. 10, 2003), *Continental Distributing Co. v. Ind. Comm'n*, 98 Ill.2d 407 (1983). The employer must show that the facts in its possession would lead a reasonable person to believe the employee is not entitled to prevail under the Act. *Cook County v. Indus. Comm'n*, 160 Ill.App.3d 825, 830 (1st Dist. 1987).

In the case at bar, Respondent failed to present any medical evidence to justify its failure to pay outstanding medical expenses. In light of this, it cannot be said that Respondent had a good faith basis for its failure to pay medical expenses. Therefore, the Arbitrator finds the failure to provide medical benefits under the Act to be vexatious and unreasonable and orders penalties pursuant to Section 19(k) of the Act in the amount of $5,843.85 (50% of outstanding medical expenses of $11,687.69).

In addition, a delay in payment of 14 days or more creates a presumption of unreasonable delay. 820 ILCS 305/19(l). Respondent has not met its burden to show that the delay in paying the outstanding charges was reasonable. Therefore, pursuant to Section19(l), the Arbitrator further awards penalties in the amount of $10,000.00. Finally, the Arbitrator awards attorneys' fees pursuant to Section 16 of the Act in the amount of $2,337.54 (20% of the outstanding medical expenses of $11,687.69).

Temporary Total Disability/Maintenance

Respondent stopped paying maintenance benefits on February 2, 2022, despite the fact that Petitioner continued to perform a self-directed job search. Respondent has put forth no credible justification for its failure to provide maintenance benefits from February 2, 2022, to the time of hearing.

Therefore, the Arbitrator finds the failure to provide maintenance benefits to be vexatious and unreasonable and orders penalties pursuant to Section 19(k) of the Act in the amount of $27,889.72 (50% of outstanding maintenance benefits of $55,779.43). Finally, the Arbitrator awards attorneys' fees pursuant to Section 16 of the Act in the amount of $11,155.89 (20% of the outstanding maintenance benefits).

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent claims that it is entitled to a credit pursuant to 820 ILCS 305/8(j). Section 8(j) states Respondent is entitled to a credit "in the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under the Act." Section 8(j) credit "does not apply to payments made under any group plan which would have been payable irrespective of an accidental injury under this Act." *Id*. However, an employer has the burden to establish its entitlement to a Section 8(j) credit. *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Commission*, 409 Ill.App.3rd 943 (1st Dist. 2011). The right to a credit is narrowly construed. *Id*.

Respondent failed to present any evidence that any payments made on behalf of Petitioner would have been made irrespective of an accidental injury under the Illinois Workers' Compensation Act. Therefore, the Arbitrator finds that Respondent has not met its burden of proof establishing entitlement to a Section 8(j) credit.

WITH RESPECT TO ISSUE (O), VOCATIONAL REHABILITATION, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that it is Respondent's responsibility to submit a vocational plan if Petitioner's total incapacity exceeds 365 days pursuant to Illinois Workers' Compensation Commission Rule 9110.10(a). The record shows that Respondent did not comply with Rule 9110.10(a) as it failed to implement any vocational plan for Petitioner despite Vocamotive having created one for Petitioner. The Arbitrator further notes that following Respondent's failure to implement any vocational plan, Petitioner sought a vocational evaluation and testing from Ms. Byrne. The Arbitrator finds the vocational plan submitted by Ms. Byrne maximizes Petitioner's earning capacity consistent with the factors listed in *National Tea Co. v. Indus. Commission*, 97 Ill. 2d 424, 454 N.E.2d 672 (1983). The Arbitrator rejects the vocational plan submitted by Respondent as it would also require additional training but would result in a lower wage and a greater wage differential.

Based on the above, Respondent shall authorize and pay for the vocational rehabilitation plan submitted by the Eval Center, including maintenance benefits, the cost of retraining, and all other costs incidental to the implementation of the plan as provided by Section 8(a) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000838
Case Name	Kendra McCrory v. Archer Daniels Midland
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0300
Number of Pages of Decision	26
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Stephen Martay
Respondent Attorney	Jessica Bell

DATE FILED: 6/20/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KENDRA MCCRORY,

Petitioner,

vs. NO: 21 WC 00838

ARCHER DANIELS MIDLAND,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, prospective medical care, and temporary total disability benefits and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes a clarification as outlined below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms the Arbitrator's Decision. However, the Commission modifies the Order Section of the Decision as it pertains to the award of prospective medical treatment to read as follows:

> Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care – at a minimum, of continuing pain management and at least a trial of a spinal cord stimulator as recommended by Drs. Dold, Vetri and Li. The Respondent shall authorize and pay for same.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 12, 2023, is hereby affirmed and adopted, with the clarification as set forth above.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $58,242.42. 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.

June 20, 2024

MEP/dmm
O: 50724
49

/s/ *Maria E. Portela*
Maria E. Portela

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

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000838
Case Name	Kendra McCrory v. Archer Daniels Midland
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Stephen Martay
Respondent Attorney	Jessica Bell

DATE FILED: 9/12/2023

/s/ Jeanne AuBuchon, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 12, 2023 5.30%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Kendra McCrory
Employee/Petitioner

v.

Archer Daniels Midland
Employer/Respondent

Case # **21** WC **838**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Arbitrator Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Springfield**, on **August 24, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **October 16, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**44,720.00**; the average weekly wage was $**860.00**.

On the date of accident, Petitioner was **34** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**20,257.36** for other benefits, for a total credit of $**20,257.36**.

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

ORDER

Respondent shall pay reasonable and necessary medical services as listed in Petitioner's Exhibits 2, 3 and 6, as provided in Section 8(a) and 8.2 of the Act. subject to any credit for expenses paid by Respondent and/or Respondent's group health insurer pursuant to Section 8(j).

Respondent shall pay Petitioner temporary total disability benefits of **$573.33**/week for **135 and 4/7** weeks, commencing 12/28/20 through 8/24/23 as provided in Section 8(b) of the Act. Respondent shall have credit for benefits paid as stated above.

Respondent shall authorize and pay for medical treatment to the lumbar spine, including continued pain management and spinal cord stimulator, as recommended by Drs. Dold, Vetri and Li, as provided in Section 8(a) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Jeanne L. AuBuchon

Signature of arbitrator

September 12, 2023

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on August 24, 2023, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of her employment; 2) the causal connection between the accident and the Petitioner's current lumbar spine condition; 3) payment of medical expenses based on liability as found on issues of accident and causation; 4) entitlement to temporary total disability (TTD) benefits for the period of December 28, 2020, through August 24, 2023, based on liability as found on issues of accident and causation; and 5) entitlement to prospective medical care to the Petitioner's lumbar spine.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 34 years old and had been employed by the Respondent for about four months in the position of load out, which included working as a brakeman walking the railroad tracks and pulling switches to make sure the rail cars are on the right tracks. (AX1, T. 10, 13-14) On October 16, 2020, the Petitioner was working as a brakeman and pulled a switch that was "extremely stuck" and required an abnormal amount force to get to move, causing her back to "pop, crack and crunch." (T. 14-15) She acknowledged that at the time of the accident, she did not report it. (T. 40) She said that any coworkers were too far away to witness the accident. (T. 40-41) The Petitioner stated that she completed her shift, which required her to finish the tops of the rail cars by putting spouts into the cars and setting them up to be refilled. (T. 45) She said she had to lift manholes weighing more than 50 pounds on the tops of the rail cars and use a torque tool. (T. 45-46)

The Petitioner testified that prior to working for the Respondent, she did not have any problems with or treatment to her back. (T. 31) She acknowledged that she took Meloxicam (a

nonsteroidal anti-inflammatory) in July 2020 because she pulled something in the back of her shoulder. (T. 42) The Petitioner acknowledged having bi-polar disorder and depression, for which she previously took medication that she stopped taking because she didn't like the way it made her feel. (T. 48-49)

The day after the accident, the Petitioner sought medical treatment at the Decatur Memorial Hospital emergency room. (T. 16, PX2) She complained of back pain radiating to bilateral thighs. (PX2) She advised she did not know of any injury or trauma and denied that she had a workers' compensation injury, but she said she had a physical job turning railroad switches that may have contributed to her pain. (Id.) X-rays showed degenerative changes most pronounced at L5-S1 with loss of disc space and facet (connection between the bones of the spine through which nerves pass) degenerative changes. (Id.) The Petitioner was diagnosed with acute, unspecified osteoarthritis and acute bilateral sciatica (leg pain caused by pressure on the sciatic nerve running from the lower spine to the foot), prescribed pain medication and a muscle relaxant and told to follow up with her primary care provider. (Id.)

The Petitioner testified that she spoke to a foreman for the Respondent while she was at the emergency room. (T. 15) She said she then communicated with human resources manager Justin Burns via text and email as a last resort because the foreman she called on October 17, 2020, was not understanding her and did not want to hear anything she had to say. (T. 95-98) She said Mr. Burns said it was fine that she contacted him and did not tell her that she needed to contact anyone else. (T. 98-99) Emails and texts showing such communications were entered into evidence. (PX9) Mr. Burns did not testify.

David Gilman, safety manager for the Respondent's Decatur complex, testified that at the time of the accident, Brad Malone was safety manager of the plant where the Petitioner was working. (T. 58-60) Mr. Gilman identified the first report of injury filled out by Mr. Malone for the Petitioner's injury. (T. 60, RX6) The report dated October 27, 2020, states that the accident occurred on October 15, 2020, and that the Petitioner began work that day at 4:00 pm. (RX6) As to the time of occurrence, the report states 12:00 pm and that the time "cannot be determined." (Id.) For the date the employer was notified, the report lists October 24, 2020. (Id.) Under type of injury, the report states "specific injury – all," and for part of body affected, it says "trunk – spinal cord." (Id.) The specific activity and work process the Petitioner was engaged in are listed as unknown. (Id.) The description of how the injury occurred states that the Petitioner alleged hurting her back on October 15, 2020, and that she was in excruciating pain on October 24, 2020. (Id.) The report states: "No reports or phone calls can corroborate this. (Id.) The portions of the report regarding treatment were blank, except for a checked box for "minor clinic/hosp." (Id.) Mr. Gilman testified that Mr. Malone was no longer working for the company. (T. 60) He said he did not see the report himself until about five months after it was prepared. (T. 66)

Mr. Gilman said that typically when an accident is reported, the report is filled out the day after the incident if the injured worker is working second or third shift. (T. 61) He said the injured worker would call a general number and be transferred to the shift supervisor, who would then report the accident to the safety manager. (T. 62-63) He said that to the best of his knowledge, no one knew about the incident until October 24, 2020, which was when he believed human resources was notified. (Id.)

Mr. Gilman testified that Mr. Burns was a human resources lead for the Respondent. (T. 70) He said that if an accident was reported to Mr. Burns, the information would have been relayed to Mr. Malone. (Id.)

Sean Karakachos, currently biproducts downstream process technology manager for the Respondent, testified that around the time of the accident he was the corn processing refinery superintendent. (T. 78) He said the Petitioner had missed "a tremendous amount of work" due to having been exposed to someone who potentially had COVID or due to exhibiting COVID symptoms herself. (T. 83) Mr. Karakachos testified that following the accident, the Petitioner did not show up for her next shift, and it was his understanding that the Petitioner called off work saying she had COVID symptoms and not due to a back injury. (T. 84-85) Mr. Karakachos stated that at that time, the only way an employee would get paid for sick time was if it was for COVID and not for an injury. (T. 85) On cross-examination, he testified that he "possibly" was provided notes from human resources that the Petitioner reported a work injury as early as October 17, 2020. (T. 92-93)

Mr. Karakachos said that the Petitioner was in training at the time of the accident and would not have been permitted to perform job duties by herself per company policies. (T. 87) He said that if the Petitioner was pulling a rail switch, there would have been someone that could have seen her. (Id.) He named three employees who would have been working on the shift with the Petitioner and said that none of them came to him and told him that the Petitioner hurt her back. (T. 90) He said two of those three employees were still working for the Respondent. (T. 93) None of the employees testified. Mr. Karakachos disagreed with the Petitioner's estimate that the rail car lids, which she called manhole covers, weighed more than 50 pounds – estimating that they weighed 25 pounds. (T. 89)

On October 20, 2020, the Petitioner presented to Crossing Healthcare, where she saw Nurse Practitioner Michelle Ater and complained of back pain with radiation to the leg and reported that the medication prescribed at the emergency room was not providing any relief. (T. 16, 17, PX3) NP Ater diagnosed acute bilateral low back pain with bilateral sciatica and prescribed an anti-inflammatory. (PX3) On October 30, 2020, reported additional pain in the hip-pelvic area, and NP Ater increased the medication dosage and referred the Petitioner to physical therapy. (Id.) On November 23, 2020, the Petitioner reported that her back pain was worsening. (Id.) Records reflect that the onset was three weeks prior and that the Petitioner reported possible heavy lifting at work exacerbated her chronic back pain. (Id.) The Petitioner testified that this note was referring to the back pain that occurred when she had her injury. (T. 44) At that visit, the Petitioner was prescribed muscle relaxers. (PX3) The following day, the Petitioner received a non-steroidal anti-inflammatory injection and was prescribed additional pain medication and an oral steroid. (Id.) During these visits to Crossing Healthcare, the Petitioner's mood and affect were recorded as normal, and she denied loss of bowel or bladder function. (Id.)

At a return visit on December 28, 2020, the Petitioner reported new symptoms of loss of bladder control and was instructed to go to the emergency room. (Id.) The Petitioner testified that she "was in agony" and thought her "back was going to fall out." (T. 17-18) At the Decatur Memorial Hospital emergency room, she underwent an MRI, which showed moderate central disc herniation at L5-S1 very near the S1 nerve root and contacting the L5 nerve roots within the neural foramina (structures in the spine that contain nerve roots). (PX2) The Petitioner was diagnosed with acute bilateral low back pain and lumbosacral disc herniation, prescribed a muscle relaxant, oral steroid and pain medication and was referred to neurosurgery. (Id.) She was ordered off work. (PX2, PX7)

On January 21, 2021, the Petitioner saw Dr. Oliver Dold, a neurosurgeon at Decatur Memorial Hospital. (T. 18, PX2, PX5) She described the accident consistently with her testimony. (PX2, PX5) She complained of pain in her back, legs, arms, pelvis and neck as well as weakness in her legs and arms and problems with bowel and bladder function. (Id.) Dr. Dold noted that the examination was difficult and essentially impossible to interpret because of the Petitioner's emotional distressed state. (Id.) He reviewed the lumbar MRI and found that the Petitioner had a back injury, with the main focus of pain in the lower back. (Id.) He prescribed a muscle relaxant and pain medication and said he would ask Crossing Health Family Nurse Practitioner Michelle Ater to see the Petitioner for emotional support and perhaps antidepressant treatment, as he had a sense of a very strong element of fear and anxiety in the situation. (Id.) Dr. Dold ordered the Petitioner off work. (PX5)

During a telephone follow-up on January 26, 2021, the Petitioner reported that the medications were not effective, so Dr. Dold prescribed oral steroids, initiated a pain clinic referral and strongly recommended the Petitioner see NP Ater for a psychological evaluation and counseling. (Id.) The Petitioner testified that she was having emotional issues because she finally got a job that could provide for her family but was unable to work because she got hurt. (T. 19) She said she loved her job and was finally going to be able to afford to have a kid – having always wanted to be a mom – but she did not think that was going to be possible. (Id.) Psychological treatment records were not submitted at arbitration.

On February 19, 2021, the Petitioner saw Dr. Francesco Vetri, a pain management physician with the Millennium Pain Clinic at Decatur Memorial Hospital. (T. 19-20. PX2, PX4) He ordered aqua therapy, prescribed a medication for depression, anxiety and neuropathy and

scheduled the Petitioner for thoracic/lumber trigger point injections (TPI's). (PX2, PX4) He noted that he may consider epidural steroid injections (ESI's) in the future. (Id.)

Dr. Vetri performed TPI's on March 5, 2021, adjusted the Petitioner's medications and prescribed a transcutaneous electrical nerve stimulation (TENS) unit. (T. 20, PX2, PX4) At a visit to Crossing Healthcare WHEN, NP Ater referred the Petitioner to urology for bladder incontinence and to Nurse Practitioner ??? Ashley for psychological evaluation per Dr. Dold's recommendation. (PX3) The Petitioner underwent physical therapy at Decatur Memorial from March 22, 2021, through April 14, 2021. (T. 20-21, PX2) The Petitioner continued to follow up with Dr. Dold with little change in her complaints, but she reported temporary relief with the TPI's. (PX2, PX5) A later treatment note reported 40 percent relief for four days. (Id.) At a visit to Crossing Healthcare on May 3, 2021, NP Ater added a diagnosis of bipolar disorder and ordered a walker and wheelchair. (PX3) On May 12, 2021, Dr. Dold noted that the Petitioner could not tolerate physical therapy, and it was discontinued. (PX2) He voiced concern that there may be a strong non-physiological component to the Petitioner's condition. (Id.) He continued off-work orders. (PX5)

The Petitioner underwent a Section 12 examination on May 10, 2021, by Dr. Benjamin Crane, an orthopedic spine surgeon at The Orthopedic Center of St. Louis. (RX1) Dr. Crane reviewed medical records from Dr. Dodd, Dr. Vetri, Dr. Renfro and Decatur Memorial Hospital, as well as physical therapy notes and MRI reports. (Id.) The Petitioner described the accident consistently with her testimony and reports to other care providers. (Id.) The Petitioner reported a lot of pain in her back and buttocks with occasional pain going down the outside of both thighs to the outside of both calves and the entirety of both feet, sometimes on top of the feet and sometimes in the bottom of the feet. (Id.) She said her leg pain was not there at all times and that

it was like a shooting-type sensation causing a "zinger" down both legs – happening once or twice a day and lasting five to ten minutes. (Id.) She said her back pain comprised 99 percent of her symptoms, denied having any prior back pain and rated her pain that day as 9/10. (Id.) She said the pain caused severe discomfort and was made worse with most activities of daily living – having trouble sitting, standing, walking and finding a comfortable position in which to sleep. (Id.) She also noted bowel and bladder incontinence ever since the accident. (Id.) She said she tried heat, ice, a TENS unit and trigger point injections with no relief of her symptoms. (Id.)

Dr. Crane noted that the Petitioner was sitting in a wheelchair from which she arose slowly with the use of her arms and was able to stand independently. (Id.) Dr. Crane reported that he found marked tenderness to palpation about the paraspinal muscles of the lumbar spine, with "exam out of proportion to physical exam findings." (Id.) The Petitioner was unwilling to forward flex, hyperextend or ambulate about the room. (Id.) Dr. Crane reported negative straight-leg raise bilaterally but that the Petitioner reported significant back pain with straight leg raise on both sides as well as pain when he touched her legs. (Id.) He found that the X-rays performed on October 17, 2020, were normal, and the December 28, 2020, MRI showed slight disc desiccation (dehydration) at L5-S1 and a broad-based disc bulge at that level not resulting in any significant stenosis (narrowing). (Id.)

Dr. Crane diagnosed low back and concluded that the accident was the prevailing factor in causing the Petitioner's back pain and need for subsequent treatment. (Id.) However, he noted several red flags, including give-way strength, cogwheel rigidity (a type of rigidity in which a muscle responds with cogwheel-like jerks to the use of constant force in bending the limb), evidence of magnification and exaggeration, description of bowel and bladder dysfunction not consistent with cauda equina (compression of nerve roots) and not correlating with the MRI

findings. (Id.) He recommended a CT discogram of the lumbar spine to determine if the L5-S1 was the true pain generator in the Petitioner's back, adding that if the test came back positive at that level only, she would potentially be a candidate for fusion surgery. (Id.) He also recommended light duty work restrictions of no bending, pulling, pushing or stooping; no lifting anything heavier than 10 pounds; and no overhead lifting. (Id.) He said the treatment provided had been reasonable and necessary as a result of the work accident. (Id.)

On May 12, 2021, Dr. Dold saw the Petitioner and reported that he did not see a surgical indication. (PX2, PX5) He reiterated this opinion throughout his treatment. (Id.)

Dr. Vetri performed an epidural steroid injection (ESI) at L5-S1 on June 1, 2021. (T. 23, PX2, PX4) The Petitioner reported about 50 percent improvement after that injection. (Id.) Dr. Vetri performed another ESI on July 13, 2021. (Id.) One treatment note reported about 30 percent improvement, and another note reported 50 percent relief. (PX2, PX4) On August 24, 2021, the Petitioner began complaining of greater pain in her hips, pelvis and lower sacral area (area in the low back between the hips and pelvis). (Id.) Dr. Vetri performed bilateral sacroiliac (SI) joint injections that day. (T. 24, PX2, PX4) A later treatment note reported 50 percent relief. (Id.) Dr. Vetri performed a trochanteric bursa injection of anesthetic to the hips on September 13, 2021, for which the Petitioner reported 30 percent relief. (PX2, PX4) Throughout her treatment, the Petitioner's medications continued to be adjusted. (Id.) She stopped using the TENS unit because it was not easy for her use and place by herself. (Id.)

On September 27, 2021, Dr. Dold characterized the Petitioner's symptoms as "intractable" and noted that the Petitioner was refractory to the various treatments. (PX2, PX5) Because of the Petitioner's neurological deficits and intractability, Dr. Dold ordered a new lumbar MRI and an MRI of the pelvis. (Id.)

The Petitioner underwent lumbar and pelvic MRIs on September 29, 2021, at Decatur Memorial Hospital. (PX2) The pelvic MRI was unremarkable. (Id.) The lumbar MRI showed improvement in the disc bulging at L5-S1 that no longer appeared to abut the S1 nerve roots, but the minimal bilateral foraminal stenosis at L5-S1 and mild right foraminal disc bulging with borderline right foraminal stenosis at L4-5 were unchanged. (Id.) On October 14, 2021, Dr. Dold read the lumbar MRI similarly to the radiologist but also noted a "high-intensity zone" that seemed to be maturing at the L5-S1 level. (PX5)

Another ESI was performed on October 25, 2021, for which the Petitioner reported 50 percent relief. (PX2, PX4)

At a visit on November 23, 2021, Dr. Dold disagreed with Dr. Crane's recommendation of a discogram, stating that the Petitioner would not tolerate the test and would require sedation, which would render the test invalid. (PX5) Dr. Dold recommended electromyography (EMG) due to sensory complaints. (PX5)

Dr. Crane performed a second Section 12 examination on December 1, 2021. (RX2) The Petitioner's symptom reports were essentially the same as in the first examination. (Id.) Dr. Crane reviewed updated medical records. (Id.) The results of his physical examination were similar to the first, although the Petitioner performed flexion and hyperextension to the extent of 5 degrees with significant pain. (Id.) She also reported significant pain in her low back when pushing on top of her head and shoulders and significant pain with rotation of the shoulders. (Id.) The Petitioner had a positive straight-leg raise bilaterally with reported back pain, but she did not report significant back pain with straight-leg raise when distracted. (Id.) An X-ray taken that day was normal, and Dr. Crane reading of the September 29, 2021, MRI was the same as the prior MRI

except for noting very slight Modic endplate (thin layer of cartilage between the disc and vertebrae) at L5-S1. (Id.)

Dr. Crane reiterated his diagnosis of low back pain but did not feel further treatment was necessary. (Id.) He was no longer recommending a discogram because there were too many red flags, specifically psychiatric problems, positive Waddell findings (testing for non-organic cause of pain), give-way type strength and cogwheel rigidity that he said were non-physiologic in nature, causing concern for symptom magnification and exaggeration. (Id.) He recommended home exercises and over-the-counter pain relievers/anti-inflammatories. (Id.) He found the Petitioner to be at maximum medical improvement (MMI), adding that most patients reach MMI for low back pain six weeks to three months after an injury. (Id.) He did not recommend an EMG of the lower extremities or any work or driving restrictions. (Id.)

The Petitioner underwent the EMG on December 7, 2021, that showed evidence of an underlying sensory motor polyneuropathy and possible L5-S1 radiculopathy in the left leg. (PX5, PX6)

On December 13, 2021, the Petitioner underwent another set of bilateral SI joint injections and on January 3, 2022, reported no relief but did report relief with use of medications and the TENS unit. (PX2, PX4)

Dr. Dold saw the Petitioner on December 20, 2021, and found that she was "effectively disabled." (PX2, PX5) He reviewed the new MRI and EMG and believed the radiculopathy could be attributable to the work accident but the neuropathy was idiopathic. (Id.) He thought there was significant psychological overlay that he believed needed aggressive management and recommended a multidisciplinary approach – exercises, psychological treatment and pain management. (Id.) He said the Petitioner was not able to return to work at that point. (Id.)

On January 3, 2022, Nurse Practitioner Angela Birdsell with Dr. Vetri's office ordered another ESI and discussed use of a spinal cord stimulator with the Petitioner. (T. 27, PX2, PX4) On January 19, 2022, the Petitioner saw Dr. Dold, who again attributed the Petitioner's back and leg pain to the work accident but believed there was some psychological component and that the Petitioner was in a vicious cycle involving initially pain with subsequent depression, which aggravated her pain and again her depression in a vicious cycle scenario. (PX2, PX5) He did not believe the Petitioner was a malingerer and reiterated his belief that a multidisciplinary approach was needed to break the cycle and allow rehabilitation and recovery. (Id.)

The Petitioner underwent another ESI on January 24, 2022. (PX2, PX4) On February 15, 2022, she reported having no relief from that injection. (T. 27-28, PX2, PX4) However, treatment notes from July 6, 2022, showed that ESI prevented pain for three months. (PX2, PX4) At follow-up visits, the possibility of a spinal cord stimulator was discussed again and – if the Petitioner was interested in proceeding – a referral was to be made to Dr. Ji Li, a pain management specialist in Bloomington. (T. 28, PX2, PX4)

The Petitioner testified that on February 20, 2022, she was attempting to stand up using her walker when her "legs were gone," and she fell, with the walker tipping and hitting her in the face. (T. 28) She said she experienced extreme pain and went to Decatur Memorial Hospital. (Id., RX2) She underwent doppler testing of the veins in her lower extremities, X-rays of both ankles and both knees and CT scans of the lumbar spine and head. (PX2) These tests appeared normal except for soft tissue swelling of the ankles and left knee. (Id.) She was diagnosed with a left ankle sprain and closed head injury. (Id.)

The Petitioner underwent another ESI on August 31, 2022, performed by Dr. Li. (T. 29-30) The Petitioner reported that the injection provided about 45 percent relief. (T. 30) Dr. Li

performed additional ESIs on November 30, 2022, and March 13, 2023. (T. 30, PX5) On December 15, 2022, the Petitioner reported 70 percent relief but still rated her pain at 8-10/10. (PX5)

Dr. Dold testified consistently with his records at a deposition on August 11, 2022. (PX1) He said the Petitioner's reports were genuine and that as he had gotten to know her over time, she was always consistent with her presentations, and he had no sense that the Petitioner was malingering. (Id.) He said the MRIs and EMG all correlated with a possible L5-S1 radiculopathy, which would be secondary to the work injury. (Id.) He opined that the cause of the Petitioner's injury was the work accident that led to an "injury to her work" and the subsequent "cascade of her distress and emotional difficulties and overall psychosocial disability both from an emotional standpoint and physical standpoint." (Id.) Although he agreed on cross-examination that an acute injury would not cause degeneration, he added that trauma certainly can contribute to the process and be an exacerbation that affects the long-term outcome. (Id.)

As to the recommendation for a spinal cord stimulator, Dr. Dold explained that the device is a tool to manage pain particularly in individuals who are not responsive or do not tolerate narcotics or have failed therapies, surgeries and injections by stimulating the neurological pathways to override the pain input. (Id.) He said he was not necessarily, terribly thrilled about the idea of a spinal cord stimulator but it was certainly worth potentially exploring. (Id.)

Regarding his disagreement with Dr. Crane's initial recommendation for a discogram, he stated that he spoke with the pain management specialist, who agreed that it was inconceivable that procedure would be an interpretable test for the Petitioner. (Id.) He also disagreed with Dr. Crane's later finding that the Petitioner could return to work, stating that with the Petitioner's high

level of distress, a great deal of pain and impairment with activities of daily living, it was inconceivable to him that she could be able to "do an employment situation." (Id.)

Dr. Crane testified consistently with his reports at a deposition on September 7, 2022. (RX3) He disagreed with the appropriateness of the EMG because the symptoms in the Petitioner's legs did not correlate with any specific nerve root irritation and because the MRI did not demonstrate any significant compression of the nerve roots at any level. (Id.) He reiterated that the Petitioner's complaints were out of proportion to the physical exam and diagnostic testing and said he was unaware of any explanation for the symptom magnification. (Id.) He said the change in his opinion was due to the Petitioner demonstrating significantly more symptom magnification. (Id.) Dr. Crane also said sitting in a wheelchair all day long could potentially affect back pain. (Id.)

At the Petitioner's last visit to Dr. Dold on July 17, 2023, Dr. Dold continued to recommend the Petitioner follow up with the pain clinic and caregivers at Crossing Healthcare and to stay off work. (RX5)

The Petitioner appeared at arbitration in a wheelchair. She described the current problems with her back as: "Extreme pain. It's grinding. It will pop out of place; you are not able to bend in any way. Movement, breathing hurts, coughing. It's torture. It literally feels like someone has took their fist and jammed it into my spine and grabbed it and then they start squeezing, and it's like they are trying to pull it out but they never did. They never get it out. It's been a constant, constant pain." (T. 33) She said that she used to bike ride, bowl, play darts, golf and walk, and before the accident, she was 150 pounds lighter. (Id.) She said: "I was a whole different person, and it has taken away so much. It has taken away my freedom." (T. 33-34) At the time of the arbitration hearing, the Petitioner rated her pain at 8/10. (T. 39) She said she was unable to

perform her own hygiene, go downstairs and get the mail, cook, go to the grocery store or pick something up off the floor. (T. 46-47) She said she was unable to get up the stairs to get to her second-floor apartment without assistance and had to sit on the stairs and scoot her way up. (T. 51-52)

She said she uses a TENS unit, a heating pad, a pillow, a walker to help her stand and a reclining chair. (T. 34) She said she takes "a monumental amount of medication three times a day." (Id.) She said nothing helps. (Id.)

The Petitioner testified that although she had not received a formal termination letter or call, she has been banned from access to the Respondent's computer system and her retirement plan status was in transition from regular active employee to terminated. (T. 31-32)

CONCLUSIONS OF LAW

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

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

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of the claimant's employment and (2) that the injury arose out of the claimant's employment. *McAllister v. Ill. Workers' Comp. Com'n*, 2020 IL 12484, ¶ 32.

The phrase "in the course of employment" refers to the time, place and circumstances of the injury. *Id.* at ¶34. A compensable injury occurs in the course of employment when it is sustained while a clamant is at work or while he or she performs reasonable activities in

conjunction with his or her employment. *Id.* In this case, the Petitioner reported the accident consistently throughout her treatment and in her testimony. The emails and texts produced support the Petitioner's testimony that she reported the accident to a foreman while she was in the emergency room and reported it to Mr. Burns. The Arbitrator notes that Mr. Burns did not testify, nor did any of the employees who were to be monitoring the Petitioner's work as a trainee.

As to whether the injury arose out of the Petitioner's employment, the Arbitrator notes that the Petitioner had no low back complaints prior to the work accident. The doctors, including Section 12 examiner Dr. Crane, agreed that the Petitioner suffered an injury from the accident the Petitioner described. The extent of this injury will be discussed below in the causation analysis.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that her injuries occurred in the course of and arose out of her employment.

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

As a preliminary issue, the Arbitrator finds that the Petitioner was credible, based on Dr. Dold's observations over a long period of treatment and consistencies among the Petitioner's testimony and her reports to medical providers. The symptoms and disablements of which the Petitioner complains could be seen as exaggeration – or at worst, malingering – but the Arbitrator takes into account the psychological and emotional issues that appear to be intertwined with the effects of the work injury.

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007).

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

Drs. Dold and Crane agreed that the Petitioner's back pain was caused by the work accident until Dr. Crane performed his second examination. At that time, the red flags for malingering appeared to override Dr. Crane's earlier opinions. As the Petitioner's treating physician, Dr. Dold had numerous interactions with the Petitioner over a long period of time and became more familiar with the Petitioner and her condition as opposed to Dr. Crane. Therefore, the Arbitrator gives Dr. Dold's opinions greater weight – especially when it comes to whether the Petitioner was malingering.

There is much at play in considering the Petitioner's current condition – pre-existing degeneration, injury caused by the work accident and the Petitioner's psychological and emotional issues. Dr. Dold's observation that the Petitioner is caught in a vicious cycle or "cascade" of her distress is consistent with the medical evidence as a whole. Because of the Petitioner's psychological and emotional makeup, she appears susceptible to experiencing a more serious reaction to pain than would a person without these issues. But it cannot be said that the other conditions were the cause of the Petitioner's current conditions without the pain caused by the work injury. The Arbitrator agrees with Dr. Dold that the work accident was the catalyst for a vicious cycle that has culminated in the Petitioner's current condition.

Therefore, the Arbitrator finds that the Petitioner's current low back condition was causally related to the work accident.

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

According to the Request for Hearing (AX1), the parties dispute temporary total disability benefits for the period of December 28, 2020, through August 24, 2023.

An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

The Petitioner was continuously ordered off work since December 28, 2020. Dr. Crane agreed with the off-work orders until his second report. As stated above, he felt that due to the red flags he saw, the Petitioner no longer needed work restrictions.

Based on the findings above regarding causation, the Arbitrator agrees with Dr. Dold's opinion that the Petitioner was temporarily totally disabled for the period in question and is entitled to TTD benefits from December 28, 2020, through August 24, 2023.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

Petitioner's Exhibits 2, 3 and 6 contain medical billing information. Based on the findings above regarding causation, the medical services provided are found to be reasonable and necessary. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in

Petitioner's Exhibits 2, 3 and 6 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

Issue (K): Is Petitioner entitled to any prospective medical care?

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Drs. Dold and Crane agreed that the Petitioner required further treatment until Dr. Crane performed his second examination. At that time, the red flags for malingering appeared to override his earlier opinions to the extent that he found the Petitioner's condition was not causally related and that she needed no further treatment or restrictions.

However, treatment to date has not relieved or cured the effects of the Petitioner's injury. For the reasons stated above, the Arbitrator agrees with Dr. Dold that treatment is still necessary. Drs. Vetri and Li have recommended a spinal cord stimulator, which the Arbitrator finds to be reasonable.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care – at a minimum, continuing pain management and at least a trial of a spinal cord stimulator. The Respondent shall authorize and pay for such.

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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC021533
Case Name	Tonica Wood v. State of Illinois - Murray Center
Consolidated Cases	23WC001749;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0301
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Kenton Owens

DATE FILED: 6/21/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TONICA WOOD,

Petitioner,

vs. NO: 21 WC 21533

STATE OF ILLINOIS,
MURRAY CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. This case was consolidated for hearing with case number 23 WC 01749.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 5, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $419.44 per week for a period of 137.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 27.5% loss of use of the person as a whole.

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

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

Pursuant to §19(f)(1), this decision is not subject to judicial review.

June 21, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 5/22/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC021533
Case Name	Tonica Wood v. State of Illinois/Murray Center
Consolidated Cases	23WC001749;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 1/5/2024

/s/Linda Cantrell, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JANUARY 3, 2024 5.045%

CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/14

January 5, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Tonica Wood
Employee/Petitioner

v.

State of Illinois/Murray Center
Employer/Respondent

Case # **21** WC **021533**

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon** on **11/16/23**. By stipulation, the parties agree:

On the date of accident, **7/29/20**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**36,351.42**, and the average weekly wage was $**699.07**.

At the time of injury, Petitioner was **37** years of age, ***single*** with **1** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**Any and all paid** for TTD, $**0** for TPD, $**0** for maintenance, and $**Any and all paid** for other benefits, for a total credit of $**Any and all paid**, pursuant to the stipulation of the parties.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**419.44**/week for a further period of **137.5** weeks, because the injuries sustained caused permanent partial disability to the extent of **27.5%** loss of Petitioner's body as a whole, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 8/3/23 through 11/16/23, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Arbitrator Linda J. Cantrell

January 5, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
Nature and Extent Only

TONICA WOOD,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 21-WC-021533**
	)	
STATE OF ILLINOIS/ MURRAY CENTER,	)	**Consolidated Case No. 23-WC-001749**
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on November 16, 2023. On 7/30/21, Petitioner filed an Application for Adjustment of Claim alleging injuries to her back/body as a whole as a result of being attacked by a combative patient on 7/29/20. (Case No. 21-WC-021533, AX3) On 1/20/23, Petitioner filed an Application for Adjustment of Claim alleging injuries to her back, left hip, and body as a whole as a result of rolling a mattress during bed check on 10/3/22. (Case No. 23-WC-001749, AX4). The cases were consolidated by this Arbitrator on 4/10/23.

The parties stipulated that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 7/29/20, and that Petitioner's current condition of ill-being is causally connected to the injury. The parties stipulated that all temporary benefits have been paid and that Respondent is entitled to a credit for any and all benefits paid.

The sole issue in dispute is the nature and extent of Petitioner's injuries. The Arbitrator has simultaneously issued a separate Decision in Case No. 23-WC-001749.

TESTIMONY

Petitioner was 37 years old, single, with one dependent child at the time of accident. She is employed by Respondent as a Mental Health Technician II. Petitioner testified that on 7/29/20 a patient became aggressive and threw another tech into her, causing her to flip backward over a recliner and land on the armrest. She testified that the other tech fell on top of her and when the tech got up, the aggressive patient "plopped down" on top of her and she felt her lower back pop in two places.

Petitioner underwent a disc replacement at L4-5 and L5-S1 by Dr. Gornet. She testified that her symptoms were very painful prior to surgery. Her symptoms improved with surgery, and she returned to full duty work.

On 10/3/22, Petitioner sustained a second work injury when she attempted to turn a heavy patient in bed and felt a pull in her lower back. She testified that her pain eventually returned to baseline. Petitioner has pain when standing up, which causes her to limp until she "walks it out". She has soreness and increased pain when restraining individuals at work. Petitioner testified that certain activities cause her symptoms to go down her leg. Her symptoms limit her time walking, hiking, jogging, and playing with her dogs. Petitioner stated it takes her longer to perform household activities such as sweeping and mopping. Her symptoms increase with standing to do dishes and bending to do laundry. Petitioner takes two Aleve every day to control her pain.

Petitioner testified that she underwent radiofrequency ablations with Dr. Blake after her surgery. The ablations improved her symptoms for approximately one and a half months. Dr. Gornet placed Petitioner at MMI on 8/3/23 which is the last time she saw him. She has a two-year post-operative follow up with Dr. Gornet in February 2024. Petitioner testified that she returned to her pre-accident position with Respondent, and she works a minimum of 60 hours per week which she did prior to the accidents.

MEDICAL HISTORY

On 7/29/20, Petitioner presented to the emergency department at SSM Health St. Mary's Hospital with acute back pain following an accident at work. (PX3) She reported that she had been attempting to get a client out of his room to do a visit with his mother when the client became aggressive and began hitting and kicking. Petitioner reported that she fell backward over a chair and the client "sat on her." On exam, Petitioner had tenderness, pain, and spasm to her lumbar spine. X-rays showed mild or early degenerative changes at L4-5 and L5-S1. Petitioner was diagnosed with a lumbar strain, taken off work for 48 hours, and was given Norco, Benadryl, Motrin, and Flexeril.

On 8/6/20, Petitioner presented to SSM Health Medical Group where she was seen by Kendra Bowen, PA-C, and reported symptoms of low back pain. (PX4, p. 2) She reported the history of injury, and it was noted that she had experienced sharp, worsening back pain since that time. She reported she was supposed to return to work Monday but had not been able to due to her pain. On exam, she had limited range of motion, pain with motion and tenderness in her back. She was assessed with acute bilateral low back pain without sciatica, for which she was given Norco, taken off work, and instructed to return in four days.

Petitioner noted some improvement at her next appointment with PA Bowen and was returned to light duty; however, she reported that when she went back to work, she had increased pain. A lumbar x-ray was ordered which was normal. Petitioner was kept on light duty and referred to physical therapy, which she performed at SSM Health St. Mary's Centralia Hospital from 8/25/20 through 9/4/20.

On 9/8/20, Petitioner presented to the Orthopaedic Center of Southern Illinois, where she saw Dr. Matthew Phillips. Petitioner gave the history of her injury and reported symptoms of significant left-sided low back pain and pain down her left hamstring. On exam, Petitioner had mild tenderness to the lumbar spine, point tenderness to the left sacroiliac joint and had positive left-sided Fortin finger sign, distraction test, thigh thrust and fevers test. The assessment was left sacroiliac joint dysfunction. Dr. Phillips recommended an MRI, prescribed Norco, and kept Petitioner off work.

Petitioner underwent an MRI at SSM Health St. Mary's that revealed desiccation at L4-5 and L5-S1, mild bulging and degeneration at L5-S1, degeneration, disc bulging, bilateral but greater on the left, foraminal stenosis, and mild canal stenosis at L4-5. (PX3, p. 150)

Petitioner returned to Dr. Phillips, who kept Petitioner off work and recommended SI joint focused physical therapy, which Petitioner performed at the Orthopaedic Center of Southern Illinois.

Petitioner continued treating with Dr. Phillips and undergoing physical therapy; however, her left-sided SI joint pain did not improve. Dr. Phillips ordered an MRI of Petitioner's pelvis to rule out a stress fracture or pelvic injury, and same showed no evidence of fracture or sacroiliitis. (PX3, p. 168; PX5, p. 10)

Petitioner continued to undergo physical therapy at the Orthopaedic Center of Southern Illinois through 2/8/21. On 2/9/21, Dr. Phillips recommended a left SI joint injection due to her continued symptoms. Same was performed by Dr. Aiping Smith on 3/31/21.

Petitioner returned to Dr. Phillips and reported that the injection helped for one day, but she had not gotten significantly better. (PX5, p. 29) Dr. Phillips discussed a left SI joint fusion surgery preceded by a diagnostic injection. The injection was performed by Dr. Smith on 6/7/21.

Petitioner returned to Dr. Phillips and reported that she had begun having pain all the way down her left leg. A repeat MRI was performed on 6/25/21 that showed mild to moderate left and mild right L4-5 neural foraminal narrowing due to a left foraminal disc protrusion with annular fissure and a small right foraminal protrusion with annular fissure superimposed upon the left-greater-than-right lateral bulging disc, as well as a small central right L5-S1 protrusion with annual fissure. (PX5, p. 41)

On 7/6/21, Dr. Phillips noted Petitioner had tried physical therapy, injections and pain medication; however, she continued to have symptoms. He recommended SI joint fusion surgery.

On 7/30/21, Petitioner was examined by Dr. Matthew Gornet for symptoms of low back pain central to the left side, left buttock, and left hip pain, with intermittent left leg pain down to her foot. (PX6) She gave the history of her work injury and subsequent medical treatment. Her symptoms were constant and worsened with lifting and prolonged sitting or standing. On exam, she had decreased strength in the right EHL and pain to her low back, buttock, and hip, which increased to both sides with prolonged sitting. Dr. Gornet reviewed Petitioner's prior MRI scan

from 9/1/20 and noted central right and central annular tears at L4-5 and central and left-sided annular tears at L5-S1 with an extruded fragment on the left. He reviewed the MRI dated 6/25/21 and noted that it continued to show the central annual tear at L5-S1 and the left-sided protrusion at L4-5. He noted that the MRI reports did not mention the annular tear at L5-S1, the annular tear at L4-5, or the lateral disc herniation at L4-5.

Dr. Gornet reviewed Dr. Phillips' notes and stated that they were consistent with an injury; however, his diagnosis was different. He believed Petitioner had a disc injury at L4-5 and L5-S1. He placed Petitioner off work and recommended that she wean off Hydrocodone, lose weight, and return for additional diagnostic testing. He indicated she would likely require disc replacement at L4-5 and L5-S1. He referred her to Dr. Tom Charles for a consult for anterior exposure due to her abdominal mesh.

On 1/20/22, Petitioner underwent a lumbar MRI at MRI Partners of Chesterfield that revealed bilateral foraminal annular tears/fissures and herniations with cranially extruded disc material at L4-5, resulting in moderate to severe right foraminal stenosis, as well as midline annular tear/fissure and herniated/caudally extruded disc fragment at L5-S1, resulting in epidural fat effacement. (PX7, p. 2) Petitioner's CT scan showed no evidence of facet arthropathy and Dr. Gornet recommended disc replacements at L4-5 and L5-S1. He continued Petitioner off work. (PX8, p. 1; PX6, p. 6)

On 2/16/22, Petitioner underwent an anterior decompression and disc replacement at L4-5 and L5-S1. (PX6, pp. 9-13) Objective intraoperative findings included a midline central annular defect, central annular tear and a herniation within the tear at L5-S1, a small defect and avulsion off the superior endplate at S1, and a midline central annular tear and defect at L4-5. At Petitioner's post-surgical follow-up appointments she was doing well and could feel a dramatic difference in her symptoms. She was continued off work.

On 6/2/22, Petitioner returned to Dr. Gornet's office and reported continued relief of her symptoms; however, at times she had intermittent left leg pain and weakness in her left leg. (PX6, pp. 19, 20) A postoperative CT showed no subsidence or lucency. She was continued off work and referred for physical therapy, which she performed at the Orthopaedic Center of Southern Illinois from 6/10/22 through 8/3/22. (PX5, pp. 110-126; PX6, pp. 19, 20)

On 8/4/22, Dr. Gornet's PA, Nathan Collins, noted Petitioner was motivated to return to work. She was released to return to work full duty without restrictions on 8/8/22. (PX6, p. 24) She was instructed to return in three months. PA Collins recommended four weeks of work conditioning, which Petitioner performed at the Orthopaedic Center of Southern Illinois from 8/5/22 through 9/1/22. (PX6, p. 24; PX5, pp. 127-147)

Petitioner called Dr. Gornet's office on 8/31/22 and indicated that work hardening was increasing her symptoms, as she had intermittent episodes of low back pain going down her buttock, hip, and leg, primarily on the left side. (PX6, p. 27) She was instructed to discontinue work conditioning.

On 11/1/22, Petitioner presented to Kendra Bowen, PA-C and indicated that she was concerned that she re-injured herself. (PX4, pp. 44) She had sharp left lower back pain radiating into her leg and down her foot and reported that lifting at work made her symptoms worse. She was prescribed Prednisone and Norco and was taken off work until she was able to follow up with Dr. Gornet.

On 11/3/22, Petitioner returned to Dr. Gornet's office where she saw Nathan Collins, PA. (PX6, p. 28) He noted that Petitioner had returned to work and was continuing to do exceptionally well until approximately one month ago, when she was at work and went to roll a mattress with a patient and felt immediate sharp pain when she leaned over and pulled. Since that time, she had progressive low back pain which radiated to her left hip, buttock, leg, and into her foot. A CT scan was performed that showed no evidence of subsidence or migration of her devices. PA Collins noted that Petitioner could have aggravated a facet joint or caused a new injury at an adjacent level. He noted that Petitioner contacted their office on 10/22/22; however, there were no available appointments, so he retroactively placed her off work beginning 10/27/22. He placed her on Prednisone and kept her off until 11/14/22.

On 11/18/22, Petitioner spoke with Dr. Gornet's, PA, Alison Joggerst, and indicated the Prednisone had not given her significant relief and she continued to have low back pain down her left hip and left leg and into her ankle. She was kept off work and a new lumbar MRI scan was ordered.

A lumbar MRI scan was performed on 12/19/22 that showed edema in the left-sided facet joint. (PX7, p. 1; PX6, p. 33) That same day, Petitioner saw PA Joggerst, who indicated Petitioner aggravated her left-sided facet joint. (PX6, p. 34) Medial branch blocks and radio frequency oblations were recommended on the left side and Petitioner was continued off work.

On 2/16/23, Petitioner returned to Dr. Gornet who noted she had done remarkably well after surgery; however, since her most recent accident, she had low back pain along with left buttock, left hip, and intermittent left leg symptoms. A CT scan performed that day showed no evidence of fracture and no change in the joint itself. Dr. Gornet kept Petitioner off work and recommended medial branch blocks and facet rhizotomies.

On 2/21/23, Petitioner underwent medial nerve branch blocks with Dr. Helen Blake. (PX10, pp. 1, 2) On 3/6/23, Petitioner had a telemedicine visit with Dr. Blake and reported initial substantial improvement in her symptoms; however, her symptoms returned after the local anesthetic wore off. Dr. Blake recommended radiofrequency ablations at L4-5 and L5-S1, which were performed on 3/7/23.

On 4/25/23, Petitioner was examined by Dr. Christopher O'Boynick pursuant to Section 12 of the Act. (RX2) Dr. O'Boynick took the history of both Petitioner's injuries and subsequent treatment. He believed that Petitioner's initial work injury caused or contributed to her SI joint dysfunction and indicated it was possible that a disc injury or herniation could have occurred secondary to her mechanism of injury. He opined that all her treatment had been reasonable and necessary in relation to her work injury. He did not feel she had reached MMI and recommended a diagnostic left SI joint injection.

Petitioner returned to Dr. Gornet on 5/1/23 and reported improvement following the medial branch blocks and radiofrequency ablations. (PX6, p. 40) Dr. Gornet kept Petitioner off work through 5/3/23, followed by light duty work, and then full duty work on 6/19/23.

On 8/3/23, Petitioner returned to Dr. Gornet and reported that her radiofrequency ablations in March 2023 had helped; however, she felt they were slowly wearing off. Dr. Gornet indicated that Petitioner might have ongoing pain and indicated that since her symptoms had been increasing since October, she might be developing facet changes. He recommended that she continue to work full duty, placed her at MMI, and instructed her to follow up in February.

CONCLUSIONS OF LAW

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA impairment rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner returned to her pre-accident position for Respondent and continues to work a minimum of 60 hours per week. She testified that restraining individuals increases her symptoms. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 37 years of age at the time of her injury. She is a younger individual and must live and work with her disability for an extended period of time. Pursuant to *Jones v. Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact that Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places significant weight on this factor.

(iv) **Earning Capacity**: There is no direct evidence of reduced earning capacity contained in the record. Petitioner returned to her pre-accident position with Respondent and currently works over 60 hours per week. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of her undisputed accident, Petitioner sustained a lumbar spine injury that resulted in a disc replacement surgery at L4-5 and L5-S1 on 2/16/22. On 8/3/22, Petitioner was released to full duty work without restrictions effective 8/8/22 and was ordered to simultaneously undergo work conditioning for four weeks. She was not released at MMI and was ordered to return to Dr. Gornet's office in three months. On 8/31/22, Petitioner was ordered to discontinue work conditioning as it

increased her symptoms, with intermittent episodes of low back pain going down her buttock, hip, and leg, primarily on the left side. Petitioner returned to her pre-accident position with Respondent and worked full duty without restrictions from 8/8/22 until she sustained a second work injury on 10/3/22. Petitioner complained of increased radiculopathy in her left leg to her foot. She underwent medial nerve branch blocks and radiofrequency ablations that provided relief for approximately one and a half months. Petitioner testified that her symptoms following her second work accident returned to baseline. She returned to full duty work without restrictions on 6/19/23. Dr. Gornet released Petitioner at MMI without restrictions on 8/3/23. Upon discharge, Petitioner reported the ablations were slowly wearing off. Dr. Gornet opined that Petitioner might have ongoing pain and may be developing facet changes.

Petitioner testified that she still experiences soreness and increased pain when performing her job duties. Her symptoms go down her leg with certain activities. Her daily living activities and hobbies have been adversely affected. Petitioner takes two Aleve per day to manage her symptoms. She has returned to full duty work for Respondent without restrictions and currently works a minimum of 60 hours per week. The Arbitrator places significant weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 27.5% loss of her body as a whole, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 8/3/23 through 11/16/23, and shall pay the remainder of the award, if any, in weekly payments.

Linda J. Cantrell

Arbitrator Linda J. Cantrell

DATED: **January 5, 2024**

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC001749
Case Name	Tonica Wood v. State of Illinois - Murray Center
Consolidated Cases	21WC021533;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0302
Number of Pages of Decision	11
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 6/21/2024

/s/ Raychel Wesley, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TONICA WOOD,

Petitioner,

vs. NO: 23 WC 01749

STATE OF ILLINOIS,
MURRAY CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. This case was consolidated for hearing with case number 21 WC 21533.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 5, 2024 is hereby affirmed and adopted.

Pursuant to §19(f)(1), this decision is not subject to judicial review.

June 21, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 5/22/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC001749
Case Name	Tonica Wood v. State of Illinois/Murray Center
Consolidated Cases	21WC021533;
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 1/5/2024

/s/ Linda Cantrell, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JANUARY 3, 2024 5.045%

CERTIFIED as a true and correct
copy pursuant to 820 ILCS
305/14

January 5, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

☐ Injured Workers' Benefit Fund (§4(d))
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☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Tonica Wood
Employee/Petitioner

v.

State of Illinois/Murray Center
Employer/Respondent

Case # **23** WC **001749**

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon** on **11/16/23**. By stipulation, the parties agree:

On the date of accident, **10/3/22**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**36,351.42**, and the average weekly wage was $**699.07**.

At the time of injury, Petitioner was **37** years of age, ***single*** with **1** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**Any and all paid** for other benefits, for a total credit of $**Any and all paid**, pursuant to the stipulation of the parties.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

All permanent partial disability benefits have been awarded in Consolidated Case No. 21-WC-021533; therefore, the Arbitrator awards no further permanent partial disability benefits herein.

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

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

Arbitrator Linda J. Cantrell

January 5, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
Nature and Extent Only

TONICA WOOD,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 23-WC-001749**
	)	
STATE OF ILLINOIS/ MURRAY CENTER,	)	**Consolidated Case No. 21-WC-021533**
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	)	
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FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on November 16, 2023. On 7/30/21, Petitioner filed an Application for Adjustment of Claim alleging injuries to her back/body as a whole as a result of being attacked by a combative patient on 7/29/20. (Case No. 21-WC-021533, AX3) On 1/20/23, Petitioner filed an Application for Adjustment of Claim alleging injuries to her back, left hip, and body as a whole as a result of rolling a mattress during bed check on 10/3/22. (Case No. 23-WC-001749, AX4). The cases were consolidated by this Arbitrator on 4/10/23.

The parties stipulated that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 10/3/22, and that Petitioner's current condition of ill-being is causally connected to the injury. The parties stipulated that Petitioner lost no time from work as a result of the accident. The parties further stipulated that Respondent shall receive credit for any and all benefits paid.

The sole issue in dispute is the nature and extent of Petitioner's injuries. The Arbitrator has simultaneously issued a separate Decision in Case No. 21-WC-021533.

TESTIMONY

Petitioner was 37 years old, single, with one dependent child at the time of accident. She is employed by Respondent as a Mental Health Technician II. Petitioner testified that on 7/29/20 a patient became aggressive and threw another tech into her, causing her to flip backward over a recliner and land on the armrest. She testified that the other tech fell on top of her and when the tech got up, the aggressive patient "plopped down" on top of her and she felt her lower back pop in two places.

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Petitioner testified that she underwent radiofrequency ablations with Dr. Blake after her surgery. The ablations improved her symptoms for approximately one and a half months. Dr. Gornet placed Petitioner at MMI on 8/3/23 which is the last time she saw him. She has a two-year post-operative follow up with Dr. Gornet in February 2024. Petitioner testified that she returned to her pre-accident position with Respondent, and she works a minimum of 60 hours per week which she did prior to the accidents.

MEDICAL HISTORY

On 7/29/20, Petitioner presented to the emergency department at SSM Health St. Mary's Hospital with acute back pain following an accident at work. (PX3) She reported that she had been attempting to get a client out of his room to do a visit with his mother when the client became aggressive and began hitting and kicking. Petitioner reported that she fell backward over a chair and the client "sat on her." On exam, Petitioner had tenderness, pain, and spasm to her lumbar spine. X-rays showed mild or early degenerative changes at L4-5 and L5-S1. Petitioner was diagnosed with a lumbar strain, taken off work for 48 hours, and was given Norco, Benadryl, Motrin, and Flexeril.

On 8/6/20, Petitioner presented to SSM Health Medical Group where she was seen by Kendra Bowen, PA-C, and reported symptoms of low back pain. (PX4, p. 2) She reported the history of injury, and it was noted that she had experienced sharp, worsening back pain since that time. She reported she was supposed to return to work Monday but had not been able to due to her pain. On exam, she had limited range of motion, pain with motion and tenderness in her back. She was assessed with acute bilateral low back pain without sciatica, for which she was given Norco, taken off work, and instructed to return in four days.

Petitioner noted some improvement at her next appointment with PA Bowen and was returned to light duty; however, she reported that when she went back to work, she had increased pain. A lumbar x-ray was ordered which was normal. Petitioner was kept on light duty and referred to physical therapy, which she performed at SSM Health St. Mary's Centralia Hospital from 8/25/20 through 9/4/20.

On 9/8/20, Petitioner presented to the Orthopaedic Center of Southern Illinois, where she saw Dr. Matthew Phillips. Petitioner gave the history of her injury and reported symptoms of significant left-sided low back pain and pain down her left hamstring. On exam, Petitioner had mild tenderness to the lumbar spine, point tenderness to the left sacroiliac joint and had positive left-sided Fortin finger sign, distraction test, thigh thrust and fevers test. The assessment was left sacroiliac joint dysfunction. Dr. Phillips recommended an MRI, prescribed Norco, and kept Petitioner off work.

Petitioner underwent an MRI at SSM Health St. Mary's that revealed desiccation at L4-5 and L5-S1, mild bulging and degeneration at L5-S1, degeneration, disc bulging, bilateral but greater on the left, foraminal stenosis, and mild canal stenosis at L4-5. (PX3, p. 150)

Petitioner returned to Dr. Phillips, who kept Petitioner off work and recommended SI joint focused physical therapy, which Petitioner performed at the Orthopaedic Center of Southern Illinois.

Petitioner continued treating with Dr. Phillips and undergoing physical therapy; however, her left-sided SI joint pain did not improve. Dr. Phillips ordered an MRI of Petitioner's pelvis to rule out a stress fracture or pelvic injury, and same showed no evidence of fracture or sacroiliitis. (PX3, p. 168; PX5, p. 10)

Petitioner continued to undergo physical therapy at the Orthopaedic Center of Southern Illinois through 2/8/21. On 2/9/21, Dr. Phillips recommended a left SI joint injection due to her continued symptoms. Same was performed by Dr. Aiping Smith on 3/31/21.

Petitioner returned to Dr. Phillips and reported that the injection helped for one day, but she had not gotten significantly better. (PX5, p. 29) Dr. Phillips discussed a left SI joint fusion surgery preceded by a diagnostic injection. The injection was performed by Dr. Smith on 6/7/21.

Petitioner returned to Dr. Phillips and reported that she had begun having pain all the way down her left leg. A repeat MRI was performed on 6/25/21 that showed mild to moderate left and mild right L4-5 neural foraminal narrowing due to a left foraminal disc protrusion with annular fissure and a small right foraminal protrusion with annular fissure superimposed upon the left-greater-than-right lateral bulging disc, as well as a small central right L5-S1 protrusion with annual fissure. (PX5, p. 41)

On 7/6/21, Dr. Phillips noted Petitioner had tried physical therapy, injections and pain medication; however, she continued to have symptoms. He recommended SI joint fusion surgery.

On 7/30/21, Petitioner was examined by Dr. Matthew Gornet for symptoms of low back pain central to the left side, left buttock, and left hip pain, with intermittent left leg pain down to her foot. (PX6) She gave the history of her work injury and subsequent medical treatment. Her symptoms were constant and worsened with lifting and prolonged sitting or standing. On exam, she had decreased strength in the right EHL and pain to her low back, buttock, and hip, which increased to both sides with prolonged sitting. Dr. Gornet reviewed Petitioner's prior MRI scan

from 9/1/20 and noted central right and central annular tears at L4-5 and central and left-sided annular tears at L5-S1 with an extruded fragment on the left. He reviewed the MRI dated 6/25/21 and noted that it continued to show the central annual tear at L5-S1 and the left-sided protrusion at L4-5. He noted that the MRI reports did not mention the annular tear at L5-S1, the annular tear at L4-5, or the lateral disc herniation at L4-5.

Dr. Gornet reviewed Dr. Phillips' notes and stated that they were consistent with an injury; however, his diagnosis was different. He believed Petitioner had a disc injury at L4-5 and L5-S1. He placed Petitioner off work and recommended that she wean off Hydrocodone, lose weight, and return for additional diagnostic testing. He indicated she would likely require disc replacement at L4-5 and L5-S1. He referred her to Dr. Tom Charles for a consult for anterior exposure due to her abdominal mesh.

On 1/20/22, Petitioner underwent a lumbar MRI at MRI Partners of Chesterfield that revealed bilateral foraminal annular tears/fissures and herniations with cranially extruded disc material at L4-5, resulting in moderate to severe right foraminal stenosis, as well as midline annular tear/fissure and herniated/caudally extruded disc fragment at L5-S1, resulting in epidural fat effacement. (PX7, p. 2) Petitioner's CT scan showed no evidence of facet arthropathy and Dr. Gornet recommended disc replacements at L4-5 and L5-S1. He continued Petitioner off work. (PX8, p. 1; PX6, p. 6)

On 2/16/22, Petitioner underwent an anterior decompression and disc replacement at L4-5 and L5-S1. (PX6, pp. 9-13) Objective intraoperative findings included a midline central annular defect, central annular tear and a herniation within the tear at L5-S1, a small defect and avulsion off the superior endplate at S1, and a midline central annular tear and defect at L4-5. At Petitioner's post-surgical follow-up appointments she was doing well and could feel a dramatic difference in her symptoms. She was continued off work.

On 6/2/22, Petitioner returned to Dr. Gornet's office and reported continued relief of her symptoms; however, at times she had intermittent left leg pain and weakness in her left leg. (PX6, pp. 19, 20) A postoperative CT showed no subsidence or lucency. She was continued off work and referred for physical therapy, which she performed at the Orthopaedic Center of Southern Illinois from 6/10/22 through 8/3/22. (PX5, pp. 110-126; PX6, pp. 19, 20)

On 8/4/22, Dr. Gornet's PA, Nathan Collins, noted Petitioner was motivated to return to work. She was released to return to work full duty without restrictions on 8/8/22. (PX6, p. 24) She was instructed to return in three months. PA Collins recommended four weeks of work conditioning, which Petitioner performed at the Orthopaedic Center of Southern Illinois from 8/5/22 through 9/1/22. (PX6, p. 24; PX5, pp. 127-147)

Petitioner called Dr. Gornet's office on 8/31/22 and indicated that work hardening was increasing her symptoms, as she had intermittent episodes of low back pain going down her buttock, hip, and leg, primarily on the left side. (PX6, p. 27) She was instructed to discontinue work conditioning.

On 11/1/22, Petitioner presented to Kendra Bowen, PA-C and indicated that she was concerned that she re-injured herself. (PX4, pp. 44) She had sharp left lower back pain radiating into her leg and down her foot and reported that lifting at work made her symptoms worse. She was prescribed Prednisone and Norco and was taken off work until she was able to follow up with Dr. Gornet.

On 11/3/22, Petitioner returned to Dr. Gornet's office where she saw Nathan Collins, PA. (PX6, p. 28) He noted that Petitioner had returned to work and was continuing to do exceptionally well until approximately one month ago, when she was at work and went to roll a mattress with a patient and felt immediate sharp pain when she leaned over and pulled. Since that time, she had progressive low back pain which radiated to her left hip, buttock, leg, and into her foot. A CT scan was performed that showed no evidence of subsidence or migration of her devices. PA Collins noted that Petitioner could have aggravated a facet joint or caused a new injury at an adjacent level. He noted that Petitioner contacted their office on 10/22/22; however, there were no available appointments, so he retroactively placed her off work beginning 10/27/22. He placed her on Prednisone and kept her off until 11/14/22.

On 11/18/22, Petitioner spoke with Dr. Gornet's, PA, Alison Joggerst, and indicated the Prednisone had not given her significant relief and she continued to have low back pain down her left hip and left leg and into her ankle. She was kept off work and a new lumbar MRI scan was ordered.

A lumbar MRI scan was performed on 12/19/22 that showed edema in the left-sided facet joint. (PX7, p. 1; PX6, p. 33) That same day, Petitioner saw PA Joggerst, who indicated Petitioner aggravated her left-sided facet joint. (PX6, p. 34) Medial branch blocks and radio frequency oblations were recommended on the left side and Petitioner was continued off work.

On 2/16/23, Petitioner returned to Dr. Gornet who noted she had done remarkably well after surgery; however, since her most recent accident, she had low back pain along with left buttock, left hip, and intermittent left leg symptoms. A CT scan performed that day showed no evidence of fracture and no change in the joint itself. Dr. Gornet kept Petitioner off work and recommended medial branch blocks and facet rhizotomies.

On 2/21/23, Petitioner underwent medial nerve branch blocks with Dr. Helen Blake. (PX10, pp. 1, 2) On 3/6/23, Petitioner had a telemedicine visit with Dr. Blake and reported initial substantial improvement in her symptoms; however, her symptoms returned after the local anesthetic wore off. Dr. Blake recommended radiofrequency ablations at L4-5 and L5-S1, which were performed on 3/7/23.

On 4/25/23, Petitioner was examined by Dr. Christopher O'Boynick pursuant to Section 12 of the Act. (RX2) Dr. O'Boynick took the history of both Petitioner's injuries and subsequent treatment. He believed that Petitioner's initial work injury caused or contributed to her SI joint dysfunction and indicated it was possible that a disc injury or herniation could have occurred secondary to her mechanism of injury. He opined that all her treatment had been reasonable and necessary in relation to her work injury. He did not feel she had reached MMI and recommended a diagnostic left SI joint injection.

Petitioner returned to Dr. Gornet on 5/1/23 and reported improvement following the medial branch blocks and radiofrequency ablations. (PX6, p. 40) Dr. Gornet kept Petitioner off work through 5/3/23, followed by light duty work, and then full duty work on 6/19/23.

On 8/3/23, Petitioner returned to Dr. Gornet and reported that her radiofrequency ablations in March 2023 had helped; however, she felt they were slowly wearing off. Dr. Gornet indicated that Petitioner might have ongoing pain and indicated that since her symptoms had been increasing since October, she might be developing facet changes. He recommended that she continue to work full duty, placed her at MMI, and instructed her to follow up in February.

CONCLUSIONS OF LAW

All permanent partial disability benefits have been awarded in Consolidated Case No. 21-WC-021533; therefore, the Arbitrator awards no further permanent partial disability benefits herein.

Linda J. Cantrell

Arbitrator Linda J. Cantrell DATED: January 5, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC017752
Case Name	Bryan Rhodes v. State of Illilnois - Vandalia Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0303
Number of Pages of Decision	12
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Nathan Becker, Mary Massa
Respondent Attorney	Caitlin Fiello, Nicole Werner

DATE FILED: 6/21/2024

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRYAN RHODES,

Petitioner,

vs. NO: 21 WC 017752

STATE OF ILLINOIS - VANDALIA
CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 23, 2022, is hereby affirmed and adopted.

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

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

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1).*

June 21, 2024
O061124
KAD/as
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC017752
Case Name	Bryan Rhodes v. Vandalia Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Nathan Becker
Respondent Attorney	Caitlin Fiello

DATE FILED: 11/23/2022

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 22, 2022 4.52%

/s/ Jeanne AuBuchon, Arbitrator
Signature

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

November 23, 2022

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Bryan Rhodes
Employee/Petitioner

v.

Vandalia Correctional Center
Employer/Respondent

Case # 21 WC 017752

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **6/16/2022**. 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 **5/10/2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$67,600.00**; the average weekly wage was **$1,300.00**

On the date of accident, Petitioner was **54** years of age, ***married*** with **1** 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, $ for TPD, $0 for maintenance, and $**0** for other benefits, for a total credit of $.

Respondent is entitled to a credit of $**Any Amount Paid** Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, as listed in Petitioner's Exhibit 3. as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for any medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay petitioner permanent partial disability benefits of $780.00 per week for 10.5 weeks, because the injuries sustained caused 5% loss of use of the left foot and 1% loss of use of the right leg.

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

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

NOVEMBER 23, 2022

Jeanne L. AuBuchon
Signature of Arbitrator

PROCEDURAL HISTORY

This matter proceeded to trial on June 15, 2022, on all issues. The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) the causal connection between the accident and the Petitioner's left ankle and foot and right knee conditions 3) payment of medical bills; and 4) nature and extent of the Petitioner's injuries.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 54 years old and employed by the Respondent as a correctional officer assigned to duty as a food supervisor. (AX1, T. 10) On May 10, 2021, the Petitioner had signed in for his shift and withdrew keys, a radio and a case at the armory – with the keys in his right hand and the radio and case in his left hand, he went down the stairs into the correctional officers' dining area. (T. 10-11) He said he thought he was at the bottom of the stairs at the landing, so when he came down there was nothing there and his left ankle twisted, falling to his knees with the radio and keys in his hands. (T. 11) He said he would not have been able to do his job as food supervisor without going down the stairs to the dining hall/kitchen area. (T. 12) He said the stairs were not open to public access. (Id.)

The Petitioner testified that he had no prior right knee problems. (T. 17)

After the accident, the Petitioner went to the emergency department at Pana Community Hospital, described the accident and complained of left ankle pain. (PX1) After X-rays were performed, the Petitioner was diagnosed with an avulsion fracture of the calcaneus (heel bone), given a surgical shoe and referred to his primary care physician. (Id.)

On May 12, 2021, the Petitioner sought treatment at Sara Bush Lincoln Fayette County Hospital, where Family Nurse Practitioner Sharon Draper diagnosed him with a left ankle sprain

and heel fracture and gave restrictions of no weight bearing on his left foot. (PX2) The Petitioner had a follow-up visit on May 19, 2021, and reported that his pain had improved. (Id.) FNP Draper gave restrictions of no walking more than 10-15 minutes. (Id.) At another visit on May 27, 2021, the Petitioner reported that he was having pain, popping and cracking in his right knee above the kneecap. (Id.) He said he had been using his right leg to avoid pressure on his left ankle. (Id.) The Petitioner testified that he was feeling an ache inside his right knee that had gotten worse. (T. 15) FNP Draper diagnosed right knee bursitis and overuse syndrome. (PX2) On June 3, 2021, the Petitioner was allowed to return to full duty work effective June 9, 2021. (Id.)

The Petitioner testified that at the time of arbitration, his left foot and ankle were still a little stiff when he first gets up in the morning, but he doesn't have any aches anymore except for once in a while. (T. 16-17) He said his right knee starts throbbing if he has been sitting for an hour, causing him to get up and walk or extend it. (T. 17)

CONCLUSIONS OF LAW

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

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

In order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of the claimant's employment and (2) that the injury arose out of the claimant's employment. *McAllister v. Ill. Workers' Comp. Com'n,* 2020 IL 12484, ¶ 32.

The phrase "in the course of employment" refers to the time, place and circumstances of the injury. *Id.* at ¶34. A compensable injury occurs in the course of employment when it is sustained while a clamant is at work or while he or she performs reasonable activities in conjunction with his or her employment. *Id.* In this case, the Petitioner's description of the incident was consistent and unrebutted. Therefore, the Arbitrator finds that the Petitioner's injury occurred in the course of her employment.

The "arising out of" component is primarily concerned with causal connection. *Id.* at ¶ *36*. To satisfy this requirement, it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Id.* The three categories of risk are: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics. *Id. at ¶38.*

A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing: (1) acts he or she was instructed to perform by the employer; (2) acts that he or she had a common-law or statutory duty to perform; or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *Id. at ¶46.*

The Petitioner was assigned to be a correctional food supervisor. His unrebutted testimony was that he could not do his job without using the stairs and that the stairs were not for public use. Therefore, walking down the stairs was an act that the Petitioner might reasonably be expected to perform incident to his assigned duties.

Next is the requirement that the risk created a causal connection between the employment and the accidental injuries. There was no evidence of any prior injuries or conditions that would

have caused his sprained left ankle and broken left heel bone. There also was no evidence to contradict PA Draper's diagnosis of right knee bursitis from overuse. The Arbitrator finds that the fall on the stairs caused these conditions.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his injuries had their origin in a risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.

When a claimant is injured due to an employment-related risk, it is unnecessary to perform a neutral-risk analysis to determine whether the claimant was exposed to a risk of injury to a greater degree than the general public. *Steak 'n Shake v. Ill. Workers' Comp. Comm'n,* 216 IL App 3d 150500WC at ¶38. Because the Arbitrator finds that an employment risk was present, no further analysis is necessary.

Thus, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his injuries occurred in the course of and arose out of his employment.

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

This issued is addressed above in the analysis of whether the Petitioner's injuries arose out of and in the course of his employment, and the findings above are incorporated herein.

Therefore, the Arbitrator finds that the Petitioner's left foot/ankle and right knee conditions are causally related to the work accident.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const.,* 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

Based on the findings above regarding causation and no evidence to suggest that the treatment the Petitioner had was not reasonable or necessary, the Arbitrator finds the medical expenses contained in Petitioner's Exhibit 3 are reasonable and necessary. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 3 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

(i) **Level of Impairment.** No AMA impairment ratings were produced, therefore the Arbitrator gives this factor no weight.

(ii) **Occupation.** The Petitioner continues to work as a correctional officer for the Respondent and faces the same physical challenges as he did prior to the accident. Therefore, the Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 54 years old at the time of the injury. He has several work years left during which time he will need to deal with the residual effects of the injuries. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity.** There was no evidence of limitation of the Petitioner's earning capacity. Therefore, the Arbitrator places no weight on this factor.

(v) **Disability.** The Petitioner testified that he still experiences stiffness in his left foot and ankle and aches once in a while. He also has throbbing in his right knee if he has been sitting for an hour, causing him to get up and walk or extend it. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 5 percent of the left foot and 1 percent of the right leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC037959
Case Name	Matthew Zajac v. Saline Township
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	24IWCC0304
Number of Pages of Decision	5
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Edward A. Coghlan

DATE FILED: 6/25/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Matthew Zajac,

Petitioner,

vs. No. 18 WC 037959

Saline Township,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(h) AND §8(a)

This matter comes before the Commission on Petitioner's §19(h) and §8(a) Petition for Review of the Arbitrator's November 9, 2020 decision, seeking additional medical expenses and prospective medical care for his cervical spine condition. Specifically, Petitioner seeks payment of medical bills incurred since the arbitration hearing, and seeks to undergo the two level disc replacement surgery recommended by Dr. Matthew Gornet.

Petitioner's case was originally tried before the Arbitrator on September 22, 2020 for cervical spine and right shoulder injuries resulting from a work accident of January 8, 2018. The Arbitrator awarded Petitioner 25% loss of use of the person-as-a-whole under §8(d)2 of the Act. Petitioner filed a §19(h) and §8(a) Petition on April 27, 2022, alleging a worsening of his right shoulder condition. On August 23, 2023, the Commission entered a decision awarding Petitioner an additional 10% person-as-a-whole under §8(d)2, finding his shoulder condition resulted in a material increase in his permanent disability.

Petitioner's current §19(h) and §8(a) Petition was filed on March 6, 2024, and seeks additional benefits due to the alleged worsening of his cervical injury sustained in his January 8, 2018 accident. On May 14, 2024, a hearing on this Petition was held by Commissioner Parker. At that time, Petitioner stipulated he was only requesting §8(a) benefits.

Findings of Fact:

On January 8, 2018, Petitioner, an equipment operator, injured his right shoulder and neck while lifting 5-gallon buckets of salt to spread on an icy road. On February 5, 2019, Dr. Matthew Gornet performed disc replacement surgery at C5-6 and C6-7. One year later, on February 24, 2020, Dr. Gornet found Petitioner to be at maximum medical improvement for his cervical injury and released him to full duty work. Petitioner testified he has not had any further accidents, injuries, or trauma to his neck since his January 8, 2018 accident.

At the May 14, 2024 Review hearing, Petitioner testified that even after he was released by Dr. Gornet, he continued to experience pain and symptoms in his neck and head. He takes Cyclobenzaprine and Ibuprofen for his pain. As time went by, Petitioner's neck pain increased and he began experiencing headaches. He also noticed a reduced ability to concentrate and focus mentally. On October 16, 2023, Petitioner returned to Dr. Gornet, who order a new cervical MRI and CT scan. Dr. Gornet then recommended Petitioner undergo surgery to replace his C3-4 and C4-5 discs. Petitioner testified he now wishes to undergo that surgery.

At the May 14, 2024 hearing, Respondent offered into evidence the February 26, 2024 deposition testimony of its Section 12 orthopedic surgeon, Dr. Peter Mirkin. Dr. Mirkin testified that on February 5, 2024, he examined Petitioner, who was complaining of persistent right shoulder and neck pain since his February 2019 surgery. Petitioner also reported experiencing headaches, nausea, and dizziness, which had been worsening in the past 3-4 months. Dr. Mirkin disagreed that Petitioner needed the C3-4 and C4-5 disc replacement recommended by Dr. Gornet, because it was not a curative treatment for dizziness and headaches. Dr. Mirkin further opined that the disc replacement procedure recommended by Dr. Gornet was not an accepted method of treatment, because it would give Petitioner four levels of replaced discs, when the FDA has only approved replacing discs at only one or two levels. Finally, Dr. Mirkin opined Petitioner did not need any further spine treatment related to his January 8, 2018 work accident.

At the May 14, 2024 hearing, Petitioner offered into evidence the records and the March 7, 2024 deposition testimony of Petitioner's treating surgeon, Dr. Gornet. Dr. Gornet testified that on October 16, 2023, he saw Petitioner with complaints of neck pain and headaches which had been increasing over the past several months. Petitioner informed Dr. Gornet that he had recently received shoulder treatment from Dr. Bradley. Dr. Gornet testified he ordered and reviewed a new cervical MRI which, when compared to Petitioner's October 4, 2018 MRI, showed increased structural disc pathology at C3-4 and C4-5 along with cord compression, particularly at C3-4. Given Petitioner's tight spinal canal, Dr. Gornet believed that Petitioner's options were limited. He recommended against injections or other conservative care, and opined Petitioner's best option would be to undergo anterior cervical disc replacements at the C3-4 and C4-5 levels.

Petitioner also offered into evidence the records of neurologist, Dr. Christina Overmann. At her January 25, 2024 examination, Petitioner complained of constant headaches, dizziness, and ringing in his ears. Dr. Overmann reported Petitioner's cervicogenic headaches and tinnitus were

most likely related to his cervical spine disease, and that they would likely improve with surgical intervention. Dr. Overmann found no neurological contraindications for surgery.

Conclusions of Law:

Pursuant to §8(a) of the Act, Petitioner is entitled to any and all necessary care to cure or relieve the effects of his work-related injuries. 820 ILCS 305/8(a). Upon establishment of a causal nexus between the injury and Petitioner's current condition of ill-being, Respondent is liable for all medical care reasonably required to diagnose, relieve, or cure the effects of the Petitioner's work injuries. *Plantation Mfg. Co. v. Industrial Comm'n,* 294 Ill. App. 3d 705, 709 (2d Dist., 1997). An employer's liability for medical services under §8(a) of the Act is continuous so long as the services are required to relieve the injured employee from the effects of the injury. *Efengee Elec. Supply Co. v. Industrial Comm'n,* 36 Ill. 2d 450, 453 (1967).

Dr. Gornet testified Petitioner had pathology at C3-4 and C4-5 at the time of his 2018 injury, and while Petitioner's C5-6 and C6-7 disc replacement surgery improved Petitioner's condition at that time, it did not address the structural issues Petitioner had at C3-4 and C4-5. Petitioner's symptoms at those levels worsened, necessitating the need for further treatment. Dr. Gornet opined Petitioner's best option would be to have his C3-4 and C4-5 discs replaced. He further opined that the need for this surgery was related to Petitioner's original work injury, and was a progression of his problem. Dr. Overmann also believed Petitioner's cervicogenic headaches and tinnitus were most likely related to his cervical spine disease and would likely improve with the recommended surgery.

The Commission finds the opinions of Dr. Gornet and Overmann more persuasive than those of Dr. Mirkin. Dr. Mirkin admitted Petitioner's 2023 MRI showed pathology at C3-4 and C4-5; that Petitioner complained of pain in his right shoulder, neck and head; and that there was no indication Petitioner suffered a new injury. Although Dr. Mirkin opined the recommended surgery would not cure dizziness or headaches, he did not opine that the surgery would not improve Petitioner's condition by reducing his shoulder and neck pain.

While Dr. Mirkin testified the FDA has not approved the use of artificial disc replacements at more than two levels, Dr. Gornet testified that he has authored a peer-reviewed and published study of the world's largest number patients who underwent three and four level disc replacements. The clinical results of that study showed no significant increase in complications in those patients, compared to patients who received only one or two level disc replacements.

At the May 14, 2024 hearing, Petitioner offered into evidence medical bills incurred since the Commission's August 23, 2023, §19(h) and §8(a) decision. Respondent offered no objection to the reasonableness and necessity of those charges, only liability. However, in Respondent's proposed findings for this Petition, it appears to have withdrawn its liability objection by suggesting the Commission find Petitioner, "has demonstrated a need for ongoing diagnostic

testing and conservative care." Respondent further suggests the Commission find that the $1,359.58 unpaid balances of Petitioner's bills are both reasonable and related to his January 8, 2018 work accident. The Commission finds the evidence in the record sufficiently supports a finding that the expenses itemized in Petitioner's Exhibit 2 were reasonably required to diagnose, relieve, and cure the effects of Petitioner's injuries from his January 8, 2018 accident. The Commission further finds that the surgery now being recommended by Dr. Gornet is reasonable and necessary.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's §8(a) Petition is granted to the extent discussed above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the unpaid balance of the medical bills itemized in Petitioner's Exhibit 2, pursuant to §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the C3-4 and C4-5 disc replacement surgery recommended by Dr. Gornet, and all reasonable and necessary attendant care, is granted.

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

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

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

June 25, 2024

MP/mcp
r-05/14/24
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC000152
Case Name	Brad Angelico v. O-I Glass Containers
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0305
Number of Pages of Decision	18
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Todd Schroader, Mary Massa
Respondent Attorney	Rich Lenkov

DATE FILED: 6/26/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)
) SS.	☐ Affirm with changes
COUNTY OF)	☐ Reverse
LASALLE)	
	☒ Modify

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRAD ANGELICO,

Petitioner,

vs. NO: 22 WC 152

O-I GLASS CONTAINERS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, permanent partial disability, penalties and attorney fees, and the cost of a missed Section 12 examination, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

The Commission modifies the Decision of the Arbitrator on the issue of attorney fees. In this case, attorney fees under Section 16 of the Act are not recoverable in the absence of an award of penalties under Section 19(k) of the Act. See *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 890 (1990); *Waldschmidt v. Industrial Comm'n*, 186 Ill. App. 3d 477, 480 (1989). Accordingly, the Commission vacates the award of attorney fees.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 21, 2023, is hereby modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner penalties of $10,000.00, as provided in Section 19(l) of the Act. The attorney fees awarded by the Arbitrator are vacated.

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

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

Bond for the removal of this cause to the Circuit Court is hereby fixed at the sum of $55,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 26, 2024

o: 6/20/24
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC000152
Case Name	Brad Angelico v. O-I Glass Containers
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Todd Schroader
Respondent Attorney	Rich Lenkov

DATE FILED: 12/21/2023

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

/s/ Paul Cellini, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BRAD ANGELICO Case # **22** WC **00152**
Employee/Petitioner
v.
O-I GLASS CONTAINERS
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Ottawa**, on **October 23, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **Cost of missed Section 12 exam**

FINDINGS

On **October 30, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**80,000.00**; the average weekly wage was $**1,538.46**.

On the date of accident, Petitioner was **44** 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 $**23,693.28** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**23,693.28**.

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

ORDER

The Arbitrator finds that the Petitioner has shown by the preponderance of the evidence that his right ankle/foot condition is causally related to the October 30, 2021 accident.

Respondent shall pay Petitioner temporary total disability benefits of $1,025.64 per week for 11-1/7 weeks, commencing February 4, 2022 through February 9, 2023, from April 14, 2022 through April 20, 2022, and from September 7, 2022 through November 10, 2022, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $23,693.28 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical expenses presented in Petitioner's Exhibit 14, as specifically described in Section J below, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit towards the awarded medical expenses for the expenses that have been paid by Respondent prior to the hearing date, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $923.08 per week for 29.225 weeks, because the injuries sustained caused the loss of use of 17.5% of the right foot, as provided in Section 8(e) of the Act.

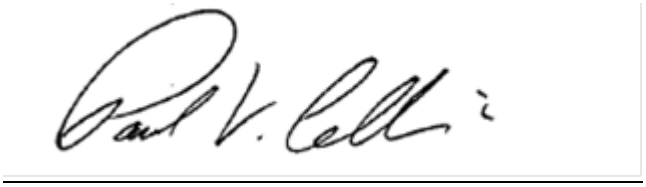
Respondent shall reimburse Petitioner in the amount of $155.12 for his lost wages for attending the Section 12 exam.

Respondent shall pay to Petitioner penalties of $2,000.00, as provided in Section 16 of the Act; $0, as provided in Section 19(k) of the Act; and $10,000.00, as provided in Section 19(l) of the Act.

Respondent shall pay Petitioner compensation that has accrued from **October 30, 2021** through **October 23, 2023**, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

DECEMBER 21, 2023

STATEMENT OF FACTS

Petitioner works for Respondent as a maintenance mechanic. On 10/30/21, he was working on machinery on a platform. While stepping down he stepped on a piece of angle iron and injured his right ankle. Petitioner's supervisor brought him to Streator OSF Hospital where he reported stepping down from machinery and twisting his right ankle. He heard a pop and had throbbing pain and swelling. X-ray showed a tiny avulsed bony fragment posterior to the distal tibia of unknown age, and soft tissue swelling, with clinical correlation recommended. The report also notes no acute fracture or evidence for cortical disruption, stating that the small avulsion was ossified. Swelling was visualized. Diagnosis was right ankle sprain and tiny avulsed distal tibia bone fragment of indeterminate age. Petitioner was given ace wrap with crutches and advised to follow up the next day. (Px1; Px5).

Petitioner saw Dr. Fiszer at OSF Occupational Health on 11/8/21 reporting a consistent history of the injury to the right ankle. He reported no initial swelling, then lateral swelling by the time he went to the ER, followed by medial swelling the next day. While improved his pain was at a 6 out of 10 (6/10) level. He reported being taken off work since the ER visit. A right ankle sprain was diagnosed, noting this generally takes 3 to 6 weeks to heal, and work restrictions were instituted (weight bearing as tolerated, no climbing, machine operation, or repetitive stair use). (Px2).

On 11/12/21 Petitioner went to OSF Glen Park urgent care. He reported he had stopped using crutches but developed worsening the day before with pain on both sides or the ankle and across the proximal foot. CNP Finley reviewed noted prior x-ray appeared negative for any acute fracture or process and Petitioner was advised to continue crutches and avoid prolonged weightbearing. Updated x-rays showed tiny calcific densities along the distal dorsal tibia, noted to be nonspecific and possibly small avulsion fractures. Appearance was unchanged versus 10/30/21 films, with small plantar calcaneal spur and probable first MP joint degenerative changes. (Px3; Px6).

Petitioner followed up at Occupational Health on 11/17/21 reporting a setback with increased symptoms with intense shooting pain getting out of his work chair with no other known inciting event, and he was sent for a re-evaluation the next day. Repeat x-ray again showed no acute findings, but the MD report notes it was abnormal with tiny calcific densities along the dorsal distal margin of the tibia, small avulsion-type fracture fragments difficult to exclude. He had returned to using crutches and that prior ankle sprains had always healed quickly unlike this time. The doctor notes prior sprains may have resulted in some ankle weakness prone to pain exacerbations, though it was unclear how this could have increased just getting out of a chair: "It is possible the original injury was a very severe, grade 3 sprain with either a significant tear or complete tear, but based on the fact that he has range of motion in the foot and that he was improving prior to last Thursday, and not even needing crutches, makes me skeptical of complete tear or even a severe tear." Exam noted swelling. Petitioner was to have physical therapy and was to use crutches and an air cast. He was restricted to desk duty. (Px2).

On 12/1/21, Petitioner reported no significant improvement with random shooting pains ("spasms"), noting he hadn't yet had therapy as he hadn't heard from workers compensation. Restrictions were continued and therapy again recommended. On 12/15/21, Petitioner reported therapy was aggravating his symptoms and Petitioner's restrictions were continued, noting an MRI might be needed. On 12/29/21, Petitioner returned with definite improvement with no spasm/shooting pains in a week but still with a 5/10 pain level. Work within his restrictions and therapy were going well. He was allowed to increase his stair use but was still restricted from climbing. On 1/12/22, Petitioner again reported increased pain (8/10 level) since another bad spasm walking out of his house. He was working his regular job except but with no climbing. Dr. Fiszer didn't Petitioner's pain was due to the small bone fragment seen on x-ray. Petitioner was to follow up on 1/26/22. There is an addendum note at the end of the 1/12/22 report, dated 2/4/22, which states: "(Petitioner) is off work until after he sees me for follow up appointment on 2/9/22." At his 2/9/22 visit, it was noted Petitioner had called on 2/4/22 reporting a significant increase in pain and went to the ER "for additional treatment, although no additional treatment was given. He did ask to be taken off work while at the ER last week, and I did so for him through an addendum to the note from February 4." Noting concern for a ligament tear, Petitioner was referred to a podiatrist (Dr. Daniel) and restricted to no prolonged standing/walking with alternating sitting and standing every 30 minutes. Weight-bearing x-rays and an MRI were also ordered unless this was deemed unnecessary by the podiatrist. (Px2).

Petitioner saw podiatrist Dr. Pearson on 2/17/22. He reported he'd been off work for 2 weeks and was wearing an ankle brace/air cast. He had returned to full time work and his pain returned. Dr. Pearson's assessment was right posterior tibial tendinitis, right leg deltoid ligament sprain, and right ankle pain. He agreed with the MRI and was put Petitioner in a CAM boot. (Px4). The impression on the 2/22/22 right ankle MRI was a severe contusion of the medial talar dome with no definite evidence of fracture or osteochondral lesion. Further evaluation with CT scan was recommended. (Px10).

Dr. Pearson reviewed the MRI results on 2/24/22, diagnosing posterior tibial tendinitis of right leg, deltoid sprain, bone marrow edema, and osteochondritis dissecans of ankle. Films reflected significant bone marrow edema to the medial one half of the talus and osteochondral defect to the articular surface of the posterior medial talus. No acute fractures or dislocations were seen, and no tendon pathology appreciated. Dr. Pearson prescribed two weeks of immobilization with the CAM boot and "full-time light duty more sedentary type work" while using the boot. (Px4).

Weightbearing x-rays from 3/10/22 reflected findings consistent with osteochondral defect (OCD) of the medial talus and extensive chronic degenerative first MP joint changes and no acute fractures. Right foot x-ray noted a rectus foot type with advanced chronic degenerative changes of the first MP joint. (Px7; Px8). On 3/10/22, Dr. Pearson performed a diagnostic and therapeutic right ankle cortisone injection and recommended ongoing immobilization and a lace up ankle brace to transition out of the boot. On 3/24/22, Petitioner was not improving

with conservative options and Dr. Pearson obtained a CT scan to further evaluate the talar lesion, continuing Petitioner's work restrictions. (Px4). The 4/8/22 right ankle CT scan showed the osteochondral lesion of the talar dome with mild subchondral cystic changes and no acute fracture. The small plantar calcaneal spur was also noted. (Px11).

On 4/14/22, Dr. Pearson found the CT scan confirmed the dimensions of the OCD to the posterior medial aspect of the talus. Ultimately, had not been working due to unavailability of light duty, and he was overall significantly improved. Dr. Pearson recommended staying the course and returning Petitioner to regular unrestricted work. If his pain returned, surgery (arthroscopy with microfracture of the lesion) would be recommended. Petitioner was released to return to work on 4/21/22 but returned on 4/28/22 reporting after returning to work for 3 days he was unable to stand because of right ankle pain. Petitioner wanted to discuss surgery, which Dr. Pearson noted would involve extensive debridement and talar lesion microfracture. (Px4).

Petitioner was examined at Respondent's request by orthopedic surgeon Dr. Lee on 6/22/22. The history indicated was Petitioner stepping down from an approximate 3' high platform, stepping awkwardly and severely inverting his right ankle. X-rays obtained on 6/22/22 were noted to show no discrete lesions with mild spurring at the distal medial and lateral malleolar region. Dr. Lee agreed the MRI and CT scans showed a medial talar posteromedial OCD. Diagnosis was right ankle sprain, talar contusion, and osteochondral lesion. Dr. Lee opined that "there appears to be a direct causal relationship of his current condition to the work accident of 10/30/21." He agreed with the right ankle arthroscopy procedure with possible microfracture and possible biologic treatment of the osteochondral lesion, opining it would be causally related to the accident. Pending surgery, work restrictions were recommended and post-surgical recovery was estimated to be 4 to 6 months. (Rx1).

Arthroscopic right ankle surgery was performed on 8/3/22 involving debridement of extensive synovitis in multiple right ankle compartments, and excision and repair (microfracture and grafting) of the osteochondral talar lesion. The defect was noted to be "overall loose" from the subchondral plate. Both preoperative and postoperative diagnoses were dorsal medial talar osteochondral lesion and right ankle joint synovitis. (Px12)

On 8/11/22, Petitioner was casted and held off work. He was to return in three weeks to remove his short-leg cast and obtain new x-rays. On 9/1/22, Petitioner advised he had minimal pain. He was to remain non-weightbearing for six weeks post-surgery and then was to transition to a CAM boot. 9/1/22 x-rays showed maintained surgical alignment correction with what appeared to be increased incorporation of the chondral graft to the osteochondral defect. Petitioner was progressing well, and his cast was removed. On 9/22/22, Petitioner was using crutches with the CAM boot and was weight-bearing as tolerated. X-ray continued to show graft consolidation. He was to continue the boot for two more weeks before transitioning into a lace up ankle brace. Physical therapy was ordered. On 10/20/22, was noting daily improvement with therapy and home exercise. Dr. Pearson didn't believe Petitioner was ready yet for full-time full duty and all of his job requirements. Three more weeks of therapy was prescribed, and Petitioner was again released to full-time light-duty more sedentary type of work. On 11/10/22, Dr. Pearson noted Petitioner was doing well and had significant improvement with therapy: "All of his previous pain within the ankle joint he had prior to surgery is resolved." New x-ray films showed the osteochondral defect appeared to be resolved. Petitioner was progressing well, and Dr. Pearson believed Petitioner could return to work full-time unrestricted duty. On 12/8/22, Dr. Pearson noted Petitioner had 5/5 strength to the right lower extremity with no pain and placed Petitioner at maximum medical improvement and full duty without restrictions. He was to follow up as needed. (Px4).

The 11/18/22 discharge report from ATI Physical Therapy indicates the Petitioner's ankle was "drastically better" and a transition to work conditioning was recommended. Petitioner had not yet met all of his long term goals, however, and he was to transition to self-management to address the remaining deficits. (Px13).

Dr. Lee was asked to examine Petitioner again on 5/10/23. Petitioner reported tolerating unrestricted full duty since November 2022. He continued to have generalized stiffness in the ankle and occasional weakness and soreness but did not need medications. At worst his pain was at 5/10 level, and he felt the ankle was 90% of normal. There was no atrophy, swelling, or edema. There was mild crepitus without pain in the ankle and no malalignment. X-ray showed a possible posterolateral lucency in the distal talus. Dr. Lee noted Petitioner's subjective complaints appeared to be corroborated by his previous objective findings. He believed Petitioner had reached MMI in December 2022 and was capable of working full unrestricted duty. Dr. Lee provided an AMA guide (6th Edition) impairment rating of 5% of the right lower extremity. (Rx2). Petitioner underwent physical therapy at Athletico both before and after surgery (Px13).

Petitioner testified that he provided all of his off work slips to the Respondent. He also testified that discipline for missing work for Respondent without an excuse involves a point system – he did not receive any points for his time off from 11/2/21 to 11/8/21 or from 2/4/22 to 2/8/22 to his knowledge – he denied having any points resulting from the dates listed on Arbx1.

Petitioner testified he attended both examinations with Dr. Lee, receiving a mileage check in each case, but that he missed four hours of work to attend the second exam, losing $38.78 per hour at that time. Petitioner testified he continues to have soreness/tenderness with prolonged standing or walking. He acknowledged he climbs ladders and stairs in his job and has to climb up onto equipment to perform work, and that he has been able to do this since being released and returning to work. He has minimal pain with these activities, but there is occasional discomfort. He does feel the surgery was successful. He does not receive prescription medication but takes occasional over-the-counter pain medication about twice a week.

On cross-exam, Petitioner testified that he could stand for ½ hour to an hour before developing ankle pain. He agreed he carries things at work but denied having to carry anything really heavy. Using stairs does increase his pain and leads him to take over-the-counter medications. Petitioner agreed with Dr. Lee's second report in terms of his reported ongoing complaints and that he was tolerating his job. His job as a mechanic involves working on various machinery. He walks around on his feet a lot throughout the day in a large factory with lots of stair use. He acknowledged he does occasionally have to climb on machinery to perform his work, testifying it is nothing overly strenuous. He carries around a roughly 20 pound tool bag during the workday. Petitioner used to work eight hour days prior to the accident but since February 2023 works 12 hours a day. He hasn't had any additional lost time from work since returning after surgery. He hadn't sought treatment since 12/8/22. On redirect, Petitioner testified that while he had been working light duty for Respondent, he was sent home by supervisor Nathan Harris due to a lack of work. He did not testify exactly when this occurred.

Thomas Nagle, Respondent's assistant plant manager, testified that he runs the day to day operations at Respondent's facility, and had personally worked as a maintenance mechanic and maintenance manager. This made him familiar with Petitioner's job duties. Petitioner reports to Nate Harris and Josh Lange (plant engineer). The job involves answering between one and twenty radio calls per day from all over the factory. The production involves making bottles, constructing cartons, and palletizing product for shipment. He testified it is a labor intensive job that includes climbing ladders, using stairs multiple times a day, and climbing on equipment. Mr. Nagle opined that changing motors and gear boxes is the most labor intensive. A cart is available that can be driven to a work area, but there are times Petitioner might have to carry a motor upstairs when he gets to a machine. Petitioner earns the same or more than he did prior to the work injury.

On cross, Mr. Nagle acknowledged that Petitioner does have to climb throughout the workday, including on top of machines to perform work. He testified that while he rarely is involved in the payment of benefits to workers who are off work, he is involved in employee discipline. He agreed that Petitioner was not disciplined for

missing time during any of the requested TTD periods listed in Arbx1, and thus to his knowledge Petitioner turned in off work notes for those dates.

Respondent presented surveillance video of Petitioner via private investigator Derrick Dawson. Mr. Dawson testified he surveilled Petitioner on 6/25/23 and 6/28/23 at the request of Respondent at a residence located at 907 N Monroe in Streator, IL, which matches the address of Petitioner listed in Arbx2. He did not have an independent recall of the activity and thus referred to his report and the video obtained (see Rx3). Surveillance was performed from 8 a.m. to 4 p.m., noting video is obtained when activity is seen, and otherwise a shot is taken once per hour. Mr. Dawson testified that the person depicted in the video on 6/25/23 was Petitioner, a Sunday, and he obtained a few minutes of active video that day. The Petitioner was not observed to be active on 6/28/23. On cross-examination, Mr. Dawson agreed he couldn't say the person in the video was Petitioner with 100% certainty, but that he fit the description provided and believes it was Petitioner to the best of his knowledge. While further testimony was obtained from Petitioner on rebuttal, the Petitioner ultimately agreed he was the person depicted in the video of 6/25/23.

In reviewing the video in court, the Arbitrator notes that Petitioner was observed on 6/25/23 performing what appeared to be pulling weeds and picking up debris in his yard, bending over multiple times to do so. At approximately 00:40, Petitioner entered the frame, and bent at the waist to work at ground level. He was carrying a trash receptacle as he moved around the yard pulling weeks and picking up debris until 04:08. The film thus totaled just short of four minutes and the Arbitrator saw no obvious evidence of Petitioner being in pain or favoring his right lower extremity. (Rx3).

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner's right ankle/foot condition of ill-being is causally related to the 10/30/21 accident.

The Petitioner promptly reported his injury on the accident date and sought immediate treatment. The ER report reflects evidence of swelling in the right ankle/foot, though x-ray was unclear as to whether a noted avulsion fracture was acute or chronic. A right ankle sprain was diagnosed, and the initial note of Dr. Fiszer noted that healing could take 3 to 6 weeks. The Petitioner then had ongoing complaints that continued through his 8/3/22 surgery. He ultimately was diagnosed with a talar OCD. Thus, there is reasonable support in establishing causation based solely on a chain of events analysis.

Additionally, Respondent's Section 12 examiner, Dr. Lee, opined on 6/22/22 that Petitioner's right ankle condition was causally related to the work accident and that the surgery recommended by Dr. Pearson was both reasonable and causally related to the 10/30/21 accident. On 5/10/23, he opined that Petitioner's subjective right ankle complaints had been supported by the objective findings. There are no medical opinions which rebut the causal relationship of Petitioner's injury to the 10/30/21 accident.

Based on this evidence, it is unclear what the basis of Respondent's causation dispute was in this case, and the Arbitrator finds that Petitioner's right ankle/foot condition is causally related to the 10/30/21 accident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL

APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner submitted claimed outstanding medical expenses as Petitioner's Exhibit 14.

Included are outstanding balances at Occupational Health Clinic OSF for the following dates of service: 11/8/21 date of service in the amount of $180.09; 12/29/21 in the amount of $114.52; 1/12/22 in the amount of one $114.52; and 2/9/22 in the amount of $171.15. The demonstrative cover sheet Petitioner attached to this exhibit indicates the latter bill has an outstanding balance of $114.52. The Arbitrator awards these expenses pursuant to Sections 8(a) and 8.2 of the Act, and Respondent is entitled to credit for any amounts paid towards these awarded expenses prior to the hearing date.

There is a bill from Grundy Radiologists with charges totaling $511.00 for a 2/22/22 date of service, which includes the right foot/ankle MRI, and an eye orbit x-ray in preparation for the MRI. This is consistent with the records in evidence for work related treatment, and the Arbitrator awards this bill pursuant to Sections 8(a) and 8.2 of the Act. Respondent is entitled to credit for any amounts paid towards these awarded expenses prior to the hearing date.

A bill from Central Illinois Radiological Associates totals $58.00 related to 11/12/21 right ankle x-ray. The bill indicates that $39.58 has been paid towards the bill. This bill is awarded pursuant to Sections 8(a) and 8.2 of the Act, and Respondent is entitled to credit for the amount paid towards this awarded expense prior to the hearing date.

Billing from Dr. Pearson for office visits, x-rays, and an ankle brace as follows:

2/25/22	$216
3/10/22	$693
3/10/22	$137
4/28/22	$216
9/1/22	$ 22
10/20/22	$699
11/10/22	$699
11/10/22	$238
12/8/22	$216
TOTAL	$3,136

The Arbitrator finds that the Respondent is liable for these expenses totaling $3,136 pursuant to Sections 8(a) and 8.2 of the Act. Respondent is entitled to credit for any amounts paid towards these awarded expenses prior to the hearing date.

A creditors claim is included in this exhibit which indicates that $40 is due to Morris Hospital. This appears to be related to a $40 charge on 2/17/22 for Power Step Pro Shoe Inserts. Morris Hospital also billed $216.00 for a 2/24/22 office visit. The statement date submitted is from 4/27/22. The Arbitrator saw no prescription for any shoe inserts and the Petitioner did not testify as to this bill. The Arbitrator finds that Petitioner is entitled to the $216 expense pursuant to Sections 8(a) and 8.2 of the Act but is not entitled to the $40 expense. Respondent is entitled to credit for any amounts paid towards these awarded expenses prior to the hearing date.

Central Illinois Radiological Associates are owed $58 with that bill being turned over to TH Professional and Medical Collections Limited. This expense is awarded pursuant to Sections 8(a) and 8.2 of the Act, and Respondent is entitled to credit for any amounts paid towards this expense prior to the hearing date.

Finally, billing from ATI and Athletico Physical Therapy totaling $11,547.00 was presented, with the bill indicating $3,325.22 in payments and $6,425.78 in adjustments, leaving a $1,796.00 balance. This covers billing between 12/6/21 to 12/27/21, and from 10/11/22 to 11/18/22, and the bill appears to show only the bills after11/9/22 were not paid. The Arbitrator awards the $11,54.00 bill pursuant to Sections 8(a) and 8.2 of the Act, and Respondent is entitled to credit for all amounts paid towards the bill prior to the hearing date.

It is clear from the bills themselves that some of these expenses have been paid. The Petitioner did not submit the Fee Schedule amounts due under Section 8.2 related to these bills, and it is possible some of these bills constitute balance billing. The Respondent is not liable for any of the awarded expenses in excess of the amounts allowable under Section 8.2. For any and all expenses where the Respondent is entitled to credit, Respondent shall hold the Petitioner harmless with regard to claims for payment from the providers involved.

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

Based on the Arbitrator's Exhibit 1, the TTD periods in dispute were from 11/2/21 to 11/8/21, 2/4/22 to 2/8/22, 3/30/22 to 4/20/22; and 9/7/22 to 11/22/22. Petitioner stipulated that the Respondent has paid all other claimed periods of TTD.

Petitioner testified that while off work during this period he did not receive any disciplinary points for unexcused absences. He also testified he was sent home once or at times while working light duty due to a lack of available work. The Petitioner did not however testify as to the specific dates when he was sent home with no work available.

On 10/30/21, Streator OSF Hospital placed Petitioner in an Ace wrap and crutches and advised him to follow-up the next day. Petitioner then did not seek further treatment until 11/8/21, when he was seen at OSF Occupational Health Ottawa, at which time he was to be weight bearing as tolerated with no climbing, repetitive stair use, or machine operation. On 11/17/21, OSF Occupational Health restricted him to desk duty. As to the period from 11/2/21 to 11/8/21, it is unclear from the evidence presented why the Petitioner did not follow up on 10/31/21. As to this time period, the Arbitrator finds that the Petitioner failed to prove he was entitled to TTD benefits between 11/2/21 and 11/8/21.

On 2/4/22, Petitioner contacted Dr. Fiszer and apparently went to an ER. The Arbitrator did not see any records for an ER visit on this date. Dr. Fiszer noted on 2/4/22 that Petitioner was off work until 2/9/22. On 2/9/22, he indicated Petitioner had called on 2/4/22 with an increase in pain, was advised to go to the ER, and that he asked Dr. Fiszer to take him off work, which he did through the 2/9/22 visit, at which time Petitioner was referred to a podiatrist and provided with light duty work restrictions. Based on this evidence, the Arbitrator finds that the Petitioner is entitled to TTD benefits from 2/4/22 through 2/9/22, the date the new restrictions were issued.

By 2/24/22, Dr. Pearson had taken over Petitioner's care. At that time, he prescribed a CAM boot and "full time light more sedentary type work." The same restrictions were continued by Dr. Pearson on 3/24/22. On 4/14/22, Dr. Pearson's report stated that Petitioner had been off work due to no availability of light duty. Petitioner also reported significant improvement and was released to return to work by Dr. Pearson as of 4/21/22.

The evidence here supports that the Petitioner was not working due to no availability of light duty from 4/14/22 through 4/21/22. It also supports that the Petitioner was off work prior to 4/14/22, but it is unclear based on the evidence presented exactly when he initially was off work in April prior to that date. While the Arbitrator thus believes that Petitioner is likely entitled to TTD prior to 4/14/22, the Petitioner has failed to prove what that time period might be. It would be speculative. The Arbitrator finds the Petitioner is entitled to TTD from 4/14/22, through 4/20/22.

Following Petitioner's 8/3/22 surgery, Petitioner was held off work (see 8/11/22 report in Px4). On 9/1/22, he was advised to remain non-weightbearing until at least six weeks pos-surgery. On 9/22/22, Dr. Pearson noted Petitioner was using crutches and had been weight-bearing as tolerated in the CAM boot, which he was to do for two more weeks before transitioning to a lace up ankle brace. On 10/20/22, Dr. Pearson noted that there was a delay on starting physical therapy per the patient due based on workers' compensation approval, and while he was not yet ready to perform all of his job requirements, he was again released to "full-time light duty more sedentary type of work." On 11/10/22, Dr. Pearson noted Petitioner had significant improvement with surgery and therapy with all of his previous pain being resolved. At that point, Dr. Pearson indicated Petitioner could return to full time unrestricted work duties. Petitioner then was released from care at MMI as of 12/8/22. While the Petitioner claims entitlement to TTD benefits from 9/7/22 to 11/22/22, the Arbitrator finds that the evidence supports an award of TTD from 9/7/22 through 11/10/22. There is no clear evidence as to whether Petitioner returned to work between 11/11/22 through 11/22/22. The Arbitrator finds that the Petitioner has failed to prove whether light duty was or was not available during this period, and thus that he is not entitled to TTD during this period.

While the Petitioner seeks to rely on the testimony of Mr. Nagle that he did not know of Petitioner being disciplined for unexcused absences during these periods, this fact does not in and of itself prove that the Petitioner had valid off work slips during the periods the Petitioner claims and the Arbitrator has denied. While Mr. Nagle testified that he did not dispute the claimed TTD periods, again, this is not sufficient proof in the Arbitrator's view that the Petitioner is entitled to the denied periods of TTD. Petitioner testified that it was Nathan Harris who advised him to go home when there was no light duty available. The Respondent did not necessarily know what the Petitioner's testimony was going to be in this regard given the lack of full discovery in workers' compensation, and the Petitioner could have subpoenaed Mr. Harris to testify given this was going to be an issue.

The Arbitrator finds that the Petitioner is entitled to TTD from 2/4/22 through 2/9/22, from 4/14/22, through 4/20/22, and from 9/7/22 through 11/10/22.

The Petitioner stipulated that the Respondent had paid for other TTD benefits that were not in dispute at the hearing. It is clear that the agreed TTD credit covers a significant period of time beyond what was awarded. Respondent is not entitled to a double credit. Respondent would only be entitled to credit against the current TTD award if the amount paid to date at the time of hearing involved an overpayment of the agreed and paid TTD period.

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

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

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an

evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's (AMA) "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

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

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that the record contains an impairment rating of 5% of the right lower extremity as determined by Dr. Lee pursuant to the most current edition of the American Medical Association's (AMA) Guides to the Evaluation of Permanent Impairment. (Rx2). 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 such a disability evaluation. This factor carries some weight in the permanency determination.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a maintenance mechanic at the time of the accident and that he has returned to this job on a full time, full duty basis. The Petitioner testified that he is on his feet a lot in this job, and that the job involves climbing and frequent use of stairs, and thus that the use of the right lower extremity is important to his job. This factor involves medium weight in the permanency determination.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 44 years old at the time of the accident. Neither party has provided evidence which would tend to show how the Petitioner's age impacts any permanent disability resulting from the 10/30/21 accident. The Petitioner is at basically a midpoint in a general career cycle. This factor carries minimal weight in the permanency determination.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that no evidence was presented which would indicate that the Petitioner has sustained a diminished earning capacity as a result of the injury to his right ankle/foot. The Petitioner testified that he works full duty and that his job now involves working 12 hours per day rather than the 8 hours per day he previously worked prior to the accident. Mr. Nagle testified he earns the same or more than he did at the time of the accident. This factor therefore tends to show a somewhat lesser degree of permanency in carrying some weight in the permanency determination.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner sustained an injury to the right ankle/foot. Initially it was believed that he had sustained an ankle sprain/strain, which he may have, but ultimately it appears that the more significant problem was an osteochondral defect at the right medial talar dome, which was visualized by an MRI. Both Dr. Pearson and Section 12 examiner Dr. Lee agreed on this diagnosis, as well as the need for excision and repair of the defect via debridement, microfracture, and grafting. Following surgery, Dr. Pearson on 11/10/22 noted Petitioner had significant improvement with surgery and therapy and that all of his pre-surgical pain was

resolved. He was released to full work duties at that time and found to be at MMI as of 12/8/22. Dr. Lee opined that the subjective symptoms were consistent with objective findings. Petitioner testified he has sought no further treatment, and that he has minimal pain with work activities and occasionally discomfort but feels overall the surgery was a success. He takes over-the-counter medication approximately twice a week. This factor carries the most weight of the five factors in the permanency determination.

Based on the above factors, the record taken as a whole and a review of prior Commission awards with similar injuries similar outcomes, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of the loss of use of 17.5% of the right foot pursuant to §8(e) of the Act.

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

The Arbitrator notes that the Petitioner's Petition for Penalties and the Respondent's Response have been filed in CompFile and have been reviewed. The Petition and Response address only weekly TTD benefits, and while Petitioner alleges supporting medical had been provided to Respondent, Respondent denied that such supporting documentation was provided timely.

Pursuant to case law, penalties under section 19(l) are in the nature of a late fee, and the assessment of a penalty is mandatory if a payment is late and the employer cannot show an adequate justification for the delay. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 763, 279 Ill.Dec. 531, 800 N.E.2d 819 (2003). The employer has the burden for justifying the delay. *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, ¶ 19, 355 Ill.Dec. 358, 959 N.E.2d 772. In addition, the assessment of a penalty under section 19(1) is mandatory "[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." *McMahan v. Industrial Comm'n*, 183 111.2d 499, 515 (1998).

The standard for granting penalties pursuant to Section 19(1) differs from the standard for granting penalties and attorney fees under Sections 19(k) and 16. Section 19(1) provides in pertinent part, as follows: "If the employee has made written demand for payment of benefits under Section 8(a) [820 ILCS 305/8] or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission *shall* allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." (Emphases added.) 820 ILCS 305/19(1) (West 2012).

Under Section 19(k) of the Act, "In a case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation then the Commission may award compensation additional to that otherwise payable under the Act equal to 50% of the amount payable at the time of such award." 820 ILCS 305/19(k) (West 2012).

Section 16 of the Act provides for an award of attorney fees where the Respondent has been guilty of delay or unfairness towards the employee in the payment of benefits due. 820 ILCS 305/16 (West 2012). The standard for awarding penalties and attorney fees under sections 19(k) and 16 of the Act is higher than the standard for awarding penalties under section 19(1) because sections 19(k) and 16 require more than an "unreasonable delay" in payment of an award. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 234 Ill.Dec. 205, 702 N.E.2d 545 (1998). It is not enough for the claimant to show that the employer simply failed, neglected, or refused to make payment or unreasonably delayed payment without good and just cause. Instead, section 19(k)

penalties and section 16 fees are "intended to address situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose." In addition, while section 19(l) penalties are mandatory, the imposition of penalties and attorney fees under sections 19(k) and section 16 fees is discretionary. (Id.)

The Arbitrator finds that Section 19(k) penalties do not apply in this matter. As noted above, Petitioner's penalty petition seeks penalties based on the non-payment of TTD, not any non-payment of medical expenses. The Respondent in this matter, based on a significant preponderance of the evidence, does not appear to have any reasonable defense to the failure to pay benefits in this matter. Their own Section 12 examiner opined that Petitioner's right ankle/foot condition was related to the 10/30/21 accident, and that the surgery that was performed was reasonable and necessary and related to the 10/30/21 accident. While the Petitioner has clearly shown unreasonable delay in the payment of benefits, the Arbitrator does not believe that it has been shown that Respondent's failure to pay was unreasonable and vexatious within the meaning of Section 19(k). A significant amount of TTD has been paid by Respondent. It appears that some of these periods of TTD may have fallen through the cracks, but it doesn't appear to the Arbitrator based on the evidence presented that there has been purposeful or vexatious non-payment as contemplated by Section 19(k). One of the claimed periods was not awarded as there is no medical documentation of off work status, and another period is based on a one sentence addendum that was added to a prior report at the very end keeping Petitioner off work from 2/4 to 2/9/22, a note that easily could have been missed if not specifically pointed out to Respondent. The last period of unpaid TTD that is being awarded by the Arbitrator is close to being in 19(k) territory, but overall, the Arbitrator does not believe the preponderance of the evidence supports a finding that 19(k) is applicable here.

Section 19(l) penalties are another matter. The Arbitrator does believe that the TTD periods that have been awarded have been unpaid by Respondent with unreasonable delay. Petitioner indicated he submitted his off work notes to Respondent. As noted above, the 1/12/22 note of Dr. Fiszer is interesting as there is a very brief note amended to this report from 2/4/22 stating Petitioner called about an increase in pain and requested an off work note, which was provided. That said, this is an addendum that could easily be missed. The email from Petitioner to Respondent specifies that light duty was being requested with TTD benefits as the alternative but doesn't specify what dates benefits were claimed to be owed. Respondent indicated on 2/9/22 that benefits were being disputed but did not say why. In light of the reports of Dr. Lee, the lack of a stated basis is noteworthy here given that multiple demands were made for the 2/4/22 through 2/8/22 benefits per the emails in Px15. As this is the longest standing unpaid TTD period, the Arbitrator bases the award of 19(l) penalties on the period of time where this TTD was initially requested on 4/25/22 through the accident date, as it remained unpaid, and additional requests were made on 6/22/22 and 8/2/22 (Px15). The time period from 4/25/22 through the 10/23/23 hearing date is a total of 547 days. At $30 per day, the penalties under Section 19(l) exceed the maximum allowable 19(l) penalty of $10,000. Therefore, the Arbitrator finds the Petitioner is entitled to Section 19(l) penalties totaling $10,000.00, and to attorney fees pursuant to Section 16 based on these penalties of $2,000.00 (20%). As noted, no basis was provided as to the delay in payment by Respondent, and thus 19(l) penalties are mandatory as a late fee per the case law.

WITH RESPECT TO ISSUE (O), IS THE PETITIONER ENTITLED TO LOST TIME BENEFITS FOR ATTENDANCE AT A SECTION 12 EXAMINATION, THE ARBITRATOR FINDS AS FOLLOWS:

An employer requesting such an examination, of an employee residing within the State of Illinois, shall deliver to the employee with the notice of the time and place of examination sufficient money to defray the necessary expense of travel by the most convenient means to and from the place of examination, and the cost of meals necessary during the trip, and if the examination or travel to and from the place of examination causes any loss of working time on the part of the employee, the employer shall reimburse him for such loss of wages upon the

basis of his average daily wage. Such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employee, if such employee so desires. 820 ILCS 305/12.

In May 2023, Respondent's counsel was made aware that Petitioner had lost 4 hours of work and that his rate of pay was $38.78 per hour and reimbursement was demanded two times. (Px15). On 5/16/23, Petitioner sent another email demanding payment of the 4 hours of lost wages. (Px15). The Arbitrator finds Respondent shall reimburse Petitioner in the amount of $155.12 for his lost wages for attending the Section 12 exam.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC020420
Case Name	John K. Schmidt v. Sheriff of Cook County
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0306
Number of Pages of Decision	22
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Philip D Blomberg
Respondent Attorney	Megan Inskeep

DATE FILED: 6/26/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN K SCHMIDT,

Petitioner,

vs. NO: 18 WC 20420

SHERIFF OF COOK COUNTY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses, prospective medical care, permanent partial disability, and whether maintenance and rehabilitation services are causally connected, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 6, 2023 is hereby affirmed and adopted.

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

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

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

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

June 26, 2024
O: 06/20/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC020420
Case Name	John K. Schmidt v. Sheriff of Cook County
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Philip D Blomberg
Respondent Attorney	Megan Inskeep

DATE FILED: 12/6/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 5, 2023 5.19%

/s/ Jacqueline Hickey, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JOHN K. SCHMIDT Case # **18** WC **020420**
Employee/Petitioner

v.

SHERIFF OF COOK COUNTY
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 **Jacqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **August 30, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **05/18/2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**70,732.48**; the average weekly wage was $**1,360.00**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **no** dependent children.

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

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $**906.67** /week for total of **74** weeks, commencing **5/24/18-12/20/18** (30 1/7 weeks), **12/15/20-7/25/21** (31 6/7 weeks) **and 10/25/22- 1/16/23** (12 weeks), as provided in Section 8(b) of the Act.

Maintenance

Respondent shall pay Petitioner maintenance benefits of $**906.67** /week for **31 2/7** weeks, commencing **1/24/23 - 8/30/23**, as provided in Section 8(a) of the Act.

Credits

Respondent shall be given a credit of $**74,038.62** for TTD, $**0** for TPD, and $**0** for maintenance benefits, and a credit of $**1,169.60** for the IOD payments made to Petitioner for a total credit of $**75,208.22**. Respondent shall be given a credit of $**6,501.33** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Prospective Medical

The Arbitrator has found that Petitioner's current condition of ill-being for both the right knee and left knee to be causally related to the 5/18/18 work accident. While the Petitioner remains under active treatment for his bilateral knee conditions with his treating doctors, and his medical rights under Section 8(a) remain open, there is no specific procedure or treatment plan presented upon which the Arbitrator can base an award for prospective medical treatment at this time. See Rider.

Vocational Rehabilitation

Respondent shall provide for the preparation of a vocational assessment as provided in Section 8(a) of the Act and Section 9110.10 of the Commission rules.

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. **DECEMBER 6, 2023**

Jacqueline C. Hickey

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN SCHMIDT,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 18WC020420
SHERIFF OF COOK COUNTY,	)	
	)	
	)	
Respondent.	)	

RIDER TO ARBITRATION DECISION

This matter proceeded to hearing on August 30, 2023, in Chicago, Illinois before Honorable Arbitrator Jacqueline Hickey on Petitioner's Petition for Immediate Hearing pursuant to Section 19(b) of the Act. The issues in dispute are: causal connection for bilateral knees, temporary total disability and maintenance benefits, vocational rehabilitation, credits for TTD & medical paid, and prospective medical care. [Arb. Ex. 1]. Proofs were closed on August 30, 2023.

FINDINGS OF FACT

Petitioner's Background

The Petitioner testified that he graduated from Fenton High School in 1992. [T. 13] Following graduation, he took classes at the College of DuPage [*Id.*]. In 2006, he took some general courses at Moraine Valley Community College. [T. 14] He was hired by Respondent Sheriff of Cook County as a correctional officer on February 21, 2006. [*Id.*]

Correctional Officer Job Duties

Petitioner is 6 foot tall and weighs 350 pounds. [T. 13] Petitioner has been a Correctional Officer with the Cook County Sheriff's Department since 2006. [T. 14] The physical demands of his job including walking up and down tier stairs and "handling the situation". [T. 15] His job is to provide safety and security for pre-trial detainees. [T. 14] Petitioner worked as a Correctional Officer until October of 2022. [T. 14] He testified that he moved into to Court Services as a Deputy Sheriff in October 2022, in the civil process unit serving paperwork such as warrants, evictions, and orders of protection. [T. 15]

Accident

On May 18, 2018, Petitioner was involved in an in-service training. [T. 17] He was engaged in "scenario training," in which the instructor plays the part of an unruly inmate and the officers are given a scenario to play out, in which they are to take the instructor to the ground and simulate hand-cuffing. [*Id.*] They were instructed to "go 5% so don't, you know, go full on." [T. 18] During this exercise, two other officers

fell on top of Petitioner and he fell, landing on his right knee. [*Id.*] He struck his knee on the concrete, as there was no padding on the floor. [*Id.*] This event was documented by both the Employee's Accident Report [RX 1, p. 2] and Supervisor's Investigation Report. [*Id.*, p. 3]

As a result of the incident, he injured his right knee, right ankle and right elbow, and was in severe pain. [T. 19] He had to be helped off the ground because he could not stand up on his own and was placed in a chair. [T. 19-20] He was taken that day to Mt. Sinai Hospital. [T. 20]

In March 2019, Petitioner was going down a set of stairs at his home when his right knee gave out and he fell down the stairs. He landed on his left knee. [T. 26-28] The left knee has been getting progressively worse since that time. [T. 28]

Summary of Medical Records

The Petitioner was taken by City of Chicago EMS ambulance to Mt. Sinai Hospital on the date of accident. [PX 1] According to the history set forth in the ambulance report, the Petitioner reported a history of participating in a training exercise when he was pushed from behind and fell on his right knee. [*Id.,* p. 2] He reported feeling and hearing a pop in his knee and then felt a sharp pain. [*Id.*] He was thereafter transported to the hospital.

According to the history taken at Mt. Sinai Hospital, the Petitioner presented with a prior medical history of "HTN, L knee arthritis and MRSA (nostrils)," and was complaining of right knee pain after injuring it during a training exercise at work at "CCDOC." [PX 2, p. 2] He reported that co-workers fell on top of him and his knee "when" [sic] back into floor and made a loud "pop." [*Id.*] The examination showed generalized right knee swelling with no joint laxity and a positive limp with gait. [*Id.*, p. 3] X-rays of the right knee were negative, and an Ace wrap and cane was provided ("PT states he knows how to use a cane already"). [*Id.*] He was diagnosed with "knee injury vs sprain vs contusion vs ligament injury," and advised he may require additional imaging and to be seen by an orthopaedic specialist. [*Id.*]

The Petitioner followed up his treatment at AMITA Health Medical Group on May 24, 2018, where he was seen by Dr. Antonio Carlino. [PX 3] He provided a consistent history of the work accident – "[h]e was taking down an assailant, and as he was doing so other officers ran into him, knocking him forward, and he landed on his right knee on very hard cement, and he noted hearing and feeling a significant pop at the point of injury." [*Id.,* p. 4] In addition to pain in the right knee, he also reported some pain in his right ankle and right elbow. [*Id.*] The physical examination by Dr. Carlino revealed swelling, tenderness and effusion in the right knee, as well as tenderness over the medial and lateral joint lines. The McMurray test was positive, and he walked with a limp. [*Id.*] X-rays of the right knee revealed a lateral subluxation of the patella. X-rays of the right ankle and right elbow were negative. [*Id.*] He was referred to an orthopaedic surgeon for further evaluation. [*Id.*] He was also advised to return to work in a sitting position only, with no kneeling, squatting or bending. [*Id.,* p. 7]

On May 31, 2018, the Petitioner was seen by Dr. Sheryl Lipnick at The Center for Sports Orthopaedics, P.C. [PX 5] He presented at that time for evaluation of his right knee, ankle and elbow. He provided a consistent history of the work accident on May 18, 2018, specifically striking his right knee on a concrete floor during a training exercise, as well as twisting his right ankle and possibly hitting his right elbow. [*Id.,* p. 11] He denied any significant pain to the right knee prior to this episode, and complained of pain, clicking and popping, as well as catching and locking in the knee as a result of the accident. [*Id.*] He also

reported pain in the lateral aspect of the right forearm and posterior aspect of the upper arm, and pain and swelling in the right ankle. [*Id.*]

The physical examination by Dr. Lipnick revealed mild to moderate swelling of the right ankle, moderate tenderness in the right elbow and tenderness in the right knee. [*Id.*, p. 12] Examination of the right knee also revealed positive patellar testing. [*Id.*] Based on the Petitioner's symptoms, physical examination findings and x-ray results, Dr. Lipnick diagnosed right knee pain likely related to contusion and lateral subluxation with possible transient lateral patellar dislocation, as well as a right elbow contusion with lateral epicondylitis and triceps tendinitis. [*Id.*] The doctor prescribed conservative treatment, including medications, icing, bracing and physical therapy. She also noted he may be a candidate for right knee arthroscopy in the future if he has persistent problems. [*Id.*] She gave him a note to stay off work. [*Id.*]

The Petitioner participated in an initial course of physical therapy at ATI Physical Therapy from June 20, 2018, through July 30, 2018. [PX 6] According to the initial evaluation report, the Petitioner presented with decreased range of motion, strength, balance, flexibility, joint mobility, soft tissue mobility, proprioception and increased pain and hypersensitivity in the right knee. [*Id.*, p. 8] These deficits limited Petitioner's abilities regarding ascending and descending stairs, carrying and lifting, pushing and pulling, squatting and walking and sleeping. [*Id.*] According to the discharge summary of July 30, 2018, after eleven physical therapy visits, the Petitioner continued to have high pain levels and difficulty walking. His condition was generally unchanged, and he was discharged from therapy due to lack of authorization for further treatment. [*Id.,* p. 21]

On August 16, 2018, the Petitioner underwent an MRI scan of his right knee at Joliet Open MRI. [PX 7] The results showed small knee joint effusion and a Baker's cyst, as well as evidence of Grade IV chondromalacia at the lateral aspect of the femoral trochlea. The collateral ligaments, the cruciate ligaments and menisci were noted to be unremarkable. [*Id.*, p. 2]

The Petitioner followed up with Dr. Lipnick on August 23, 2018, at which time the doctor reviewed the results of the MRI scan with him. According to Dr. Lipnick, the MRI scan of the right knee showed significant lateral subluxation in the patella in the trochlear groove. [PX 5, p. 4] She recommended right knee arthroscopy with medial retinacular reefing and possible lateral release. [*Id.*] In the meantime, he was advised he could be weightbearing as tolerated on the right lower extremity and could return to work in a sitting position. [*Id.*]

The next office visit with Dr. Lipnick took place on November 1, 2018. The Petitioner complained of persistent pain in the right knee despite anti-inflammatories and physical therapy, and that he was unable to perform regular activities of life without discomfort. [PX 8, p. 5] The physical examination showed tenderness in the right knee and positive patellar findings. [*Id.*, p. 6] Dr. Lipnick diagnosed osteoarthritis of the right knee with subluxation of the patellofemoral joint and performed a DepoMedrol injection into the knee. [*Id.*] She also noted a possible need for a series of five Hyalgan viscosupplementation injections into the right knee if the pain were to persist. [*Id.*] The doctor released Petitioner to sit down work only. [*Id.*]

The Petitioner returned to see Dr. Lipnick on November 29, 2018, noting the injection did not help at all and the pain had worsened. [PX 8, p. 3] He also noted that due to the pain in his right knee, his left knee was hurting more. [*Id.*] Due to a MRSA infection, Petitioner had not commenced another course of

physical therapy, so Dr. Lipnick again recommended such treatment and advised him to follow-up in four weeks. [*Id.*] She also continued his restriction of a sitting position only at work. [*Id.*]

The Petitioner participated in a second course of physical therapy at ATI Physical Therapy from December 3, 2018, through December 14, 2018. According to the initial evaluation report of December 3, 2018, the Petitioner presented with diffuse anterior knee pain and decreased range of motion and increased edema, pain and impairments with gait and weight-bearing. [PX 6, p. 38] After six physical therapy visits, the discharge summary of December 14, 2018, notes continued diffuse anterior knee pain, which increases with exercise. [*Id.*, p. 47] It was noted he had made objective improvements with range of motion in the right knee but continued to have problems with ascending/descending stairs, jogging/running, walking, squatting, kneeling and other activities. [*Id.*] He was discharged from therapy at that time.

At the next office visit with Dr. Lipnick on December 27, 2018, the Petitioner advised that he had returned to full duty work and was complaining of significant pain in his right knee as a result. [PX 6, p. 12] Dr. Lipnick recommended alternating sitting and standing, as well as limited walking and no bending, squatting or stairs. [*Id.*] She also recommended viscosupplementation injections and home exercises. Surgical treatment, including right knee arthroscopy and a possible total knee replacement, was also discussed, although the doctor noted Petitioner would need to lose 100 pounds before undergoing a total knee replacement procedure. [*Id.*]

The Petitioner last saw Dr. Lipnick on February 7, 2019. He complained of persistent pain in the right knee as well as worsening pain in the right elbow over the last few weeks. [PX 6, p. 16] The doctor recommended an MRI scan of the right elbow to evaluate for elbow pathology, and discussed treatment to the right knee, including possible surgery. She was hesitant to recommend surgical treatment given his weight and history of MRSA infections, but he was willing to take the risks given the severe pain in the knee. [*Id.*] The doctor released the Petitioner to return to full duty work. [*Id.*]

The Petitioner initially presented for treatment with Dr. Eugene Lopez of Midwest Sports Medicine & Orthopaedic Surgical Specialists on January 24, 2019. He provided a consistent history of the work accident and related ongoing symptoms in his right knee, including constant throbbing and aching pain, as well as weakness, clicking and giving out of the knee. [PX 9, p. 28] Additional symptoms included stiffness, swelling, instability, sleep disturbances, range of motion limitation, difficulty walking and radiation of pain. [*Id.*] Symptoms are made worse with walking, using a splint/immobilizer or when climbing stairs. [*Id.*]

The examination of the right knee by Dr. Lopez on that date showed minor swelling and mild patellar crepitus, as well as mild medial and lateral patellar facet tenderness and positive patellar apprehension testing. The knee had full range of motion, normal strength and normal sensation and reflexes. The patient exhibited an antalgic gait. [PX 9, p. 29] It is noted that recent x-rays of the right knee show laterally subluxed patella with OCD of the lateral condyle and lateral facet. [*Id.*]

Based on the symptoms, physical examination findings and x-rays, Dr. Lopez diagnosed work-related right knee patellar dislocations/subluxations with OCD of the lateral femoral condyle and lateral patellar facet. [PX 9, p. 30] He recommended a course of physical therapy and light duty work, with a 10-pound lifting restriction, no excessive twisting, turning, bending sitting or standing, and no stair climbing, kneeling or squatting. It was recommended he perform desk work only. [*Id.*]

At the next office visit with Dr. Lopez on February 7, 2019, the doctor recommended home exercises and a course of Supartz injections due to failure of other conservative measures. He was also released to return to regular duty work without restrictions. [PX 9, p. 38]

The Petitioner subsequently underwent Supartz injections to his right knee on February 18, 2019, February 25, 2019, and March 4, 2019. [PX 9, pp. 40-42]

Left Knee Injury

On March 10, 2019, the Petitioner presented to the emergency department at Presence St. Joseph Medical Center. He provided a history of going down the stairs when his right knee gave out, causing him to fall down the stairs. [PX 10, p. 1] His left leg rammed into the door frame, causing a buckling of the left knee. He felt immediate pain and heard something "snap." [*Id.*] The physical examination showed generalized tenderness in the left knee, tib-fib and ankle, and he was ambulating with a limp. [*Id.*, p. 2] X-rays of the left knee were negative, the knee was placed in an immobilizer, and he was diagnosed with a knee sprain and advised to follow up with orthopedics for a possible MRI scan. [*Id.*]

The Petitioner followed-up with Dr. Lopez on March 11, 2019, and provided a history of falling down stairs two days ago when his knee went out, striking his left leg on the wall and door jamb. [PX 9, p. 43] His right knee was still painful but not as bad as the left. A fourth Supartz injection was completed at that time. [*Id.,* p. 46-47] He was advised he could return to full duty work on March 19, 2019. [*Id.*]

An MRI scan of the left knee was performed at AMITA Alexian Brothers Medical Center on July 27, 2019, and the results showed an osteochondral defect on the articulating surface of the lateral femoral condyle with some adjacent edema, as well as a small popliteal cyst and chondromalacia of the patella. [PX 11, pp. 7-8]

On March 18, 2019, Dr. Lopez performed the fifth and final Supartz injection to the Petitioner's right knee. [PX 9, p. 50] Dr. Lopez performed cortisone injections into the Petitioner's right knee on August 14, 2019 [*Id.*, p. 55] and June 4, 2020 [*Id.*, p. 60]

On December 2, 2020, the Petitioner presented to the emergency department at AMITA Health Joliet, complaining of pain in the right knee. He reported undergoing injections into the knee without relief of his pain. [PX 10, p. 5] He further reported that while his symptoms had not changed recently, he just continues to have pain that he cannot deal with at work. [*Id.*, p. 7] He was provided with a Lidocaine patch and medication and advised to follow-up with his orthopedist for further treatment. [*Id.,* p. 8]

The Petitioner followed-up with Dr. Lopez on December 7, 2020, stating that the pain in the right knee was very intense to the point he couldn't walk and was affecting his everyday activities of daily living and could not enjoy his quality of life. [PX 9, p. 63] He wished to discuss surgical options as he couldn't handle the pain anymore. [*Id.*, p. 65] The examination showed an antalgic gait with a varus deformity and crepitus, as well as painful flexion and moderate synovitis. [*Id.*, p. 66] It was also noted that recent x-rays of both knees showed advanced degenerative changes with osteophyte formation and joint space narrowing bilaterally. [*Id.*] Dr. Lopez diagnosed bilateral patellofemoral osteoarthritis, right greater than left, and refractory to conservative treatment. [*Id.*, p. 67] He recommended a right total knee replacement and the Petitioner agreed. [*Id.*]

On January 26, 2021, the Petitioner was admitted to AMITA Alexian Brothers Medical Center, at which time Dr. Lopez performed a right total knee replacement. [PX 11, pp. 11-12] The Petitioner was discharged from the hospital on January 27, 2021. [*Id.*, pp. 3-6] Following surgery, the Petitioner received in-home physical therapy and treatment through Presence Home Health. The records reflect this treatment took place from January 30, 2021, through February 17, 2021. [PX 13]The Petitioner also participated on outpatient physical therapy through AMITA Health Joliet, from February 25, 2021, through June 8, 2021. [PX 14]

The Petitioner was seen by Dr. Lopez on July 19, 2021, and reported that he was doing well six months status post right total knee replacement. He was ambulating full weight without any assisted device and was very pleased with the results. He did report some minor aches and pains while stair climbing and hears a popping. [PX 9, p. 89] The physical examination revealed definite improvement with no swelling or tenderness. The range of motion of the knee was noted to be 0 to 120, with normal strength and neurovascular exam. He was referred to Dr. Friedman, a foot and ankle specialist, for the fitting of orthotics to reduce stress on the lumbar spine and lower extremities and was released to return to work regular duties without restrictions as of July 26, 2021. [*Id.*, p. 90]

On September 8, 2021, the Petitioner was seen by Dr. Lopez and reported increased pain and swelling, as well as stiffness upon sitting too long and difficulty standing from a sitting position. He was ambulating full weight bearing but was starting to limp due to stiffness and increased pain. He was also starting to notice increasing left knee pain. [PX 9, p. 106] The examination of the right knee revealed no swelling or palpable tenderness, with full range of motion and normal strength. Dr. Lopez prescribed physical therapy and anti-inflammatory medications, as well as a home exercise program. [*Id.*, p. 107]

The Petitioner was seen by Dr. Lopez on January 24, 2022, one year after the right total knee replacement surgery. On that date, he reported a deep aching pain in the right knee, as well as pain in the left knee with symptoms of stiffness, swelling and limited range of motion. [PX 9, p. 113] Physical examination of the right knee revealed moderate lateral collateral ligament tenderness, but no swelling in the knee. Range of motion was full and strength and sensation was normal. Examination of the left knee revealed a varus deformity with moderate synovitis and mild swelling, as well as limited range of motion but normal strength and sensation. [*Id.,* p. 114] X-rays of the right knee revealed widening of the joint on the lateral side with the total knee prosthesis in good and stable alignment. X-rays of the left knee revealed osteoarthritis with loss of joint space and osteophyte formation. [*Id.*, p. 115] The Petitioner was diagnosed with status post right total knee replacement with LCL sprain and left knee osteoarthritis, primarily around the patellofemoral joint. [*Id.*] Dr. Lopez performed a steroid injection into the left knee, prescribed a course of physical therapy and advised the Petitioner to return to work with light duty restrictions of no lifting over 20 pounds, no excessive twisting, turning, bending, sitting or standing, and no stair climbing, kneeling or squatting. [*Id.*, p. 116]

The Petitioner continued to treat with Dr. Lopez throughout 2022, continuing to complain of increased pain in both knees. At the office visit on April 28, 2022, he noted and increase of sharp, shooting pain in the right knee that was causing him to limp. [PX 9, p. 117] He also felt he was overcompensating with his left knee and his left ankle would give out on stairs. [*Id.*] It was noted he had recently changed positions at work and was working without restrictions, but felt he needed restrictions due to his new position requirements. Dr. Lopez continued the light duty restrictions put in place in January 2022. [*Id.*, p. 120]

The Petitioner was seen again by Dr. Lopez on June 2, 2022, and July 25, 2022, continuing to complain on worsening pain in both knees. [PX 9, pp. 121, 125] He was advised to participate in physical therapy, home exercises and maintain his light duty work restrictions. [*Id.*, pp. 123, 127]

At the next office visit with Dr. Lopez on October 17, 2022, the Petitioner advised that both knees were painful, he could not sit, stand or walk for long periods and was noticing a popping and rubbing sensation in both knees. He also noticed pain when getting up from a seated position and going up and down stairs. The pain was also affecting his sleep. [PX 9, p. 128] Dr. Lopez diagnosed status post right total knee replacement with possible LCL rupture and posterior-lateral corner rupture, as well as left knee osteoarthritis, primarily around the patellofemoral joint. [*Id.,* p. 129] He advised the Petitioner to continue working within the previous light duty restrictions and noted such restrictions would likely need to be permanent. [*Id.,* p. 130]

The Petitioner was next seen by Dr. Lopez on January 30, 2023. At that time, he reported pain at a level of 9/10 in the right knee and 5/10 in the left knee. Pain generators included walking, standing, getting up from a seated position, stair climbing, kneeling, squatting, bending and sleeping at night. He was also having problems with performing activities of daily living. It was noted he had returned to full duty work after attending an IME on January 7, 2023. [PX 9, p. 131] Dr. Lopez performed a steroid injection into the left knee and recommended a home exercise program for both knees. He also advised the light duty restrictions would be permanent, including no excessive twisting, turning, bending, sitting, standing or walking, and no stair climbing, kneeling or squatting, and no lifting over 20 pounds. [*Id.*, p. 133]

On February 27, 2023, the Petitioner reported to Dr. Lopez that the steroid injection to the left knee had only provided a couple of weeks of relief. He therefore requested gel injections and Dr. Lopez injected Hymovis into the left knee. [PX 9, p. 138] A second Hymovis injection to the left knee was performed on March 6, 2023. [*Id*., p. 139]

At an office visit on June 26, 2023, Dr. Lopez discussed the Petitioner's treatment options regarding the left knee osteoarthritis, including quad strengthening, anti-inflammatory medications, cortisone injections, visco-supplementation injections and finally total joint replacement. [PX 9, p. 146] The doctor performed a steroid injection into the left knee on that date. [*Id.*]

The Petitioner was most recently seen by Dr. Lopez on August 2, 2023. On that date, he presented with ongoing pain in the right knee and related problems walking up stairs and walking long distances. He also noticed that his knee clicks and pops with prolonged movement. He was also having trouble keeping the knee bent or straight for long periods of time due to pain. [PX 9, p. 153] The physical examination of the right knee revealed no swelling and no evidence of crepitus, effusion or tenderness. He had nearly full range of motion and some reduced strength (4/5) in all muscle groups tested. The exam was also positive for varus stress testing with some laxity, but otherwise the knee was stable, and the gait pattern was normal without a limp. He did have point tenderness over the lateral patella facet. [*Id.*, p. 154] X-rays taken on that date showed the right knee components in good position with some lateral collateral laxity and a lateral patella ossicle formation. The Petitioner was advised to continue with his permanent light duty restrictions. [*Id.*, p. 154]

Narrative Report – Dr. Eugene Lopez – April 30. 2021

At the request of Petitioner's attorney, treating physician Dr. Lopez drafted a narrative report dated April 30, 2021. [PX 15] In this report, Dr. Lopez sets forth the history of the May 18, 2018, work accident, as well as his treatment of Petitioner from January 24, 2019, through April 30, 2021. He also stated that it was his impression that Petitioner had sustained a right knee patellar dislocation and had damaged the cartilage of the patella, resulting in a traumatic OCD lesion of the lateral femoral condyle and patellar facet, all related to the fall and accident on the job. [*Id.,* p. 2]

Dr. Lopez also writes in his report that Petitioner has sustained permanent disability as a result of the work-related condition, that it is more likely than not that he will require permanent activity and work modification, and that due to his young age, it is more likely than not that he will require further treatment and surgical revision of the knee in the future. [PX 15, p. 4]

Section 12 Independent Medical Examinations

Dr. Daniel Troy IME – September 24, 2018

The Petitioner was examined by Dr. Daniel Troy at the Respondent's request on September 24, 2018. [RX 6] The Petitioner provided a consistent history of the work accident that occurred during the training exercise on May 18, 2018. He related injuries to his right elbow, right ankle and right knee, and that the right elbow pain had resolved, and he only had intermittent pain in the right ankle. The main complaints that day were to the anterior aspect of his right knee. [*Id.,* p. 3] The report sets forth a summary of the records reviewed by Dr. Troy in conjunction with the examination, including an Employee's Accident Report, Supervisor's Investigation Report, a job description for correctional officer with the Cook County Sheriff's Office, utilization review reports, and medical records setting forth treatment rendered to Petitioner from the date of accident through August 23, 2018. [*Id.*, pp. 3-7]

Dr. Troy performed a physical examination of the Petitioner, including, *inter alia,* the left and right knees. The examination of the left knee revealed no pain with range of motion. The examination of the right knee revealed limited range of motion and diffuse vague pain over the anterior aspect of the knee, over the medial retinaculum going up the quadriceps, similar to the patellar tendon region and over the lateral aspect. There was no instability with varus and valgus testing. He had a markedly positive patellar grind test and more pain around the medial retinaculum than he did laterally. The Petitioner also had slight difficulty moving from a standing to sitting position or sitting to standing position secondary to underlying anterior knee pain. [*Id.*, pp. 8-9]

Dr. Troy reviewed the MRI films of the right knee taken on August 16, 2018, and agreed they showed small joint effusion, Baker's cyst and Grade IV chondromalacia at the lateral aspect of the femoral trochlea. [RX 6, p. 9] X-rays of the right knee were performed during the IME and the results showed significantly advanced arthritic changes affecting the patellofemoral joint. [*Id.*, p. 10]

Based on the history from Petitioner, his review of the various records provided to him and his physical examination, as related to the work accident of May 4, 2018, Dr. Troy diagnosed an exacerbation of pre-existing, longstanding, patellofemoral, Grade 4, bone-on-bone changes. [RX 6, p. 11] He also notes the Petitioner's prognosis is guarded and the MRI scan "has no changes," "had no induced trauma," "no bony edema or soft tissue injury…." [*Id.*]

Regarding causation, Dr. Troy notes "the only causality at this time is secondary to the claimant's subjective complaints of pain." [RX 6, p. 11] He further notes the MRI scan of the right knee demonstrates no acute induced traumatic pathology to the knee and that the Petitioner has longstanding, grade 4 changes affecting the lateral patellofemoral compartment. [*Id.*]

As for treatment, Dr. Troy recommended a steroid injection to the right knee, as well as physical therapy. He did not recommend surgery and he felt there was a strong risk of failure due to the Petitioner's size and weight. He did recommend hyaluronic acid replacement therapy following the steroid injection and physical therapy. [RX 6, pp. 11-12] Dr. Troy opined the treatment to date was reasonable and necessary, but the Petitioner had not yet reached maximum medical improvement based on his subjective complaints. He also felt the Petitioner could return to a desk work capacity at that time, and back to full duty in approximately four weeks. [RX 6, p. 12]

Dr. Daniel Troy Addendum – December 17, 2018

Dr. Troy subsequently issued an addendum IME Report, dated December 17, 2018. [RX 7] In this report, Dr. Troy reiterates his opinion that Petitioner's symptomatology is subjectively based only and there were no findings on the MRI scan to demonstrate any significant traumatic injury as a result of the work accident. [*Id.*, p. 1] He further states the Petitioner's symptoms are related to his pre-existing, longstanding, "non-workers' compensation-related" grade 4 patellofemoral changes, that the Petitioner had been appropriately treated for that condition and could return to full duty work at that time. [*Id.*, p. 2]

Dr. Daniel Troy IME – May 17, 2021

Dr. Troy examined the Petitioner a second time at the request of Respondent on May 17, 2021. [RX 11] In his report, Dr. Troy sets forth a summary of updated medical treatment records he reviewed, regarding treatment rendered to Petitioner from November 11, 2018, through February 15, 2021. [*Id.*, pp. 3-7] The Petitioner also related to Dr. Troy that he was feeling about 75% better after undergoing total right knee arthroplasty. [*Id.*, p. 7] The physical examination of the right knee showed a reduced range of motion and vague anterior knee pain. The Petitioner was able to get up on his own slowly, favoring the right lower extremity. [*Id.*, pp. 8-9] Dr. Troy also notes some limitation in range of motion of the left knee. [*Id.*, p. 8]

In his report of May 17, 2021, Dr. Troy opines the need for the right total knee arthroplasty was not secondary to the work accident, but rather to the Petitioner's longstanding, pre-existing, arthritic changes to the right knee, which naturally progressed over time. [RX 11, p. 11] Regardless of causation, Dr. Troy felt the Petitioner would continue to benefit from further physical therapy and could anticipate a return to work in approximately six to eight weeks. [RX 11, pp. 11-12] He did not feel he could return to work full duty at that time but could return to work in a desk position. [*Id.*, p. 12]

Dr. Brian Forsythe IME – January 3, 2023

The Petitioner was examined at Respondent's request by Dr. Brian Forsythe on January 3, 2023. [RX 15] Dr. Forsythe's report sets forth a summary of documents he reviewed in conjunction with his examination of the Petitioner, including a job description for a correctional office and medical records regarding treatment rendered to Petitioner from November 1, 2018, through October 27, 2022. [*Id.*, pp. 6-8]

The report also sets forth the history provided by Petitioner, including the May 18, 2018, work accident and subsequent treatment (notably, the report does not set forth a summary of the incident of March 10, 2019, concerning the injury to Petitioner's left knee, either in the form of a history provided by Petitioner

or a review of the relevant treatment records by Dr. Forsythe). [RX 15, p. 8] The Petitioner advised Dr. Forsythe that he was never seen for treatment to his bilateral knees prior to the work accident. [*Id.*] He also advised that he had been off work since his appointment with Dr. Lopez on October 25, 2022. [*Id.*]

In his report, Dr. Forsythe notes the Petitioner showed moderate-to-severe symptom magnification during physical examination. He also notes the Petitioner had severe, preexisting right knee patellofemoral arthritis and mild preexisting left knee patellofemoral arthritis. [RX 15, p. 10] Regarding causation, Dr. Forsythe opines Petitioner sustained a right knee contusion as a result of the May 18, 2018, work accident, which had resolved by the time of his examination. [*Id.*] He further states there was no aggravation, acceleration or worsening of the preexisting patellofemoral arthritis as a result of his work accident. [*Id.*] He also states the condition of the left knee is unrelated to the work accident as "no specific work injury was incurred." [*Id.*]

Regarding additional treatment, Dr. Forsythe opines that Petitioner likely returned to his baseline status three months following the work accident, or August 18, 2018. [RX 15, p. 11] He did not feel that any additional treatment was necessary at the time of his examination of the Petitioner and that he had reached maximum medical improvement from the results of the work accident. [*Id.*] Regarding work restrictions, he did not believe any restrictions were necessary regarding the work accident. [*Id.*]

Dr. Brian Forsythe Addendum IME Report – June 1, 2023

On June 1, 2023, Dr. Forsythe drafted an addendum IME report, based on additional medical records provided to him, the treatment reports of Dr. Lopez dated January 30, 2023, and February 27, 2023. [RX 17, p. 1] He repeated his opinion that the May 18, 2018, accident caused a right knee contusion which resolved, and neither the right total knee arthroplasty or subsequent left knee pain was causally related to this accident. [*Id.*, p. 2]

Petitioner's Current Condition

The Petitioner testified that to his understanding, his current restrictions include no kneeling, squatting, excessive walking, excessive driving, stairs or ladders, and no lifting over 20 pounds. [T. 32] According to him, these restrictions apply to both the right and left knees. [*Id.*]

Petitioner further testified that as a result of these restrictions, it's difficult to get in and out of the squad car and walking certain distances causes his knee to swell and grind. He can't get involved in altercations as a corrections officer because there's a chance if he goes to the ground, he can't get back up. He can't do excessive walking or security checks and can't get involved in anything to do with serving warrants or being at the jail and dealing with the detainees because there could be long-term effects. [T. 31]

Petitioner testified that after returning to work full duty in July of 2021, he was assigned to a "Tiers" position, which involves going up and down a flight of stairs to monitor 48 detainees. [T. 46] Because he was favoring his right knee, he was putting a lot of emphasis on his left knee and going up and down the stainless-steel stairs put a lot of pressure on the knee. As a result, it started getting worse going up and down those stairs. [T. 46]

The last day Petitioner worked was January 23, 2023. [T. 16] On that date, he was working as court services deputy sheriff in the civil process unit, and he twisted his right knee while descending a set of

stairs in the process of serving paperwork. [T. 48] The stairs were "rickety" and gave way and he twisted his knee. [*Id.*]

Petitioner's Job Search
Petitioner testified that he has been looking for alternative employment, including applying for positions with Fed/Ex Kinkos as a production operator, CarMax in their business office and as a cashier at Home Depot, as well as completing numerous online applications for jobs that meet his restrictions. [T. 33] He has also applied for all the job leads sent to him by Respondent. According to Petitioner, the human resources department of Cook County will send him job postings via email and he applies for these positions, even if he doesn't necessarily qualify for such jobs (e.g. computer positions or jobs which require a college degree). [T. 34]

Petitioner's Prior Condition
Petitioner testified that prior to the work accident of May 18, 2018, he never had any treatment to his right knee. [T. 35] He has not been symptom-free in the right knee since the accident. [T. 35-36] Regarding the left knee, it has not been symptom-free since the incident in March of 2019 when he fell at home, and the injections to the left knee have not provided any benefit. [T. 36]

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

A decision by the Commission cannot be based upon speculation or conjecture. *Deer and Company v. Industrial Commission,* 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission,* 68 Ill.2d 236, (1977).

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

On the issue of (F), whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980). Included within that burden is proof that his current condition of ill-being is

causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. Id. at 205. "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." Id.

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

"A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The evidence presented in this matter, both in terms of Petitioner's testimony and the histories contained the medical records, establish that Petitioner sustained an accident arising out of and in the course of his employment on May 18, 2018, and that Petitioner immediately sought treatment for his right knee following that accident. He was diagnosed with an injury to his right patella (lateral subluxation), as well as Grade IV chondromalacia and osteoarthritis. The Arbitrator notes that Petitioner was working full duty with no restrictions before the initial right knee injury took place at work. There is evidence to the contrary, submitted. At various points in time since the work incident, petitioner was also restricted from work or given light duty work restrictions for one or both of his knees.

The evidence presented also shows that Petitioner sustained an injury to his left knee on March 10, 2019, when descending stairs at home as a result of his right knee giving out. The medical reports of Dr. Lipnick in 2018 set forth evidence of Petitioner's issues with his right knee, the physical therapy reports from ATI Physical Therapy set forth Petitioner's problem with ascending and descending stairs, and the Dr. Lopez treatment report of January 27, 2019, makes reference to Petitioner's right knee clicking and giving out.

In his report of April 30, 2021, treating physician Dr. Eugene Lopez states that Petitioner sustained a right knee patellar dislocation and damaged the cartilage of the patella, resulting in a traumatic OCD lesion of the lateral femoral condyle and patellar facet, all related to the fall and accident on the job. Dr. Lopez has been Petitioner's treating physician for more than four years, from January 2019 to the present.

In his IME report of September 24, 2018, Dr. Troy diagnosed an exacerbation of pre-existing, longstanding, patellofemoral, Grade 4, bone-on-bone changes in the right knee. In his addendum report of December 18, 2018, Dr. Troy states there were no findings on the MRI scan to demonstrate any significant traumatic injury as a result of the work accident. In his report of May 17, 2021, Dr. Troy opines the need for the right total knee arthroplasty was not secondary to the work accident, but rather to the Petitioner's longstanding, pre-existing, arthritic changes to the right knee, which naturally progressed over time.

In his IME report of January 3, 2023, and addendum report of June 1, 2023, Dr. Forsythe opines Petitioner sustained a right knee contusion as a result of the May 18, 2018, work accident, which had resolved by the time of his examination. He further states there was no aggravation, acceleration or worsening of the preexisting patellofemoral arthritis as a result of his work accident. He also states the condition of the left knee is unrelated to the work accident as "no specific work injury was incurred." Notably, neither report sets forth a summary of the incident of March 10, 2019, concerning the injury to Petitioner's left knee, either in the form of a history provided by Petitioner or a review of the relevant treatment records from Presence St. Joseph Medical Center on March 10, 2019, or Dr. Lopez's treatment report of March 11, 2019, both of which set forth the history of the incident concerning Petitioner's left knee.

Finally, Petitioner testified that he never had any treatment to his right knee prior to the accident on May 18, 2018, and there was no medical evidence submitted to rebut this assertion, or to show any treatment to either knee prior to the 5/18/18 work accident in question.

Regarding the left knee, the evidence establishes that Petitioner was under active treatment for the right knee, which was clicking and giving way prior to the incident at home on March 10, 2019. But for the weakened condition of the right knee and its giving way on that date (due to the work accident), the Petitioner would not have sustained the injury to the left knee. In addition, Petitioner testified to the additional stress placed upon on the left knee during his work in the "Tiers," due to the need to favor his right knee, leading to increased symptoms in the left knee.

Taking all this evidence into account, the Arbitrator finds the opinions of Dr. Lopez on the issue of causation to be more persuasive than those of Dr. Troy or Dr. Forsythe. As noted above, Dr. Lopez has been treating Petitioner on a consistent basis for the last four years and as the treating physician, the Arbitrator finds his opinion to carry more weight than the two examining physicians. In addition, Dr. Troy even states in his report the accident caused an "exacerbation" of the pre-existing osteoarthritic condition. As for Dr. Forsythe, he agrees that Petitioner denies any prior history of treatment to his knees and his reports make no reference to any such pre-accident treatment. Furthermore, his reports are devoid of any reference to the March 10, 2019 incident involving the Petitioner's left knee.

Based on the above, the Arbitrator finds the Petitioner's current condition of ill-being regarding both the right and left knees is causally related to the work accident of May 18, 2018.

On the issue of (K), is Petitioner entitled to any prospective medical care, the Arbitrator finds as follows:

The Arbitrator adopts the above findings of fact and conclusions of law and incorporates them by reference as though fully set forth herein.

On June 26, 2023, the Petitioner discussed treatment options with Dr. Lopez concerning his left knee, and the doctor performed a steroid injection, but no specific recommendation or prescription for treatment was made by the doctor on that date, other than to have Petitioner call in one month to discuss future treatment.

On August 2, 2023, Dr. Lopez examined the Petitioner's right knee, advised him to continue with his permanent restrictions and asked him to return in three months. The doctor did not set forth a specific treatment plan or prescribe any specific treatment or procedure.

The Arbitrator finds that Petitioner has not reached maximum medical improvement for his bilateral knees and continues to require medical care. While the Petitioner apparently remains under active treatment for his bilateral knee conditions with Dr. Lopez, and his medical rights under Section 8(a) remain open, there is no specific procedure or treatment plan presented upon which the Arbitrator can base an award for prospective medical treatment. For this reason, no specific additional prospective medical treatment is awarded at this time but the arbitrator nonetheless finds causal connection between Petitioner's condition of ill-being relating to his bilateral knees.

On the issue of (L), what temporary benefits are in dispute, the Arbitrator finds as follows:

TTD

The Petitioner was initially advised to return to limited duty work by Dr. Carlino on May 24, 2018, and there is no indication the Respondent accommodated this restriction. The Request for Hearing form [Arb. Ex. 1] indicates TTD benefits were paid through December 20, 2018, and Petitioner told Dr. Lipnick at his appointment on December 27, 2018, that he had returned to full duty work.

The Petitioner was taken completely off work by Dr. Lopez on December 15, 2020, in anticipation of the right total knee replacement surgery which took place on January 26, 2021. The Petitioner was kept completely off work by Dr. Lopez until July 26, 2021, at which time the doctor released him to return to full duty work.

On January 24, 2022, Dr. Lopez places restrictions on Petitioner's ability to work, including no lifting over 20 pounds, no excessive twisting, turning, bending, sitting or standing, and no stair climbing, kneeling or squatting. These restrictions would eventually become permanent as of January 30, 2023.

The medical records of Dr. Lopez indicate Petitioner continued to work from July 26, 2021, until October 24. 2022, at which time the parties agree that TTD benefits commenced on October 25, 2022, and continued through January 16, 2023. The Petitioner testified he last worked for Respondent on January 23, 2023.

Based on the above, the Arbitrator finds Petitioner is entitled to receipt of TTD benefits for the periods of May 24, 2018, through December 20, 2018 (30-1/7 weeks), December 15, 2020, through July 25, 2021 (31-6/7 weeks), and October 25, 2022, through January 16, 2023 (12 weeks). These periods constitute a total of 74 weeks of TTD benefits, payable at a rate of $906.67 per week.

Maintenance

On January 24, 2022, Dr. Lopez put work restrictions in place for Petitioner, including no lifting over 20 pounds, no excessive twisting, turning, bending, sitting or standing, and no stair climbing, kneeling or squatting. The Petitioner testified that he last worked for Respondent on January 23, 2023, in the civil process unit. On that date, he twisted his knee on a set of stairs. At his next appointment with Dr. Lopez on January 30, 2023, the restrictions which had been in place for the previous year became permanent.

Prior to his last date of work on January 23, 2023, Petitioner was working in the civil process unit for Respondent, apparently within the restrictions put in place by Dr. Lopez on January 24, 2022. These restrictions are now permanent and remain in place to the present time, according to the medical reports of Dr. Lopez. As such, the Arbitrator notes that Petitioner may be physically able return to work for

Respondent in the civil process unit, but no evidence was presented to establish that Respondent has offered to take Petitioner back to work in that capacity or that such a position is available to him as of the time of trial.

Petitioner testified that since his last date of employment, he has engaged in a self-directed job search, including seeking work on his own and applying for jobs supplied to him by the County of Cook. To date, he has yet to find alternative employment. As noted above, there is no indication Respondent has offered to take Petitioner back to work within his permanent restrictions.

Based on the above, the Arbitrator finds Petitioner is entitled to receive maintenance benefits and Respondent must pay said benefits for the period of January 24, 2023, to the date of hearing on August 30, 2023, a period of 31-2/7 weeks, at a rate of $906.67 per week.

Credits

The parties have stipulated that Respondent paid $74,038.62 in TTD benefits prior to the hearing on this matter, for which credit may applied to Respondent's liability for payment of TTD or maintenance benefits.

According to the payroll record for Petitioner [RX 3], Respondent paid Petitioner his regular salary in the form of "Injured on Duty" (IOD) payments from May 21, 2018, through June 5, 2018. The Arbitrator has found that Petitioner was initially entitled to receipt of TTD benefits commencing on May 24, 2018, the first day Petitioner was placed on restricted duty by a doctor.

The Arbitrator finds Respondent is entitled to credit for the IOD payments made to Petitioner for the period of May 24, 2018, through June 5, 2018, a period of 1-2/7 weeks, at the TTD rate of $906.67 per week, pursuant to Section 8(j) of the Act. This amounts to a credit of $1,169.60. In total, Respondent is entitled to $75,208.22 in credit for payments made to Petitioner prior to trial, to be applied against the award of TTD and maintenance, as explained above.

On the issue of (O), Is Petitioner entitled to vocational rehabilitation, the Arbitrator finds as follows:

The Petitioner testified that he has not worked since January 23, 2023, and is currently seeking work within the permanent restrictions set by Dr. Lopez on January 30, 2023. This self-directed job search includes seeking work on his own volition, as well as applying for job leads sent to him by the County of Cook human resources department.

Section 8(a) of the Act provides that "[t]he employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto."

Section 9110.10(a) of the Commission's rules provides as follows:
"(a) An employer's vocational rehabilitation counselor, in consultation with the injured employee and, if represented, with his or her representative, shall prepare a written assessment of the course of medical care and, if appropriate, vocational rehabilitation required to return the injured worker to employment. The vocational rehabilitation assessment is required when it can be reasonably determined that the injured worker will, as a result of the injury, be unable to resume the regular duties in which he or she was engaged

at the time of injury." 50 Ill. Adm. Code 9110.10(a) (2016). See also *CDW Corp. v. Ill. Workers' Comp. Comm'n*, 2021 IL App (2d) 200562WC-U, 2021 Ill. App. Unpub. LEXIS 1355.

As noted above, Dr. Lopez put restrictions of no lifting over 20 pounds, no excessive twisting, turning, bending, sitting or standing, and no stair climbing, kneeling or squatting, in place on January 24, 2022, and made such restrictions permanent on January 30, 2023. Given these restrictions have now been in place for nearly two years (and permanent for the seven months prior to trial), the Arbitrator finds that it can be "reasonably determined" the Petitioner will not be returning to work for Respondent as a corrections officer, the position he held at the time of the accident on May 18, 2018.

As such, the Arbitrator orders the Respondent to provide for preparation of a vocational assessment per Section 8(a) of the Act and Section 9110.10 of the Commission rules.

For the reasons stated above, Petitioner is entitled to an award of benefits under The Illinois Workers' Compensation Act consistent with the findings herein.

It is so ordered:

Jacqueline C. Hickey

Jacqueline C. Hickey
Arbitrator

December 5, 2023
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC029337
Case Name	Timothy Van Ness v. Groot Industries
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0307
Number of Pages of Decision	19
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Bryan Shell
Respondent Attorney	Candice Drew

DATE FILED: 6/26/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Timothy Van Ness,

Petitioner,

vs. NO: 20 WC 29337

Groot Industries,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 5, 2023, is hereby affirmed and adopted.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $8,100.00. 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.

June 26, 2024

MP:yl
o 6/20/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC029337
Case Name	Timothy Van Ness v. Groot Industries
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Bryan Shell
Respondent Attorney	Candice Drew

DATE FILED: 12/5/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 5, 2023 5.19%

/s/ Jessica Hegarty, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Timothy Van Ness
Employee/Petitioner

v.

Groot Industries
Employer/Respondent

Case # **20 WC 029337**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Joliet**, on **October 5, 2023.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084

FINDINGS

On the date of accident, **11/13/20**, 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 ***$84,284.46***; the average weekly wage was ***$1,620.86***.

On the date of accident, Petitioner was ***40*** years of age, ***single*** with ***1*** dependent child.

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

Respondent shall be given a credit of ***$52,947.93*** for TTD, $0.00 for TPD, ***$105,433.27*** for maintenance, and $0.00 for other benefits, for a total credit of ***$158,381.20***.

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

ORDER

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the work accident that occurred on November 13, 2020, and that Petitioner reached MMI as of November 2, 2021, per the opinions of Dr. Phillips.

Petitioner is not entitled to prospective medical treatment, namely the surgery recommended by Dr. Ross.

Petitioner is entitled to TTD from November 25, 2020, through November 2, 2021, and maintenance benefits from November 3, 2021, through September 10, 2023. Respondent is entitled to a credit of $158,381.20.

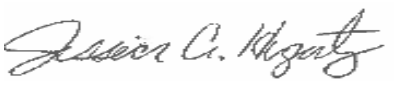
Respondent is liable for reasonable, necessary, and causally related medical treatment through November 2, 2021, when Petitioner was placed at MMI by Dr. Phillips. Respondent is not liable for treatment after November 2, 2021.

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.

DECEMBER 5, 2023



Signature of Arbitrator
ICArbDec19(b)

ADDENDUM TO THE DECISION OF THE ARBITRATOR

FINDINGS OF FACT

Petitioner was injured in a prior work accident on September 10, 2017, and underwent surgery performed, by Dr. Steven Mather, consisting of a fusion at L5-S1. Following that surgery, Petitioner returned to his full-duty job on August 8, 2019. He testified that he had no problems with his back after returning to full duty, until his accident on November 13, 2020.

The records from Dr. Steven Mather reflect that Petitioner underwent an L5-S1 left microdiscectomy on February 22, 2018, with Dr. Pelinkovic. Petitioner presented to Dr. Mather as a new patient on March 29, 2018, and on April 25, 2018, Dr. Mather performed a revision L5-S1 laminectomy with decompression of the L5 and S1 nerve roots, and interbody fusion at L5-S1. Dr. Mather removed the hardware in 2019, and Petitioner was released to full-duty work and discharged from care on August 8, 2019. (RX 9)

Respondent does not dispute that Petitioner was injured in the course of his job duties on November 13, 2020, while throwing yard waste into his garbage truck. (Arbitrator's Exhibit 1)

Petitioner initiated treatment on November 25, 2020, with Dr. Stefan Nemeth who noted a history of low back pain for one week. Dr. Nemeth noted Petitioner had undergone a prior lumbar fusion and recommended that Petitoner consult with an orthopedic surgeon. (PX 1; p. 617-619)

On December 10, 20202, Dr. Mather noted that Petitioner presented with complaints of sharp pain in his lower back that radiated to his left leg following a work accident on November 13, 2020. On examination, the doctor noted no real tenderness at the lumbar spine with extension to 10 degrees and flexion forward to 30 degrees, limited by fairly severe low back pain. X-rays showed a solid fusion at L5-S1 with removed hardware. Dr. Mather's assessment noted lumbar strain syndrome. An MRI was recommended and Petitioner was authorized off work. (Id., p. 578)

On December 16, 20201, Petitioner underwent a lumbar spine MRI that showed post-surgical changes at the lumbosacral junction, particularly on the left side. The radiologist noted mild/minor posterior facet arthropathy at L1-L2, L2-L3, L3-L4, and L4-5, but those levels were otherwise unremarkable. (Id., p. 561-562)

On December 17, 2020, Petitioner discussed the MRI results with Dr. Mather who noted the MRI was "benign" although there could be a stress crack in the fusion. Dr. Mather recommended a lumbar CT scan which Petitioner underwent on December 22, 2020. The study showed stable postoperative changes from L5 through S1 with an interbody fusion device and removal of the previously seen L5-S1 pedicle screws. Postoperative changes were evident from the left L5 facetectomy and hemilaminectomy. Partial osseous incorporation of the left L5-S1 interbody device with posterior left bridging endplate osteophyte was noted. There was no moderate to severe central canal or neuroforaminal stenosis with stable mild left L5-S1 and subarticular recess

neuroforaminal narrowing as seen on the recent MRI. No compression fractures or aggressive osseous lesions were present. Transitional lumbosacral anatomy with S1 lumbarization was noted. (Id., p. 536-537, 550)

On January 18, 2021, Dr. Mather sent Petitioner a message to Petitioner stating the CT scan "look[ed] good" and the fusion was solid with all other levels. Dr. Mather believed Petitioner had sustained a soft tissue injury to the muscles and ligaments which did not necessitate surgery. The doctor recommended physical therapy which Petitioner began on January 19, 2021, and attended eight sessions of therapy, through February 11, 2021. (Id., p. 501, 526, 358-501)
On February 18, 2021, Petitioner returned to Dr. Mather with complaints of left mid to lower back pain radiating down to his left buttock area. Petitioner had no leg symptoms. Physical examination revealed some stiffness with extension or flexion of the lumbar spine. Overall, Dr. Mather felt Petitioner's range of motion was approximately 70% to 80% normal. Dr. Mather again noted the CT scan and MRI images were normal aside from the fusion at L5-S1. Dr. Mather advised Petitioner he could not determine the source of Petitioner's pain. (Id., p. 344-345)

On February 26, 2021, Dr. Frank Phillips, of Midwest Orthopedics at Rush, completed a Section 12 examination of Petitioner at the request of Respondent. 9RX 1) Petitioner reported a history of lower back pain that radiated to his left leg on September 10, 2017, when he was lifting objects in the yard at work. He underwent fusion surgery on April 25, 2018, with Dr. Mather and returned to regular duty with no issues until November 13, 2020, when he was lifting refuse in the yard at work and developed lower left-sided back pain that radiated to his left leg. Petitioner complained of low back pain with intermittent radiating pain down his left leg in a sciatic distribution. He rated his pain at 3-5/10. Physical examination revealed mild left paralumbar tenderness to palpation. Sensation was diminished in the plantar and posterior aspect of his left calf. Straight leg raising was negative. Dr. Phillips did not have any imaging studies to review. He opined that Petitioner sustained two separate accidents. Based on the lumbar MRI report he reviewed, he noted no acute structural injury from the recent accident although foraminal stenosis was noted. Dr. Phillips opined that Petitioner aggravated his back pain and radiculopathy that was related to the accident at issue. He recommended an epidural steroid injection and opined that Petitioner could work with a 20-pound lifting restriction. Further, Petitioner should avoid repetitive bending or driving for more than 40 minutes without a stretching period. (Id.)

On March 18, 2021, Petitioner presented to Dr. Mather with complaints of persistent left-sided low back pain. Dr. Mather noted that Petitioner had good range of motion of the lumbar spine. (PX 1; p. 328-329)Dr. Mather again reviewed the lumbar CT scan and MRI which showed a solid fusion at L5-S1 with normal discs at the other levels. The assessment was left low back pain. Dr. Mather recommended that Petitioner see a physiatrist to undergo non-operative treatment. Petitioner was released with a 15-pound lifting restriction. Dr. Mather noted he had no further treatment treatment recommendations for Petitioner. (Id.)

On March 23, 2021, Petitioner presented to Dr. Barbara Heller, a physiatrist, who diagnosed a persistent severe lumbar strain/myofascial pain and dysfunction. She recommended dry needling as Petitioner's primary complaint was tightness. Gabapentin was prescribed. (Id., p. 303-309) On May 17, 2021, Dr. Heller administered trigger point injections in Petitioner's back and instructed Petitioner to replace Gabapentin with Flexeril. (Id., p. 273-281) On June 8, 2021, Dr. Heller noted Petitioner's complaints of left leg pain, numbness, and tingling in an S1 distribution. The doctor reviewed the MRI noting stable mild L5-S1 left lateral recess stenosis. Dr. Heller recommended a left S1 transforaminal epidural steroid injection targeting the S1 nerve root only. (Id., p. 250-259)

On June 8, 2021, Petitioner underwent a second Section 12 exam at Respondent's request with Dr. Frank Phillips at Midwest Orthopedics at Rush. (RX 2) After reviewing the December 16, 2020, lumbar MRI and December 2, 2020, lumbar CT scan images, Dr. Phillips noted evidence of the prior surgery but found no evidence of acute structural injury. The doctor noted considerable bone overgrowth at the side of the fusion into the lateral recess which was the side where Petitioner complained of radiating leg pain. Dr. Phillips opined the injury was responsible for Petitioner's flare-up of pain and continued to recommend an epidural steroid injection. (Id.)

On June 23, 2021, Dr. Heller administered a left S1 transforaminal epidural steroid injection. (PX 1; p. 134-198) The doctor noted a diagnosis of left S1 radiculitis. When Petitioner followed up with Dr. Heller on July 7, 2021, he reported improved lower back pain with intermittent left leg pain that had increased. Dr. Heller thought the left S1 nerve root was possibly the pain generator as Petitioner's lower back pain had loosened up. (Id., p. 147-157) When Petitioner followed up in late July 2021, he reported some progress with the left S1 epidural steroid injection as his back had loosened up, and Gabapentin was decreasing his radicular symptoms. Petitioner reported nerve pain when he "approaches the 8th hour". Dr. Heller increased gabapentin to 300 mg every 6 hours and Petitioner was to stop Volatren. Dr. Heller continued to diagnose left S1 radiculitis. (Id., p. 121-134) On August 11, 2021, Dr. Heller opined that Petitioner had improved with the S1 epidural steroid injection. She noted that when Petitioner bends to the left side, he has "electrical" pain into the leg in an L5-S1 distribution. Gabapentin was only slightly improving his leg pain. Dr. Heller concluded that Petitioner had failed conservative care but noted that "perhaps we have identified the pain generator - left S1." Dr. Heller recommended that Petitioner return to Dr. Mather for further treatment recommendations. She noted the only other diagnostic test that would be reasonable was an EMG. (Id., p. 109-110)

On August 16, 2021, Dr. Mather noted Petitoner's report that he felt worse after the L5-S1 epidural steroid injection. On exam, Petitioner was able to heel and toe walk without difficulty and had excellent reflexes in his knees and ankles and straight leg raising was negative. Petitioner reported significantly more pain with extension than flexion. Dr. Mather again reviewed the MRI and CT scans with Petitioner and explained there was no nerve root compression and a solid fusion at L5-S1. He also stated that "…the discs above the fusion are clean". Dr. Mather recommended an EMG but also noted there was no structural abnormality of the spine. (Id., p. 93-94)

On August 17, 2021, Petitioner underwent an EMG administered by Dr. Heller that suggested a chronic left L5-S1 radiculopathy. (Id., p. 80-83)

Dr. Mather's last evaluation of Petitioner was on September 20, 2021, at whch time Petitioner continued to report symptoms of low back pain and left leg pain in an S1 distribution and down the back of the thigh and calf. Dr. Mather noted the EMG showed mild chronic changes on the left at L5-S1, and explained that since Petitioner had a fusion at that level, these may be old changes. Upon physical examination, Petitioner's only positive finding was an absent left ankle reflex. Dr. Mather again noted that all discs were normal on the MRI and CT scan with a solid fusion at L5-S1. He concluded Petitioner has low back and left leg pain of unknown etiology. Dr. Mather indicated Petitioner could seek a second opinion with Dr. Ross as he did not feel he could help Petitioner further. (Id., p. 68-69)

On November 2, 2021, Dr. Phillips examined Petitioner for a third time pursuant to Respondent's Section 12 request. (RX 3) The doctor reviewed records from March 2021 through September 2021. Petitioner reported left-sided back pain with radiating L5-S1 left leg pain. He had undergone an epidural steroid injection without relief. A recent EMG showed chronic L5-S1 radiculopathy. Petitioner had been referred to a neurologist, and according to Dr. Mather, there were no structural injuries to his spine. Petitioner rated his current pain at 5/10.

He was taking gabapentin, ibuprofen, and Tylenol. Dr. Phillips opined Petitioner had reached MMI. He agreed with Dr. Mather there was no obvious indication for surgery to address Petitioner's ongoing subjective complaints. Dr. Phillips believed Petitioner had a flareup of radiculopathy related to the work accident. There was no evidence of any acute structural pathology. Dr. Phillips opined an FCE would be useful to determine work restrictions. In the interim, Petitioner could lift up to 20 pounds and was to avoid repetitive bending, twisting, and alternating between sitting and standing. (Id.)

On February 10, 2022, Petitioner presented to Dr. Matthew Ross, a neurosurgeon at Midwest Neurosurgery and Spine Specialists for initial evaluation. (PX 2) Petitioner advised Dr. Ross that therapy worsened his symptoms and the steroid injection caused severe nerve pain down his left leg. On exam, the doctor noted decreased range of motion on forward flexion, extension, bilateral side bending, and rotation were mildly impaired, and straight leg raising aggravated the left pain at approximately 80 degrees. Pinprick was hypersensitive over the left great toe. Dr. Ross did not have diagnostics to review but noted that Petitioner had undergone a lumbar MRI and CT scan in December 2020. Dr. Ross reviewed the EMG and opined that Petitioner's symptoms and clinical presentation suggested a left L5 and possible S1 radiculopathy. He noted this could be due to external compression on the L5-S1 nerve root or intrinsic nerve dysfunction. He recommended an updated lumbar spine MRI and possibly a CT scan. Dr. Ross noted that Petitioner may be a candidate for a decompression at L5-S1 or possibly a spinal cord stimulator. He did not believe Petitioner could return to work as a trash collector. (Id.)

On March 3, 2022, Petitioner underwent a lumbar spine MRI, interpreted by the radiologist as showing multilevel degenerative changes. At L5-S1, there was trace Grade 1 retrolisthesis with a left facetectomy, minimal disc bulging with superimposed mild left foraminal osteophytic bridging, and superimposed minimal right foraminal disc osteophyte complex. Further, a T1 hypointense signal within the left ventral epidural space at L5-S1, which may represent residual/recurrent disc protrusion, scar tissue, or a combination, was contacting the left traversing nerve root of S1. Moderate left foraminal narrowing at L5-S1 was noted as well. (Id., p. 85)

On March 3, 2022, Petitioner underwent a lumbar CT scan that showed no acute fractures. (Id., 2; p. 87)

On March 11, 2022, Petitioner underwent a functional capacity evaluation ("FCE") that determined he was capable of performing 88.1% of the physical demands of his job as a residential area garbage man. He was unable to perform occasional squat lifting, frequent squat lifting, occasional shoulder lifting, simple grasping, firm grasping, and walking. Petitioner demonstrated the ability to work at a medium physical demand level with bilateral lifting of 50 pounds, frequent bilateral lifting of 27.5 pounds, bilateral carrying of 25 pounds, bilateral shoulder lifting of 40 pounds, and pushing/pulling of 45 pounds. (PX 15)

On March 7, 2022, Dr. Ross noted Petitioner's report of persistent lower back and left leg pain. Dr. Ross noted the CT scan showed a solid fusion spanning from L5 to S1 with instrumentation removed. Significant foraminal stenosis on the left side at L5-S1 was noted. The remainder of the lumbar spine was unremarkable. Dr. Ross did not detect any significant disc herniation or nerve impingement at any other level. The doctor concluded that Petitioner's post-traumatic back and left leg pain was likely due to impingement on the L5 root from the residual foraminal stenosis on the left side at L5-S1. He recommended a nerve root block at left L5 and a transforaminal epidural steroid injection for diagnostic and therapeutic purposes. If Petitioner did not improve, Dr. Ross recommended additional diagnostic workup including facet blocks at L3-L4 and L4-L5 bilaterally. (PX 2; p. 8)

On April 1, 2022, Petitioner underwent a left L5 transforaminal epidural steroid injection administered by Dr. Rajesh Patel. (PX 4; p. 10)

On April 12, 2022, Dr. Ross noted Petitioner's report of no immediate improvement following the L5 nerve block although he reported feeling slightly better the next day. Petitioner complained of persistent pain in his left lower back. Physical examination revealed a normal gait with normal toe and heel walking. Deep knee bending was performed with good strength bilaterally. Petitioner had mildly restricted mobility on forward flexion and extension with aggravation of pain in his left lower lumbar paravertebral muscles. Given Petitioner's lack of improvement from the nerve block, Dr. Ross did not believe Petitioner's pain was due to the foraminal stenosis at L5-S1. Since Petitoiner's distribution of pain was in a sciatic nerve pathway, the plan was to test the S1 nerve root. Dr. Ross administered trigger point injections at this appointment resulting in improvement but not complete relief of pain. (PX 2; p. 11)

On May 5, 2022, Petitioner underwent a select nerve root block at S1 administered by Dr. Patel. When Petitioner followed up with Dr. Ross on May 12, 2022, he reported no improvement following the procedure. (PX 4; p. 15; PX2; p. 15) Petitioner's complaints of persistent left lower back pain and left ankle pain with numbness over the dorsum of his foot to his left great toe were noted by Dr. Ross who recommended a lumbar discogram at L3-L4 and L4-L5, noting L2-L3 may be included for control purposes. Dr. Ross also recommended that Petitioner be evaluated by a foot/ankle specialist to determine whether his pain in this area was originating from the joint itself. Petitioner was authorized off work. (Id.)

On June 19, 20211, Dr. Phillips authored an addendum Section 12 report noting his opinions remained unchanged after reviewing additional medical records from February 10, 2022, through April 12, 2022. The FCE from March 11, 2022, showed that Petitioner put forth full effort and demonstrated the ability to function at a medium physical demand level. Dr. Phillips continued to believe Petitioner was at MMI and could work within the restrictions outlined in the FCE noting these restrictions were likely permanent. (RX 4)

On July 25, 2022, Petitioner underwent a discogram administered by Dr. Sharma whose report noted a positive pain response at L3-L4. (PX 4; p. 22-23) The post-discogram CT scan showed a Grade 5 radial tear at L3-L4 with a contrast leak along the anterior disc and a prior interspace fusion at L5-S1 with adequate osseous fusion. (Id., p. 10-11)
On July 28, 2022, Dr. Ross noted Petitioner's report of being heavily sedated during the study and did not have a clear recollection of the results. Dr. Ross was waiting for the operative report and the results of the provocative testing. The post-discogram CT images showed a pronounced annular tear at L3-L4. The L2-L3 and L4-L5 discs did not show any significant abnormality. Dr. Ross opined the post-discogram imaging supported a clinical impression of discogenic pain at L3-L4. If Petitioner's provocative testing recreated pain at this level, Dr. Ross concluded he would be an appropriate candidate for surgery. (PX 2; p. 20)

On August 11, 2022, Dr. Sharma noted Petitioner had concordant pain at L3-L4 with provocation reproducing low back pain, however, all pain complaints specifically involving the left leg were not reproduced. (PX 4; p. 25)

On August 16, 2022, Dr. Ross noted Petitioner's pain increased from a baseline of 5 to 7 out of 10 with the discogram study which noted concordant back pain but no leg pain. Dr. Ross stated the etiology of Petitioner's chronic radicular pain was obscure. Based on the discogram, Dr. Ross believed Petitioner was a candidate for a fusion at L3-L4, which would help Petitioner's back pain but may not relieve his leg pain. Alternatively, a trial cord stimulator was discussed. Petitioner would discuss treatment options with his family and continue taking Tylenol No. 3 for pain management. (PX 2; p. 22)

Dr. Phillips examined Petitioner again at Respondent's request on October 7, 2022. (RX 5) Dr. Phillips again noted he reviewed medical records from February 2022, through April 2022, and the post-discogram CT scan

images of July 25, 2022. On examination, Petitioner's radicular symptoms had improved. Full lumbar range of motion with discomfort at the extremes was noted. Regarding the July 25, 2022 post-discogram CT scan, Dr. Phillips noted the cage at L5-S1 appeared to be reasonably positioned, the disc height at L4-L5 well-maintained, and the discography material was contained within the nucleus. At L3-L4, there was slight disc space narrowing with some slight anterior extravasation of dye but no reactive bony changes to suggest an advanced degenerative process. At L2-L3, contrast was mostly confined within the nucleus with some slight leakage toward the anterior annulus. At L3-L4 and L4-L5, there was some facet arthropathy but no significant stenosis. Dr. Phillips noted Petitioner's report of being completely sedated and had no recollection of the procedure. (Id.) Dr. Phillips found no evidence to suggest any structural injury in Petitioner's lumbar spine that would be responsible for his ongoing complaints. Dr. Phillips explained that the L3-L4 findings appeared mild on the CT scan and there was no clear indication Petitioner's pain was originating from that level. Dr. Phillips further noted Petitioner's MRI images from December 2020 showed the L3-L4 disc was well-maintained in terms of disc height and signal intensity with no evidence of structural injury. Dr. Phillips found no objective indication for a fusion at L3-4. Further, the doctor noted that discograms are not widely considered invalid an unreliable for diagnostic purposes. The MRI showed no substantial pathology at the adjacent disc levels. Dr. Phillips did not believe the discography findings should guide treatment. Dr. Phillips continued to believe Petitioner was at MMI and able to work per the FCE. (Id.)

On October 25, 2022, Petitioner reported to Dr. Ross that he wished to proceed with the L3-L4 discectomy and fusion. On examination, decreased range of motion with increased pain at the extremes was noted. Dr. Ross further noted that Petitioner had to "severely limit his activities in order to keep his pain at a manageable level." His pain medication was increased to include Tylenol #4. (PX 2; p. 27)
On December 22, 2022, Dr. Ross noted surgery had yet to be authorized. Petitioner reported his condition had slightly worsened. Activities involving forward bending aggravated his back pain. Petitioner reported increased pain after "a couple days of winterizing his home." Petitioner reportedly did not lift anything greater than 20 pounds. Tylenol No. 4 was not providing adequate pain relief. Physical examination revealed decreased range of motion, primarily on forward flexion. There was mild limitation with extension and bilateral side bending with no paraspinal tenderness or spasm. Dr. Ross opined Petitioner continued to have disabling discogenic back pain and that he required surgery. Dr. Ross noted that L4-L5, which would be subjected to increased mechanical stress and wear, could possibly be fused as well. (PX 3; p. 1)

When Petitioner followed up with Dr. Ross on February 2, 2023, he reported persistent disabling low back pain and a recent episode of being confined to bed due to his symptoms although his had settled back down to baseline. There was no radiation to his legs. Petitioner planned to go to court for surgery. Dr. Ross encouraged Petitioner to manage his pain with activity modification and oral analgesic medication. (Id., p. 3)

On February 13, 2023, Dr. Phillips provided an addendum Section 12 report after reviewing surveillance video from December 3, 2022, and December 11, 2022. Dr. Phillips noted Petitioner was performing heavy physical activities in the footage and appeared able to, with assistance, load large items, including appliances, without any obvious discomfort or distress. Based on the video, it appeared Petitioner was capable of functioning at a higher level than outlined in the FCE which concluded Petitioner could perform 88% of the physical demands of his job. Dr. Phillips believed Petitioner's physical restrictions could be increased to lifting 75 pounds occasionally and 50 pounds frequently. Dr. Phillips recommended an updated FCE to better determine Petitioner's lifting restrictions. (RX 7)

There are no treatment records until July 7, 2023, when Petitioner returned to Dr. Ross. Petitioner reported his tolerance for any activity was approximately 2 hours after which he needed to lie down. On exam, the doctor noted Petitioner was able to barely extend beyond neutral. Dr. Ross reviewed the lumbar MRI with Petitioner,

noting slight bulging at L3-L4. Dr. Ross opined Petitioner can work with a 20-pound restriction but must vary his position from sitting to standing as needed. Dr. Ross continued to recommend surgery. (PX 3; p. 7)

Testimony of Dr. Matthew Ross - 12/7/22

On December 7, 2022, an evidence deposition of Dr. Matthew Ross was completed. (PX 17) Dr. Ross testified that during his initial examination of Petitioner on February 10, 2022, he noted leg pain with bending forward to 70 degrees and pain with straight leg raising at 80 degrees which suggested sciatica or nerve root irritation as both maneuvers stretch the sciatic nerve. (Id.,p. 9) Dr. Ross noted a diagnosis of left L5 and possibly S1 radiculopathy. (Id., p. 11).

Dr. Ross reviewed the MRI and CT scan images completed on March 3, 2022, noting the MRI showed foraminal stenosis at L5-S1 on the left side, and the CT scan showed a solid fusion with the instrumentation removed. (Id., p. 11) Dr. Ross recommended a selective nerve root block and transforaminal epidural steroid injection. Since Petitioner reported no relief after the selective nerve root block, Dr. Ross concluded that his pain was not coming from the L5 nerve root and recommended an S1 nerve root block, which did not provide improvement. (Id., p. 13)

Regarding the utility of discograms in general, Dr. Ross testified if none of the discs recreate a person's pain, then a fusion should not be performed. (Id., p. 15) Likewise, if pain is recreated at every level, a fusion should not be performed. If one or two discs recreate concordant pain, there is an indication the patient could improve with a fusion. Dr. Ross testified that Petitioner had a 50% chance of relief by undergoing the recommended fusion. (Id., p. 20) Dr. Ross testified that his objective findings supporting the recommendation for a fusion at L3-L4 are that Petitioner failed conservative treatment and he has discogenic pain, per the discogram, at L3-L4. (P x 17; p. 20) Other than the discogram, no objective findings of concordant pain at the L3-L4 level. Petitioner did not exhibit reflex changes or muscle atrophy on exam. (Id., p. 21).

If Petitioner did not proceed with the fusion or a spinal cord stimulator, it would be appropriate for him to proceed with a repeat FCE. (Id., p. 27)

On cross-examination, Dr. Ross testified that he did not review the MRI or CT scan images from December 2020, and relied on the reports. Dr. Ross ordered an updated MRI and CT scan and did not see an annular tear on those studies. (Id., p. 32) Dr. Ross testified the first time he saw an annular tear was on the post-discogram CT scan. When Petitioner presented for exam on October 25, 2022, at which time he indicated pain at the L3-L4 level of his spine. (Id., p. 33) Dr. Ross had performed that same testing during Petitioner's previous exams with no similar findings at L3-L4. Dr. Ross acknowledged it was only after the discogram that he noticed any issues with the L3-L4 level. (Id., p. 34) Dr. Ross agreed that discograms are based on the patient's subjective pain response. Discograms are a "semi-objective test" because the test requires feedback from the patient. (Id., p. 35)

Surveillance of 12/3/22 and 12/11/22

Surveillance video from December 3, 2022, begins at 8:01 a.m. and ends at 3:59 p.m. (R x 8) Petitioner is first observed on the video at 10:21 a.m., wearing a fluorescent yellow/green jacket. He is observed performing several physical activities over several hours, until approximately 12:49 p.m. Petitioner is seen walking in a fluid manner throughout the video. He is seen bending repetitively while he performs work in his yard (3:45; 4:45; 6:04; 6:39; 21:00; 25:00; 37:00). Petitioner is seen pulling and holding an extension cord (9:47 and 10:32). He is seen carrying large pieces of wood (12:35; 27:30; 28:20) and working on his knees for several minutes at a time (13:09; 16:00; 17:27). Petitioner is seen carrying a compressor (20:00) and moving a pallet on

the ground (21:00). He is seen lifting and carrying large objects (25:45; 33:00; 48:00). Petitioner is seen driving a small tractor and twisting his body to look behind him (30:00). He is seen pulling, pushing, and lifting a large object with help putting the object onto a dolly (1:05:25; 1:08:00). Petitioner is also seen bending over and pulling the cord several times of what appears to be a backpack leaf blower (1:10:00), and then using the leaf blower. He is also seen helping to pull a large file cabinet that is on a dolly into his house (1:17:00).

Surveillance video from December 11, 2022, begins at 8:00 a.m. and ends at 4:00 p.m. Petitioner is first observed at 11:00 a.m. and is wearing the same jacket from December 3, 2022. Petitioner is seen rolling a large object to the outside of the trailer (6:50). He is seen wheeling a large box on a dolly into the trailer and unloading the box in the trailer (8:00). Petitioner is seen rolling a refrigerator on a dolly to the outside of the trailer (16:30). Petitioner is observed unloading several smaller items into the trailer (29:40). He is seen lifting a large box-shaped item with two hands and unloading it into the trailer and then bending to move things around inside the trailer for several minutes (30:20; 41:40). Petitioner is seen pulling a washing machine on a dolly up the ramp into the trailer and moving the washing machine around in the trailer (43:50). He is then seen loading the refrigerator onto the dolly to bring into the trailer (44:50). While maneuvering the refrigerator around inside the trailer, Petitioner is seen climbing from behind the refrigerator onto the washing machine and pushing the refrigerator (47:00). Petitioner is seen loading a dryer onto the dolly to bring into the trailer (49:00). He is then seen loading several more items into the trailer for several more minutes. Throughout the surveillance, Petitioner is observed walking in a normal manner with no outward signs of pain.

Petitioner testified he was active on these two dates for approximately three to four hours. He testified that because of inconsistent TTD payments from the insurance company, he could no longer afford the storage unit and needed to move all items from the storage unit to his house. He testified that he was maneuvering objects more than 20 pounds, which was consistent with what he reported to Dr. Ross on December 22, 2022, that he did not lift anything more than 20 pounds. He admitted there were several instances during the surveillance where he was performing heavy activities while the other individual in the video watched him.

Testimony of Dr. Frank Phillips - 7/25/23

The deposition of Dr. Frank Phillips was completed on July 25, 2023. Dr. Phillips testified that during his first IME on February 26, 2021, he performed a physical examination which showed some diminished sensation in the leg in the S1 nerve distribution. (RX 7; p. 14) Dr. Phillips believed Petitioner's condition was related to the work accident, and he concluded an epidural steroid injection was reasonable. (Id., p. 16)

Regarding his June 8, 2021 addendum, Dr. Phillips testified that he reviewed the lumbar MRI and CT scan images from December 2020. (Id., p. 17) Dr. Phillips opined the MRI imaging confirmed the fusion at L5-S1. At the L5-S1 level, on the left side, there was bone material growing beyond the confines of the disc into the foramen which is the tunnel the nerve exits from. Dr. Phillips explained the bone material had overgrown and was narrowing the space around the nerve on the left at L5-S1, and those were the primary positive findings on the MRI. (Id., p. 18) Dr. Phillips testified the CT scan also showed a bony overgrowth on the left side extended up the tunnel of the foramen. There was no structural injury shown in either study. Dr. Phillips testified that given the narrowing around the nerve on the left side, the injury in November 2020 would make the back and nerve more likely to flare-up which he believed was the case for Petitioner. (Id., p. 19)

Regarding his exam of Petitioner on November 2, 2021, Dr. Phillips noted improved range of motion since the last IME, with normal strength, normal sensation, and normal straight leg raise testing. (Id., p. 20). Dr. Phillips reviewed an EMG suggesting chronic left L5-S1 radiculopathy. Dr. Phillips continued to diagnose narrowing around the left L5-S1 nerve roots with flare-ups related to the work injury. Treatment up to that point was

reasonable and related to the work injury, and Petitioner had reached maximum medical improvement ("MMI"). Dr. Phillips did not see any indication for surgery. (Id., p. 21) Regarding Dr. Phillips' addendum report of June 19, 2022, by which point Dr. Ross had examined Petitioner, Dr. Phillips testified that he reviewed an FCE completed on March 11, 2022. (Id., p. 22-23) Dr. Phillips believed Petitioner was at MMI per his prior examination. Dr. Phillips testified the FCE placed Petitioner at a medium physical demand level and the FCE was deemed valid, so Dr. Phillips felt it would be reasonable for Petitioner to work within the level defined by the FCE. (Id., p. 23) Based on his prior examination, he did not believe Petitioner required further treatment and additional injections would not provide any improvement since Petitioner had not responded to them. (Id., p. 24)

Regarding his third examination of Petitioner on October 7, 2022, Dr. Phillips reviewed the CT discogram of July 25, 2022, noting findings at the level of the fusion and contrast contained within the nucleus at L4-L5. At L3-L4, there was some slight space narrowing and some slight anterior extravasation of the contrast with no posterior extravasation. At L2-L3, there was some slight leakage of the contrast towards the anterior annulus. (Id., p. 25-26)

Dr. Phillips testified that discograms have largely been dismissed as unreliable in the medical community and are seldom performed. (Id., p. 26) Most insurance companies do not cover discograms and therefore most surgeons do not use them for diagnostic purposes. The results of Petitioner's discogram did not change Dr. his diagnosis or treatment recommendations. (Id., p. 26) Dr. Phillips further testified there is "zero indication" for Petitioner to undergo a fusion at L3-L4, and he would strongly counsel Petitioner not to proceed with surgery. (Id., p. 26) The diagnostic testing, including the lumbar MRI, showed no evidence of new disc herniations or acute pathology at L3-L4. (Id., p. 27)

Regarding his final report dated February 13, 2023, wherein he reviewed surveillance of Petitioner. Dr. Phillips testified that surveillance from December 3, 2022, showed Petitioner bending to lift items, placing them on the ground, and performing repetitive bending, lifting, and carrying without any obvious discomfort. (Id., p. 30) On December 11, 2022, the surveillance showed Petitioner was moving heavy objects, such as appliances, on a dolly. Dr. Phillips testified that at Petitioner's appointment with Dr. Ross on December 22, 2022, he described debilitating pain with difficulty bending over, which was inconsistent with the surveillance video from a few days earlier. (Id., p. 31) Given the activities performed during the surveillance, he believed Petitioner was able to function at a higher level than shown on the previous FCE of March 11, 2022. Therefore, he recommended an updated FCE to determine Petitioner's functional capacity. (Id., p. 33)

On cross-examination, Dr. Phillips testified regarding the EMG findings showing L5-S1 radiculopathy. Dr. Phillips explained that despite the findings on the EMG, he did not believe Petitioner was a surgical candidate as Petitioner had a previously herniated disc at that level with surgery, and very seldom does a positive EMG become negative. (Id., p. 40) Therefore, it was not surprising to Dr. Phillips that the EMG showed chronic L5-S1 radiculopathy. Dr. Phillips was also asked about the CT scan finding of trace Grade 1 retrolisthesis of L3 on L4. Dr. Phillips explained that is a normal physiologic finding that most people have and is not a sign of any abnormality and is not considered a surgical indication. (Id., p. 43)

Regarding the discogram dated July 25, 2022, Dr. Phillips acknowledged that he only reviewed the CT images. Petitioner's attorney asked Dr. Phillips about the CT report, which noted at L3-L4, there was disc space narrowing and anterior extravasation of the dye with a concordant pain response. Dr. Phillips testified that the discogram is not considered a valid reliable test and a small amount of anterior dye extravasation is not meaningful. (Id., p. 44.) He testified the results of the discogram do not have an impact on his opinions as it is not a validated test. Dr. Phillips further explained that when he asked Petitioner about pain reproduction during

the discogram, Petitioner responded that he was completely sedated and had no recollection of the procedure. (Id., p. 44-45) Therefore, Dr. Phillips questioned how the discogram could accurately reflect pain at any particular level if Petitioner was sedated and did not remember the procedure. (Id.)

On cross-examination, Dr. Phillips was also asked about whether he saw a high-grade annular disruption on the post-discogram CT scan. Dr. Phillips explained that on a CT scan, you cannot see any part of the disc and the disc is “just a space”. Therefore, you can see dye and the rest is "someone's interpretation". Dr. Phillips further explained there was some dye extravasation, but in someone of Petitioner's age, almost everyone will have some “cracks and fissures and wear and tear in every disc.” Therefore, it was not unusual for the dye to leak. (Id., p. 45) Dr. Phillips testified this finding did not imply an injury, specific pathology, or source of pain. Therefore, it was not a diagnostic finding and did not suggest a specific spinal diagnosis. Dr. Phillips also stated that while he agrees there was some extravasation of dye at L3-L4, most of the dye was contained in the nucleus. There was enough of a slight fissure that dye could leak out and this is what was structurally seen on the CT scan. (Id., p. 46) Dr. Phillips explained there have been several studies showing that discograms are unreliable and seldom used by surgeons as a basis upon which surgical recommendations are made. (Id.,p. 46-47)

Dr. Phillips testified that Petitioner's symptoms following the injury were located at S1 and had "nothing to do with L3-L4". (Id., p. 47) Petitioner had pathology from the prior fusion surgery that would explain why he might have a flare-up of radicular pain at that level. He opined there was no compelling evidence that the pain was coming from L3-L4. (Id., p. 49)

CONCLUSIONS OF LAW

F. Is Petitioner’s current condition of ill-being causally related to the injury?
&
K. Is Petitioner entitled to prospective medical care?

The Arbitrator finds that Petitioner’s current condition of ill-being in his lumbar spine is causally related to the work accident of November 13, 2020. All physicians that have provided medical treatment, as well as Respondent’s Section 12 physician, agree that the November 13, 2020, work activities of throwing yard waste into the truck caused or contributed to the Petitioner’s current condition in his lower back.

Petitioner underwent surgery prior to the accident at issue which was performed by Dr. Mather on April 25, 2018, consisting of fusion at L5-S1 and revision L5-S1 laminectomy and decompression. Petitioner fully recovered following this procedure and was released from care to full-duty work as of August 8, 2019. Petitioner resumed treatment with Dr. Mather on December 10, 2020, following his November 13, 2020 accident. After reviewing the MRI and CT scan of Petitioner’s lumbar spine, completed within six weeks of the accident, Dr. Mather noted on December 17, 2020, January 18, 2021, February 18, 2021, March 18, 2021, August 16, 2021, and September 20, 2021, that the studies were benign, that all discs were normal with the exception of the prior fusion at L5-S1, and that Petitioner’s low back pain and left leg pain were of unknown etiology. (PX 1) On January 18, 2021, Dr. Mather specifically stated there was no need for surgery and believed Petitioner sustained a soft tissue injury. (Id., p. 526) Dr. Mather recommended physical therapy.

When Petitioner did not improve with eight sessions of therapy, Dr. Mather recommended treatment with a physiatrist, at which point Petitioner presented to Dr. Heller on March 13, 2021. (Id., p. 303-309) Dr. Heller

examined Petitioner and reviewed his diagnostic studies, and like Dr. Mather, only noted findings at the L5 and S1 levels as potential pain generators. Therefore, Dr. Heller recommended and performed a left S1 transforaminal epidural steroid injection secondary to left S1 radiculitis. On August 11, 2021, Dr. Heller noted that Petitioner had pain in an L5-S1 distribution. (Id., p. 109-110)

The diagnosis and treatment recommendations of Dr. Mather and Dr. Heller are consistent with those of Dr. Phillips, who performed three examinations of Petitioner and authored three addendum reports. After Dr. Phillips' first examination of Petitioner on February 26, 2021, he concluded Petitioner had pain down the left leg in a sciatic distribution. Dr. Phillips recommended an epidural steroid injection. (RX 1) After reviewing the lumbar MRI and CT scan completed in December 2020, Dr. Phillips continued to believe that Petitioner sustained a flare-up of pain related to the L5-S1 level, where Petitioner had a prior fusion. He continued to recommend an epidural steroid injection. (RX 2) When Dr. Phillips examined Petitioner for a second time on November 2, 2021, he noted agreement with Dr. Mather that surgery was not indicated. Dr. Phillips explained there were no findings on the diagnostics showing a structural injury to the spine. He believed Petitioner sustained a flare-up of radiculopathy at the L5-S1 level, which was related to the work accident. Petitioner was at MMI and required no further treatment. (RX 3)

The Arbitrator notes that Dr. Ross did not see Petitioner until 15 months after the work accident, on February 10, 2022. (PX 2; p. 4) Dr. Ross did not review the actual images from the studies completed in December 2020, only the reports. (PX 17; p. 31) Based on his examination of Petitioner on February 10, 2022, like Dr. Mather and Dr. Phillips, Dr. Ross also concluded Petitioner had left L5 and possibly S1 radiculopathy, and he ordered updated diagnostics. Dr. Ross explained during his deposition the significance of Petitioner having difficulty bending forward at 70 degrees and pain with straight leg raising at 80 degrees, which suggested Petitioner had sciatica or nerve root irritation. (PX 17; p. 9)

After reviewing the lumbar and CT scan from March 2022, like Dr. Mather and Dr. Phillips, Dr. Ross also believed Petitioner's symptoms were due to impingement on the L5 root from residual foraminal stenosis on the left side at L5-S1. (PX 2; p. 8) Petitioner ultimately underwent nerve root blocks at L5 and S1, per the recommendations of Dr. Ross. (PX 4; p. 10 and p. 15)

Since Petitioner was still having pain, Dr. Ross recommended a discogram, which was completed on July 25, 2022. (PX 6; p. 10-11 and PX 4; p. 22-23) It was not until after the discogram that Dr. Ross began recommending treatment at L3-L4. Dr. Ross admitted during his deposition that other than the discogram, no objective findings pointed to the L3-L4 level as the pain generator. (PX 17; p. 20) Dr. Ross also testified that Petitioner failed conservative treatment, yet Dr. Ross never recommended additional physical therapy or nerve root blocks targeting the L3-L4 level to determine whether Petitioner would improve. Dr. Ross further admitted during his deposition that he did not see an annular tear on the MRI scan completed in March 2022 (Id., p. 32), and he did not review the MRI scan from December 2020 (Id., p. 31). He testified that during his multiple physical examinations of Petitioner, prior to the discogram, Petitioner never had muscle pain at L3-L4, and only after the discogram at the October 25, 2022 visit, did Petitioner report pain at L3-L4 (Id., p. 33).

The Arbitrator finds the opinions of Dr. Mather, Dr. Heller, and Dr. Phillips more persuasive than those of Dr. Ross. Dr. Mather, Dr. Heller, and Dr. Phillips noted no pathology on the MRI and CT scan completed soon after the work accident that would warrant treatment at L3-L4, nor did their physical examinations of Petitioner suggest pathology at L3-L4. Dr. Mather, Dr. Heller, and Dr. Phillips concluded that Petitioner's pain was due to pathology at L5-S1, where the prior fusion was completed. Dr. Mather and Dr. Phillips both concluded Petitioner was not a surgical candidate. The Arbitrator further notes that Dr. Ross had the same opinions as Dr.

Mather, Dr. Heller and Dr. Phillips when he initially treated Petitioner, as his treatment also focused solely on L5 and S1 until the discogram.

The Arbitrator is also persuaded by Dr. Phillips' testimony regarding the validity of discograms, in conjunction with Petitioner's testimony and the medical records indicating that Petitioner had no recollection of the discogram procedure because of the level of his sedation. Dr. Phillips testified that discograms have largely been dismissed as unreliable and are seldom performed. (RX 7; p. 26) Dr. Ross conceded that discograms are "semi-objective" tests because they are based on the pain response from the patient. The Arbitrator questions the significance of Petitioner's pain level increasing from a 5 to a 7. (PX 2; p. 22)

Finally, the Arbitrator takes issue with Petitioner's level of disability as noted throughout the medical records and as reported by Petitioner during the hearing. The surveillance video taken within the last 10 months, on December 3, 2022, and December 11, 2022, shows Petitioner walking for several hours, repetitively bending and crouching, and lifting, pushing, and pulling multiple heavy objects, including appliances. Petitioner exhibits no pain behaviors while performing these activities. Furthermore, another individual observes Petitioner performing these activities on several occasions and does not help Petitioner. If Petitioner was in debilitating pain as he reported to multiple doctors, then it is logical to conclude the second individual seen in the surveillance would either be performing a majority of the tasks, or at the very least, helping Petitioner with the heavier tasks.

Based on the diagnostic studies, completed soon after the work accident, and their physical examinations of Petitioner, Dr. Phillips and Dr. Mather opined that Petitioner was not a surgical candidate. Dr. Ross did not review the initial diagnostic studies, nor did he review Dr. Mather's medical records. According to his own testimony, Dr. Ross is basing his recommendation for surgery on the discogram, "a semi-objective test" that Petitioner does not remember undergoing, and Petitioner's subjective complaints of pain, which are undermined by the surveillance.

Based on the preponderance of credible evidence contained in the record, the Arbitrator concludes that Petitioner reached maximum medical improvement on November 2, 2021, per the opinions of Dr. Phillips.

The Arbitrator finds that Petitioner is not entitled to any prospective medical care in relation to the work accident of November 13, 2020. In reaching this conclusion, the Arbitrator finds the opinions of Dr. Mather and Dr. Phillips more persuasive than those of Dr. Ross.

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 that Petitioner attained MMI as of November 2, 2021. Petitioner provided outstanding medical bills from Duly Health and Care DuPage Surgical Center, Joliet Radiological, S.C., and Midwest Neurosurgery & Spine/Dr. Ross, Pain & Spine Institute.

The Arbitrator finds Respondent is not liable for the following bills, which relate to treatment after Petitioner was placed at MMI: Joliet Radiological for treatment on July 25, 2022 ($193.00); Midwest Neurosurgery & Spine/Dr. Ross February 10, 2022, through August 11, 2022 ($1,341.00); Pain & Spine Institute for treatment from March 22, 2022, through August 11, 2022 ($12,845.00).

Regarding the outstanding balance with Duly Health and Care DuPage Surgical Center, the Arbitrator finds Respondent liable for medical bills related to the treatment of Petitioner's lower back between November 25, 2020, and November 2, 2021. Treatment that falls outside of this period is Petitioner's responsibility.

Regarding the medical bills from St. Joseph Medical Center for services rendered on December 2, 2020, this was for treatment unrelated to Petitioner's lumbar spine and was paid by group. Respondent is not liable for this treatment.

Finally, regarding Petitioner's claim for out-of-pocket expenses with Walgreens, the Arbitrator finds that Respondent should reimburse Petitioner for medications prescribed between November 25, 2020, and November 2, 2021, for $102.01.

L. What temporary benefits are in dispute?

The Arbitrator finds Petitioner reached MMI as of November 2, 2021, and is entitled to TTD benefits from November 25, 2020, through November 2, 2021, or a period of 49 weeks using a TTD rate of $1,080.57, for a total of $52,947.93.

Petitioner is entitled to maintenance benefits from November 3, 2021, through September 10, 2023, when he began working at Garda, a period of 96-5/7 weeks, and a total of $104,506.55.

The Arbitrator finds that Respondent issued TTD benefits from November 25, 2020, through November 2, 2021, and maintenance benefits from November 3, 2021, through September 17, 2023. (RX 10)

N. Is Respondent due any credit?

The Arbitrator finds that Respondent is due a credit of $52,947.93 in TTD benefits, and $105,433.27 in maintenance benefits, for a total of $158,381.20, as shown in Respondent's Exhibit 10.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC028935
Case Name	Stanley Johnson v. FedEx
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0308
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Ronald Sklare, Michael Trybalski
Respondent Attorney	Carol Cesaretti

DATE FILED: 6/27/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STANLEY JOHNSON,
Petitioner,

vs. NO: 19 WC 28935

FEDEX,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 1, 2023 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 27, 2024
O: 06/20/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC028935
Case Name	Stanley Johnson v. FedEx
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Ronald Sklare, Michael Trybalski
Respondent Attorney	Carol Cesaretti

DATE FILED: 12/1/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 28, 2023 5.24%

/s/ Jeffrey Huebsch, Arbitrator

Signature

S. Johnson v. FedEx, 19 WC 028935

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Stanley Johnson Case # **19** WC **028935**
Employee/Petitioner

FedEx
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago, IL**, on **8-18-23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **7-31-19**, 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 $**62,862.83**; the average weekly wage was $**1,208.90**.

On the date of accident, Petitioner was **58** years of age, ***single*** with **1** 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 $**2,417.91** for TTD, $**11,036.98** for TPD, $**0.00** for maintenance, and $**28,297.88** for other benefits (non-occupational indemnity benefits), for a total credit of $**41,752.77**.

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

ORDER

Respondent shall pay reasonable and necessary medical expenses of $61,350.31, pursuant to the medical fee schedule as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall pay Petitioner temporary total disability benefits of $805.93/week for 59-2/7 weeks, commencing 12/17/19 through 2/3/2021as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits, totaling $11,036.98 for the time period of August 14, 2019 through December 16, 2019, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $725.34/week for 125 weeks because the injuries sustained caused him to suffer the 25% loss of use of the person as a whole, in accordance with Section 8(d)2 of the Act.

Respondent shall pay Petitioner all awarded compensation that has accrued from 7/31/2019 to 8/18/2023 in a lump sum and shall pay the reminder of the award, if any, in weekly benefits.

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 1, 2023

Signature of Arbitrator

FINDINGS OF FACT

Petitioner was employed by Respondent as a truck driver. He had been so employed since 2017. His job duties included a pre-shift meeting, obtaining bills of lading, checking the load and the trailer, doing a pre-trip inspection of the truck and driving and delivering freight. He would drive a tractor with a 28 to 53 foot trailer. He was experienced as a truck driver since the 1980s.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on July 31, 2019. He testified that he was in a trailer making a delivery when a customer pushed a freight skid forward and his foot was pinned between two pallets. He stated that he injured his knee as he twisted to avoid getting his feet being pinched. His foot was pinched a little and was trapped between the skids.

Petitioner testified that he originally only felt left ankle symptoms but later in the day his left knee was hurting. Petitioner worked until the end of the day. He filled out paperwork at Respondent and was sent to Concentra. He stated that he was sent to Concentra the same day that he reported the knee pain.

Neither Party submitted a copy of the accident report, but it is noted that accident was stipulated to.

On cross examination, Petitioner testified that he was truthful and honest with all of his medical providers. He specifically testified that he was truthful and honest with Advocate Medical Group when he first saw them about his pain and when it developed.

Petitioner first sought medical treatment for his injuries on August 13, 2019 at Advocate Medical Group. (PX1, p.10) He provided a history of left knee pain for 3 days. He denied trauma. He was evaluated and referred to an orthopedic. X-rays were performed, which revealed mild osteoarthritis. Of note, the clinical indication at the time of the x-rays was left knee pain for five weeks. There were no prior studies for comparison. (PX 1, p. 5)

On August 14, 2019, Petitioner was seen at Concentra for left knee and left leg pain. (PX3, p. 146) He reported a history of an accident on July 31, 2019 when his foot was stuck between two skids and one of the skids was turned by a pallet jack resulting in left foot pain. He reported that at the same time he was turning to try to free his leg he twisted his left knee, but had no pain in his left knee at the time. He did not develop left knee pain and stiffness until 8/3/2019. He then went to his PCP on 8/13/2019. He was referred to an orthopedic, but had not yet seen one. He was diagnosed with a left knee sprain and contusion of the left foot. (PX 3, p. 148) He was prescribed work restrictions and physical therapy.

The Arbitrator notes that the Concentra records contained Petitioner's SSN, which was redacted by the Arbitrator. The Parties are reminded to comply with SCR 138.

Petitioner began physical therapy at Concentra on August 19, 2019. (PX3, p.140). He also followed up with Concentra Occupational Health that date and reported that his left knee was improving and his left foot was nearly resolved. (PX3, p. 137) It was noted that the left foot had resolved from a functional standpoint and his remaining diagnosis was a knee strain. He was continued in a brace and continued with physical therapy at Concentra. (PX3, p.124)

On August 29, 2019, Petitioner returned to Concentra Occupational Health for a recheck appointment. (PX3, p.121) He reported that his knee had been improving, but then the therapy was advanced and the left knee worsened some. He stated he noticed some popping and instability in the left knee. An MRI of the left knee without contrast was ordered and he was to continue physical therapy. (PX3, p.116)

Petitioner came under the care of Dr. Tony Hampton at Advocate Medical Group on September 3, 2019 with chief complaints of hypertension, left knee pain, and left foot pain. (PX1, p.15) He reported that he had left knee pain since July 31, 2019, when he injured his left leg as it was pinched between two objects. He was requesting an MRI referral.

Petitioner subsequently returned to Concentra and continued with physical therapy. (PX3, p.113) Petitioner was seen at Concentra on September 5, 2019, for a recheck. (PX3, p. 110) He reported that the left knee had not improved. He reported that the MRI had been approved, but he had not yet been contacted to have it scheduled. He also stated that the left medial foot had a discomfort/tingle and he was asking about an MRI for the foot. His left foot pain worsened with walking, causing a sharp pain at the medial left foot. An MRI of the left foot was ordered. He continued left knee physical therapy. (PX3, p.106)

On September 12, 2019, Petitioner underwent an MRI of the left knee. (PX3, p.72) He underwent an MRI of the left foot on September 13, 2019. (PX3, p.70) The left knee had a "complex tear of the extruded medial meniscus, horizontal tear of the lateral meniscus posterior horn and free edge fraying of the body, extensive ACL mucoid degeneration mild in the ACL, scarring the proximal superficial MCL, advanced osteoarthritis in the medial compartment mild to moderate lateral patellofemoral compartments". (PX 1, pg. 7) No prior MRI images were available for comparison at that time (Px. 1, pg. 6). The MRI of Petitioner's left foot showed "edema, small intrasubstance ossicle, chronic partial tearing, and mild osteoarthritis (PX 1, pg. 8-9)

Petitioner returned to Concentra on September 16, 2019 for a recheck on the left foot. (PX3, p.103) He reported that neither the left knee or left foot had improved. MRI findings were reviewed and he was referred to an orthopedic.

Petitioner followed up with Dr. Hampton for both injuries on September 18, 2019. (PX 1, p. 20) The PE of the left knee revealed warmth and swelling of the left knee and crepitus. The assessment was encounter related to worker's (sic) compensation claim, acute medial meniscus tear of left knee and essential hypertension. He was referred to an orthopedic surgeon for further evaluation.

On September 27, 2019, the Petitioner was seen by Dr. Gregory Primus, an orthopedic surgeon at the Chicago Center for Sports Medicine and Orthopedic Surgery. (PX5, p.4) He reported a consistent history of the work accident and noted that he had intermittent shooting pain in the anterior knee. He reported intermittent swelling in the knee. He noted moderate stiffness with prolonged sitting. He noted buckling when getting up from a seated position. He reported that he has pain and swelling that can travel down his leg into his ankle. Dr. Primus noted that the left knee MRI of 9/12/2019 revealed a complex tear of extruded medial meniscus,

horizontal tear of lateral meniscus posterior horn and free edge fraying of the body, extensive ACL mucoid degeneration, mild in the ACL, scarring proximal superficial MCL, advanced OA in medial compartment, mild to moderate in lateral patellofemoral compartments, moderate effusion and extensive synovitis. Dr. Primus noted that surgery may be considered. He stated that for now they were starting therapy and considering injections. He also issued a compound cream, to minimize complications from opiods and NSAIDs. (PX 5, p.5)

Petitioner began physical therapy at the Chicago Center for Sports Medicine and Orthopedic Surgery on October 4, 2019. (PX5, p.24)

On October 8, 2019, Petitioner underwent an examination for certification for his Commercial Driving License. (PX3, p.152) No issues were noted and it was marked that he had normal gait. He was provided certification for two years. Under examiner comments, the examiner noted that the Petitioner stated that the previous left knee and left foot injuries were resolved. (PX3, p.157)

On October 25, 2019, Petitioner returned to Dr. Primus. (PX5, p.31) He reported that since his last visit his symptoms had stayed the same. He reported that the pain was located in his left knee and it required Tylenol #3. He reported that physical therapy and medications did not help at all. Dr. Primus recommended surgery. He continued to issue compound creams.

Petitioner continued physical therapy at the Chicago Center for Sports Medicine and Orthopedic Surgery. (PX5, p.33)

Petitioner returned to Dr. Hampton at Advocate Medical Group on October 30, 2019, requesting a letter for work regarding his work injury. (PX1, p.22) It was recommended that he follow up with the specialist as scheduled.

Petitioner was seen by Dr. Primus on November 25, 2019. (PX 5, p. 43) Dr. Primus noted continued complaints and charted that an arthroscopic surgical intervention to address the symptomatic meniscus tear may be appropriate and may be the only chance for Petitioner to return to work. "based on the patient's given history, our review of ant pertinent records that were provided, the physical examination and review of the imaging, we believe the injuries evaluated today are causally and directly related to the work injury." (PX 5, p.44) The therapy note of November 26, 2019 documents poor participation by Petitioner (arrives late, distracted by the phone throughout, questionable compliance with HEP, questionable lack of motivation, poor mechanics secondary to lack of focus. Strength gains were evident, but a good recovery from surgery would require good participation in therapy. This was the last therapy visit for Petitioner at Chicago center and he was released, PRN. (PX 5, p. 46) Follow ups in PT on December 17, December 20, December 24 and December 30, 2019 were similar. (PX 5, p. 48-54) The last PT note is January 6, 2020 and poor compliance was noted, with Petitioner feeling ill. (PX 5, p. 55)

Respondent submitted into evidence surveillance performed of Petitioner from November 20, 2019 through November 26, 2019. (RX 5) It revealed Petitioner waking to and from his vehicle, fueling his vehicle, opening a door, walking to and from a store, shopping for televisions inside a store, entering his vehicle, and driving his vehicle. He has a slower gait walking into Best Buy, without a left sided limp. He stands and talks with a salesman. Other than the slower gait, he performed all of these activities without any visible signs of restriction or a limp.

On December 3, 2019, Petitioner came under the care of Dr. James Hill, orthopedic surgeon at Northwestern Medicine, complaining of discomfort in his left knee. (PX7, p.5) He reported to Dr. Hill that on July 31, 2019 his leg was pinned against a wall and he twisted it trying to get it out and he felt a pop in both his

leg and foot. He reported that since then he has been experiencing popping, giving away, pain and swelling of his left knee. Dr. Hill reviewed the MRIs and performed a physical examination. His overall impression was degenerative arthritis of the left knee with a torn left medial meniscus. Since conservative treatment had failed, Dr. Hill recommended a left knee arthroscopy. On December 17, 2019, Dr. Hill placed Petitioner off work.

On January 8, 2020, the Petitioner was seen for a §12 examination by orthopedist, Dr. Nikhil Verma, at Midwest Orthopedics at Rush at the request of Respondent. (RX 1, DepX 2) In his report, Dr. Verma noted that Petitioner was a fray driver (freight?). The diagnosis was severe end stage OA. Petitioner may have sustained a subtle knee strain as a result of the work accident, but the current diagnosis was related to severe degenerative arthritis The MRI showed no evidence of acute or traumatic findings and no evidence of worsening or material worsening as a result of the work event. No more related treatment was recommended, and Petitioner was at MMI for his work injury. He could return to work with no restrictions as a result of the work accident, but maybe light duty work was appropriate. (RX 1, DepX 2)

Petitioner underwent surgery by Dr. Hill at Northwestern on February 17, 2020. (PX9, p. 20) The procedures performed were left knee diagnostic arthroscopy, left knee partial medial meniscectomy, and left knee partial synovectomy. The postoperative diagnosis was a left knee medial meniscal tear. Significant degenerative changes, along with inflamed synovium was noted. Dr. Hill thought that the medial meniscus tear was degenerative.

Petitioner returned to Dr. Hill on February 27, 2020. (Px9, p.102) He was doing well post-operatively. His wounds were healing without any signs of infection and he had excellent range of motion. Dr. Hill encouraged him to begin a diligent physical therapy program. He was to return in one month.

Petitioner began physical therapy at Athletico Physical Therapy on March 3, 2020. (PX11, p.148) He testified at hearing that he chose to have his therapy at Athletico.

On June 10, 2020, Petitioner returned to Dr. Hill. (PX9, p.87) Dr. Hill noted that since the last visit the Petitioner had discontinued physical therapy secondary to the Covid pandemic and had not been doing strengthening exercises. He was complaining of weakness and pain in the left knee. Dr. Hill noted that at that time he was not adequately rehabilitated. He instructed Petitioner to remain off work and return to physical therapy. He was to follow up in 6 weeks.

Petitioner returned to Athletico on June 16, 2020 to restart physical therapy. (PX11, p.130)

Petitioner returned to Dr. Hill on July 22, 2020. (PX9, p.71). Dr. Hill noted that since the last visit he had been undergoing physical therapy with improvement in his leg, though he was still weak and had limited flexion. He recommended that Petitioner remain off work and in physical therapy. He was to return on September 29, 2020 for reevaluation. On September 10, 2020 the therapist noted that a TV that Petitioner hung on the wall over the weekend weighed 70 lbs. (PX11, p.60)

Petitioner continued his physical therapy at Athletico. (P11, p.63-129) By September 8, 2020, he reported that he had been able to go up and down stairs carrying up to 20 pounds of groceries with minimal pain. He noted on that date that he was lifting a flat screen TV on Saturday to hang on the wall by himself and had some forearm pain from pushing motions. (PX11, p.62)

On September 24, 2020, the therapist noted that Petitioner called to cancel his appointment and did not reschedule. He continued to report knee discomfort throughout but she further noted that he was able to ambulate for at least 15 minutes in the clinic without increase in pain and had been able to complete simulated

freight pull with 55 pounds on a LifeTime fitness machine. He also reported that he had been able to regularly ride a bike for up to 90 minutes at a time. She noted that they would await physician instructions from the next appointment. (PX11, p.47)

On September 29, 2020, Petitioner returned to Dr. Hill with improvement in his left knee but still complaining of lack of complete flexibility and some mild discomfort. (PX9, p.49) He was status post left knee arthroscopy with a flexion contracture of his left knee. He was encouraged to continue physical therapy and remain off work.

Clinical notes of Northwestern Medicine of October 2, 2020 indicate that the physical therapist reported that Petitioner was not pushing himself and that she wanted to know what Dr. Hill's goals were for PT. The therapist reported that he was plateauing and it was hard to motivate him. (PX9, p.41)

Petitioner returned to Athletico on October 6, 2020 for continued physical therapy. (PX11, p.43) On October 15, 2020, the therapist noted that he complained that the LifeFitness pulling task aggravated his hip the last session. However, when pressed, she noted that he further admitted that he also completed multiple hours of trim work and painting after the session. He additionally reported that he had more pain and limping after playing pool by himself for an hour or with others for 2 to 3 hours. (PX11, p.32) During his October 20, 2020 visit with Athletico, Petitioner reported that was still feeling throbbing pain in the knee with walking and had limited range of motion. However, he further stated that after the last session he sat to paint for about an hour without any increase in pain. (PX11, p.24)

Petitioner returned to Dr. Hill on December 1, 2020. (PX9, p.37) He reported that he was still experiencing difficulty in his left knee. He reported difficulty with climbing and prolonged sitting. Dr. Hill indicated that he had reached maximum medical improvement and he recommended an FCE. He placed him on work restrictions in the meantime.

Petitioner was reevaluated by Dr. Nikhil Verma on December 2, 2020 at the request of Respondent. (RX 1, DepX 3) Petitioner was noted to be post OR, 2/17/2020. His subjective complaints were consistent with his degenerative OA condition. The diagnosis was end-stage osteoarthritis. The condition was unrelated to the work accident. Dr. Verma did not see any aggravation or material worsening related to the work injury. Dr. Verma opined that the lack of evidence of objective improvement confirms that the surgery was not appropriate. The current treatment was unnecessary and post arthroscopy therapy should have been 8 weeks (assuming, the Arbitrator notes, that the patient actively and appropriately participates in therapy). In this case, MMI should have been 2 – 4 weeks post the injury.

Petitioner underwent an FCE at Athletico on January 5, 2021. It revealed an invalid/inconsistent performance. (PX 11, p.9) It was noted by the therapist throughout the examination that the Petitioner self-terminated multiple activities without clinical objective findings. Petitioner testified that he used full effort in participating in the FCE. He said that he did not self-terminate without discomfort.

On February 3, 2021, Petitioner returned to Dr. Hill for his last visit. (PX9, p.28). Petitioner was still complaining of difficulty with his left knee. He had an FCE done but it was invalid. He was still complaining of difficulty navigating stairs or doing any prolonged walking. At that time, he was also complaining of hip pain and was diagnosed with bilateral hip degenerative arthritis. Dr. Hill released Petitioner at MMI, with work restrictions of no climbing, squatting, kneeling, bending, prolonging walking, or heavy lifting greater than 10 pounds. The diagnosis was said to be posttraumatic arthritis of the left knee, with bilateral hip arthritis. He was to return in 3 months. There were no follow-up visits. (PX 9)

Respondent offered into evidence surveillance of Petitioner from March 24 and March 25, 2021. The surveillance showed Petitioner operating a motor vehicle, walking, entering and exiting a building, and entering a vehicle without any obvious difficulty or need for assistive devices. It also does not show any inconsistent physical activities being performed by Petitioner. (RX 6)

Dr. Verma authored a records review report, dated April 21, 2021. (RX 1, DepX 4) The diagnosis was the same and Dr. Verma did not review causation. There was no need for ongoing work restrictions secondary to the FCE because Petitioner had been working full duty in the past with his arthritic knee.

Dr. Nikhil Verma testified via evidence deposition on September 29, 2021. (RX 1) Dr. Verma is a board certified orthopedic surgeon, with an added certification in sports medicine. Dr. Verma testified in accordance with his reports. that he examined the Petitioner on January 8, 2020. (p.7) He further testified that he reviewed the treatment records and the x-ray and MRI imaging that had been performed to date including the September 12, 2019 MRI imaging. (p.11) His interpretation of the imaging was that there was end-stage arthritis with meniscal extrusion, most notably in the medial compartment, essentially grade 4, articulation with significant sclerosis and cystic changes. He stated that the meniscus was highly degenerated and extruded, which was consistent with that level of arthritis. He further noted ACL degeneration and that the lateral compartment showed degeneration of the lateral meniscus but no acute tear. He also noted moderate patellofemoral joint disease. Petitioner's subjective complaints were consistent with OA. (p.11-12)

Dr. Verma testified that he did not find a causal relationship between the work injury and the current diagnosis regarding Petitioner's left knee. He did not see a clear relationship between the work injury and the current diagnosis. (p.13) His basis was multifactorial. He first pointed out that the very first treatment record did not point to any acute event but rather overuse symptoms. He further stated that Petitioner's current clinical complaints and objective findings were consistent with a severe preexisting underlying degenerative condition. He also felt that his MRI findings were consistent with a severe preexisting underlying degenerative condition with no evidence of an acute or traumatic finding. (p.13) Dr. Verma concluded that Petitioner had reached MMI for any alleged work injury and did not require an arthroscopy. Petitioner had severe end-stage OA without mechanical symptoms that would benefit from surgery. (p.14-15) He further opined that Petitioner could return to work without restrictions. (p.15)

Dr. Verma testified that examined Petitioner for a second time on December 2, 2020, post arthroscopy. (p.15) At that time, he found that Petitioner's gait was normal, he was not using assistive devices, and he had no limping. (p.17) Dr. Verma testified that his diagnosis was the same as in the first report and he still felt that Petitioner's condition was not related to the work injury. (p.18) He testified that the arthroscopy was not indicated and that the therapy performed post arthroscopy was excessive. (p.19-20) Dr. Verma testified that Petitioner had reached MMI about two to four weeks following the initial work injury with an ACL and knee strain. (p.20)

Dr. Verma testified that he also reviewed additional records and produced an addendum report on April 22, 2021. He provided testimony based upon the review of those additional records. (p.22) He continued to maintain the diagnosis of severe end-stage osteoarthritis. (p.23) He continued to maintain his position as to MMI and that Petitioner required no work restrictions. (p.22-23)

On cross-examination, Dr. Verma stated that it would not be accurate to say that Petitioner was asymptomatic prior to the date of injury because the motion deficits that were identified soon after the alleged injury would be chronic in nature. He testified that patients don't develop stiffness to that degree over a matter of weeks. (p.32-34) Dr. Verma further testified that he could state within a reasonable degree of medical certainty that the Petitioner's meniscus had been torn for years. (p.36) He agreed that Petitioner's job was

physically demanding, although he had not reviewed a job description. (p. 27) Dr. Verma further explained on redirect examination that he there is a difference how an acute meniscal tear and a degenerative meniscal tear shows on imaging. (p.45-46) This meniscal condition was degenerative. (p.46)

Regarding lost time, Petitioner testified that Concentra took him off work and ordered light duty through 9/16/2019. Petitioner worked light duty and received TPD benefits from August 14, 2019 through mid-December, 2019. From January 20, 2020 through February 20, 2020, he was off work and receiving no benefits.From February, 2020 through August, 2020, he received short term disability of $2,400.00 per month. From August 11,2020 through February 10, 2021, he received long term disability.

Petitioner testified that he was separated from his employment from Respondent, but he was not really terminated. He did not recall the specific details. He stated that he had been in touch with HR, but he did not testify to any specific dates when he contacted HR regarding return to work or provide anything to substantiate whether he made any efforts to return to work for Respondent following his FCE and release from Dr. Hill. He also testified that he was searching for work, but admitted he did not bring anything with him to the hearing documenting those efforts. Nothing was submitted into evidence that Respondent was notified that any job search efforts or return to work efforts were being made or that Petitioner had any desire to rejoin the workforce.

He testified that he used Indeed and Career Builder in 2021 and 2022, but he did not provide any specific details of an actual job search. He further testified that he had Covid in 2021 for a period and did not work, but in 2022 he worked for a trucking company for months doing an over the road truck driving job. He also testified that he worked in a yard training truck drivers after the driving job. He testified to having difficulty performing these jobs, but did not provide any other testimony or evidence regarding the times he held these positions and why he no longer held these positions. He further testified that he may have a position lined up soon as a restaurant manager. No wage or employment information regarding these jobs was submitted into evidence.

Petitioner presented at hearing with a cane, using it in his right hand, as would be expected for someone favoring their left leg. He testified that Dr. Hill did not recommended the cane, but they did discuss it. There is no mention of a cane in Dr. Hill's records.

Petitioner testified that he previously worked for Roadway Express. He further confirmed that he recovered a settlement for a left foot injury. Respondent offered into evidence Commission records confirming the prior left foot settlement of 15% loss of use of the left foot, Case Number 99 WC 033022. (RX2)

Petitioner received TPD benefits of $11,036.98, apparently for the time period of August 14, 2019 through December 17, 2019, when he worked light duty. He was excused off work by Dr. Hill on December 17, 2019 and he received TTD benefits of $2,417.19, apparently for the time period of December 17, 2019 through January 8, 2020 (the date of the Dr. Verma IME). after which time Peitioner received short and long term disability benefits of $28,297.88, from Hartford, a plan sponsored by FedEx. He received short term benefits of $2,400.00/month from February 10, 2020 through August 10, 2020 and long term benefits from August 11, 2020 through February 10, 2021. (RX 4, RX 5, ArbX 1)

Petitioner testified that he continues to experience left knee pain, which is constant. He had no prior left knee or left ankle symptoms, other than a 1999 left ankle workers' comp injury. He never had left knee imaging before the July 31, 2019 accident. He was able to fully perform his job before the injury. He does not think that he is physically able to do his job at present. He is not 100% healed. He has some discomfort. He has stiffness after sitting. He uses a cane to walk, partially to help with balance and hip pain.

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between his employment and his injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

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

In support of the Arbitrator's Decision related to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds:

Petitioner's current condition of ill-being, to wit: resolved left foot contusion/sprain and left knee sprain/meniscus tear/aggravation of left knee osteoarthritis status post arthroscopic surgery by Dr. Hill (knee conditions as endorsed by Dr. Primus and Dr. Hill) is causally related to the injury.

As noted above, accident was stipulated to. Additionally, Petitioner's testimony that he had no knee problems at the time of accident and had never had any knee imaging is unrebutted. Petitioner's testimony that he was working full duty as a freight truck driver for Respondent at the time of the injury, with no limitations, is unrebutted.

No doubt, the OA condition in Petitioner's left knee preexisted the work injury. The chain of events, with Petitioner being asymptomatic and able to perform his job duties before the work injury and being symptomatic with objective findings, as shown by the treating medical records of Advocate, Concentra, Dr. Primus and Dr. Hill, along with Petitioner's testimony establish causation. Additionally, the Arbitrator relies upon the causation opinion in Dr. Primus' records and Dr. Hill's records documenting a symptomatic meniscal tear, necessitating surgical repair (with no record of this diagnosis or of consistent symptoms prior to the work injury in evidence).

Dr. Verma's opinions on causation are not persuasive. According to Dr. Verma, there was not a clear relationship between the injury and the current diagnosis. It is clear to the Finder of Fact, as is stated above, Petitioner was asymptomatic and able to perform his full work duties as a freight truck driver before the work injury. Thereafter, Petitioner was symptomatic and unable to work at full duty, as is shown by the treating medical records. Causation has been established.

In support of the Arbitrator's Decision related to (J.), Were the medical services that were provided to Petitioner reasonable and necessary/Has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds:

The Arbitrator finds that the medical services provided to Petitioner were causally related to the work injury and reasonable and necessary to cure or relieve the effects of the injury.

Based upon the Arbitrator's finding above on the issue of causation and the evidence adduced, the following medical ills are awarded:

PX 6. Chicago Center for Sports Medicine $3,955.46
PX 10. Northwestern Medicine:……..$37,934.85
PX 12. Athletico……..$19,460.00
TOTAL: $61,350.31

The bills are awarded pursuant to the Medical Fee Schedule and pursuant to §§8(a) and 8.2 of the Act. Respondent is entitled to a credit for all awarded bills that it has paid or satisfied.

In support of the Arbitrator's Decision related to (K.), What temporary disability benefits are due, the Arbitrator finds:

Based upon the Arbitrator's finding above on the issue of causation, and the evidence adduced, Petitioner is entitled to lost time benefits from August 14, 2019 through February 3, 2021, the date that Dr. Hill released him with permanent restrictions, at MMI. Interstate Scaffolding v. Illinois Workers' Compensation Commission, 236 Ill.2d 132 (2010)

The Arbitrator awards TPD benefits for the time period of August 14, 2019 through December 17, 2019, for which he was paid $11,036.98, per the Parties' stipulation. (ArbX 1)

Petitioner is awarded TTD benefits from December 17, 2019 (the day that he was excused off-work by Dr. Hill), through February 3, 2021 (the day that Dr. Hill released him with permanent work restrictions, at MMI), a time period of 59-2/7 weeks.

Respondent is entitled to a credit of $2,417.19 for TTD benefits paid and for $28,297.88 in Group non occupational lost time benefits paid, pursuant to §8(j) of the Act as is set forth on ArbX 1. In order for the Group credit to apply, Respondent shall hold Petitioner safe and harmless from any claims for reimbursement, in accordance with §8(j) of the Act.

No lost time benefits are awarded subsequent to February 3, 2021. The testimony of Petitioner was that he did not refuse work, but he apparently did not contact Respondent about returning to work in any job after Dr. Hill's release and he was subsequently "separated" in September of 2021. His testimony does not support any award of Maintenance benefits and he provided no evidence of any job search efforts or the wages and time periods worked at the two subsequent employers that he testified about.

In support of the Arbitrator's Decision related to (L.), What is the nature and extent of the injury?, the Arbitrator finds:

Petitioner's foot condition has clearly resolved and there is a 15% loss of use of the left foot credit. No PPD is ascribed to the foot injury.

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

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the

injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

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

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records.

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

All factors are relevant in determining PPD, as they are required to be considered in determining PPD.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no opinion comporting with the specific requirements of §8.1b(a) was submitted into evidence. This factor is given no weight in determining PPD.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a freight truck driver at the time of the accident and that he is not able to return to work in his prior capacity as a result of said injury. This factor is given substantial weight in determining PPD.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 58 years old at the time of the accident and 61 years old at the time of trial. He has a relatively short work life expectancy. This factor is given moderate weight in determining PPD.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner has permanent restrictions which prohibit hime from returning to work at a job such as he had for Respondent and likely will limit his ability to earn as much as he did prior to the work injury of July 31, 2019. This factor is given moderate weight in determining PPD.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner testified to continued left knee pain and stiffness, along with it not feeling as it did before the work injury (not 100%). On February 3, 2021, Petitioner returned to Dr. Hill for his last visit. Petitioner was still complaining of difficulty with his left knee. He had an FCE done but it was invalid. He was still complaining of difficulty navigating stairs or doing any prolonged walking. At that time, he was also complaining of hip pain and was diagnosed with bilateral hip degenerative arthritis. Dr. Hill released Petitioner at MMI, with work restrictions of no climbing, squatting, kneeling, bending, prolonging walking, or heavy lifting greater than 10 pounds. The diagnosis was said to be posttraumatic arthritis of the left knee, with bilateral hip arthritis. He was to return in 3 months. There were no follow-up visits. (PX 9, p. 6)

Based on the above factors, and the Record taken as a whole, the Arbitrator finds that as a result of the injuries sustained, Petitioner suffered permanent partial disability to the extent of 25% loss of use of the person as a whole, pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC039743
Case Name	Elizabeth Medina v. Borinquen Restaurant aka Jibarito & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0309
Number of Pages of Decision	13
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	John Powers
Respondent Attorney	Rufus Barner

DATE FILED: 6/27/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ELIZABETH MEDINA,

Petitioner,

vs. NO: 13 WC 39743

BORINQUEN RESTAURANT
aka JIBARITO & IWBF,

Respondent,

DECISION AND OPINION ON REVIEW

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

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

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

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

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund was named as a co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under §4(d) of the Act, in the event of the failure of Respondent-Employer to pay the

benefits due and owing the Petitioner. Respondent-Employer shall reimburse the injured Workers' Benefit Fund for any compensation obligations of Respondent-Employment that are paid to the Petitioner from the Injured Workers' Benefit Fund.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $9,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 27, 2024
O: 06/20/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC039743
Case Name	Elizabeth Medina v. Borinquen Restaurant a/k/a Jibarito and State Treasurer as Ex-Officio of the Injured Workers' Benefit Fund
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	John Powers
Respondent Attorney	Rufus Barner

DATE FILED: 11/22/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 21, 2023 5.23%

/s/ Rachael Sinnen, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Elizabeth Medina
Employee/Petitioner

v.

Boringuen Restaurant a/k/a Jibarito and State Treasurer as Ex-Officio of the Injured Workers' Benefit Fund
Employer/Respondent

Case # **13** WC **039743**

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 **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **September 6, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **June 20, 2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**12,480.00**; the average weekly wage was $**240.00**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** 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

Respondent shall pay reasonable and necessary medical services of $2,901.06, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $240.00/week for 25 weeks, because the injuries sustained caused 5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

NOVEMBER 22, 2023

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Elizabeth Medina,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 13WC039743
Borinquen Restaurant a/k/a Jibarito and	)	
State Treasurer as Ex-Officio of The Injured	)	
Workers' Benefit Fund,	)	
	)	
Respondents.	)	

FINDINGS OF FACT

This matter proceeded to hearing on September 6, 2023 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing pursuant the Illinois Workers' Compensation Act "Act." Issues in dispute include whether Respondent, Borinquen Restaurant (hereinafter "Borinquen"), was operating under the Act, whether an employee-employer relationship existed, accident, notice, causation, average weekly wage "AWW," Petitioner's age/marital status/dependents, unpaid medical bills, temporary total disability "TTD" benefits, nature and extent of the injury, statute of limitations, proper service, and insurance compliance. (Arbitrator's Exhibit "AX" 1)

Petitioner's Testimony

Petitioner testified she was born on May 15, 1976. Due to prior car accidents affecting her memory, she could not recall her children's dates of birth. Petitioner's 2007 income tax return indicates her daughter Erika was born in 1999 and her son Sebastian was born in 2005. (Petitioner's Exhibit "PX" 3) On June 20, 2011, Petitioner was single.

In 2005, Petitioner began working for Borinquen, which was also known as Jibarito. Borinquen was a restaurant open to the public with less than 20 employees. Petitioner performed various job duties from cashier to waitress to stocking shelves. She was paid $6.00 per hour and worked 40 hours a week. Borinquen determined Petitioner's work schedule and set her hourly pay rate. No contract existed between the parties and the duration of employment was indefinite. At the hearing, Petitioner presented multiple letters from Borinquen indicating she was employed by Borinquen. (PX 3) She also presented various checks from Borinquen showing that taxes were withheld. (PX. 3)

On June 20, 2011, Petitioner was lifting cases of soda pop when she experienced low back pain. Later that same day, she reported what happened to her supervisor Jaime Figueroa.

Prior to the work accident, Petitioner had not sought medical treatment for her low back and did not have pain radiating into her legs.

At trial Petitioner testified that her back and leg pain symptoms are currently aggravated by walking 10-20 minutes and standing 20-30 minutes. She must take breaks while doing laundry or shopping for groceries. She continues taking muscle relaxers and pain medication prescribed by her doctor. She has worked off and on since the accident.

Summary of Medical Records

On June 23, 2011, Petitioner began treating at Young Family Health Center with her primary care physician, Dr. Myrna Patricio. Petitioner provided Dr. Patricio with a history indicating she injured her back doing heavy lifting about a week prior to the visit. Dr. Patricio prescribed Flexeril and Naprosyn. (PX. 4, pg. 2) On August 30, 2011, Dr. Patricio reported Petitioner had low back pain with radiation. (PX. 4, pg. 5). On September 10, 2011, Dr. Patricio noted standing made Petitioner's low back pain worse and provided Petitioner with a script for a lumbar MRI. (PX. 4, pg. 6-7)

On December 12, 2011, a lumbar MRI revealed Petitioner had bulging discs from L3-4 to L5-S1. (PX. 5)

On April 3, 2012, July 19, 2012, and November 5, 2012, Petitioner followed up with Dr. Patricio, who noted Petitioner continued having intermittent low back with leg numbness. (PX. 4, pg. 10-15) On November 5, 2012, Petitioner underwent a thoracic MRI, which was unremarkable. (PX. 6)

On June 30, 2013, October 7, 2013, and December 2, 2013, Petitioner followed up with Dr. Patricio due to continued low back pain. On December 2, 2013, Dr. Patricio recommended Petitioner undergo a Depo shot followed by physical therapy. (PX. 4, pg. 17-20)

On February 20, 2014, Petitioner underwent a Depo shot. (PX. 4, pg. 22) On April 21, 2014, Dr. Patricio noted Petitioner walked with a cane most of the time. (PX. 4, pg. 24) Petitioner testified the cane was prescribed by Dr. Patricio. From July 15, 2014, to September 15, 2014, Petitioner underwent physical therapy at St. Mary of Nazareth Hospital for low back pain and trunk stiffness. (PX. 7)

Petitioner continued following up with Dr. Patricio throughout 2015. On November 23, 2015, Dr. Patricio prescribed more physical therapy for Petitioner. (PX. 4, pg. 51) Petitioner underwent physical therapy from January 15, 2016, to March 4, 2016. (PX. 8) She continued seeing Dr. Patricio throughout the rest of 2016. (PX. 4)

On January 17, 2017, Petitioner reported to Dr. Patricio that she was experiencing pain on her right side following an automobile accident. (PX. 4, pg. 60) On May 6, 2017, Petitioner underwent

an annual exam with Dr. Patricio. (PX. 4, pg. 62-63) Dr. Patricio last saw Petitioner on February 23, 2018 for conditions unrelated to her June 20, 2011, accident.

CONCLUSIONS OF LAW

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

Issue A, whether Respondent was operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act, the Arbitrator finds as follows:

Petitioner credibly testified that Borinquen operated as a restaurant to the general public. Petitioner testified that the restaurant was also called "Jibarito.[1]" The Arbitrator finds that Borinquen's business falls under Section 3(14) of the Act.

As a result, the Arbitrator finds that Respondent, Borinquen Restaurant, was operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act.

Issue B, whether there was an employee-employer relationship, the Arbitrator finds as follows:

Petitioner presented multiple letters from Borinquen indicating she was employed by Borinquen, as well as various checks from Borinquen showing that taxes were withheld. (See PX. 3)

The Arbitrator finds that there was an employee-employer relationship.

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

Petitioner credibly testified that on June 20, 2011, while working for Borinquen, she injured her low back lifting cases of soda pop. The Arbitrator finds that Petitioner was exposed to a risk distinctly associated with her employment as her job duties included stocking products. See McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 38.

The Arbitrator finds that the accident did arise out of and in the course of Petitioner's employment by Respondent, Borinquen Restaurant.

Issue D, the date of the accident, the Arbitrator finds as follows:

Petitioner credibly testified that her injury occurred on June 20, 2011 and her testimony was corroborated by the medical records.

The Arbitrator finds that the accident occurred on June 20, 2011.

[1] Jibarito is the Puerto Rican name for a *fried* plantain sandwich.

Issue E, whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

Petitioner credibly testified that on June 20, 2011, she reported her accident to her supervisor, Jaime Figueroa.

The Arbitrator finds that timely notice of the accident was given to Respondent, Borinquen Restaurant.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his/her employment was a causative factor in his/her ensuing injuries. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Petitioner testified that prior to June 20, 2011, she had not sought treatment for her low back and did not have low back pain symptoms radiating into her legs. After lifting the cases of soda pop, Petitioner began experiencing low back pain that eventually began radiating into her legs. Petitioner's testimony was corroborated by the medical records submitted into evidence which included a December 12, 2011 lumbar MRI revealing bulging discs from L3-4 to L5-S1. (See PX. 5). Petitioner has met her burden in demonstrating a previous condition of good health, an accident, and a subsequent injury.

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the injury.

Issue G, Petitioner's earnings, the Arbitrator finds as follows:

Petitioner credibly testified Respondent paid her $6.00 per hour and she normally worked 40 hours a week during the 52 weeks prior to her June 20, 2011 accident. Petitioner's testimony was corroborated by various checks from Respondent. (See PX. 3)

The Arbitrator finds that Petitioner earned $12,480.00 in the year preceding the injury resulting in an average weekly wage of $240.00.

Issue H, Petitioner's age at the time of the accident, the Arbitrator finds as follows:

Petitioner testified she was born on May 15, 1976 and her accident occurred on June 20, 2011.

The Arbitrator finds that Petitioner was 35 years old at the time of the accident.

Issue I, Petitioner's marital status and number of dependents at the time of accident, the Arbitrator finds as follows:

Petitioner testified that on June 20, 2011, she was single. Although she could not recall her children's date of birth, due to effects of being involved in auto accidents, her income tax returns submitted into evidence show that one child was born in 1999 and the other in 2005. This would make both children under the age of 18 on June 20, 2011.

The Arbitrator finds that Petitioner was single with 2 dependents at the time of the accident.

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

Petitioner's Exhibit 9 is an itemization from the Illinois Department of Healthcare and Family Services indicating $2,901.06 was paid on Petitioner's behalf for medical expenses incurred related to Petitioner's June 20, 2011 accident.

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent, Borinquen Restaurant, has not paid for said treatment. As such, the Arbitrator orders Respondent, Borinquen Restaurant, to pay Petitioner directly for the following outstanding medical services in the amount of $2,901.06 (See PX 9), pursuant to Sections 8(a) and 8.2 of the Act and *Perez v. Illinois Workers' Compensation Comm'n*, 2018 IL App (2d) 170086WC, ¶ 17, 96 N.E.3d 524.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

On August 30, 2011, Dr. Patricio provided Petitioner with a note indicating Petitioner was unable to work from June 20, 2011 to June 24, 2011 along with a second note indicating Petitioner should be restricted to light duty work. (PX. 4, pg. 67-68)

On July 19, 2012, Dr. Patricio gave Petitioner another note restricting her to light duty work and limited standing. (PX. 4, pg. 69) Two years after that, on July 21, 2014, Dr. Patricio provided Petitioner with a note indicating Petitioner was unable to return to work. (PX. 4, pg. 70) On October 2, 2014, Petitioner followed up with Dr. Patricio, but there is no mention of Petitioner's work status. (PX. 4, pg. 34-35) On December 19, 2014, Dr. Patricio advised Petitioner to continue physical therapy, but there is no mention of Petitioner's work status. (PX. 4, pg. 38-39)

Petitioner testified she worked off and on over the years. There was no evidence presented that Respondent refused to accommodate her restrictions. The Arbitrator finds that Petitioner has failed to meet her burden in establishing her entitlement to TTD benefits.

Based on the above, the Arbitrator finds Respondent, Borinquen Restaurant, liable for 0 weeks of TTD benefits at a weekly rate of $240.00.

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

As Petitioner's accident occurred before September 1, 2011, adherence to Section 8.1b(b) of the Act is not required for establishing permanent partial disability.

As a result of her June 20, 2011 accident, Petitioner sustained a back injury with radiculopathy going into both legs. Her December 12, 2011 lumbar MRI revealed bulging discs from L3-4 to L5-S1. (PX. 5) Petitioner received conservative care from her primary care physician periodically over the next 5-6 years. (PX. 4) She underwent physical therapy two months of physical therapy at St. Mary Medical Center from July 14, 2014 to September 15, 2014 and about two more months of physical therapy at St. Mary of Nazareth Hospital from January 15, 2016 to March 4, 2016. (PX. 7, PX. 8) Petitioner testified that her back and leg pain symptoms are currently aggravated by walking 10-20 minutes and standing 20-30 minutes. She must take breaks while doing laundry or shopping for groceries. She continues taking muscle relaxers and pain medication prescribed by her doctor.

Based on the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% loss of use of person as a whole, pursuant to §8(d)2 of the Act which corresponds to 25 weeks of permanent partial disability benefits at a minimum weekly rate of $240.00.

Issue O, statute of limitations, proper service, and insurance compliance, the Arbitrator finds as follows:

Statute of Limitations

Petitioner's date of accident was June 20, 2011. She filed her Application for Adjustment of claim on December 30, 2013, which was almost 6 months before the statute of limitation would have run. Therefore, Petitioner's claim was filed timely with the Illinois Workers' Compensation Commission.

Proper Service

The Commission's rules require that in all cases that have been on file at the Commission for more than three years, the parties or their attorneys must appear at each status call. 50 ILAC 9020.60(D) If the employer fails to appear, the arbitrator may schedule the claim for a trial and proceed ex-parte. 50 ILAC 9030.20(c)(2) On August 9, 2023, this matter appeared on the arbitrator's status call. A pretrial was scheduled for August 11, 2023 at 9:00 AM. Counsel for Petitioner and the Illinois Injured Worker Benefit Fund appeared at the pretrial and this matter was scheduled for trial on September 6, 2023 at 9:00 AM.

On July 12, 2023, Petitioner's counsel attempted to notify Respondent that the claim would be set for trial on September 6, 2023 by mailing letters to Respondent's last known locations at 1720 N. California Avenue, Chicago, IL 60647 and 3811 N. Western Avenue, Chicago, IL 60618. The letter sent to 1720 N. California Avenue was returned by the post office. (PX. 2) According to the United States Post Office, the letter sent to 3811 Western Avenue was received on September 1,

2023. (PX. 2) On August 11, 2023, Petitioner also attempted to serve notice of the hearing on Respondent through the Illinois Secretary of State's Office. (PX. 2)

Based upon the above, the Arbitrator concludes that Petitioner complied with proper service requirements before proceeding forward with an ex-parte hearing.

Insurance Compliance

On October 22, 2018, the National Council on Compensation Insurance issued a certification indicating that it did not show a workers' compensation insurance policy for Respondent covering June 20, 2011. (PX. 1)

Injured Workers' Benefit Fund:

The Illinois State Treasurer, ex-officio custodian of the Injured Workers' Benefit Fund, was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of this Act. In the event the Respondent/Employer/Owner/Officer fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits paid due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

It is so ordered:

Arbitrator Rachael Sinnen

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC030556
Case Name	INSURANCE COMPLIANCE v. VITAL ENTERPRISES INC AKA PRIME MASONRY GROUP
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	24IWCC0310
Number of Pages of Decision	8
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Dan Kallio
Respondent Attorney	

DATE FILED: 6/28/2024

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
)
COUNTY OF WINNEBAGO)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

State of Illinois
Department of Insurance,
Insurance Compliance Department[1],
Petitioner,

v.

Vital Enterprises, Inc.; aka Prime Masonry;
Vitaly Chuverov individually and
as President of Vital Enterprises, Inc.,
Employers/Respondents.

Case # **19WC030556**
12INC00597
Rockford, IL

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the State of Illinois Department of Insurance, Insurance Compliance Department, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondents alleging violation of Section 4(a) of the Illinois Workers' Compensation Act for failure to procure mandatory workers' compensation insurance. Petitioner alleges that Respondents knowingly and willfully lacked workers' compensation insurance for 361 days. On March 7, 2024, after timely notice to Respondents, a hearing was held before Commissioner Doerries in Rockford, Illinois. Petitioner was represented by the Office of the Illinois Attorney General. Respondent did not appear in person or through counsel. A record was taken.

Petitioner seeks the maximum fine allowed under the Act, $500.00 per day for each of the 361 days during the period of March 2, 2012, to February 26, 2013, the date on which the corporation was dissolved, when Respondents conducted business and failed to provide coverage for its employees. In addition, Petitioner seeks reimbursement for the liability incurred by the Injured Workers' Benefit Fund in claim 12 WC 013604 in the amount of $124,800.00. Petitioner seeks a total award of $305,300.00.

The Commission, after considering the record in its entirety, and being advised of the applicable law, finds that Respondents knowingly and willfully violated section 4 of the Act and section 9100.100 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules) during the claimed periods in question. As a result, Respondent shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against the Respondents under section 4 of the Act in the sum of $72,200.00, representing $200.00 per day for each of the 361 days and orders Respondent to reimburse the Injured Workers' Benefit Fund in the amount of $124,800.00, for a total of $197,000.00.

[1] Formerly the Illinois Workers' Compensation Commission, Insurance Compliance Department

I. Findings of Fact

The State of Illinois, Department of Insurance, Insurance Compliance Department, initiated an insurance compliance investigation upon learning that the Injured Workers' Benefit Fund (IWBF) had been named as an additional party in the matter of *David Carole vs. Vital Enterprises, Inc. and the Illinois State Treasurer as ex officio Custodian of the IWBF*, No. 12 WC 012604. The claimant in that case alleged a work-related accident arising out of and in the course of employment on January 27, 2012. The department's investigation determined that Respondents' business was subject to the Worker's Compensation Act by virtue of Section 3 of the Act and had failed to provide insurance coverage for its employees. The department further determined Respondents' business was not self-insured.

Investigator Lolita Parham served Respondent via USPS with a Notice of Non-Compliance Hearing on September 18, 2019. (PX4). Further Notices of non-compliance were previously sent to Respondent on August 2, 2012, and November 19, 2019. (See PX4).

Notice of a Scheduled Hearing on the Merits was sent via certified mail. (PX1). The mailed notice was received by Respondent, Vitaly Chuverov, on February 2, 2024, at 5463 Forest Trail Dr., Rockford, IL. Notice was also received by the last known registered agent of the corporate Respondent, Alexander Narod, at 601 Skokie Blvd., Suite 503, Northbrook, IL on February 2, 2024. *Id*.

George Sweeney, a supervisor for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing.

Mr. Sweeney identified Petitioner's Exhibit 4 as Notices of Non-Compliance that had been previously sent to Respondent in this case. The first notice sent August 2, 2012, states that the Commission's records indicate that Respondent was not in compliance with the requirements of Section 4 for the period from March 2, 2012, to August 3, 2012. This notice states that it was hand delivered. (PX4). The second notice sent September 18, 2019, states that the Commission's records indicate that Respondent was not in compliance with the requirements of Section 4 for the period from March 2, 2012 to August 12, 2016. (PX4A). The notice includes an affidavit indicating service by mail on August 31, 2018. *Id*.

Mr. Sweeney identified Petitioner's Exhibit 4(b) as a Notice of Insurance Compliance Hearing mailed to Vitaly Chuverov. The notice is dated November 18, 2019, and states that Respondents were not in compliance with the requirements of Section 4 of the Act and that a hearing date had been scheduled for March 9, 2020. (PX4b).

Mr. Sweeney further testified that in 2022, his office received a bankruptcy notice from Respondent but that the bankruptcy matter has since been discharged or otherwise resolved at this time. (T. P. 29). Sweeney also testified that numerous attempts have been made to contact Respondent including attempts to hand deliver documents as indicated in his notes, but that was before Mr. Sweeney was assigned to the file. (T. P. 20-31).

Mr. Sweeney identified Petitioner's Exhibit 2, a File Detail Report for Vital Enterprises, Inc. from the Secretary of State's Office. According to this document, Vital Enterprises, Inc. was incorporated in Illinois on January 15, 2008, and dissolved on February 26, 2013. (PX2).

Mr. Sweeney testified that Petitioner also obtained the Articles of Incorporation and the Annual Reports from the Secretary of State related to Vital Enterprises, Inc. (PX3). Per the Articles of Incorporation, on February 21, 2011, the name of the corporate entity changed to "Vital Enterprises, Inc." from "Prime Masonry, Inc." *Id*. Mr. Sweeney testified that, to the best of his knowledge, Vital Enterprises was also doing business as Prime Masonry and vice versa during all relevant periods. (T. P. 18-19).

Mr. Sweeney also identified, and the Commission takes judicial notice of, the Commission's arbitration decision *David Carole v. Vital Enterprises, Inc. and the Illinois State Treasurer as ex officio Custodian of the IWBF* (12WC013604). In this case, the Arbitrator concluded that the parties were operating under the Act as employee and employer. The arbitrator further concluded that respondent was uninsured on the accident date of January 27, 2012, pursuant to an NCCI certification entered into evidence by the claimant in that case. The Arbitrator awarded the petitioner medical expenses, temporary total disability benefits, permanent partial disability benefits, and additional compensation. (PX7).

Mr. Sweeney testified that after Respondent in this matter failed to pay the award in 12WC013604, the Injured Workers Benefit Fund ultimately paid out approximately $124,000.00 in benefits to the injured claimant in *David Carole v. Vital Enterprises, Inc.* (T. P. 22).

Mr. Sweeney testified that Petitioner's Exhibit 6, is a certified finding from the Department of Self-Insurance that Respondents were not self-insured during the dates indicated. The document indicated that no certificate of approval to self-insure was issued to Vital Enterprises. (PX6).

Mr. Sweeney testified that Petitioner requested insurance information regarding the Respondent from the National Council of Compliance Insurance (NCCI) in Boca Raton, Florida. (PX5). The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers. The certificate indicates that said records do not show policy information was filed showing proof of workers' compensation insurance for the period from March 2, 2012, to August 3, 2016. (PX5).

Mr. Sweeney further testified that Respondent had previously purchased a workers' compensation insurance policy sometime in 2011 that had been cancelled by the carrier prior to the January 2012 injury in the underlying workers' compensation claim.. (T. P. 31). Mr. Sweeney also testified that, during the course of his investigation, he found no indication that Respondent did anything to become compliant pursuant to the Act and had simply just dissolved the corporation. (T. P. 31-32).

Mr. Sweeney further testified that in the regular course of Petitioner's investigation, Petitioner requested information regarding the Respondents from the Illinois Department of Revenue. Petitioner submitted Petitioner's Exhibit 8 comprised of certified records from the Department of Revenue with no income or tax withholdings having been recorded. (PX8).

II. Conclusions of Law

The Commission first considers whether Respondents are subject to the Act. Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including: "the distribution of any commodity by… motor vehicle where the employer employs more than 2 employees in the enterprise or business." 820 ILCS 305/3(3).

The Commission finds that Respondents' business falls within Section 3(3) of the Act. While there was no direct testimony as to the nature of Respondents' business during the period of non-compliance, the Commission takes judicial notice of the findings by the Arbitrator in this regard as contained in the Decision rendered in *David Carole v. Vital Enterprises, Inc., and the Illinois State Treasurer as Ex Officio Custodian of the Injured Workers' Benefit Fund*, No. 12 WC 013604**.** The Claimant's testimony therein established that he was employed as a truck driver by Vital Enterprises, Inc. and was in the business of the distribution of commodities with at least one other employee accompanying him on delivery routes. Accordingly, the Commission finds that the work Respondents engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a) (West 2004). Section 9100.90(a) of the Rules similarly provides that any employer subject to section 3 of the Act shall insure payment of compensation required by section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a) (1986). Section 9100.90(d)(3)(E) of the Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986). Section 9100.90(d)(3)(D) of the Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986).

The Commission analyzes here the culpability of Respondents and the applicability of Section 4(a). Section 4 of the Act requires that all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under Section 2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Vital Enterprises. At hearing, Petitioner sought a fine from March 2, 2012, to February 26, 2013, the date on which the corporation was dissolved. The NCCI certification provided by Petitioner shows there was no policy information showing proof of workers' compensation insurance for the period from March 2, 2012, to August 3, 2016. Mr. Sweeney testified that Respondent had bought a workers' compensation insurance policy in 2011 which had been cancelled by the carrier before the January 27, 2012, injury in the underlying workers compensation claim, and that it was not covered by an insurance carrier. Mr. Sweeney also testified that, during the course of his investigation, he found no indication that Respondent took any remedial action to become compliant pursuant to the Act and had simply

dissolved the corporation. Furthermore, the Commission finds that Respondent was uninsured on the accident date of January 27, 2012, pursuant to an NCCI certification entered into evidence by the injured Claimant in the case of *David Carole v. Vital Enterprises, Inc* and the previous finding of no insurance by the Commission. The Commission now finds that there was no policy information showing proof of workers' compensation insurance for any period. Respondents did not attend the hearing and thus presented no evidence indicating that they provided workers' compensation insurance of any kind during this period. Accordingly, the Commission concludes that Petitioner has proved, by a preponderance of the evidence, that Respondents failed to comply with the legal obligations imposed by section 4(a) of the Act from March 2, 2012, to February 26, 2013

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, Section 4(d) of the Act states:

> "Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section ***, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty." 820 ILCS 305/4(d) (West 2004).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b) (1986). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter. 50 Ill. Adm. Code 9100.90(c) (1986). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d) (1986).

In this case, Petitioner submitted into evidence the Notice of Non-Compliance mailed to Vitaly Chuverov, individually, and Vital Enterprises, Inc. aka Prime Masonry, in the form prescribed by the Rules. The Commission further notes that Petitioner also sent certified notice to the last known registered agent. Petitioner also submitted notice for the insurance compliance hearing, accompanied by certified mail receipts. Moreover, Mr. Sweeney testified that in 2022, his office received a bankruptcy notice from Respondent but that the bankruptcy matter has since been discharged or otherwise resolved at this time. Mr. Sweeney further testified that numerous attempts have been made to contact Respondent to no avail. Attempts had been made to contact Respondent to resolve the issues in question, including attempts to hand deliver documents as indicated in his notes, but that was before

Mr. Sweeney was assigned to the file. The insurance compliance hearing allowed the Petitioner to introduce evidence and testimony, and afforded Respondents the opportunity to do the same, had any of them chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice and hearing was provided to Respondents.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. See, *e.g.*, *State of Illinois v. Murphy Container Service*, Ill. Workers 'Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondents violated the Act by failing to obtain workers' compensation insurance was significant. The Respondents failed to have insurance for at least 361 days, March 2, 2012, to February 26, 2013. In the *David Carole v. Vital Enterprises, Inc.* decision, the claimant's testimony established that Respondent employed at least two people and at least one of Respondents' employees sustained a work injury. As Respondents failed to have workers' compensation insurance, the Injured Workers' Benefit Fund paid benefits to that petitioner as a result of the injury. Having reviewed the record, the Commission finds no evidence as to Respondent's inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The evidence established that Respondents maintained workers' compensation insurance in 2011 and permitted the policy to be cancelled without procuring a new policy. The Commission concludes that Respondents knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondents failed to comply with the Act, the Commission assesses a penalty of $72,200.00 against Respondents. Pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondents in the amount of $124,500.00, representing the compensation obligations paid by the Injured Workers' Benefit Fund in the *David Carole v. Vital Enterprises, Inc.* case.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, Vital Enterprises, Inc.; aka Prime Masonry; and Vitaly Chuverov individually and as President of Vital Enterprises, Inc., pay to the Illinois Workers' Compensation Commission the sum of $197,000.00 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Department of Insurance
Attn: Insurance Compliance
122 South Michigan Avenue, 19th floor
Chicago, Illinois 60603

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 28, 2024
KAD/swj
H 3/07/24
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/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	16WC038902
Case Name	Kelly Salisbury v. Oswego C.U.S.D. #308
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0311
Number of Pages of Decision	20
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Leandro A. Alhambra
Respondent Attorney	Derrick Lloyd

DATE FILED: 6/28/2024

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0311

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KELLY SALISBURY,

Petitioner,

vs. NO: 16 WC 038902

OSWEGO C.U.S.D. #308,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary disability, medical expenses and permanent 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 affirms and adopts the Arbitrator's Decision except the Commission modifies the Arbitrator's award of permanent partial disability from 10% to 7.5% loss of use of the person as a whole and corrects scrivener's errors as set forth below.

With respect to the Arbitrator's award of permanent disability, the Commission views the evidence differently and modifies the first paragraph under Section "L", "what is the nature and extent of the injury," in subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records. After the first sentence in §8.1b(b)(v), the Commission adds the following: Petitioner underwent a lumbar spine MRI on January 23, 2017. The Conclusion section of the lumbar spine MRI radiology report confirmed, "[t]here is a subacute compression fracture involving the superior endplate of the L2 vertebral body extending to the posterior superior corner without displaced fragments or retropulsion. Persistent bone marrow edema along the fracture line is evident. No spinal stenosis. Posterior lateral annular tear of the L4 disc on the right within the foramen. No focal disc herniation or evidence of root impingement by imaging. Trivial annular

bulging of the L3-L4 and L4-L5 disc. Otherwise, negative for focal disc herniation, spinal stenosis, intradural or paraspinal abnormality."

The Commission further strikes the last paragraph of the Arbitrator's Decision and substitutes the following:

> Based on the factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 7.5% loss of use of a person as a whole pursuant to §8(d)2 of the Act for the injuries sustained to her lumbar spine. Respondent shall pay Petitioner permanent partial disability benefits of $291.44/week for 37.5 weeks or $10,929.00.

The Commission further corrects two scrivener's errors. The first is on page one, the fourth sentence in paragraph four, under the Findings of Fact, wherein the Commission strikes "27" and replaces it with "7" so the sentence reads as follows: "Petitioner subsequently reported to Atlas Physical Therapy for a job screening on December 7, 2016."

The second scrivener's error is on page 6, the third sentence in the last paragraph, under the section "Dr. Julie Wehner's testimony." In that sentence, the Commission strikes the first word, "Petitioner" and replaces it with Dr. Wehner, so that the sentence reads as follows: "Dr. Wehner examined Petitioner on April 21, 2017, and reviewed medical records."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on August 26, 2022, is hereby modified for the reasons stated herein, the Arbitrator's Order is modified to conform with said modifications, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $323.82 per week for a period of 22-6/7 weeks, commencing December 29, 2016, through June 6, 2017, 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 $291.44 per week for a period of 37.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 7.5% loss of use of a person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services through June 6, 2017, regarding Petitioner's back condition as provided in §8(a) and §8.2 of the Act.

Respondent shall be given a credit of $4,198.00 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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.

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 28, 2024
O050724
KAD/bsd
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC038902
Case Name	Kelly Salisbury v. Oswego C.U.S.D. #308
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Leandro Alhambra
Respondent Attorney	Derrick Lloyd

DATE FILED: 8/26/2022

THE INTEREST RATE FOR THE WEEKOF AUGUST 23, 2022 3.11%

/s/ Roma Dalal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF LA SALLE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kelly Salisbury
Employee/Petitioner

v.

Oswego C.U.S.D. #308
Employer/Respondent

Case # **16 WC 38902**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Roma Dalal**, Arbitrator of the Commission, in the city **Ottawa**, on **06/30/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On, **12/07/2016** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**26,351.52**; the average weekly wage was $**485.73**.

On the date of accident, Petitioner was **59** years of age, ***married*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of $**4,198.00 (medical)** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $323.82/week for 22-6/7 weeks, commencing December 29, 2016 through June 6, 2017, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services through June 6, 2017 regarding Petitioner's back condition as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Respondent shall be given a credit of $4,198.00 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Based on the record taken as a whole, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 10% loss of use of the person as a whole pursuant to §8(d)2 of the Act.

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

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

AUGUST 26, 2022

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF Ottawa)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Kelly Salisbury,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 16WC038902
Oswego C.U.S.D. #308,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on June 30, 2022 in Ottawa, Illinois before Arbitrator Roma Dalal on Petitioner's Request for Hearing. Issues in dispute include accident, causation, disputed medical bills, TTD benefits, and nature and extent. (Arb. Ex. 1).

Kelly Salisbury (hereinafter referred to as the "Petitioner") was a 59-year-old married female. On December 7, 2016 Petitioner testified she worked at Oswego C.U.S.D.#308 (hereinafter referred to as the "Respondent") as a bus driver. (T.8).

Petitioner testified prior to the alleged injury she had a prior right shoulder injury that she was off work for. She returned to work on August 17, 2016. (T.9).

Petitioner testified shortly before the date of injury she was advised she had to undergo CPR training for driving the bus. (T.10). Petitioner testified she did not pass the training. (T.11). Petitioner failed the CPR test as she was unable to do the compressions due to her COPD and inability to breath. (RX4). Petitioner subsequently reported to Atlas Physical Therapy for a job screening on December 27, 2016 (T.11). On that day she felt fine. (T.17). During the screening she had to dead lift a 70-pound box. As she was lifting it up, she heard her back pop and felt shooting down the right side. (T.11). She dropped the container and stopped doing the test. Petitioner stated she felt a pop in her lumbar spine and took a break. (T.12). After a 15-minute break, she finished the test. (T.13). After the lifting accident, she had to lift 40 pounds off of a weight bench and climb up steps. (T.13). Petitioner stated her pain was sharp and stabbing pain from her back through her buttocks all the way to her toes. Petitioner testified she notified her therapist conducting the Fit-for-duty test about the pain. (T.14). She subsequently saw her chiropractor that evening, Dr. Wayda. (T.14).

Petitioner testified she gave a history of her lifting incident at the job screening to Mr. Wayda. (T.15). Prior to this lifting incident Dr. Wayda was treating her for her neck, shoulder blades, and hips. (T.16). Petitioner noted she would do monthly maintenance with him as far back as 2010. (T.16).

Petitioner testified to her medical history. (T.17-25). Petitioner noted she never underwent the surgery Dr. Darwish recommended or underwent pain management as she does not like injections or needles. (T.25)

Petitioner no longer works for Respondent. (T.27) Petitioner testified that she met with the DOT Supervisor and other administrator just before Christmas break in December 2016. At that meeting, Petitioner was informed that she had one year to pass the fitness-for-duty test, otherwise she would be let go from the school district. (T.28).

Petitioner testified prior to the lifting incident on December 7, 2016, she did not have sharp stabbing pain down her leg. (T.29). Currently, Petitioner testified she is able to sit for approximately 5-10 minutes, stand for 15 minutes prior to feeling discomfort. (T.30-31). Petitioner is unable to play with her great nephews and nieces due to pain. (T.32). Petitioner testified she experiences pain all day on and off but does not take any medication for the pain. (T.33).

On Cross-Examination, Petitioner testified she had four surgeries to the right shoulder prior to the accident. (T.34). Petitioner stated that CPR training became a mandatory part of her employment in November of 2016 and agreed she did not pass the CPR training. (T.39-40). Petitioner testified she had difficulties performing compressions on the mannequin because it was up on a table and could not get into the positioning correctly due to her height. (T.40-41). Petitioner opined she could physically perform the compressions but could not complete them due to the height of the table. After that class Petitioner subsequently got certified. (T.41). Petitioner was subsequently advised she had to complete a fitness-for-duty examination because of the initial failed CPR exam. (T.42).

Petitioner reviewed the November 17, 2016 restrictions but advised she does not remember going to Rush Copley. (T.45-46). The Arbitrator notes no corresponding medical records were placed into evidence in regards to the same, only the restrictions. (RX5).

Petitioner testified that while performing the 75-pound lift she felt a sharp pain in her lower back and dropped the weight and rested for 15 minutes. (T.53). Petitioner testified after the exam was complete, she informed the therapist that she continued to be in pain. (T.56). She did not terminate the test. (T.57).

Petitioner did not remember if she advised someone of her accident. (T.59-60). She later testified she did not report the injury right away because she got hurt off site and was not sure if it was covered under worker's compensation. (T.138). Petitioner testified on December 16, 2016, she had a meeting with Roxanne Sanders, Derrick, a union representative, and Dawn Simosky (DOT supervisor). At that meeting Petitioner was informed that she was going to be placed on a one-year unpaid leave of absence due to failing the fitness-for-duty examination. (T.61).

Petitioner testified she last saw Dr. Darwish on June 6, 2017. She had not seen any doctor relative to her back since that date, approximately five years ago. (T.70). Petitioner testified she never received a termination letter that was addressed to her. (T.71-72, RX13). She also never reached out to the school district to return to work. (T.72). Petitioner further acknowledged she does not hold a valid CDL. (T.73). Petitioner testified she is currently living in Florida. Petitioner drove down for the hearing and is currently not working. (T.81).

On Redirect, Petitioner testified she completed the fit-for-duty test because if she didn't complete the test she could not return back to work. (T.84). Petitioner testified she felt pain the whole time during the fitness-for-duty test. (T.85).

Dawn Simosky testified on behalf of Respondent. (T.95). Ms. Simosky last worked for Respondent on December 31, 2021 and held the position of safety coordinator. (T.95-96). Ms. Simosky testified Petitioner was off work for a shoulder condition and returned to work on August 1, 2016. (T.98). Ms. Simosky testified in November 2016, she was informed by the school nurse Petitioner had physical difficulties with compressions and was unable to do breaths during CPR training. CPR certification was a new requirement under the new union contract. (T.98-99).

Ms. Simosky testified after Petitioner failed the November 3, 2016 CPR training, Respondent had sent Petitioner for a physical examination with a Dr Steven at Rush Copley on November 17, 2016. (T.104). Dr. Steven opined Petitioner could work with restrictions of no lifting more than 40 pounds from floor; no use of right arm above mid-chest-level, although may raise to just above shoulder level with assist from left arm. (RX5).

After receiving the results of Dr. Steven's exam, Ms. Simosky along with the union Rep, the Director of Transportation, Derrick, and Executive Director, Roxanne Sanders, determined they would send Petitioner for a fitness-for-duty examination. (T.106). After Petitioner underwent the fit-for-duty test, a meeting with Ms. Simosky, HR, the union, and Petitioner was scheduled on December 16, 2016 to discuss the results of the fitness-for-duty exam. (T.111).

Petitioner was notified she would not be allowed to drive a bus until she could pass the fitness-for-duty exam. Petitioner was placed on a 1-year unpaid leave effective January 10, 2017 through January 9, 2018. (T. 111, 117). Ms. Simosky testified Petitioner would have been able to return to work during that timeframe, provided she could meet the physical requirements of a bus driver. (T.118).

Ms. Simosky testified in January of 2018 a letter of termination of employment was sent to Petitioner by Roxanne Sander, Executive Director of HR. The letter characterized Petitioner's separation with Respondent as a "voluntary" resignation. However, Simosky testified the "voluntary resignation" was due to Petitioner's failure to notify the district of returning from leave of absence. (T.120, 126).

On Cross Examination, Ms. Simosky admitted Petitioner never gave verbal or written notification she was voluntarily resigning. (T.126). Ms. Simosky admitted she received correspondence dated December 20, 2016 from Atlas PT, indicating on December 7, 2016, while performing a 75-pound lift, Petitioner struggled to perform and stopped due to complaints of low back pain. (T.128-129). Ms. Simosky also testified she and her colleagues directed Petitioner to attend the fitness-for-duty exam. She noted the school district requested Petitioner take this exam. (T.131, 133-134).

Petitioner submitted the Atlas PT functional Job Screen Report dated December 7, 2016. (PX2). Within the job description it was noted that an employee should have significant physical abilities include climbing, balancing, lifting, and carrying (75 lbs.), reaching, walking stooping bending, kneeling, pushing, and pulling and ascend/descend bus steps. (PX2). On the screening it was noted Petitioner was unable to safely lift 75lbs from the floor. (PX2).

On December 22, 2016, Petitioner filled out an Employee Injury/Accident Form. Petitioner stated she was at ATI undergoing the Fit-for-Duty test that was requested by Dawn. Petitioner went to lift a 75 lb. box and felt her back popped. (PX7).

Respondent submitted into evidence that Petitioner's CDL permit expired on July 29, 2017, her physical expired as of June 17, 2017 and her CDL refresher expired as of July 14, 2017. Her unpaid leave of absence ended with a return date of January 8, 2018. (RX6).

Respondent also placed a notice of termination letter to Petitioner dated January 8, 2018. The letter indicated Petitioner was on unpaid leave of absence from January 10, 2017 through January 8, 2018. She was terminated effective January 16, 2018. The reason for termination was failure to notify the Human Resources department in writing on her intention to return to work. (RX13).

MEDICAL SUMMARY

According to the records introduced into evidence, Petitioner treated at Wayda Chiropractic since 1999. (PX4, RX12).

On February 19, 2008, a letter was authored by Dr. Wayda noting, Petitioner was diagnosed with a thoracic sprain/strain, cervical and lumbar intersegmental dysfunction, and myofascial trigger points. The main issues were to her upper back and neck. (PX4).

The records document Petitioner was seen by Dr. Wayda regularly between 2008 and 2016. During that course of time Petitioner's primary complaints were to her upper back and neck. The Arbitrator notes, Petitioner would complain of low back pain and tightness. (PX4, RX12).

The Arbitrator notes Petitioner reported low back pain on several occasions. On October 25, 2016 Petitioner reported increased low back pain. She returned to see Dr. Wayda the next day on October 26, 2016 reporting low back and hip pain. (PX4).

Petitioner was seen at Rush Copley on November 17, 2016. Petitioner was cleared to return the work with a 40-pound lifting restriction and was restricted to no single arm use of the right arm above chest level. (RX5).

Petitioner returned to see Dr. Wayda on November 25, 2016 complaining of increased tightness throughout her back. Petitioner returned to see Dr. Wayda on December 5, 2016, two days before the alleged accident. The records indicate Petitioner was complaining of tightness and soreness everywhere. Examination revealed decreased range of motion and muscle spasm in the lumbar spine. (PX4).

On December 7, 2016 Petitioner presented to Dr. Wayda on December 7, 2016. The note indicates "lifting a box at physical testing." Examination revealed decreased range of motion, tenderness, and muscle spasm of the lumbar spine. (PX4).

Petitioner testified she saw Dr. Alpert on December 28, 2016. (T.18). There are no records to corroborate the same.

On December 29, 2016 Petitioner first presented to Dr. Ashraf Darwish. Petitioner was a 59-year-old female who presented as a new patient with a chief complaint of lumbar pain. Petitioner reported on

December 7, 2016 she was doing a "fit for duty" test for her job as a bus driver and was required to deadlift 75 pounds. She felt a pop in her back and immediate low back pain. Petitioner complained of pain radiating to the right lower extremity with 8/10 pain. Dr. Darwish diagnosed Petitioner with radiculopathy, lumbar region, and low back pain. Petitioner was ordered an MRI of her lumbar spine, provided a prescription for meloxicam and Flexeril and was to return. Petitioner was taken off work. (PX3).

Petitioner underwent an MRI of the lumbar spine on January 23, 2017. The MRI revealed a subacute compression fracture of L2 vertebral body; posterior lateral annular tear of L4 disc on the right within the foramen; and annular bulging of L3-4 and L4-5 disc. (PX3).

Petitioner followed up with Dr. Darwish on January 24, 2017. Petitioner reported continued right leg pain with pain in her butt and quad. Petitioner's diagnoses were radiculopathy in the lumbar region and low back pain. Dr. Darwish recommended physical therapy 2-3 times a week for 4-6 weeks. (PX2). Dr. Darwish continued to keep Petitioner off work. (PX1, p.11).

Petitioner underwent therapy for the lumbar spine at ATI from January 26, 2017 through March 8, 2017. (PX5).

Petitioner followed up with Dr. Darwish on March 14, 2017. Petitioner continued to have pain in her low back and right leg. Petitioner was recommended a lumbar epidural steroid injection. Dr. Darwish reviewed the MRI of the lumbar spine which revealed a right-sided foraminal disc herniation at L4-5. Dr. Darwish noted the L4-5 epidural steroid injection had not been approved. As Petitioner had symptoms for four months, he believed she was a candidate for a microdiscectomy. (PX3). Petitioner remained off work. (PX3).

On June 6, 2017 Petitioner presented to Dr. Darwish. Petitioner reported low back pain with pain into her right butt, going down the front of her anterior thigh. Petitioner was diagnosed with spinal stenosis, radiculopathy, and low back pain. Petitioner was referred to pain management and transferred her care to Dr. Bayran. She would follow up with him as needed. (RX15).

Dr. Darwish's testimony

The parties proceeded with Dr. Darwish's testimony on September 15, 2017. (PX1). Dr. Darwish is an Orthopaedic spine surgeon with a fellowship trained in spine surgery. (PX1, p.5). Dr. Darwish went over his medical records. He testified he first saw Petitioner on December 29, 2016 and went over his medical treatment. (PX1, p.7). He next saw her on January 24, 2017. (PX1, p.9). At that point, he recommended conservative management to include an epidural steroid injection and physical therapy. He kept Petitioner off work. (PX1, p.11). Dr. Darwish testified he next saw Petitioner on March 14, 2017 and maintained his recommendations. He also recommended a right L4-5 microdiscectomy. (PX1, p.12-14). He kept Petitioner off of work. (PX1, p.13). The Doctor testified he next saw Petitioner on April 25, 2017. On examination he noted a seated straight leg raise on the right side was positive. Dr. Darwish testified this indicated nerve root irritation. Petitioner still had pain radiating into her right anterior thigh and right buttock. Based on the same he continued to recommend the L4-L5 microdiscectomy and kept her off work. (PX1, p.14). Dr. Darwish testified he last saw Petitioner on June 6, 2017. (PX1, p.15). Petitioner continued to feel the same. Dr. Darwish recommended the same treatment and provided her a referral to a pain management specialist because she may benefit from a right L4-L5 epidural steroid injection. He

transferred her care to Dr. Bayran, a pain management specialist, as Petitioner needed someone to help control her symptoms. He testified he would recommend Petitioner start with an injection. If the injection did not provide any relief, he would recommend a right L4-5 microdiscectomy. (PX1, p.15-17).

Dr. Darwish opined he believed the December 7, 2016 lifting incident caused, aggravated, or accelerated Petitioner's lower lumbar spine condition. (PX1, p.17). He noted Petitioner had some history of back pain in the past but had no complaints of right-sided radicular symptoms and did not have any debilitating back pain prior to the incident. She lifted a heavy object. Based on the same, the mechanism of injury (lifting a heavy object) is consistent with one that would cause injury to her disc. (PX1, p.17-18). He noted her MRI findings were consistent with her physical exam findings and treatment had been reasonable and necessary. (PX1, p.18).

On Cross Examination, Dr. Darwish noted there were subjective elements to tenderness. (PX1, p.22). He further noted Petitioner had age-related degenerative changes on her X-rays. (PX1, p.23). Dr. Darwish testified the MRI findings of L4-5 foraminal disc protrusion, causing foraminal narrowing, was unlikely to be degenerative in nature but was possible. (PX1, p.24). Dr. Darwish disagreed with the radiologist's MRI finding of a compression fracture. (PX1, p.25). In addition, Dr. Darwish admitted he did not review any of Petitioner's chiropractic records. (PX1, p.27). Dr. Darwish noted degeneration or age could be a factor in developing radiculopathy, low back pain and spinal stenosis. (PX1, p.28).

Dr. Darwish testified Petitioner has a disc protrusion on L4-5 neuroforamen and the goal of surgery was to remove that and create more space for the nerve and decrease irritation of the nerve root. Dr. Darwish based surgical recommendation on the radiographic findings of a disc protrusion and Petitioner's subjective complaints. (PX1, p.29-30) Furthermore, Dr. Darwish noted Petitioner developed a positive straight leg test, as documented in the April 24, 2017 and June 6, 2017 Hinsdale Orthopedic records. (PX1, p.35). Dr. Darwish admitted he did not perform these exams, but his physician assistant did. (PX1, p.32). Dr. Darwish admitted Petitioner's injuries could have been caused by lifting anything. He also was unaware Petitioner assisted her husband with lifts and transfers. (PX1, p.33). Dr. Darwish also noted disc herniations could be caused spontaneously. (PX1, p.34).

Dr. Julie Wehner's testimony

The Parties proceeded with Dr. Julie Wehner's deposition testimony on May 15, 2018. (RX1). Dr. Wehner is a board-certified surgeon of which 90% of her practice is dedicated to the treatment of spinal conditions. (RX1, p.6). Petitioner examined Petitioner on April 21, 2017 and reviewed medical records. (RX1, p.8-19). At the time of the exam, Petitioner advised she was doing a fit-for-duty test which was required for work. She was dead lifting a 75-box with weights from the floor to straight up and felt her a low back snap. (RX1, p.115). At the time of the IME, Petitioner was complaining of pain of a nine out of ten that was characterized as shooting and stabbing in her low back and radiated into the back and inside of her right thigh above her knee. (RX1, p.16). Dr. Wehner testified Petitioner advised that prior to the December 7, 2016 lifting incident, she stated she never received chiropractic care. (RX1, p. 17). Dr. Wehner's physical examination revealed marked pain with light palpation in low back area, pain in low back with axial compression, pain with axial rotation, and a negative straight leg raise. (RX1, p.19-20). Dr. Wehner explained these physical examination findings were consistent with possible symptom magnification. (RX1, p.21). Dr. Wehner testified as Petitioner's subjective complaints did not fit an anatomic pattern, her neurologic examination was normal, Petitioner's MRI did not show many findings,

and Petitioner exhibited symptom magnification behaviors, she believed Petitioner may have been reporting pain for secondary gain. (RX1, p.21).

Dr. Wehner's diagnosis was chronic low back pain. Dr. Wehner opined the diagnosis was not causally related to Petitioner's work activities. (RX1, p.26). Dr. Wehner noted the diagnosis predated her work with Respondent. (RX1, p.26). The Doctor opined Petitioner had been complaining of neck and low back pain for over 15 years prior to the December 7, 2016 lifting incident. Further, Dr. Wehner pointed out Petitioner's chiropractic records document multiple episodes prior to December 7, 2016 wherein Petitioner would report increased activity caused an increase in back pain. (RX1, p.27). She noted there was nothing on her clinical exam or on the MRI of any acute injury indicating something was new and related to the December 7, 2016 injury. (RX1, p.27). Dr. Wehner opined the December 7, 2016 lifting incident did not aggravate, exacerbate, or accelerate Petitioner's low back condition but was a manifestation of Petitioner's chronic low back condition. (RX1, p.27).

Dr. Wehner opined Petitioner did not sustain an injury on December 7, 2016. If she did have an injury, based on the MRI that did show anything new, it would have been a lumbar strain, that would have healed in four to six weeks. Petitioner would have been at Maximum Medical improvement at that point. (RX1, p.29). Dr. Wehner opined Petitioner's medical treatment was not related to a work activity. (RX1, p.29). Dr. Wehner further opined Petitioner did not need an epidural injection or surgical intervention. (RX1, p.30-31). Dr. Wehner opined Petitioner did not require any work restrictions in regards to her low back or needed to be off work. (RX1, p.32).

Dr. Wehner calculated an impairment rating of 0 percent. (RX1, p.32).

On Cross Examination, Dr. Wehner admitted she performs 2-10 IME per week, almost all for Respondents in workers' compensation claims. (RX1, p.35). Dr. Wehner agreed the accident history Petitioner gave to Dr. Wayda, Dr. Darwish and ATI were consistent with a lifting episode that caused an increase in back pain. (RX1, p.41). Dr Wehner admitted that while Petitioner had chiropractic treatment for shoulder, cervical pain, thoracic pain, and lumbar pain prior to December 7, 2016, Petitioner complained of general soreness and tightness. (RX1, p.42). She also noted there were no documented complaints of radicular pain in any of the medical records prior to December 7, 2016. (RX1, p.44).

Dr. Wehner also testified she did not review the MRI films of January 23, 2017 and only reviewed the radiologist's MRI report. (RX1, p.45). Dr. Wehner characterized Petitioner's December 7, 2016 lifting incident as a "manifestation of her preexisting back pain." (RX1, p.47). Dr. Wehner admitted Dr. Darwish's records contain Petitioner's subjective report that she experienced a snapping during the lifting incident. (RX1, p. 49-50). Dr. Wehner admitted she did not review Dr. Darwish's medical notes of April 25, 2017 and June 6, 2017 and was not aware of what the objective findings were at those appointments. (RX1, p.57).

September 19, 2019 Deposition of Dr. Julie Wehner

Dr. Wehner was deposed a second time on September 19, 2019. (RX2). Dr. Wehner testified subsequent to her May 15, 2018 deposition she was provided with the MRI films from January 23, 2017. (RX2, p.6). After her review of the films, Dr. Wehner's opinions in her first deposition did not change. (RX2). Dr. Wehner opined the films showed an annular fissure at L4-5 on the right with no herniated disc at L4-5.

(RX2, p.7). She noted none of these findings were consistent with the subjective complaints documented in Petitioner's medical records. (RX2, p.10). On Cross-examination, Dr. Wehner advised she did not examine Petitioner again. (RX2, p.14).

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. While the Arbitrator did note some inconsistencies, the Arbitrator recognizes that there was no evidence to contradict her testimony. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the record as a whole. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

With regard to issue "C", whether an accident occurred that arose out of and in the course of Petitioner's employment, the Arbitrator finds as follows:

For accidental injuries to be compensable under the Workers' Compensation Act, a claimant must show such injuries arose out of and in the course of his or her employment. Navistar Intern. Transp. Corp. v. Industrial Com'n, 315 Ill.App.3d 1197 (2000).

After a careful review of the record, including Petitioner's testimony and the medical evidence available in this case, the Arbitrator finds Petitioner did sustain an "accident" as defined by the Act.

Petitioner testified she was directed to undergo a fit-for-duty test by the Respondent. Petitioner was employed at this juncture. Respondent's witness, Dawn Simosky, also testified Petitioner was directed by Respondent to perform a fitness-for duty exam at Atlas Physical Therapy. This exam took place on December 7, 2016. While performing that examination, Petitioner attempted to deadlift a 75-pound box and felt a snap on her back. Petitioner reported the same to the therapist who provided written notice of

the lifting incident to Respondent on December 20, 2022. Petitioner's testimony is also corroborated by the medical records of Dr. Wayda and Dr. Darwish.

Petitioner saw Dr. Wayda that same day. The December 7, 2016 note from Dr. Wayda gives a history of "lifting a lot at physical testing." Furthermore, when Petitioner was first seen by Dr. Darwish, a history of the lifting injury is documented in the December 29, 2016 medical record. The Arbitrator finds that there was no evidence offered to rebut Petitioner on her testimony regarding this issue. As such, the Arbitrator concludes Petitioner sustained an accident arising out of and in the course of her employment with Respondent on December 7, 2016.

With regard to issue "F", whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein.

To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. The claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." R & D Thiel v. Illinois Workers' Compensation Comm'n, 398 Ill. App. 3d 858, 867 (2010). "'[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment.'" Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n, 409 Ill.App. 3d 463, 470, (2011), quoting Caterpillar Tractor Co. v. Industrial Comm'n, 92 Ill. 2d 30, 36, (1982). Further, "[e]very natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." Vogel v. Ill. Workers' Comp. Comm'n, 354 Ill. App. 3d 780 (2005). "That other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant." Vogel, 354 Ill. App. 3d at 786. To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." St. Elizabeth's Hospital v. Workers' Compensation Commission, 864 N.E.2d 266, 272-273 (5th Dist. 2007). Even when a preexisting condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. Sisbro, Inc. v. Industrial Commission, 797 N.E.2d 665 (2003). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole

or primary cause of a claimant's condition. Land & Lakes Co. v. Industrial Commission, 834 N.E.2d 583 (2d Dist. 2005).

In the instant case, the Arbitrator finds Petitioner's current condition of ill-being is causally related to her work accident. This finding is based on the testimony of Petitioner, the medical records, and the persuasive opinions of Dr. Darwish.

Pursuant to the Sisbro case, it is clear that a work-related accident that aggravates or accelerates a pre-existing condition can be compensable under Illinois Workers' Compensation law. Further, based on the medical records and testimony, it is clear Petitioner had preexisting back complaints. Petitioner, however, was only going for maintenance visits. The chain of events presented in this case show her back pain worsened after her work accident. There is no evidence prior to Petitioner's work accident that she received any diagnostic tests, was recommended any epidural injections or surgery. The record does not reflect Petitioner had ever taken time off work due to back pain either.

Petitioner not only notified the therapist about her accident, but she also advised Dr. Wayda, her chiropractor as well as Dr. Darwish.

In evaluating the medical opinions, the Arbitrator puts greater weight on the opinions of the treating physician, Dr. Ashraf Darwish, than that of Respondent's Section 12 examiner, Dr. Julie Wehner.

Dr. Darwish opined the December 7, 2016 lifting incident caused, aggravated, or accelerated Petitioner lumbar spine condition. Dr. Darwish noted Petitioner had a history of back pain in the past but had no complaints of right-sided radicular symptoms prior to the lifting incident.

Dr. Darwish opined the mechanism of injury is consistent with one that would cause injury to the disc. Following the lifting incident Petitioner immediately felt pain and continued to have that pain. Furthermore, Dr. Darwish, who read the actual MRI films, opined the MRI findings were consistent with her physical exam findings. Dr. Darwish testified the MRI findings of L4-5 foraminal disc protrusion, causing foraminal narrowing, was unlikely to be degenerative in nature

The Arbitrator finds the testimony of Dr. Wehner not as persuasive. Dr. Wehner opined Petitioner did not sustain an accident on December 7, 2016. The Arbitrator, however, finds Petitioner did sustain a compensable accident. Dr. Wehner opined the December 7, 2016 lifting incident did not cause a new injury to the lumbar spine but admitted the lifting caused a manifestation of her chronic back condition. Dr. Wehner later testified if Petitioner did have an injury, based on the MRI that did not show anything new, it would have been a lumbar strain, that would have healed in four to six weeks. (RX1, p.29). Additionally, she does not address Petitioner had much more subjective pain after the work injury.

Based on the above, the Arbitrator finds that Petitioner's lumbar spine condition is causally related to the December 7, 2017 work accident.

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

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. In reviewing the medical services provided to Petitioner, the Arbitrator finds that Respondent has not paid all appropriate charges for all reasonable and necessary medical services. The Arbitrator finds the medical services provided to Petitioner were reasonable and necessary.

The Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds Respondent has not paid for said treatment. The Arbitrator finds Petitioner's physician, Dr. Darwish, to be persuasive and in the best position to order medical care. Dr. Darwish ordered physical therapy. Petitioner last sought treatment with Dr. Darwish on June 6, 2017. No further medical care was sought out.

As such, the Arbitrator orders Respondent to pay Petitioner the reasonable and necessary medical expenses incurred through June 6, 2017 in connection with the care and treatment of her causally related condition pursuant to Sections 8 and 8.2 of the Act. Respondent shall receive credit for amounts paid.

With regard to issue "K", what temporary benefits are in dispute, the Arbitrator finds as follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein.

In order to prove entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. Sharwarko v. Illinois Workers' Compensation Comm'n, 2015 IL App (1st) 131733WC. An employee is temporarily totally disabled from the time that an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Archer Daniels Midland Co. v. Industrial Comm'n, 138 Ill. 2d 107, 118 (1990). Once an injured employee's physical condition stabilizes or he has reached MMI, he is no longer eligible for temporary total disability benefits. Archer Daniels Midland Co., 138 Ill. 2d at 118. A claimant reaches MMI when he is as far recovered or restored as the permanent character of his injury will permit. Nascote Industries v. Industrial Comm'n, 353 Ill. App. 3d 1067, 1072 (2004). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence, testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. Nascote Industries, 353 Ill. App. 3d at 1072. The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. Archer Daniels Midland, 138 Ill. 2d at 119-20.

Petitioner is claiming a period of Temporary Total Disability from December 29, 2016 June 30, 2022. (Arb. Ex. 1). The Arbitrator notes Petitioner stopped medical treatment as of June 6, 2017. No physician kept her off work after this date. In addition, Petitioner testified she did not look for work or try to return to work with the Respondent.

Based on the same, the Arbitrator finds Petitioner is entitled to TTD from December 29, 2016 through June 6, 2017 based on the medical records and opinions of Dr. Darwish.

At the time of trial, Petitioner testified that she is no longer interested proceeding with the surgery recommended by Dr. Darwish. Based on the above the Arbitrator finds Petitioner reached MMI as of June 6, 2017.

Based on the foregoing, the Arbitrator finds Petitioner has proved, by a preponderance of the evidence, that she was temporarily totally disabled from December 29, 2016 through June 6, 2017, for a period of 22 6/7 weeks at a rate of $323.82, or $7,401.60. Respondent shall receive credit for amounts paid.

With regard to issue "L", what is the nature and extent of the injury, the Arbitrator finds as follows:

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein.

Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

i. The reported level of impairment pursuant to subsection (a) (e.g., the AMA rating)
ii. The occupation of the injured employee
iii. The age of the employee at the time of the injury
iv. The employee's future earning capacity
v. Evidence of disability corroborated by the treating medical records.

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

With regard to subsection (i) of § 8.1b(b), the Arbitrator notes that Dr. Wehner calculated a permanent partial disability impairment rating of 0%. The Arbitrator therefore gives significant weight to this factor.

With regard to subsection (ii) of § 8.1b(b), the Arbitrator notes Petitioner testified she was employed as a bus driver for Respondent. Although Petitioner never returned to work, she testified she never made any attempts to do the same. In addition, right after the accident, Petitioner was put on leave due to failure of the CPR test. Petitioner was last seen in June of 2017 and terminated by Respondent in January 2018. The Arbitrator therefore gives moderate weight to this factor.

With regard to subsection (iii) of § 8.1b(b), the Arbitrator notes Petitioner was 59 years old on the date of this accident. The Arbitrator notes that due to Petitioner's advanced age the remaining amount of work life is minimal. As such, the Arbitrator assigns moderate weight to this factor.

With regard to subsection (iv) of § 8.1b(b), Petitioner's future earnings capacity, the Arbitrator concludes Petitioner is currently not working. Petitioner, however, has not looked for work or made any attempts

to seek employment. As such, the Arbitrator assigns moderate weight to the effect Petitioner's injury had on her wages and the fact Petitioner has not tried to look for any work.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes Petitioner's medical records indicate Petitioner sustained a back injury undergoing therapy. While Petitioner was recommended an injection and surgery, she testified that she did not want to undergo the same. The Arbitrator acknowledges Petitioner was last seen on June 6, 2017 and has not sought out any type of medical care relative to her back since that date, approximately five years ago. (T.70).

Petitioner experiences discomfort while walking, sitting, or standing for a prolonged period of time. (T.30-31). Petitioner is unable to play with her great nephews and nieces due to pain. (T.32). Petitioner testified she experiences pain all day on and off but does not take any medication for the pain. (T.33). Petitioner testified she is currently living in Florida. Petitioner drove down for the hearing and is currently not working. (T.81). Based on the same, the Arbitrator gives significant weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 10% loss of use of person as a whole pursuant to §8(d)2 of the Act for the injuries sustained to her lumbar spine. Respondent shall pay Petitioner permanent partial disability benefits of $291.44/week for 50 weeks or $14,572.00.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC024546
Case Name	George Jones v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0312
Number of Pages of Decision	18
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Joseph P. Brancky
Respondent Attorney	James Jackson

DATE FILED: 6/28/2024

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GEORGE JONES,

Petitioner,

vs. NO: 22 WC 024546

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section §19(b) and §8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, prospective medical, and permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322.

The Commission affirms and adopts the Arbitrator's Decision in its entirety except corrects one scrivener's error on page six, in the first sentence in paragraph four, wherein the Commission strikes the name "Wellington" and replaces it with the name "Hsu" so the sentence reads as follows: Dr. Hsu further opined that the act of steering a bus that had caused the increase in neck pain is "a mechanism that is not specific to his work-related responsibilities."

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 30, 2023, is hereby affirmed and adopted with the referenced scrivener's error correction.

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

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

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

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 28, 2024
O052124
KAD/bsd
42

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC024546
Case Name	George Jones v. CTA
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Joseph P. Brancky
Respondent Attorney	

DATE FILED: 8/30/2023

/s/Jacqueline Hickey, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 29, 2023 5.35%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

George Jones
Employee/Petitioner

v.

CTA
Employer/Respondent

Case # **22** WC **24546**

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 **Jacqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **6/29/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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, **8/8/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**47,297.29** over 32 weeks; the average weekly wage was $**1,478.04**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**7,208.10** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**7,208.10**.

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

ORDER

Petitioner sustained accidental injuries that arose out of and in the course of his employment on August 8, 2022.

Petitioner provided timely notice of the accident to Respondent.

Petitioner's current condition of ill-being is causally related to the August 8, 2022 work accident.

Petitioner earned an average weekly wage of $1,478.04.

Respondent is liable for all reasonable and necessary medical expenses related to the August 8, 2022 work accident, including the unpaid medical charges provided in Petitioner's Exhibits 2, 5, 7, and 10.

The Arbitrator awards prospective medical care in the form of a cervical disc replacement procedure at C4-5 and C5-6, as recommended by Dr. Kern Singh.

Respondent shall pay Petitioner temporary total disability benefits of $985.36/week for 46 3/7 weeks, commencing August 9, 2022 through June 29, 2023, as provided in Section 8(b) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Jacqueline C. Hickey

Signature of Arbitrator

August 30, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

George Jones,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. **22WC024546**
CTA	)	
	)	
	)	
Respondent.	)	

RIDER TO DECISION

This matter proceeded to hearing on June 29, 2023, in Chicago, Illinois before Arbitrator Jacqueline Hickey. Issues in dispute include accident, notice, causal connection, medical expenses, temporary total disability benefits, average weekly wage and prospective medical. Arbitrator's Exhibit 1 (AX1).

FINDINGS OF FACT

Petitioner's Job Duties

George Jones (hereinafter "Petitioner") has worked as a bus operator for CTA (hereinafter "Respondent") since 2006. (T. 10). His physical duties include steering and opening the door. (T. 10). He drove the 21st and Cermak route, which ends at Insight Hospital on 26th and Michigan. (T. 10-11). He would begin his workday at Respondent's Kedzie garage, from which he would drive the bus to his route. (T. 11). Petitioner drove an articulated bus, which is a double bus connected by an accordion attachment. (T. 11-12). Driving the bus required taking wider turns than a straight bus and was more physical than driving a regular bus. (T. 13). The steering wheel for an articulated bus is two feet wide and is larger than a steering wheel for a straight bus or for the average person's vehicle. (T. 13). Petitioner would use his left upper extremity to pull back and forth on a lever to open the bus door. (T. 13-14).

Petitioner worked 43 hours per week, with 10-11 hour shifts. (T. 14). He would complete his route approximately 4.5 times per shift, completing 13 turns per route, and picking up 25-35 passengers per route. (T. 14-15). Petitioner earned $39 per hour. (T. 14). The 43 hours per week were mandatory. (T. 15).

Petitioner's Prior Medical Condition

Prior to his August 8, 2022 accident, Petitioner testified he had felt neck pain at 2 out of 10 for about 5 years. (T. 19, 23). He felt this neck pain was the result of constantly driving the bus at work. (T. 20). He never sought medical care for his neck or left upper extremity pain or symptoms before. (T. 20). He would occasionally take Motrin or take a hot or cold shower. (T. 24). Prior to the work incident, he testified he was able to work full duty and perform all of his regular activities. (T. 20).

Accident

Petitioner was working as a bus operator on August 8, 2022. (T. 15). He was driving the bus and veered left in order to make a right hand turn when he felt a sharp pain from his neck down to his left arm, and numbness into his left hand. (T. 16-17). His neck pain went up to a 7 out of 10. The numbness in his left hand was a 7 out of 10. (T. 17-18). He is left handed, and suddenly was unable to squeeze his hand. (T. 21). Petitioner stopped driving the bus. (T. 18). He testified he was scared, and believed he may be having a heart attack. (T. 18). He called to CTA's control center to report his condition, and the control center called an ambulance for him. (T. 18-19). He was picked up from his bus at Michigan Avenue and 26th Street with neck and left shoulder pain and left-hand numbness. (PX1 at 3, 4). The ambulance took him approximately one block to Insight Hospital. (T. 21). An employee from Respondent was sent to pick up the bus. (T. 23).

Summary of Medical Records

Petitioner first treated with the Chicago Fire Department (CFD) on August 8, 2022. (P.x.1). On the treatment notes, Petitioner denied any trauma that caused his need for medical treatment. Further, Petitioner noted that to CFD that he had been experiencing those symptoms for the past few days. Id.

Petitioner was seen at Insight Hospital on August 8, 2022. He was noted to be a bus driver who was using his neck and left arm to turn the wheel when he felt numbness into the left arm. (PX3 at 127). He was diagnosed with cervical radiculopathy, was given cyclobenzaprine, was advised to remain off work, and was told to see a neurosurgeon. (PX3 at 127).

After his ER visit at Insight, Petitioner was taken back to Respondent's Kedzie garage by a supervisor. (T. 22). Petitioner told her about his accident. (T. 22). Upon arriving at the garage, he told the manager on hand about his accident. (T. 22).

Petitioner was seen by neurologist Dr. Ahmad Elakil at Insight Hospital on August 11, 2012. (PX3 at 6). He reported to Dr. Elakil chronic neck pain that had become acutely worse and was now at 10/10. (PX3 at 6). Dr. Elakil noted numbness and weakness across the C5 and C6 dermatomes, and "[g]iven this I will order urgent MRI for cervical spine." (PX3 at 6).

Petitioner underwent an MRI on August 18, 2022 that revealed central canal stenosis, spondylosis, C4-5 cord myelomalacia and severe central canal stenosis and impingement, and an extruded disc at C5-6. (PX3 at 207).

Petitioner returned to Dr. Elakil on August 25, 2022. Dr. Elakil noted Petitioner's pre-accident neck pain had started while driving his bus, that driving the bus aggravated his pain, that recently while driving the bus his pain went to 10/10, and that nothing relieves it. (PX3 at 8). Dr. Elakil noted progressive severe numbness and worsening weakness of his arms, left greater than right. (PX3 at 8). Dr. Elakil explained:

> "Its my medical opinion, given the history of the patient pain and his onset of symptoms that his bus driving the past years until now caused him to have slipped desks in his neck causing severe spinal cord compression, pain and weakness in his arms. Patient has signs and symptoms of severe progressive worsening radiculopathy secondary to severe spinal cord stenosis at C3/4 and C4/5. Given his progressive worsening weakness, patient is consented for urgent C3/4 and C4/5 ACDF." (PX3 at 9).

Dr. Elakil completed a form for the ReedGroup advising Petitioner would need to remain off work through 1/2/23 at least due to cervical myelopathy and radiculopathy. (PX3 at 151).

Dr. Scott Coppel examined Petitioner on August 28, 2022 and provided clearance for ACDF. (PX3 at 178).

Petitioner saw Dr. Shante Griggs for physical therapy on September 7, 2022. (PX9 at 9). He complained of moderate to severe left sided pain and stiffness, and numbness into the left hand. (PX9 at 9). He was advised to remain off work. (PX9 at 9).

Petitioner testified he was scheduled to undergo surgery on September 14, 2022. However, this was cancelled as it was not approved. (T. 29).

Petitioner returned to Dr. Griggs for therapy on September 15, September 19, and September 22, 2022. (PX9 at 7, 5, and 3). Petitioner testified the physical therapy seemed to worsen his pain. (T. 28).

Petitioner saw Dr. Elakil on September 19, 2022, had no change in his symptoms, and was again recommended for surgery. (PX3 at 218). Dr. Elakil noted Petitioner wanted to think about it and would return. Petitioner returned on September 22, 2022 and advised Dr. Elakil he wanted the surgery. (PX3 at 232).

Petitioner was seen by Dr. Kern Singh at Midwest Orthopaedics at Rush on September 26, 2022. (PX6 at 5). He reported an August 8, 2022 accident when he turned the wheel of his bus and developed sharp stabbing pain at his neck down his left arm. (PX6 at 8). He reported pain and burning down to his left forearm and into the 1st, 2nd, and 3rd digits, with occasional right sided symptoms, and no improvement with physical therapy. (PX6 at 8). Dr. Singh found a positive bilateral Hoffman's and Inverted Brachioradialis tests, and positive left Spurling's sign. (PX6 at 10). Dr. Singh reviewed the MRI and felt it showed C4-5 and C5-6 moderate to severe spinal stenosis, and a herniated disc at C5-6. (PX6 at 10). Dr. Singh diagnosed cervical myeloradiculopathy, recommended a C4-5 and C5-6 total disc replacement procedure, and continued Petitioner's off work restriction. (PX6 at 10, 11). Dr. Singh stated:

> "Mr. Jones has failed conservative management in the form of physical therapy x3 weeks, 2 times a week, home exercise program and NSAID medication. On exam, he displayed positive left Spurling sign with bilateral deltoid, biceps, wrist extension weakness consistent with a CS-6 nerve root distribution. His radiographic findings confirm C4-5 and C5-6 moderate to severe spinal stenosis with a C5-5 central HNP consistent with his symptomatology."(PX6 at 10).

Petitioner saw Dr. Scott Coppel for pre-op clearance on September 28, 2022. (PX3 at 25). Petitioner was provided another surgical date on November 2, 2022, and was seen at Suburban Surgical Suites in Munster, Indiana on that day. (T. 22). However, he was found to have an upper respiratory infection and was unable to undergo the procedure. (T. 33; PX4 at 6).

Petitioner was thereafter treated for bronchitis and was then cleared for surgery. (T. 34). He saw Dr. Coppel on November 4, 2022 to resolve his upper respiratory issue. (PX3 at 70). He underwent a chest x-ray for bronchitis on November 7, 2022. (PX4 at 8). He returned to see Dr. Coppel on November 11, 2022, December 29, 2022, and January 10, 2023. (PX3 at 88; PX4 at 6, 10, 11, & 7).

Dr. Singh authored a letter on February 23, 2023 that stated Petitioner required a disc replacement procedure as "the patient displayed positive Spurling's sign with bilateral deltoids and bicep and wrist extension weakness with hyperreflexia with positive Hoffman's and an invered brachio radialis reflex consistent with myelopathy." (PX8). Dr. Singh pleaded that "I am asking that the surgery be reconsidered for this individual who displays neurological deficits of the upper extremities with hyperreflexia consistent with myelopathy with confirmed C4-C5 and C5-C6 spinal stenosis." (PX8).

CTA Interview – Petitioner Exhibit 11

Petitioner was interviewed by Respondent on September 22, 2022. (T. 30). Respondent created an "Interview Record" that day detailing the August 8, 2022 work accident, advising that as he was turning the wheel of the bus he felt numbness into his neck and left arm and hand. It was completed by "D. Russell" and placed Petitioner on "IOD" or injured on duty. (PX11). Respondent warned Petitioner that if they found any information that contradicted his statement, "appropriate action" would be taken. (PX11).

Section 12 Exam- Dr. Wellington Hsu

Petitioner underwent an IME with Dr. Wellington Hsu on April 3, 2023. (R.x.1) Here, Petitioner gave a history denying any arm or back pain prior to August 8th, 2022. *Id*. Dr. Hsu opined that Petitioner's condition was brought about without any significant event or trauma and that his history implicates a mechanism that is not specific to his work-related responsibilities and would be independent of any activities of daily living. *Id*. Dr. Hsu furthered that he did not believe that turning the steering wheel … would lead to causing cervical stenosis or spondylosis. *Id*.

Petitioner's Current Condition

At the time of trial, Petitioner was still authorized off work and still recommended for surgery. (T. 34). Other than an advance on benefits paid in April 2023, he testified he was not paid any TTD benefits. He no longer has group health insurance benefits through Respondent. (T. 35).

As of the time of trial, Petitioner's neck pain has increased to 8 out of 10. (T. 35). His left arm numbness has increased to 8 out of 10. (T. 36). He testified he has progressive myelopathy and has developed symptoms in the past two months in his lower back and legs. (T. 38, 37). His low back "feels like it's on fire as well as my legs and my thighs." (T. 37). He is scared that the increasing nature of his symptoms means he will be unable to function in life or play with his granddaughter. (T. 38). He has difficulty now standing for long periods of time or walking even a block or two without feeling a lot of pain. (T. 38). He testified he has difficulty functioning at home or picking up his granddaughter. (T. 38-39). He is no longer able to exercise. (T. 39).

Petitioner wants the cervical disc replacement procedure so he can return to his prior level of functioning. (T. 40). He testified he is still cleared for surgery as of the trial date. (T. 34).

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

A decision by the Commission cannot be based upon speculation or conjecture. *Deer and Company v. Industrial Commission,* 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission,* 68 Ill.2d 236, (1977).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. None of the physicians who treated or examined him noted any symptom magnification. Petitioner's testimony appeared to be consistent with the medical records as a whole.

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

The Act is a remedial statute, which should be liberally construed to effectuate its main purpose of providing financial protection for injured workers. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 149 (2010). According to the Act, in order for a claimant to be entitled to workers' compensation benefits, the injury must "aris[e] out of" and occur "in the course of" the claimant's employment. 820 ILCS 305/1(d) (West 2014). Case law interpreting the Act makes it clear that both elements must be present at the time of the accidental injury in order to justify compensation. *Orsini*, 117 Ill. 2d at 44-45; *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989); *Free King Oil Co. v. Industrial Comm'n*, 62 Ill. 2d 293, 294 (1976); *Wise v. Industrial Comm'n*, 54 Ill. 2d 138, 142 (1973). Therefore, in order to obtain compensation under the Act, a claimant bears the burden of proving by a preponderance of the evidence two elements: (1) that the injury occurred in the course of claimant's employment and (2) that the injury arose out of claimant's employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003) (collecting cases). First, we turn to whether the injury occurred in the course of the employment. The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366-67 (1977). "A compensable injury occurs 'in the course of' employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise*, 54 Ill. 2d at 142. In addition, the Illinois Supreme Court has held that a claimant's testimony standing alone may be accepted for purpose of determining whether an accident occurred. However, the testimony must be proved credible. *Caterpillar Tractor v. Industrial Commission*, 83 III. 2d 213, 413 N.E. 2d 740(1980).

Petitioner had been working full duty prior to August 8, 2022 and was able to perform all of his regular activities. (T. 20). He had no prior injuries or treatment for his neck. (T. 20). On that day, he was working his regular job as a bus operator driving an articulated bus when he veered left in order to make a right-hand turn and felt sharp pain from his neck down to his left arm, and numbness into his left hand. (T. 15, 16-17). The steering wheel is two feet wide, is larger than the steering wheel for a regular straight bus or the average person's vehicle, and Petitioner is required to make approximately 58.5 turns per day. (T. 13-15). He is left-handed, and suddenly was unable to squeeze his hand, and had to stop driving the bus. (T. 21, 18). He reported this to central control, and they called an ambulance which took him to the ER at Insight Hospital. (T. 18-19, 21). He was seen immediately thereafter and provided a history of turning the wheel of his bus when he felt neck pain and numbness into his left arm. (PX3 at 127). The Arbitrator notes that Respondent submitted no evidence such as a witness or video to rebut the accident. It is reasonable to assume that if evidence disproving the accident existed, it would have been submitted. The Arbitrator has already deemed the Petitioner to be credible and therefore the evidence supports a finding that Petitioner's injury occurred in the course of employment.

Next, we turn to whether the injury arose out of the employment. An injury "arises out of the employment if its origin is in some risk connected with or incidental to the employment. A "traveling employee" is an employee whose work duties require him to travel away from his employer's premises. *The Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728, ¶ 17. In the context of traveling employees, the Illinois Supreme Court established that an injury sustained arises out of his employment if he was injured while engaging in conduct that was reasonable and foreseeable, i.e., conduct that "might normally be anticipated or foreseen" by the employer. *Robinson v. Industrial Comm'n*, 96 Ill. 2d 87, 92 (1983).

Petitioner is a bus driver who's job duties required him to leave Respondent's premises. (T. 11). He was steering the CTA bus when he was injured. Petitioner therefore has established the injury arose out of his employment. This is certainly reasonable and foreseeable and would be foreseen by Respondent.

Respondent's Section 12 examiner Dr. Wellington Hsu felt Petitioner did not suffer a work accident because he stated the records he reviewed showed Petitioner had neck pain that worsened without any inciting event or trauma while at work. However, a review of Dr. Hsu's report shows he only reviewed records from August 8, 2022 forward showing Petitioner's neck pain started while driving his bus. (RX1). It is appears unrebutted that Petitioner had no prior treatment, was working full duty, and was able to perform his regular activities before August 8, 2022. He treated immediately after his accident, has been unable to work, and is unable to perform his regular activities since that time. The evidence shows this aggravation and/or change to Petitioners neck condition occurred on August 8, 2022, and no other time of onset or mechanism of injury has been put forth to otherwise discredit this.

Dr. Wellington further opined that the act of steering a bus that had caused the increase in neck pain is "a mechanism that is not specific to his work-related responsibilities." However, the mechanism is in fact very specific to the work-related responsibilities of driving an articulated bus. Petitioner testified that steering an articulated bus is both quantitively and qualitatively different from the steering activities of the general public. The Arbitrator nonetheless finds that the the risk analysis does not need to apply as Petitioner is a traveling employee, as discussed above. He must only prove his conduct was reasonable and foreseeable, which he has.

Based on the above, the Arbitrator concludes Petitioner sustained an accidental work injury to his cervical spine on August 8, 2022.

Issue E, whether timely notice of the accident given to Respondent, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

Under the Act, a claimant must give notice of an accident to the employer "as soon as practicable, but not later than 45 days after the accident." 820 ILCS 305/6(c) (West 2006). Further, "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." 820 ILCS 305/6(c) (West 2006). The purpose of the Act's notice requirement "is to enable employers to investigate alleged accidents," and a claimant has complied with the Act when the employer possesses known facts related to the accident within the relevant 45–day time frame. *Estes v. Illinois Workers' Comp. Comm'n, 2013 IL App (5th) 110450WC-U, ¶ 16.*

The Arbitrator notes the unrebutted testimony of Petitioner that he provided notice to multiple Respondent employees on the date of accident. Additionally, Respondent called an ambulance for Petitioner at the time of the accident and sent an employee to pick up the driverless bus. (T. 18-19, 23). Finally, the Arbitrator notes Respondent documented Petitioner's reporting of the accident in writing in a September 22, 2022 "Interview Record." (PX11). The Arbitrator notes this is 45 days after the accident. Respondent submitted no evidence regarding notice.

The Arbitrator therefore finds Petitioner provided timely notice of the accident to Respondent.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

The Workers' Compensation Act does not require a causation opinion. Instead, a simple chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability will suffice to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 442 N.E. 2d 908(1982). When a worker's physical structures give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of the employment. *Sisbro v. Indus. Comm'n*, 207 Ill.2d 193, 205 (2003). The work-related task need not even be the sole or principal causative factor of the injury, as long as the work is a causative factor. *See Sisbro*, 207 Ill.2d at 205. Thus, even if the claimant had a pre-existing degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causation factor. *Id*. at 205. A claimant may establish causal connection in such cases if he can show that a work-related injury played a role in aggravating his pre-existing condition. *Mason & Dixon Lines, Inc. v. Indus. Comm'n.*, 99 Ill. 2d 174, 181 (1983).

Despite Petitioner testifying that he had neck pain in the years prior and reported the same to a few of his treaters, the Arbitrator finds that prior to Petitioner's August 8, 2022 work accident, he had no prior accidents, no documented prior neck injuries, no prior neck treatment, and was working full duty and performing all of his regular activities. (T. 20). As detailed above, he suffered a work accident on August 8, 2022 while driving the bus. His neck pain suddenly went up to 7 out of 10 and his left hand went numb, rendering him unable to continue driving the bus. He was taken from the scene by an ambulance and has never returned to work. Since that time, he has had consistent and progressive neck and radiating extremity symptoms, which have never abated. Within a week of the accident he was told he would need a cervical surgery, and his testimony at trial shows his symptoms are getting worse. Respondent's IME found Petitioner unable to drive a bus in his current condition. The evidence therefore convincingly shows a dramatic change and aggravation in Petitioner's condition resulting from his August 8, 2022 accident, and the chain of events therefore supports causation for this neck injury.

In addition to the chain of events, Dr. Elakil causally related Petitioner's condition to his August 8, 2022 work accident. Dr. Elakil noted Petitioner's pre-accident neck pain had started while driving his bus, that while driving the bus on August 8, 2022 his pain went to 10/10 and that nothing had relieved it. (PX3 at 8). Dr. Elakil also noted progressive severe numbness and worsening weakness of his arms, left greater than right. (PX3 at 8). Dr. Elakil explained:

> "Its my medical opinion, given the history of the patient pain and his onset of symptoms that his bus driving the past years until now caused him to have slipped desks in his neck causing severe spinal cord compression, pain and weakness in his arms. Patient has signs and symptoms of severe progressive worsening radiculopathy secondary to severe spinal cord stenosis at C3/4 and C4/5." (PX3 at 9).

Respondent's Section 12 examiner Dr. Hsu stated Petitioner's condition is age and genetically related. Dr. Hsu performed no genetic testing and obtained no family history from Petitioner. Petitioner is only 47 years old. Dr. Hsu's causation opinion does not persuade the Arbitrator.

Based on the above, the Arbitrator finds Petitioner's current condition of ill-being of his cervical spine is causally related to the August 8, 2022 work accident.

Issue G, the calculation of Petitioner's average weekly wage, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

Section 10 of the Illinois Workers' Compensation Act states that "average weekly wage" shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury divided by 52. But if the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. 820 ILCS 305/10.

Petitioner is a union bus operator and testified he worked a mandatory 43 hours per week, earning $39/hr. (T. 15). In *Airborne Express v. IL Workers' Compensation Commission,* (App. Ct. 1st Dist 2007), 372, Ill.App.3d 549, 865, NE 2d 979, the court held that overtime includes those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week. *Airborne Express* 372 Ill.App 3d at 554. Stated conversely, hours that an employee is required to work as a condition of employment or hours that are set and worked each week are not excluded from the calculation of the AWW as overtime. The two criteria are stated disjunctively. Here, Petitioner's unrebutted testimony established that overtime was mandatory as a part of his job. He has met the first criteria identified by the court – that he is required to work these hours as a condition of his employment - and his overtime hours are included in his average weekly wage calculation. He is not required to prove more. The Arbitrator therefore finds the overtime hours are to be included in the wage calculation.

Petitioner's Exhibit 12 contains payments from Respondent for biweekly pay periods ending 8/21/21 through 8/6/22. The payment information indicates Petitioner did not work at all in pay periods ending 11/13/21, 11/27/21, 12/5/21, and 4/30/22. He also missed significant hours in pay periods ending 10/16/21, 10/30/21, 1/8/22, 1/22/22, 4/16/22, and 5/14/22. Petitioner argues that the weeks and parts thereof method to eliminate these weeks, in order to determine that he earned $47,297.29 over the remaining 32 weeks. The Arbitrator agrees and finds this yields an average weekly wage of $1,478.04, with a corresponding TTD rate of $985.36, and PPD rate of $886.82.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

Section 8(a) of the Act states a Respondent is responsible …"for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

The Arbitrator finds Respondent has not paid all reasonable and necessary medical expenses. As shown above, Petitioner's August 8, 2022 work accident resulted in his cervical condition. Petitioner underwent treatment for this injury with City of Chicago EMS, Insight Hospital, Midwest Orthopaedics at Rush, and Custom Health and Wellness. (PX1, PX3, PX4, PX6, PX8, PX9). This resulted in the related medical bills found in Petitioner's Exhibits 2, 5, 7, and 10. Respondent submitted no Utilization Reviews regarding these services, and Respondent's Section 12 examiner declined to comment on the reasonableness and necessity of medical care. (RX1). The Arbitrator therefore finds Respondent is liable for unpaid and related medical expenses as found in Petitioner's Exhibits 2, 5, 7, and 10.

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for all of said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act from: Petitioner's Exhibit 2 (Chicago Fire Dept.) indicates an unpaid balance of $65.18 (PX2); Petitioner's Exhibit 5 (Insight Hospital and Medical Center) indicates a balance of $5,055.00 (PX5); Petitioner's Exhibit 7 (Midwest Orthopedics at Rush) indicates a balance of $751.00 (PX7); Respondent's Exhibit 10 (Dr. Shante Griggs) indicates a balance of $2,010.00. (PX10).

Issue K, whether Petitioner is entitled to prospective medical care, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein. As shown above, Petitioner suffered an accidental work injury on August 8, 2022 that resulted in his current cervical condition.

Petitioner's condition has been noted to be serious and in need of surgical repair from the onset. On the date of accident itself Petitioner was referred by the ER to see a neurosurgeon. (PX3 at 127). Petitioner underwent an MRI on August 18, 2022 that revealed central canal stenosis, spondylosis, C4-5 cord myelomalacia and severe central canal stenosis and impingement, and an extruded disc at C5-6. (PX3 at 207). On August 25, 2022, a few weeks later, Dr. Elakil noted 10/10 pain and progressive severe numbness and worsening weakness of his arms, left greater than right. (PX3 at 8). Dr. Elakil explained Petitioner had "signs and symptoms of severe progressive worsening radiculopathy secondary to severe spinal cord stenosis," and that given his progressive weakness he urgently required a fusion surgery. (PX3 at 9). Petitioner thereafter underwent a short course of physical therapy with Dr. Griggs that failed to improve - and even seemed to worsen- his pain. (T. 28).

Petitioner subsequently saw Dr. Singh for a second opinion at Midwest Orthopaedics at Rush. Petitioner presented with pain and burning down to his left forearm and into the 1st, 2nd, and 3rd digits, with occasional right sided symptoms, and noted no improvement with physical therapy. (PX6 at 8). Dr. Singh found positive bilateral Hoffman's and Inverted Brachioradialis tests, and a positive left Spurling's sign. (PX6 at 10). Dr. Singh reviewed the MRI and felt it showed C4-5 and C5-6 moderate to severe spinal stenosis, and a herniated disc at C5-6. (PX6 at 10). Dr. Singh diagnosed cervical myeloradiculopathy. (PX6 at 10). He recommended a C4-5 and C5-6 total disc replacement procedure. (PX6 at 10). Dr. Singh stated:

> "Mr. Jones has failed conservative management in the form of physical therapy x3 weeks, 2 times a week, home exercise program and NSAID medication. On exam, he displayed positive left Spurling sign with bilateral deltoid, biceps, wrist extension weakness consistent with a CS-6 nerve root distribution. His radiographic findings confirm C4-5 and C5-6 moderate to severe spinal stenosis with a C5-5 central HNP consistent with his symptomatology." (PX6 at 10).

Dr. Singh thereafter authored a letter on February 23, 2023 that stated Petitioner required a disc replacement procedure as "the patient displayed positive Spurling's sign with bilateral deltoids and bicep and wrist extension weakness with hyperreflexia with positive Hoffman's and an inverted brachioradialis reflex consistent with myelopathy." (PX8). Dr. Singh pleaded that "I am asking that the surgery be reconsidered for this individual who displays neurological deficits of the upper extremities with hyperreflexia consistent with myelopathy with confirmed C4-C5 and C5-C6 spinal stenosis." (PX8).

The Arbitrator notes that Respondent's Section 12 examiner diagnosed cervical stenosis and spondylosis, noted Petitioner's resulting upper extremity weakness and radiating pain rendered him unable to drive a bus, but declined to comment when asked directly what further treatment would be required. (RX1). Respondent did not submit any Utilization Review of the prospective surgery.

Petitioner is cleared by his treating physicians for surgery as of the trial date . (T. 34). However he testified he no longer has group health insurance and therefore cannot obtain this surgery outside of workers' compensation insurance. (T. 35).

As of the time of trial, Petitioner's neck pain and left arm numbness had increased to 8 out of 10. (T. 35, 36). He testified he has progressive myelopathy, and that he has developed symptoms in the past two months in his lower back and legs. (T. 38, 37). His low back "feels like it's on fire as well as my legs and my thighs." (T. 37). He is scared that the increasing nature of his symptoms means he will be unable to function in life or play with his granddaughter. (T. 38). He has difficulty now standing for long periods of time or walking even a block or two without feeling a lot of pain. (T. 38). He has difficulty functioning at home or picking up his granddaughter and is no longer able to exercise. (T. 38-39). Petitioner wants the cervical disc replacement procedure so he can return to his prior level of functioning. (T. 40).

The evidence indicates Petitioner has cervical radiculopathy and stenosis in need of surgical repair. He is being recommended a disc replacement procedure to treat the severe findings on his MRI per Dr. Singh. The Arbitrator has already found that a work related accident occurred and causation for Petitioner's current cervical condition, and further is persuaded by Petitioner's treating physicians that cervical disk replacement surgery is needed. Petitioner also testified that he still seeks to have the surgery if awarded by the Arbitrator. Therefore, the Arbitrator finds Petitioner is entitled to prospective medical treatment in the form of a C4-5 and C5-6 total disc replacement procedure as proposed by Dr. Singh. (PX6 at 10).

Issue L, whether Petitioner is entitled to temporary benefits, the Arbitrator finds as follows:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

It is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, i.e., whether the claimant has reached maximum medical improvement. *Westin Hotel v. Industrial Comm'n*, 372 Ill.App.3d 527, 542, 310 Ill.Dec. 18, 865 N.E.2d 342 (2007); *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 594, 296 Ill.Dec. 26, 834 N.E.2d 583 (2005); *F & B Manufacturing Co. v. Industrial Comm'n*, 325 Ill.App.3d 527, 531, 259 Ill.Dec. 173, 758 N.E.2d 18 (2001). See also *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill.2d 107, 118, 149 Ill.Dec. 253, 561 N.E.2d 623 (1990) (TTD compensation is provided for in section 8(b) of the Workers' Compensation Act, which provides, "[W]eekly compensation * * * shall be paid * * * as long as the total temporary incapacity lasts," which this court has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit).

As shown above, Petitioner suffered an accidental work injury on August 8, 2022 that resulted in his current and ongoing condition and inability to perform his job duties. Drs. Elakil, Singh, and Hsu all feel Petitioner's condition renders him unable to work, however there was a dispute regarding causation. These opinions are contained in and supported by the treaters' medical records. Also as shown above, Petitioner is still currently treating and in need of prospective medical treatment related to his cervical spine condition. The Arbitrator agrees and awards the prospective medical care and has determined based on the above that Petitioner has not reached maximum medical improvement.

The Arbitrator therefore finds Petitioner is entitled to TTD benefits of $985.36/week for 46 3/7 weeks, commencing August 9, 2022 through June 29, 2023, as provided in Section 8(b) of the Act.

It is so ordered:

Jacqueline C. Hickey
Arbitrator

August 29, 2023
Date

August 30, 2023

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC010742
Case Name	Angel Prieto v. Inland Die Casting
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0313
Number of Pages of Decision	34
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Lee Laudicina

DATE FILED: 6/28/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANGEL PRIETO,

Petitioner,

vs. NO: 19 WC 10742

INLAND DIE CASTING,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, temporary total disability benefits, prospective medical treatment, and nature and extent and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms and adopts the Decision of the Arbitrator, however makes the following changes:

The Commission strikes the fourth sentence of the second paragraph on page 22, beginning with "This reads…"

In the second sentence of the second paragraph on page 26 under Issue (K) of the Arbitrator's Decision, the Commission strikes the word "Petitioner" and replaces with the word "Respondent".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 27, 2023 is hereby affirmed and adopted with the corrections as noted above.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

June 28, 2024
MEP/dmm
O: 52124
49

/s/ *Maria E. Portela*
Maria E. Portela

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

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC010742
Case Name	Angel Prieto v. Inland Die Casting
Consolidated Cases	
Proceeding Type	19B/8A Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	31
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Steven Seidman
Respondent Attorney	Lee Laudicina

DATE FILED: 6/27/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 27, 2023 5.21%

/s/ Joseph Amarilio, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION – 19B/8A

ANGEL PRIETO
Employee/Petitioner

v.

INLAND DIE CASTING
Employer/Respondent

Case # **19 WC 010742**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph D. Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **April 25, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 24, 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 $**24,680.00**; the average weekly wage was $**617.00**.

On the date of accident, Petitioner was **36** years of age, single with **3** 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 $**12,464.96** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**12,464.96**.

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

ORDER

Respondent shall pay reasonable and necessary medical services of $88,095.78, as provided in Section 8(a) of the Act, subject to the Fee Schedule. See attachment to Arbitration Decision.

Respondent shall pay Petitioner temporary total disability benefits of $411.33 per week for 103-2/7TH weeks, commencing May 3, 2019 through April 25, 2021, as provided in Section 8(b) of the Act.

Respondent is liable for the medical charges to be incurred for an anterior cervical decompression and fusion at C5-6 and C6-7 and the award for prospective medical care shall also include evaluation, testing, and the associated treatment of Petitioner's neck that follows arising from the surgery pursuant Section 8(a) of the Act and subject to the Fee Schedule.

IN NO INSTANCE SHALL THIS AWARD BE A BAR TO SUBSEQUENT HEARING AND DETERMINATION OF AN ADDITIONAL AMOUNT OF MEDICAL BENEFITS OR COMPENSATION FOR A TEMPORARY OR PERMANENT DISABILITY, IF ANY.

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

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

/s/ *Joseph D. Amarilio*

JUNE 27, 2023

Signature of Arbitrator Joseph D. Amarilio

ATTACHMENT TO ARBITRATION DECISION

ANGEL PRIETO v. INLAND DIE CASTING 19 WC 010742

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Angel Prieto (Petitioner), by and through his attorney, filed an Application for Adjustment of Claim for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)). Petitioner alleged that he sustained an accidental injury on March 24, 2019 while employed by Inland Die Casting (Respondent"). A hearing was held on April 25, 2023 under Section 19(b) of the Act on the disputed issues and proofs were closed.

The following five (5) issues are in dispute: 1. Whether Petitioner's current condition of ill-being is causally connected to his injury; 2. Whether Respondent is liable for unpaid medical bills; 3. Whether Petitioner is entitled to temporary total disability (TTD) benefits; 4. Whether Petitioner is entitled to prospective medical; and, 5. The parties agreed that the Arbitrator can address the nature and extent the injury if the Arbitrator finds that Petitioner has reached maximum medical improvement. Arb. X 1. The parties mutually requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (Arb. X 1)

II. FINDINGS OF FACT

On March 24, 2019, Petitioner was 36 years old die casting machine operator employed by Inland Die Casting. (AX1; T 13-14.) His duties involved going in and working a die casting machine. (T 14.) As of March 24, 2019, Petitioner had worked for Respondent for almost 12 years. (T 14.) Prior to March 24, 2019, H had no treatment to either his shoulder or neck. (T 15.) Petitioner is right-hand dominant. (T 15.)

The parties stipulated that on March 24,2019 Petitioner sustained an accident that arose out of and in the course of his employment with Respondent. Petitioner testified that March 24, 2019, he was working first shift, lasting from 7:00 AM to 3:00 PM. (T 15.) He had been assigned to work Machine No. 4. (T 15-16.) However, the machine was not running. (T 16.) Petitioner's supervisor, floor manager Juan Bias, told him that machines were down and asked him to just start cleaning the area and picking up heavy parts that were above head high . (T 16, 42-42.) Petitioner went to pick up a heavy part. The weight and momentum of the part pulled his upper body down and he felt a pop in the back of his neck on the left side. He did not fall to

the ground. (T 18, 42-43.) Petitioner reported the incident to his supervisor, telling him that he'd felt a pop in his neck with pain, and then he went home to rest. (T 18, 43.) He returned to work later that evening and, while working a machine, felt a pop a second time. (T 18-19.) Petitioner reported the second pop as well. (T 19.)

On Tuesday, March 26, 2019 at 3:42 AM, Petitioner presented to Lutheran General Hospital emergency department. (PX3 15.) Petitioner testified that he reported left-sided neck pain and left shoulder pain. Petitioner's testimony is corroborated by the medical records. (T 57.) However, Petitioner's "chief" complaint was documented as shoulder pain and swelling in his left shoulder since trying to pick up heavy metal parts at work. (PX3 29.) Petitioner reported that he was working light duty prior to coming to the emergency room but that he was experiencing increased pain with lifting. (PX3 29.) Petitioner's shoulder pain was documented as a new issue, 10/10 in the left shoulder, aching and sharp and aggravated with touch and movement. (PX3 32.) Third year emergency room resident, Dr. Komal Paladugu and emergency room physician, Dr. Peder Lindberg recorded: "36-year-old male presenting with left-sided neck and trapezius after heavy lifting." (PX 3, p. 27) It was also recorded that "36-year-old male with history of anxiety presents to the emergency department with shoulder pain. Patient was pulling at heavy machinery parts at work yesterday when he heard a pop in his left shoulder. He reports pain along the left side of his neck and left shoulder, which prevented him from being able to continue working." (PX 3, p. 28) In another entry, Dr. Paladugu recorded "2-year-old male (sic.) with no significant past medical history presenting with left shoulder pain. Patient states that yesterday while working with heavy items he was pulling and felt a "pop" in the left side of his neck and left trapezius area. Since then progressively worsening and at times notes some sharp shooting discomfort…. States he went to work today and attempted to continue doing work with minimal alleviation of symptoms. He did not take any medication for pain…. " (RX 3, p. 25) Petitioner was discharged with a diagnosis of left shoulder pain. (PX3 28.) Petitioner was excused from work; was told to rest; was prescribed Acetaminophen, Ibuprofen and Morphine; and was referred to Dr. Rahul Modi for follow-up. (PX3 24, 28.)

An Employee Description of Accident Form [page 4 of 6] regarding the March 24, 2019 injury of employee Angel Prieto as reported to Mr. Luis Sanchez was introduced into evidence as Respondent Exhibit Number 14. Although the form that was introduced into evidence consists of one page, the form indicates that it is page four of six. The Arbitrator takes judicial notice that March 24, 2019 was on a Sunday. The form is undated but appears to have been completed shortly after the Petitioner went to the emergency room on March 26, 2019 because it appears to state that he had gone to the ER. The form is a poor-quality photocopy. The accident form reflects that Petitioner gave a history of injuring his left shoulder on Sunday,

March 24, 2019 [no mention of neck]. Some of the statements contained therein are unclear due to an unsophisticated use of grammar but it appears that Petitioner stated he "…was working i. felt pain and some burning on my left shoulder…." It further indicates that Petitioner "spoke to cesar about changing me to a different machine on Monday…He said o.k. When I come in today he sent me to machine # 16 which is the same part/job just different machine so I for about when I felt pain in my shoulder I told my supervisor to please move me & but as I was working I was still in pain. That when I left to the E.R." Th Accident Form explains in part and corroborates Petitioner's testimony at trial regarding feeling pain on two occasions while working. (T 17-19)

On March 28, 2019, Petitioner sought follow-up care with Dr. David L. Spencer at The Spine Center. (PX4 55.) Petitioner reported pain in his neck that began three days prior after a work injury. (PX4 55.) Petitioner stated that he had been in good health until very recently when he developed the severe neck pain after bending and lifting at work. (PX4 55.) Petitioner reported that he thought it was not too bad, so he tried to go back to work the next day but working proved impossible. (PX4 55.) Petitioner reported that the pain was severe and radiating down his left arm; he could get no relief no matter what position he was in. (PX4 55.) On physical examination, Dr. Spencer noted triceps weakness on the left side as well as decreased triceps reflexes on the left. (PX4 56.) Dr. Spencer reviewed plain x-rays of the cervical spine. (PX4 56.) Dr. Spencer stated: "I'm convinced he herniated a disk in his neck and has severe a [sic] cervical radiculopathy in the left arm." (PX4 56.) He diagnosed Petitioner with cervical radiculopathy to his left upper extremity. (PX4 56.) Dr. Spencer took Petitioner off work, ordered an MRI, and prescribed Petitioner a Medrol Dosepak and pain medication. (PX4 56.)

On April 2, 2019, Petitioner underwent a cervical MRI at Smart Choice MRI. (PX5 2.) The radiologist opined that Petitioner's MRI revealed moderate left foraminal narrowing at C3-4 due to facet and joint hypertrophy as well as central canal stenosis due to congenital factors and a disc osteophyte complex; mild to moderate left foraminal narrowing at C4-5 due to facet and joint hypertrophy as well as central canal stenosis due to congenital factors and a disc osteophyte complex; severe foraminal narrowing bilaterally at C5-6 due to facet and joint hypertrophy as well as central canal stenosis due to congenital factors and a disc osteophyte complex; and moderately severe right foraminal narrowing at C6-7 due to facet and joint hypertrophy. (PX5 3.) The radiologist opined that Petitioner's osteophyte complexes were mildly compressing his spinal cord. (PX5 3.)

Petitioner returned to Dr. Spencer on April 9, 2019 with continued radicular symptoms. (PX4 54.) Dr. Spencer reviewed the radiologist's report, which he felt did not describe any relevant pathology. (PX4 54.) However, upon personally reviewing the films themselves, Dr. Spencer opined that they showed "an obvious left-sided C5-6 disc herniation" that was likely to be the source of Petitioner's symptoms. (PX4 54.) Dr. Spencer ordered a myelogram and post-myelogram CT scan to further clarify the pathology before proceeding with what would likely be an anterior cervical diskectomy and fusion procedure. (PX4 54.)

On April 21, 2019, Dr. Richard A. Suss reviewed Petitioner's April 2, 2019 MRI at Respondent's request, presumably under Section 12 of the Act. (RX9.) Dr. Suss opined that there was a herniation visible at C5-6, remarking: "The largest and most focal protrusion is at C5-6 on the left posteriorly where the protrusion reaches a thickness of 3 mm AP and also extends 3 mm caudally (inferiorly) behind the upper part of C6." (RX9.) He noted that this herniation "indents the left anterior spinal cord margin where it places the left C6 ventral (motor) root origin at chronic risk." (RX9.) Dr. Suss opined that Petitioner's triceps findings "point mainly to C7," though C6 has been known to contribute somewhat in anatomic references. (RX9.) Dr. Suss opined that there should be greater clinical correlation before proceeding with a myelogram. (RX9.)

On May 30, 2019, Petitioner presented to Dr. Frank Phillips for a Section 12 examination at Respondent's request. (RX1.) Dr. Phillips reviewed Petitioner's history of treatment. (RX1 1-2.) Upon physical examination, Dr. Phillips noted limited cervical range of motion with 60 degrees of flexion and only 30 degrees of extension. (RX1 2.) Spurling's testing mostly resulted in neck and scapular pain, and shoulder impingement testing produced no obvious pain. (RX1 2.) Dr. Phillips specifically noted that he had no obvious Waddell's signs. (RX1 2.) Dr. Phillips reviewed Petitioner's April 2, 2019 cervical MRI and agreed with Dr. Spencer that it showed a disk herniation at C5-6. (RX1 2.) He wrote: "At the C5-6 level, he does have left-sided uncus hypertrophy with a disk protrusion perhaps contacting the left C5-6 nerve root." (RX1 2.) Dr. Phillips opined: "Based on the information provided, I believe Mr. Prieto indeed sustained a cervical injury in the alleged incident in question. He does have a small C5-6 left-sided disk protrusion that is probably responsible for what seems to be C6 radiculopathy." (RX1 2-3.) Dr. Phillips diagnosed Petitioner with cervical radiculopathy, opined that it was causally related to his work accident, and opined that Petitioner's treatment to date had been appropriate. (RX1 3.) He further opined that Petitioner was not at MMI, that Petitioner could return to work light duty, and that conservative treatment in the form of anti-inflammatories and traction would be an appropriate next step. (RX1 3.)

On June 25, 2019, Petitioner returned to Dr. Spencer. (PX4 11.) Dr. Spencer reiterated his diagnosis and opined that Petitioner's cervical radiculopathy resulted from his work injury. (PX4 11.) He prescribed Petitioner physical therapy and released him to work light duty with restrictions against bending or lifting more than 20 pounds. (PX4 11.)

On July 1, 2019, Petitioner started physical therapy at Athletico on referral from Dr. Spencer. (PX15 87-89, 107-10.) Petitioner related his history of injury: on March 24, 2019, he was lifting parts from a different level when he felt a "pop" in his neck. (PX15 87.) Petitioner reported pinching, pressure, and constant burning pain in his neck at 6 out of 10 with radiation to his anterior shoulder. (PX15 87.) Petitioner reported that he had no functional limitations prior to the accident. (PX15 87.) Petitioner was assessed as having decreased cervical active range of motion including flexion, extension, side bending, and rotation, as well as decreased postural endurance and decreased activity tolerance due to pain. (PX15 88.)

On July 23, 2019, Petitioner followed up with Dr. Spencer. (PX4 9.) Petitioner reported continued and severe left-sided cervical radicular pain despite consistent physical therapy. (PX4 9.) Dr. Spencer noted that any treatment other than physical therapy had been denied by workers' compensation insurance, and that they would obtain a myelogram and post-myelogram CT scan using private insurance. (PX4 9.)

On July 30, 2019, Petitioner underwent a CT myelogram at Lake Zurich Open MRI. (PX6.) The CT myelogram revealed reduced disc space at C3-4, C4-5, and C5-6 with minimal neural foraminal stenosis at C3-4 and mild neural foraminal stenosis at C4-5 and C5-6. (PX6 2.)

On July 31, 2019, Petitioner returned to Dr. Spencer once more. (PX4 8.) Petitioner reported that he had been experiencing increasing pain in his left arm that was not relieved by Ibuprofen. (PX4 8.) Subsequently, Petitioner received the CT myelogram. (PX4 8.) Upon reviewing the CT myelogram, Dr. Spencer was no longer as certain about Petitioner's C5-6-disc herniation. (PX4 8.) He kept Petitioner on light duty pending the imaging report. (PX4 8.)

On August 22, 2019, Petitioner presented to Dr. Howard Freedberg at Suburban Orthopaedics for treatment. (PX8, 412.) Petitioner complained of constant neck pain at 8/10 with pinching, pressure, and popping, constantly radiating down to his left shoulder at 8/10 with stiffness. (PX8, 412.) Petitioner related his history of injury: he was at work on March 24, 2019 pulling and lifting a board warmer, a part that goes into a Ford engine, when he felt a

pop in his neck followed by pain. (PX8, 412.) He then felt pain in his shoulder as well and became unable to lift it. (PX8, 412.) He reported the incident to his supervisor. (PX8, 412.) During his next shift, he experienced another neck pop with pain. (PX8, 412.) Petitioner then related his history of treatment. (PX8, 412.) On physical examination, Dr. Freedberg noted that Petitioner's cervical spine range of motion was limited due to pain with popping. (PX8, 413.) Dr. Freedberg observed a positive Spurling test on the left as well as positive tenderness in the left paraspinal muscles. (PX8, 413.) X-rays of the neck and shoulder were negative. (PX8, 414.) Dr. Freedberg diagnosed Petitioner with cervical radiculitis, ordered him medication, referred him for a consultation with Dr. Dalip Pelinkovic, and released him back to work light duty. (PX8, 414.)

On August 27, 2019, Petitioner followed up again with Dr. Spencer complaining of left shoulder pain. (PX4 7.) Dr. Spencer opined that Petitioner would benefit from an epidural steroid injection. (PX4 7.)

On September 5, 2019, Petitioner came back to Dr. Spencer complaining of left shoulder pain and swelling. Dr. Spencer noted that Petitioner was "complaining bitterly" of left shoulder pain and swelling with his occupational activities which cause him "excruciating pain." (PX4 6.) Dr. Spencer noted no obvious bony pathology on his x-rays; he referred Petitioner to a shoulder specialist for further care. Dr. Spencer did not find him MMI but showed Petitioner the door by releasing him from his care. (PX4 6.)

On September 13, 2019, Petitioner returned to Dr. Phillips for a second Section 12 examination. (RX2.) Dr. Phillips opined that Petitioner's CT myelogram had not revealed any acute or structural cervical pathology, and so he believed Petitioner could return to work regular duty with respect to his neck. (RX2 3.) He opined that Petitioner had suffered a cervical sprain/strain in his work accident and that his clinical evaluation that day was more suggestive of a shoulder problem. (RX2 3.) Dr. Phillips opined that Petitioner required no further treatment for his cervical spine, and that the condition had reached MMI. (RX2 3.)

On September 16, 2019, Petitioner presented to Dr. Mark Levin, an orthopedic surgeon, for a Section 12 examination at Respondent's request. (RX3.) On physical examination, Petitioner complained of pain over the left anterior shoulder and left biceps area, demonstrating greatly reduced range of motion with his left arm compared to his right. (RX3 3.) Dr. Levin opined that they needed to rule out shoulder pathology giving rise to Petitioner's symptoms. (RX3 5.) He recommended a left shoulder MRI arthrogram and recommended that Petitioner be placed on light duty. (RX3 5.)

On September 30, 2019, Petitioner underwent an MRI arthrogram of the left shoulder at Progressive Radiology. (PX9.) The radiologist noted a non-displaced tear of the posterior superior aspect of the glenoid labrum. (PX9.)

On October 3, 2019, Dr. Levin authored an addendum report after reviewing Petitioner's left shoulder MRI study. (RX4.) Dr. Levin opined that the MRI showed a non-displaced posterior labral tear in Petitioner's left shoulder. (RX4 1.) Dr. Levin opined that Petitioner's complaints and physical examination from the September 16th Section 12 examination could be consistent with such a tear. (RX4 1.) Dr. Levin recommended an intra-articular injection to assess if Petitioner was a candidate for arthroscopic surgery and possible labral repair. (RX4 2.)

On October 8, 2019, Petitioner returned to Dr. Freedberg. (PX8 406.) His left shoulder kept getting worse; he reported numbness and tingling in his second and third digits. (PX8 406.) Dr. Freedberg reviewed the MRI arthrogram. (PX8 409.) He updated Petitioner's diagnosis to cervical radiculitis and left shoulder bicipital tendinitis with posterior superior labral tear. (PX8 410.) He again sent Petitioner to consult with Dr. Pelinkovic. (PX8 410.)

On October 16, 2019, Petitioner saw Dr. Pelinkovic for the first time. (PX8 400.) Petitioner complained of neck pain at 8/10 that would come and go, a sharp stabbing and pinching sensation that radiated down to his shoulders and left hand with numbness and tingling in his left arm. (PX8 400.) He related his history of injury: he was at work on March 24, 2019, pulling and lifting a warmer part that goes inside of an engine, when he suddenly felt a pop in his neck. (PX8 400.) During his next shift, he was given the same work load despite reporting the incident to a supervisor. (PX8 400.) He experienced a second pop while working. (PX8 400.) He was pain-free and working prior to the injury. (PX8 400.) On physical examination, Dr. Pelinkovic documented 20 degrees of extension in the neck with tenderness, as well as reduced rotation to the left compared to the right, also with tenderness. (PX8 402.) Dr. Pelinkovic also documented decreased sensation to touch in Petitioner's left C7 dermatomal distribution. (PX8 402.) Left shoulder abduction caused pain, and a Spurling test was positive on the left side. (PX8 402.) He wrote: "Waddell signs are noted to be negative." (PX8 402.) Dr. Pelinkovic reviewed Petitioner's CT myelogram and the report of Petitioner's April 2, 2019 MRI, though he noted that he needed to obtain the films themselves. (PX8 403.) He also reviewed the Section 12 reports of Drs. Phillips and Levin. (PX8 402-03.) Dr. Pelinkovic assessed Petitioner with left upper extremity radiculopathy and left shoulder injury. (PX8 403.) Dr. Pelinkovic recommended an EMG to distinguish between neurogenic pain

radiating from Petitioner's neck and pain caused locally by his left shoulder injury. (PX8 403.) Dr. Pelinkovic opined that, more likely than not, Petitioner's conditions were causally related to his work accident; he further opined that Petitioner's treatment thus far had been reasonable and appropriate. (PX8 403.)

Petitioner returned to Dr. Freedberg twice more in October, reporting worsening left arm pain and trouble lifting his left arm. (PX8 387, 394.)

On November 5, 2019, Petitioner underwent an EMG study. (PX8 469.) The study noted electrical instability in the cervical paraspinal muscles correlated with left mid-lower cervical radiculopathy, with findings suggestive of a preference for the left C6 nerve root. (PX8 469.) Imaging of the spine to correlate a structural cause of nerve root disease was recommended. (PX8 469.)

On November 13, 2019, Petitioner followed up with Dr. Pelinkovic complaining of continued bothersome pain in his neck, anterior left shoulder, and left shoulder blade, worsened by neck movement and left shoulder movement. (PX8 381.) Dr. Pelinkovic noted that there had been no interval change in his symptoms since the last visit. (PX8 381.) Dr. Pelinkovic reviewed the EMG results. (PX8 383.) He updated Petitioner's diagnosis to left upper extremity radiculopathy, cervical disk protrusion, and left shoulder injury with labral tear. (PX8 385.) Dr. Pelinkovic noted that Petitioner's left shoulder appeared to be the main pain generator, and that his neck symptoms overlapped. (PX8 385.) He recommended that Petitioner follow up with Dr. Freedberg for left shoulder treatment before proceeding with treatment for the neck. (PX8 385.)

The following day, Petitioner returned to Dr. Freedberg complaining of pain at 9-10/10. (PX8 374.) Petitioner consented to arthroscopic surgical repair of his shoulder. (PX8 378.)

On November 25, 2019, Petitioner returned to Dr. Levin for a second Section 12 examination. (RX4 3.) Dr. Levin opined that Petitioner's left shoulder labral tear "could have at least been aggravated, if not caused by his alleged work injury." (RX4 3.) Dr. Levin opined that Petitioner required more orthopedic intervention, and that he was a candidate for arthroscopic surgery, potentially including labral debridement with biceps tenodesis and subacromial decompression with distal clavicle resection. (RX4 3.)

On December 16, 2019, Petitioner underwent left shoulder arthroscopic surgery with Dr. Freedberg at the Ashton Center for Day Surgery. (PX10.) Dr. Freedberg inserted an

arthroscope into Petitioner's left shoulder; he observed some fraying of the biceps, which he debrided. (PX10.) Dr. Freedberg noted a superior labral tear with tearing of the attachment into the superior glenoid, corroborating his preoperative diagnosis. (PX10.) Dr. Freedberg performed a tenotomy of the biceps, debrided the anterior labrum, and then addressed additional, posterior labral tearing. (PX10.) He performed a bursectomy and decompression in the subacromial space. (PX10.) Dr. Freedberg then finished removing the bicipital tendon, replacing it with sutures and an Arthrex anchor drilled into the bone. (PX10.)

Petitioner followed up regularly with Dr. Freedberg as he recovered from the surgery, his left shoulder symptoms gradually improving. (PX8 353, 356, 360, 369.) Petitioner continued to treat with Dr. Pelinkovic as well. On January 8, 2020, Petitioner reported that the surgery had relieved some portion of his shoulder pain and that the numbness and tingling in his left arm had resolved, but that he was still feeling constant neck pain. (PX8 363.)

On March 2, 2020, Petitioner was performing floor-to-chest, chest-to-above-head, and sled exercises with 20-pound weights at Athletico as part of his physical therapy exercises for his shoulder. (PX15 43.)

On March 25, 2020, Petitioner reported to Dr. Pelinkovic that his neck had been doing better until March 2, 2020, when he was carrying 20-pound tubes on each shoulder during physical therapy. (PX8 345.) He reported that he noticed increased pain on the left side of his neck radiating down into his left arm. (PX8 345.) Dr. Pelinkovic ordered an MRI. (PX8 349.)

On March 26, 2020, Petitioner received a cervical spine MRI at Suburban Orthopaedics, which revealed "severe bilateral foraminal stenosis at C5-6" slightly worsened from his previous MRI, as well as moderate left foraminal stenosis at C3-4 and C4-5 and moderate right foraminal stenosis at C6-7. (PX8 458.)

The following day, Petitioner returned to Dr. Pelinkovic with unchanged symptoms. (PX8 338.) Petitioner reported neck pain at 7/10 radiating down to his left arm to his fingers, with twitching in his fourth finger and the majority of his pain in the lower-back neck and mid-left trapezius area. (PX8 338.) Dr. Pelinkovic reviewed the new imaging. (PX8 340.) Dr. Pelinkovic opined that there had been progression of Petitioner's C5-6 neuroforaminal stenosis. (PX8 343.) He recommended physical therapy with cervical traction and a possible cervical epidural steroid injection for pain management. (PX8 343, 462.)

Petitioner continued to follow up with Dr. Freedberg for his shoulder. (PX8.)

On May 5, 2020, Petitioner was scheduled for another Section 12 examination with Dr. Levin. (RX6.) Petitioner reported to Dr. Levin that he had suffered a resurgence of neck pain during physical therapy when performing overhead exercises with a 20-pound piece of pipe. (RX6 2.) Petitioner described pain different from his prior left shoulder pain, feeling like pain in his neck and left scapular area. (RX6 2.) The pain varied from a 6/10 to an 8/10. (RX6 2.) Dr. Levin reviewed Petitioner's MRIs, noting the presence of "severe bilateral foraminal stenosis at C5-6 and foraminal stenosis at C3-C4, C4-C5, and C6-C7." (RX6 4.) Dr. Levin opined that Petitioner was at maximum medical improvement for his left shoulder. (RX6 5.) Dr. Levin further opined that Petitioner's neck complaints were not related to his work accident, stating that Petitioner had underlying degenerative changes of the neck which could have become symptomatic at any time. (RX6 5.) He opined that Petitioner could return to work at full duty. (RX6 9.)

Petitioner continued to treat with Dr. Freedberg. On May 28, 2020, Dr. Freedberg reviewed a copy of Dr. Levin's most recent Section 12 report; he disagreed with Dr. Levin's causal opinion as it concerned Petitioner's cervical spine. (PX8 328-29.) Dr. Freedberg cited Petitioner's cervical spine as the reason he needed more treatment. (PX8 329.) At the following visit of June 22, 2020, Dr. Freedberg stated: "I feel he is completed with treatment for his shoulder." (PX8 318.)

Around this time, Dr. Pelinkovic left the practice for a year to work as a spine surgeon in Iowa. (PX16 at 12.) Dr. Thomas McNally took over for him during this period. (PX16 at 13.)

On June 19, 2020, Petitioner was seen by physician's assistant Matthew Barnes. (PX8 320, 24.) Petitioner complained of a pain that felt like burning and pressure in the left side of his neck, 6-7/10, sharp with movement, radiating down the left arm with numbness and tingling in the fingers of his left hand. (PX8 320.) Barnes scheduled Petitioner for a consultation with Dr. McNally.

Petitioner consulted with Dr. McNally on July 14, 2020. (PX8 307.) Petitioner complained of constant neck pain at 6-7/10 radiating down to his left arm and left shoulder blade. (PX8 307.) Petitioner again gave his history of injury. (PX8 307.) On physical examination, Petitioner had a positive Spurling test on the left as well as diminished sensation in the second and third digits of his left hand. (PX8 311.) Dr. McNally reviewed Petitioner's imaging and EMG test results. (PX8 312-13.) He diagnosed Petitioner with cervical radiculopathy, cervical spinal stenosis, degenerative disc disease, and strains of the muscles, tendons, and fascia. (PX8 313.) He noted that Petitioner's pain had started with his work

accident of March 24, 2019. (PX8 314.)

On September 8, 2020, Petitioner returned to Dr. McNally with continued neck symptoms and pain at 5-6/10. (PX8 295.) Dr. McNally recommended an updated MRI and EMG testing. (PX8 299.)

On September 14, 2020, Petitioner received another cervical MRI at Suburban Orthopaedics. (PX8 453.) This time, the report documented a disk bulge and central canal and bilateral foraminal stenosis at C5-6, and stenosis of the left lateral recess and left foramen at C3-4. (PX8 453-54.)

On September 29, 2020, Petitioner underwent an updated EMG study. (PX8 463.) The study produced evidence of left C6 radiculopathy. (PX8 464.)

Petitioner returned to Dr. McNally on October 6, 2020. (PX8 283.) Dr. McNally reviewed Petitioner's updated MRI and EMG studies. (PX8 285-86.) He noted that the EMG confirmed left C6 radiculopathy, and that the MRI showed stenosis at C5-6 with a disc bulge. (PX8 285-86.) Dr. McNally opined that Petitioner would be a candidate for surgery, including anterior decompression and fusion, if he failed non-operative care. (PX8 287.)

Petitioner continued to treat with Suburban Orthopaedics, consistently reporting neck pain at 6-7/10. (PX8.) On July 1, 2021, Dr. Pelinkovic returned to his practice at Suburban Orthopaedics and resumed seeing Petitioner. (PX8 226; PX16 at 12.)

On July 14, 2021, Petitioner received another cervical MRI. (PX8 451.) This MRI showed narrowing of the disk at C5-6 with a disc bulge impinging the ventral subarachnoid space, stenosis, and bilateral foraminal impingement. (PX8 451.) The radiologist stated that Petitioner's most significant pathology related to the degree of canal and foraminal stenosis in his spine at C5-6. (PX8 451.)

On July 26, 2021, Petitioner underwent an MRI arthrogram of his left shoulder which revealed supraspinatus tendinopathy. (PX8 449.)

On July 27, 2021, Petitioner followed up with Dr. Pelinkovic complaining of neck pain at 8/10 with shooting pain down his left arm, as well as numbness and tingling in his left hand and fingers. (PX8 214.) On physical examination, Dr. Pelinkovic noted decreased sensation to touch in Petitioner's left C6-7 dermatomal distribution. (PX8 215.) Dr. Pelinkovic also

observed reduced cervical range of motion, a positive Spurling test on the left, and weakness in Petitioner's left upper extremity. (PX8 215-16.) He again wrote: "Waddell signs (tenderness, simulation, distraction, regional weakness, overreaction) are noted to be negative." (PX8 216.)

Dr. Pelinkovic reviewed the new cervical MRI. (PX8 216.) He opined that there was progression of Petitioner's C5-6 neuroforaminal stenosis, consistent with and explanatory of Petitioner's symptoms. (PX8 219.) He once again opined that Petitioner's neck condition was causally related to the work accident and that Petitioner's treatment had been medically necessary and appropriate. (PX8 220.)

Petitioner continued to treat with Dr. Freedberg and Dr. Pelinkovic. (PX8.)

On October 1, 2021, Dr. Pelinkovic testified at an evidence deposition. (PX16.) Dr. Pelinkovic is a board-certified spine surgeon; he has been board certified since 2008. (PX16 at 4, 22.) Dr. Pelinkovic testified to a reasonable degree of medical and surgical certainty that Petitioner suffered from left upper extremity radiculopathy secondary to the nerve being pinched in his neck at two levels, C5-6 and C6-7. (PX16 at 13-14.) Dr. Pelinkovic testified to a reasonable degree of medical and surgical certainty that this condition is directly related to his work injury of March 24, 2019. (PX16 at 16.) Dr. Pelinkovic testified that Petitioner did not have symptoms before the work accident; he developed recalcitrant pain after the work accident; the EMG was positive; physical examination was positive; there were correlating MRI findings; and Petitioner's symptoms reoccurred. (PX16 at 42.) Dr. Pelinkovic did not just rely on subjective reports of pain; he tests for Waddell signs and incorporates objective tests like EMGs and radiographic imaging. (PX16 at 25.) Dr. Pelinkovic testified that Petitioner's EMG results showed a pinched nerve toward his left arm, and that his neck MRIs showed a pinched nerve which correlated with these findings. (PX16 at 10.)

Dr. Pelinkovic did not review Dr. Spencer's records and did not know that Dr. Spencer released Petitioner from care for the cervical spine before he appeared to Suburban Orthopaedics. *Id*. at 44-45. He disagreed with the opinions of Dr. Spencer and Dr. Phillips because Petitioner had positive EMG findings, still had pain, and Dr. Pelinkovic suggested the shoulder pain clouded the picture for the neck pain, which became more bothersome after the shoulder got better. *Id*. at 46-47. He conceded that he personally told Petitioner to treat the shoulder to see if symptoms improved before dealing with the spine. *Id*. at 48-49. He also testified that he would not recommend spine surgery based on Petitioner's findings if there was not subjective pain. *Id*. at 49.

Dr. Pelinkovic opined that Petitioner was currently unable to work; Dr. Pelinkovic considered Petitioner's job duties in reaching that conclusion. (PX16 at 15.) Dr. Pelinkovic testified that he recommends an anterior decompression and fusion surgery at C5-6 and C6-7 to address Petitioner's recalcitrant pain and limited activities of daily living from his pinched nerve. (PX16 at 14.)

Petitioner continued to follow up with Drs. Freedberg and Pelinkovic from November 2021 through 2022 and into 2023, complaining consistently of neck pain radiating into his left shoulder and down his arm. (PX8.)

On February 25, 2022, Petitioner underwent a final Section 12 examination with Dr. Phillips. (RX7.) Dr. Phillips opined that Petitioner's cervical MRIs from 2021 were similar to his earlier MRI. (RX7 2.) Dr. Phillips maintained the same opinions he had expressed in his prior report. That is that Petitioner had reached MMI as to the neck and could work full duty (RX7 2.)

On March 1, 2022, Petitioner underwent a final Section 12 examination with Dr. Levin. (RX8.) His opinions also did not change. (*See Id*. at 55-57). Dr. Levin reiterated his opinions that Petitioner was at MMI for his shoulder on May 5, 2020 and that Petitioner required no further treatment for the shoulder. (RX8 6.) Dr. Levin opined that Petitioner's clinical examination had marked inconsistencies and diagnostic studies failed to show true objective pathology for his marked subjective complaints.(RX 8, 55.) He still opined that Petitioner reached maximum medical improvement for the shoulder by his last examination on May 5, 2020. *Id*. at 56. He did not agree with the shoulder surgery recommendation because it was for subjective complaints which were not substantiated objectively. *Id*. Dr. Levin saw no reason Petitioner could not work full duty. *(*RX 8, 56-57.)

Petitioner's last documented visit with Dr. Pelinkovic occurred on February 21, 2023. (PX8 17.) On that date, Petitioner complained of neck pain at 5-6/10 with pain radiating down his arm as well as numbness in his thumb and 2-3 of the fingers on his hand. (PX8 17.) Dr. Pelinkovic continued to note the "Cause/mechanism" of Petitioner's condition as "traumatic (work injury claim)." (PX8 17.) On physical examination, Dr. Pelinkovic once again noted decreased sensation to touch in Petitioner's left C6 and C7 dermatomal distributions; reduced cervical range of motion; positive Spurling test on the left; weakness in Petitioner's left upper extremity; and no Waddell signs. (PX8 11-12.)

Dr. Pelinkovic maintained his diagnosis of left upper extremity radiculopathy. (PX8 16.)

He again opined that Petitioner's condition was causally related to his work accident and that his treatment to date had been medically necessary and appropriate. (PX8 17.) Dr. Pelinkovic maintained his recommendation for an anterior cervical diskectomy and fusion in order to resolve Petitioner's axial neck pain originating from the C5-7 levels. (PX8 17.)

At the arbitration hearing, Petitioner testified that his left shoulder hurts when he uses it, producing pain, numbness, and tingling. (T 28.) He can't lift his left arm up the way he can his right arm. (T 28.) He can move his left arm only very slowly. (T 28.)

Petitioner testified that his neck is in pain and cannot use his neck. (T 29, 31.) Turning his neck is difficult. (T 31.) He feels burning in the back of his neck with pops and pain; he has to move his whole body to look to the left because his neck does not want to move in that direction. (T 29-30.) Petitioner suffers from neck weakness as well with difficulty keeping his head raised, so he lays down a lot at home. (T 31.) Sometimes his head just does not want to stay up. So the position he is most comfortable in is lying down with his head tilted back. (T 40.)

Petitioner also testified that he had a new onset of right-sided neck pain for the past few months before trial. (T 41, 34-35) He testified that that his son and his son's dog live with him and that his son is takes care of the dog. Petitioner testified that he does not dog sit because his son's dog does not require his attention as it just "lays there". Petitioner does not take care of the dog. (T 41. Petitioner testified that often had to lie down due to neck pain. *Id*. at 31. Petitioner testified that he wants to have surgery for both his neck and shoulder due to continuing pain. *Id*. at 32.

The Arbitrator notes that Petitioner presented at trial with cervical guarding. (T 30. In order to look in different directions, he rotated his upper torso instead of his neck. (T 30, 42)

Petitioner still treats with Dr. Pelinkovic. (T 25.) He testified that if surgery for his neck and left shoulder were authorized, he would undergo it. (T 32-33.)

Petitioner has not worked since he was let go by Respondent on May 3, 2021. (T 28-29.) Dr. Pelinkovic still has Petitioner ordered off of work. (T 29.)

Respondent submitted a surveillance video as (RX 15) (T 90.) The surveillance video is about three minutes in length taken over two days. (RX 15.) The video was taken on March 3, 2023 and March 7, 2023, about a month and a half prior to April 25th trial. The video depicts a male opening the front door of a house, bending over and pick up something left on his

doorstep and then walking back inside. (RX15.) This sequence lasts 5 seconds. (RX15.) The same male is also shown briefly walking a dog using a leash held by his right arm; he reaches down to clean up some waste with a small plastic bag. The individual turned his head and neck slightly to the left without visible discomfort. (RX15.) This sequence lasts 27 seconds. (RX15.)

Respondent also submitted an unsigned and undated accident report. (RX14.) Petitioner testified that he filled out an accident report. (T 44.) The report states that Petitioner felt pain and burning in his left shoulder as he was working; that he felt shoulder pain again when he returned to work later; and that he went to the ER. (RX14.)

At the time of his injury, Petitioner was 36 years old, single, with three dependent children. (AX1.) The parties stipulated that Petitioner earned $24,680.00 in the year prior to the accident for an average weekly wage of $617.00. (AX1.) Petitioner has $88,095.78 in unpaid, outstanding medical bills. (AX1; PX2; PX3; PX4; PX6; PX8; PX10; PX12; PX13; PX14.) The parties stipulate that Respondent has paid Petitioner $12,464.96 in TTD benefits and $0 for all other benefits. (AX1.)

Utilization Reviews

Respondent entered into evidence four utilization reviews. (RX 10-13.) Petitioner did not enter responses to any of the reports other than the testimony of Dr. Pelinkovic who opined that the prescribed treatment was reasonable and necessary and who explained that some of the treatment was maintenance care pending surgical authorization.

The first utilization review dated April 30, 2019 non-certified three prescriptions of Hydro/APAP tablets from March 28, 2019, April 9, 2019, and April 22, 2019. RX 10 at R61. It also certified one prescription of Morphine from March 26, 2019. *Id*. at 63.

The second utilization review dated December 5, 2019 non-certified a urine drug screen from October 8, 2018. RX 11 at R68.

The third utilization review dated February 21, 2020 non-certified the following medications prescribed on October 8, 2019: Diclofenac Sodium 1.5%, Lidocaine 5%, LenzaPro 4-4% Patch, Pantoprazole Sodium 20mg, Meloxicam 7.5mg, Tramadol 150mg, Fexmid 7.5mg. RX 12 at R79. It also non-certified a LenzaPro 4% Patch prescribed on January 29, 2020. *Id*.

The fourth utilization review dated August 1, 2022 non-certified the following medications ordered on August 22, 2019: Tramadol 150mg, Cyclobenzaprine/Fexmid 7.5mg, Meloxicam 7.5mg, Pantoprazole 20mg. RX 13 at R109-110.

The fourth utilization review dated August 1, 2022 also non-certified the following medications prescribed on December 12, 2019: Repozen 5/30/50mg [a sleep aid], Tramadol 150mg, Docuzen 8.6/50mg for constipation] , Ondansetron 4mg, Meloxicam 7.5mg, Pantoprazole 20mg, Cyclobenzaprine/Fexmid [muscle relaxer] 7.5mg (beyond #20 tablets previously certified). *Id*. It also non-certified a drug screen from March 17, 2021, Mobic refilled on March 8, 2022 and April 20, 2022, as well as CPT code 99070 billed for date of March 8, 2022. *Id*. Included in the same exhibit was a non-certification letter dated August 1, 2022, for Norco and Gabapentin ordered on May 24, 2022. *Id*. at R112. Also included in the same exhibit was a non-certification letter dated August 1, 2022, for the following prescriptions ordered on March 17, 2021: Meloxicam 7.5 mg, Norco 5mg/325mg, Meloxicam 15mg, Neurontin 300mg, drug screen with specific CPT codes for same. *Id*. at R114-115.

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989) It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence

presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47. Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission,* 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission,* 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

CREDIBITY FINDING: In the case at bar, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the record as a whole. Petitioner does not appear to be a sophisticated individual, as evidenced in part by his accident report, and any inconsistencies in his testimony are not attributed to an attempt to deceive the finder of fact.

The Arbitrator notes that at first blush it appeared that Petitioner either did not understand questions on direct examination or was inconsistent when Petitioner insisted that he felt pain twice while performing his work duties during his the course of his testimony and yet his testimony is corroborated by accident report and the medical records. Petitioner is not Herodotus like in reciting or explaining the history of his accident and symptoms, and yet he was being truthful. Petitioner's testimony is corroborated by the medical records. He consistently complained of left shoulder and left neck pain while pulling and lifting at work. He did not attempt to be change his testimony to help his cause. He stated what happened to him in his own way. Despite multiple Section 12 examinations, Petitioner's history was consistent. No material inconsistencies were noted upon physical examination until Dr. Levin last and final examination. Dr. Levin alleged unpersuasively that he found inconsistencies. Dr. Levin ignored or failed to persuasively explain away the repeated negative Waddell's as well as multiple positive EMG findings, positive MRI findings and positive Spurling tests. The Arbitrator finds that Petitioner's subjective complaints are supported by the objective findings.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent stipulated that Petitioner suffered an accident arising out of and in the course of his employment. However, Respondent disputes that Petitioner's current medical issues are causally related to the work accident. For the reasons stated below and based on the record as whole, the Arbitrator finds that Petitioner's conditions of ill-being to his left shoulder and neck are causally related to his work accident.

"In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." R & D Thiel v. Illinois Workers' Compensation Comm'n, 398 Ill. App. 3d 858, 867 (2010). "'[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment.'" *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, (2011), quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36, (1982). Further, "[e]very natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780 (2005). To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.,* 93 Ill. 2d 59 (1982).

In *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853 (1996), the Appellate Court considered the applicability of this principle to a case involving a preexisting condition and reasoned as follows: "The employer also contends that the facts of the present case do not

support the Commission's 'chain of events' analysis because [the claimant] had a preexisting condition. The employer cites no authority for the proposition that a 'chain of events' analysis cannot be used to demonstrate the aggravation of a preexisting injury, nor do we see any logical reason why it should not. The rationale justifying the use of the 'chain of events' analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury." *Walquist Farm Partnership v. IWCC*, (January 11, 2021) This is a Rule 23 Illinois Appellate Court decision. However, since it was issued after January 1, 2021 the decision may be cited for its persuasiveness, but not as precedent.

The Arbitrator notes that Respondent's has not voiced any complaints about Petitioner's pre-accident work performance. No evidence was introduced that Petitioner missed time off work because of preexisting shoulder or neck issue; no mention was made that Petitioner requested any accommodation because of a preexisting left neck or left shoulder condition. Petitioner's position with Respondent was physically demanding and taxing during his 12 years of employment with Respondent and, yet no evidence was unearthed that Petitioner's neck and left shoulder had been injured, no evidence was unearthed that he required medical treatment, nor that Petitioner had voiced complaints to his neck and left shoulder before his accident. Accordingly, the Arbitrator finds that the chain of events in this matter demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability is sufficient circumstantial evidence to prove a causal nexus between the accident and the Petitioner's injury to his left shoulder and neck.

Left Shoulder

In this case, Petitioner's credible testimony establishes such a chain of events. Prior to March 24, 2019, Petitioner had received no treatment to his shoulder. (T 15.) On March 24, 2019, Petitioner picked up a part and felt a pop at work, then came back in the evening and felt a second pop while operating a machine. (T 18-19.) He then sought treatment at the emergency room, where left shoulder pain was his chief complaint, and he continued to complain of left shoulder pain consistently thereafter.

There does not seem to be any disagreement among the doctors in this case about the nature or relatedness of Petitioner's left shoulder condition; every doctor in this case to offer a causal opinion about the left shoulder either opined that it was causally related, or in the case of Respondent's expert Dr. Levin, that it could have been. (*See e.g.*, PX8 412, RX5 3.) Based on the above and the record as a whole the Arbitrator finds that Petitioner's left shoulder condition of ill-being is causally related to Petitioner's work accident.

Neck

The real causal dispute in this case centers around Petitioner's neck. For the following reasons, the Arbitrator finds that Petitioner's neck condition is causally related as well.

Again, *International Harvester* provides that causation may be proven by showing a chain of events reflecting good health, an accident, and subsequent injury. "The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been." *Schroeder v. Ill. Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC ¶ 26 (4th Dist. 2017).

Here, again, Petitioner credibly testified that prior to March 24, 2019, he had received no treatment to his neck. (T 15.) His medical records, too, consistently state that he had no history of neck pain before his work accident. On March 24, 2019, Petitioner picked up a part and felt a pop in left side of his neck, then came back and felt a second pop in his neck. (T 18-19.)

On March 26, 2019 at 3:42 AM, Petitioner presented to Lutheran General Hospital emergency department. (PX3 15.) Petitioner credibly testified that he reported left-sided neck pain. (T 57.) His testimony is corroborated by the emergency department records. Dr. Paladugu recorded Petitioner had "…no significant past medical history presenting with left shoulder pain. Patient states that yesterday while working with heavy items he was pulling and felt a "pop" in the left side of his neck and left trapezius area. Since then progressively worsening and at times notes some sharp shooting discomfort…." (RX 3, p. 25) Consistent with this testimony, Dr. Spencer documented complaints of pain in Petitioner's neck at his first visit only two days later.

It did not take long for objective evidence of a problem in Petitioner's neck to appear. On April 9, 2019, Dr. Spencer reviewed films from an April 2, 2019 cervical MRI and opined that they showed "an obvious left-sided C5-6 disc herniation" that was likely the source of Petitioner's symptoms. (PX4 54.) On April 21, 2019, Dr. Richard A. Suss reviewed those same films and opined that there was a herniation visible at C5-6 which "indents the left anterior spinal cord margin where it places the left C6 ventral (motor) root origin at chronic risk." (RX9.) On May 30, 2019, Respondent's own examiner, Dr. Frank Phillips, also reviewed Petitioner's April 2, 2019 cervical MRI and agreed that it showed a disk herniation at C5-6: "At the C5-6 level, he does have left-sided uncus hypertrophy with a disk protrusion

perhaps contacting the left C5-6 nerve root." (RX1 2.) Dr. Phillips opined: "Based on the information provided, I believe Mr. Prieto indeed sustained a cervical injury in the alleged incident in question. He does have a small C5-6 left-sided disk protrusion that is probably responsible for what seems to be C6 radiculopathy." (RX1 2-3.)

Although Dr. Spencer and Dr. Phillips would later contradict their own earlier opinions based upon Petitioner's subsequent CT myelogram, the Arbitrator notes Dr. Pelinkovic's unrebutted testimony that MRIs are much better for visualizing nerves and disk herniations than CT scans are. (PX16 at 35.) Further, Petitioner's subsequent MRIs continued to reveal pathology in his cervical spine after the CT myelogram failed to. On March 26, 2020, for example, Petitioner's cervical spine MRI revealed "severe bilateral foraminal stenosis at C5-6" slightly worsened from April 2, 2019, as well as moderate left foraminal stenosis at C3-4 and C4-5 and moderate right foraminal stenosis at C6-7. (PX8 458.) On September 14, 2020, Petitioner received another cervical MRI which documented a disk bulge and central canal and bilateral foraminal stenosis at C5-6, as well as stenosis of the left lateral recess and left foramen at C3-4. (PX8 453-54.) On July 14, 2021, another cervical MRI showed narrowing of the disk at C5-6 with a disc bulge impinging the ventral subarachnoid space with stenosis and bilateral foraminal impingement. (PX8 451.)

Supplementing the objective evidence from MRI scans are multiple EMG studies Petitioner underwent, each documenting his radiculopathy. These studies consistently returned results showing that Petitioner suffered from left C6 cervical radiculopathy in particular. Petitioner's EMG study of November 5, 2019, for instance, noted electrical instability in the cervical paraspinal muscles correlated with left mid-lower cervical radiculopathy and findings suggestive of a preference for the left C6 nerve root. (PX8 469.) On September 29, 2020, Petitioner's updated EMG study also produced evidence of left C6 radiculopathy. (PX8 464.). The multiple positive EMG findings of cervical radiculopathy are inconsistent with an allegation of a false positive and consistent with the opinions of Dr. Phillips and Dr. Levin.

Dr. Pelinkovic, Petitioner's treating spine surgeon, persuasively testified to a reasonable degree of medical and surgical certainty that Petitioner's cervical spine condition was causally related to his work accident based on the objective evidence, medical records, and timing of events. (PX16 at 15-16.) Petitioner did not have neck symptoms prior to March 24, 2019; his EMGs were positive for left-sided radiculopathy at C6; his physical exams were positive; his symptoms reoccurred; and the MRIs correlated with this evidence. (PX16 at 42.) Moreover, Dr. Pelinkovic tests for signs of symptom magnification. (PX16 at 25.) The Arbitrator notes that Dr. Pelinkovic's records consistently note no Waddell signs. (*See e.g.* PX8 402.)

Although Dr. Phillips concluded that Petitioner has no cervical radiculopathy and that he had suffered nothing more than a sprain/strain from his work accident (RX2 4), this conclusion is directly contradicted by the results of Petitioner's EMG tests and MRI scans. The EMGs consistently showed left-sided radiculopathy originating from C6, and the MRIs consistently showed pathology at this level. The objective evidence better supports Dr. Pelinkovic in this matter. As such, the Arbitrator does not find Dr. Phillips as persuasive as Dr. Pelinkovic.

Neither does the Arbitrator find Dr. Levin's causal opinion with regard to the cervical spine as persuasive as Dr. Pelinkovic's. On May 5, 2020, Dr. Levin reviewed Petitioner's MRIs, noting the presence of "severe bilateral foraminal stenosis at C5-6 and foraminal stenosis at C3-C4, C4-C5, and C6-C7." (RX6 4.) Nonetheless, Dr. Levin opined that Petitioner's neck complaints were not related to his work accident because Petitioner had underlying degenerative changes of the neck which could have become symptomatic at any time. (RX6 5.) This reads like a paraphrase of the "normal daily activity exception," a defunct legal concept discarded by the Illinois Supreme Court twenty years ago. *See Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193 (2003). Additionally, Dr. Levin failed to persuasively explain how Petitioner was able to perform his heavy level job demands before the work accident.

Illinois law is unconcerned with whether a preexisting condition could have been triggered by something other than the work accident; the relevant question is whether the work accident actually did aggravate or accelerate the preexisting condition. *Sisbro,* 207 Ill. 2d at 215. If it did, then there is causal connection. *Id.* Dr. Pelinkovic testified that every human being gets arthritis at the C5-6 and C6-7 levels of the cervical spine sooner or later. (PX16 at 39.) Petitioner's, however, became symptomatic when he was only 36 years old. (*See* PX16 at 51.) In this matter, the evidence suggests that Petitioner's cervical spine condition was accelerated by his work accident, if not caused *de novo*.

The Arbitrator further notes that re-aggravation of the neck by way of physical therapy for Petitioner's other causally related condition is also sufficient to establish causation in this case. "As long as there is a 'but-for' relationship between the work-related injury and subsequent condition of ill-being, the employer remains liable." *Dunteman v. Illinois Workers' Comp. Comm'n*, 2016 IL App (4th) 150543WC (finding causation established by an injury brought about by treatment for a distinct causally related condition). As such, the Arbitrator finds Dr. Pelinkovic more persuasive than Dr. Levin as well.

Respondent cites Petitioner's accident report (RX14) as evidence that Petitioner did not have a neck injury immediately after his work accident. However, the Arbitrator does not find this argument persuasive. To start, the report is not dated, nor is there any evidence as to when it was created. Moreover, although Petitioner described his symptoms as "left shoulder pain" in the report, the medical evidence in this case establishes that Petitioner's neck injury consistently produced left shoulder pain. Petitioner continued to suffer left shoulder pain for years even after his left shoulder labral tear was repaired and fully healed, a symptom his treating doctors attributed to cervical radiculopathy. Given that Petitioner experienced his neck injury in no small part *as* left shoulder pain, the fact that he described it as such in his report does not prove that his neck was uninjured. And his neck pain is recorded the emergency room records which appear to have been before the accident report was completed and also recorded by Dr. Spencer, just days after the accident.

The Arbitrator further notes that Respondent submitted a surveillance video as well, but finds that the contents of the video are innocuous. The Arbitrator does not have an independent recollection of Petitioner's appearance. In the video, a male—allegedly the Petitioner, though there was no testimony or other evidence establishing this—is seen opening the front door to a house, bending over, and immediately walking back inside. (RX15.) This entire sequence takes 5 seconds. (RX15.) Later, a male is shown standing and holding a leash with his right hand while a dog defecates in the front yard; he slowly reaches down with his left hand to clean up the waste with a small plastic bag, then walks away. Initially, the neck does not rotate but at the end, the individual is seen turning his head slightly to the left without difficulty. (RX15.) This sequence, too, lasts mere seconds. (RX15.) Everything shown is consistent with Petitioner's testimony that he could use his left arm as long as he moves it slowly and below the axillary line. (T 28.) Based on the above and the record as whole the Arbitrator finds that Petitioner's current cervical spine condition is causally related to his work accident of March 24, 2019.

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

Respondent disputes its liability, in part, for Petitioner's outstanding medical bills on the basis of causation. However, as discussed in Section F above, the Arbitrator has found that Petitioner's conditions of ill-being are causally related to the accident. Respondent also disputes its liability for particular pharmaceutical bills on the basis of multiple utilization

reviews. (RX10-13.) The first two utilization reviews concern treatment decisions on or before October 8, 2019. (RX10-11.) On October 16, 2019, however, Dr. Pelinkovic opined that Petitioner's treatment thus far had been reasonable and appropriate. (PX8 403.) The Arbitrator finds Dr. Pelinkovic persuasive in this matter and finds that Petitioner's treatment up until that date reasonable and necessary. Additionally, utilization review that non-certified a urine drug screen is inconsistent with the type of medications prescribed.

Further, Dr. Pelinkovic continued to opine that Petitioner's treatment was medically necessary and reasonable well past this date, most recently on February 21, 2023. (PX8 17.) The Arbitrator also notes that Petitioner's various pain relief medications are documented as successfully reducing his chronic cervical radicular pain. (*See e.g.* PX8 59.) As such, the Arbitrator finds these medications reasonable and necessary to treat his symptoms as well.

The medical treatment rendered by treating physicians, and referenced above, was reasonable and necessary given the objective evidence. The diagnoses, the consistent objective findings on physical examination, the positive diagnostic testing, and opinions of Petitioner's treating physicians are more persuasive than the opinions the UR providers who never had the opportunity to examine Petitioner. Additionally, some to later UR non-certifications were not persuasive as the treatment was necessary as stop gap maintenance treatment until surgery is authorized and, thus reasonable and necessary. Moreover, the proof is in the pudding. The non-certified treatment helped reduce pain and the shoulder surgery worked. Petitioner enjoyed improvement in the left shoulder and may have reached maximum medical improvement. And the treatment helped Petitioner to perform his activities of daily living.

Having reviewed the bills and records of treatment, the Arbitrator finds that Petitioner's treatment has been reasonable and necessary, and awards Petitioner all outstanding medical bills related thereto as follows:

Exhibit 2 Blue Cross Blue Shield of Illinois – Subrogation/Reimbursement Claim
Service Period: 3/26/19 to 12/16/19
Total Billed Charges: $20,180.00 -Total Paid**:** $3,149.12

Exhibit 3 Lutheran General Hospital
DOS: 3/26/19 – Charges $1,128.00 (Paid by Blue Cross Blue Shield)
DOS: 7/29/19 – Charges $1,832.00

Exhibit 4 The Spine Center
- Dr. Spencer

DOS: 3/28/19 & 4/9/19 – Charges $300.00

DOS: 6/25/19 to 9/5/19 – $390.00 $215.00 O/S (For DOS: 8/27/19 & 9/5/19)

Exhibit 6 Advanced Vein Treatment & Imaging Center
D.B.A. Lake Zurich Open MRI
- CT C/S

DOS: 7/30/19 – Charges $5,000.00 O/S HCFA

Exhibit 7 IWP
DOS: 6/12/19 to 7/31/19 – Charges $606.71 -0- Balance

Exhibit 8 Suburban Orthopaedics
- Howard Freedberg, M.D.
- EMG Bilateral Upper Extremities 11/05/19
- Sx: 12/16/19
- MRI C/S4/02/19 & 3/26/20
- MRA Lt. Shoulder 8/18/21
- Dr. Pelinkovic – Spine Surgery

DOS: 8/22/19 to 8/20/20 – Charges $35,786.40 - $6,712.00 O/S
DOS: 9/08/20 to 4/05/23 – Charges $27,108.68 O/S

Exhibit 9 Progressive Radiology
- MRA Lt. Shoulder ordered by Dr. Levin (Section 12 Dr.)

DOS: 9/30/19 – Charges $2,302.00 (Paid by WC) -0- Balance

Exhibit 10 Ashton Center for Day Surgery
SX: Lt shoulder arthroscopic labral repair with capsule plication, open biceps tenodesis
DOS: 12/16/19 – Charges $83,586.00 $18,768.00 Due

Exhibit 11 Midwest Anesthesia Partners
DOS: 12/16/19 – Charges $2,325.00 (Paid by WC) -0- Balance

Exhibit 12 Persistent Labs – Suburban
Persistent Toxicology Billing
DOS: 10/08/19 & 3/17/21 - Charges $7,810.00 O/S

Exhibit 13 Persistent Med/Rx – Suburban
DOS: 10/08/19, 1/29/20, & 3/08/22 – Charges $13,801.64

Exhibit 14 Prescription Partners, LLC
DOS: 3/19/20 to 8/20/20 - Charges: $3,699.34

Exhibit 15 Athletico Physical Therapy
DOS: 7/01/19 to 5/08/20 – Charges $15,696.00-0- Balance

Therefore, Respondent shall pay the reasonable and necessary medical services of $88,095.78. The Respondent shall pay all outstanding medical bills for his left shoulder, pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

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

Respondent disputes its liability to pay TTD based upon causal connection. As discussed above, however, the Arbitrator finds that Petitioner's conditions of ill-being are causally connected to his work accident. Petitioner asserts that he was off work, and did not work, from May 3, 2021 through April 25, 2023 representing 103 and 1/7th weeks off work [sic. 103-2/7th weeks]. (Arb. X 1) This period is supported by the evidence. In addition, the Arbitrator notes that Petitioner was taken off work by Dr. Spencer on March 29, 2019 and on June 25, 2019 Dr. Spencer released Petitioner to return to work with restrictions. (PX4 11, 56.) Dr. Spencer also authorized Petitioner off work from July 29, 2019 through August 2, 2019. (PX4, p.19) On August 22, 2019, Petitioner was seen by Dr. Freedberg for his shoulder injury and placed on light duty. No evidence was introduced that light duty work was offered to the Petitioner. Therefore, the Arbitrator finds that evidence establishes that Petitioner did not work nor was paid TTD from May 3, 2021 through April 25, 2023.

The parties stipulated that Petitioner's average weekly wage was $617.00 and have further stipulated to a TTD credit of $12,464.96 on behalf of Respondent. The Arbitrator, bound by the Request For Hearing form, awards Petitioner a TTD credit for the period of May 3, 2021 through April 25, 2023 representing 103-2/7th weeks. The Arbitrator notes that Petitioner in the Request for Hearing Form inadvertently stated the period was 103-1/7th weeks by calculating May 3, 2021 to April 25, 2023 , instead of May 3, 2021 through April 25, 2023 which adds one more day. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

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

Based on the record as a whole, the Arbitrator finds that the issue of nature and extent of the disability is premature at this juncture. The evidence appears to support a finding that Petitioner's left shoulder condition of ill-being has reached maximum medical improvement. However, the evidence shows that Petitioner's neck remains symptomatic and is in need of further medical care. Dr. Pelinkovic testified that Petitioner's condition may yet be improved by surgery. As such, the Arbitrator defers making a finding if Petitioner reached MMI as to the shoulder and the Arbitrator finds that Petitioner's neck condition of ill-being has not yet reached maximum medical improvement.

Particularly because of the overlap in symptoms between Petitioner's left shoulder and left cervical neck conditions, the Arbitrator finds that the nature and extent of Petitioner's injuries in general is not yet ripe for determination.

WITH RESPECT TO ISSUE (O), PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner does not appear to claim prospective medical care for his left shoulder, asking only for additional treatment for the cervical spine condition in his neck. Respondent opposes prospective treatment for Petitioner's neck injury on the basis of causal connection and the opinions of Dr. Phillips and Dr. Levin that Petitioner reached MMI. However, as discussed above, the Arbitrator has found that Petitioner's current condition of ill-being in his neck is causally related to the accident. The Arbitrator finds that evidence does not support a causal connection to the right shoulder to the accident.

Based on a preponderance of evidence, including the testimony of Petitioner, the treating medical records and the opinions of Dr. Pelinkovic, Petitioner is entitled to prospective medical care for his cervical condition of ill-being. The Arbitrator finds that Dr. Pelinkovic's opinion that any treatment for Petitioner's cervical spine short of surgery would be a temporary patch to be persuasive. (PX16 at 55.) The Arbitrator finds Dr. Pelinkovic's recommendation that Petitioner undergo an anterior cervical decompression and fusion at C5-6 and C6-7 to be reasonable and necessary to cure and relieve Petitioner from the continuing symptoms of his neck injury. (PX16 at 14.) Petitioner testified that he would undergo surgery if authorized. (T 32-33.) The Arbitrator orders Respondent to pay the surgery and related treatment. Respondent

is liable for the medical charges to be incurred for this prospective surgery and all related treatment pursuant to Sections 8(a) and 8.2 of the Act.

IV. CONCLUSION

1. The Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that his conditions of ill-being to his left shoulder and neck are causally related based on the chain of events and the findings and opinions of the treating physicians. The Arbitrator finds the opinions of the treating physicians to be more persuasive than the Section 12 examiners on the disputed issues. The Arbitrator finds that evidence does not support a causal connection to Petitioner's right shoulder to the accident.

2. The Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that he is entitled to TTD from May 3, 2019 through April 25, 2023.

3. The Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that Respondent is liable for the payment of the unpaid medical bills $88,095.78. Petitioner's protracted medical care is due in part the delays of Respondent's refusal to authorize the cervical surgery.

4. The Arbitrator concludes that Petitioner has proven by a preponderance of the evidence that he is entitled to the recommended cervical surgery, that is, an anterior cervical decompression and fusion at C5-6 and C6-7 and related treatment.

5. The Arbitrator concludes that addressing the nature and extent of Petitioner's conditions of ill-being is premature.