ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC020660
Case Name	Patricia A West v. State of Illinois - Ann Kiley Developmental Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0103
Number of Pages of Decision	15
Decision Issued By	Marc Parker, Commissioner, Carolyn Doherty, Commissioner

Petitioner Attorney	Jim Vainikos
Respondent Attorney	Rufus Barner

DATE FILED: 3/1/2024

/s/Carolyn Doherty, Commissioner

Signature

DISSENT: /s/ Marc Parker, Commissioner

Signature

STATE OF ILLINOIS	)		
	) SS.		
COUNTY OF LAKE	)		

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PATRICIA WEST,

Petitioner,

vs. NO: 20 WC 20660

STATE OF ILLINOIS - ANN
KILEY DEVELOPMENTAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent, State of Illinois – Ann Kiley Developmental Center, herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, and nature and extent and being advised of the facts of 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.

I. Causal Connection

Relying on Petitioner's testimony and Dr. Olinger, the Arbitrator found the intervening incident on August 8, 2020, wherein Petitioner moved her sofa about one inch, did not break the chain of causation. As such, the Arbitrator concluded that Petitioner's current conditions of ill-being of her cervical spine, left shoulder/scapular area, thoracic spine and low back were causally related to the work accident on May 8, 2019. However, after a review of the record in its entirety, the Commission views the evidence differently and concludes that Petitioner's condition of ill-being is causally related to the May 8, 2019 work accident through August 12, 2019, the date of the full duty work release, and not thereafter.

The medical records demonstrate that Petitioner treated conservatively with her primary care physician, Dr. Olinger for the work injury on May 8, 2019. During that course of treatment, Petitioner sought a second opinion with an orthopedic surgeon, Dr. Tack who diagnosed a left

periscapular sprain/strain related to the work accident and opined there was no need for advanced imaging or invasive medical treatment as her symptoms would likely improve with the treatment being prescribed by her primary care physician. Dr. Tack recommended graduated return to work with full return three months post injury. Consistent with Dr. Tack's opinions, Dr. Olinger returned Petitioner to full duty work as of August 12, 2019. Petitioner testified she was released to full duty work as of August 12, 2019, but she did not return to work at that time because she was off work on bereavement unrelated to the work accident. However, Petitioner testified she did eventually return to full duty work for Respondent on January 27, 2020 and was able to perform her regular job duties, including lifting and moving patients thereafter.

In finding causal connection for Petitioner's continued and current condition of ill-being, the Arbitrator rejected the argument that the sofa moving incident of August 8, 2020 severed the causal relationship between Petitioner's condition of ill-being and the original accident. However, under the Commission's view of the evidence, the issue of intervening accident posed by the sofa moving incident is rendered moot given the Commission's determination that causal connection between the May 8, 2019 work accident and Petitioner's condition of ill-being ended a year earlier on August 12, 2019, the date of her full duty release to work following her treatment.

Specifically, in finding causal connection through August 12, 2019, the Commission further notes that during the time between the full duty release on August 12, 2019 and the "intervening sofa moving" incident on August 8, 2020, Dr. Olinger's records reveal that Petitioner did not complain of nor treat for her cervical spine, thoracic spine, left shoulder or low back, despite actively treating and off work for the unrelated bereavement condition during that same period. On August 11, 2020, Dr. Olinger's record states Petitioner was there to follow-up on the adjustment disorder with depressed mood for which she was off work. He also noted Petitioner was having lower back and left knee pain from "helping her daughter move."

Finally, while the Dr. Olinger opines in March of 2022 that Petitioner's current condition of the spine pain and left shoulder pain are related to the work accident on May 8, 2019, the Commission finds that opinion unpersuasive in light of the totality of his medical records, most persuasively the 12 month period after the full duty release wherein Petitioner required no treatment for the injuries resulting from the May 8, 2019 work accident and Petitioner's testimony that she returned to work after her bereavement period in January 2020 and performed her full job duties. Accordingly, the Commission finds that Petitioner's soft tissue injuries from the May 9, 2019 work accident were resolved as of August 12, 2019 and that Petitioner's condition of ill-being is causally related to the May 8, 2019 work accident through the August 12, 2019 full duty release and not thereafter.

II. Temporary Total Disability Benefits

The Arbitrator ordered Respondent to pay Petitioner temporary total disability (TTD) benefits for the periods of May 8, 2019 through August 12, 2019 and August 8, 2020 through May 20, 2023. For the reasons discussed above, the Commission concludes that Petitioner's condition of ill-being is causally related to the May 8, 2019 work accident through August 12, 2019 and not thereafter. As such, the Commission modifies the Arbitrator's award of temporary total disability benefits and vacates the award of temporary total disability benefits for the period of August 8,

2020 through May 30, 2023.

III. Medical Expenses

The Arbitrator ordered that Respondent shall pay reasonable and necessary medical services of $27,721.00 as provided in Sections 8(a) and 8.2 of the Act and that Respondent is entitled to a credit of $5,997.47 under Section 8(j) of the Act. For the reasons discussed above, the Commission concludes that Petitioner's condition of ill-being is causally related to the May 8, 2019 work accident through August 12, 2019 and not thereafter. As such, the Commission modifies the Arbitrator's award of medical expenses and vacates the award of reasonable and necessary medical services incurred after August 12, 2019. The Commission orders Respondent shall pay reasonable and necessary medical services incurred on or before August 12, 2019 as provided in Sections 8(a) and 8.2 of the Act and that Respondent is entitled to a credit of $5,997.47 under Section 8(j) of the Act.

IV. Permanent Partial Disability

Having concluded that Petitioner's condition of ill-being is causally related to the May 8, 2019 work accident through August 12, 2019 full duty release and not thereafter, the Commission modifies the Decision of the Arbitrator with respect to the award of permanent partial disability.

The five factors upon which the Commission must base its determination of the level of PPD benefits to which a claimant is entitled, include: (i) the level of impairment contained within a permanent partial disability impairment report; (ii) the claimant's occupation; (iii) the claimant's age at the time of injury; (iv) the claimant's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b(b) (West 2020). However, "[n]o single enumerated factor shall be the sole determinant of disability." *Id.* § 305/8.1b(b)(v).

Regarding factor (i), the Commission gives this factor no weight because an AMA rating was not submitted by either party.

Regarding factor (ii) Occupation, the Commission gives this factor significant weight because Petitioner testified that after Dr. Olinger released her to full duty, she returned to her full job duties as a Mental Health Technician II. Petitioner also testified that the delay in returning to her full duty job after August 12, 2019 release was due to an unrelated bereavement leave.

Regarding factor (iii) Age, the Commission places some weight on this factor because of her age of 59 years old and her remaining viable years in the workforce.

Regarding factor (iv), Earning Capacity, the Commission places no weight on this factor because there is no evidence of any loss of earning capacity after Petitioner returned to pre-injury job position working full duty.

Regarding factor (v), Disability, the Commission gives great weight to this factor. At trial, Petitioner testified that she is not the same person she was prior to the injury and that she cannot lift up her grandkids, walk long distances and or reach behind her back with her hand. She also has

difficulty doing activities around the house including lifting, moving furniture, and sweeping. She continues to do her home exercises and takes pain medication. However, the medical records show that after the work accident on May 8, 2019, Petitioner treated conservatively for the left upper back strain, rhomboid strain, left shoulder strain and neck muscle strain. Dr. Olinger released Petitioner to full duty work as of August 12, 2019. The course of conservative treatment for these conditions and full duty release were corroborated by Petitioner's second opinion physician, Dr. Tack who is an orthopedic spine surgeon. Petitioner testified she returned to her full job duties, which included lifting and moving patients. Regarding disability, the Commission also notes that after the full duty release on August 12, 2019, Petitioner was actively treating for and had been taken off work for an unrelated bereavement condition.

Accordingly, having concluded that Petitioner's condition of ill-being is causally related to the May 8, 2019 work accident through August 12, 2019 and not thereafter, the Commission modifies the permanent partial disability award from 45% loss of use of the body as a whole to 10% loss of use of the body for the cervical strain, thoracic strain, left shoulder/scapula strains which required conservative treatment and resulted in a full duty release as of August 12, 2019.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated July 17, 2023, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's condition of ill-being is causally related to the May 8, 2019 work accident through August 12, 2019 full duty release and not thereafter.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $532.74/week commencing from May 8, 2019 through August 12, 2019 a period of 13-6/7 weeks of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical expenses incurred through August 12, 2019 as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of $5,997.47 under Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of $479.47/week for 50 weeks because the injuries sustained resulted in 10% loss of use of the person as a whole, as provided in Section 8(e) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent 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.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall hold Petitioner harmless from any claims by providers of the services for which Respondent receives a credit under Section 8(j) of the Act.

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.

March 1, 2024
o: 02/15/24
CMD/jjm
045

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

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

DISSENT

I respectfully dissent from the Decision of the Majority and would affirm and adopt the well-reasoned Decision of the Arbitrator in its entirety.

March 1, 2024
O: 02/15/24
MP/jjm
045

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC020660
Case Name	Patricia A West v. State of Illinois – Ann Kiley Developmental Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Jim Vainikos
Respondent Attorney	James Gale

DATE FILED: 7/17/2023

/s/ Paul Seal, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JULY 11, 2023 5.27%

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

July 17, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Patricia West
Employee/Petitioner
v.
STATE OF ILLINOIS - ANN KILEY DEVELOPMENTAL CENTER
Employer/Respondent

Case # **20** WC **020660**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Waukegan**, on **May 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. ☒ What temporary benefits are in dispute?
  ☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **May 8, 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 $**41,554.24**; the average weekly wage was $**799.12**.

On the date of accident, Petitioner was **59** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**6,696.80** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**6,696.80**.

Respondent is entitled to a credit of $**5,997.47** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of **$532.74**/week for **160 2/7** weeks, commencing **May 9, 2019** through **August 12, 2019** and **August 8, 2020 through the present (May 30, 2023),** as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **$6,696.80** for temporary total disability benefits that have been paid.

Medical benefits

Respondent shall pay reasonable and necessary medical services of **$27,721.00**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent is entitled to a credit of **$5,997.47** under Section 8(j) of the Act.

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of **$479.47**/week for **225 weeks**, because the injuries sustained caused the **45% 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.

Signature of Arbitrator

July 17, 2023

STATEMENT OF FACTS

On May 8, 2019, Petitioner was an employee of the Respondent as a Mental Health Technician II. She was initially employed from 1979 to 1996 and then from 2017 to the present. Her job duties included direct care of patients at the Ann Kiley Developmental Center. She was responsible for clothing, bathing, and dealing with behavior matters. She would deal with aggressive individuals and was required to lift them from the bed to the chair and vice versa. It is a physically demanding job.

On May 8, 2019, Petitioner testified that one of the individuals was having a behavior problem. Petitioner dealt with the individual by herself for an hour. The individual was approximately 50 pounds heavier than Petitioner. The individual became aggressive and tried to bite Petitioner. The individual lunged at Petitioner and grabbed both of Petitioner's hands. As Petitioner was trying to pull away from the individual's grasp, she was pushed into the door frame, lost her breath, lost her balance, and slid down the wall to a crouched position. Petitioner credibly testified that as she was struggling with the individual she was twisting and rotating her body. During the struggle, Petitioner struck the left side of her body around the thoracic area and the shoulder blades.

Petitioner was able to walk towards the nurse's station and they called for an ambulance. Petitioner was taken to Vista Medical Center East emergency department. She was prescribed medication and was given an off-work slip. Petitioner's history of the accident in the medical records is consistent with her testimony. She was diagnosed with a left upper back muscle strain.

On May 9, 2019, Petitioner sought treatment with Dr. Nikitas at NorthShore University Health System. His examination revealed left upper rhomboid spine tenderness and a left shoulder strain. He ordered 2 weeks off work.

On May 20, 2019, Dr. Nikitas treated Petitioner and added the diagnosis of strain of the neck. He ordered physical therapy to commence and Medrol dose pack. He continued to keep Petitioner off work.

On May 23, 2019, physical therapy began at Athletico and continued through July 26, 2019.

On June 6, 2019, Dr. Nikitas was examining Petitioner for pain in her neck, back and left thumb. He continued keeping her off work.

On June 24, 2019, Dr. Nikitas examined Petitioner again focusing on her neck and back. He continued her prescription for physical therapy and time off from work.

On July 15, 2019, Petitioner was seen by Dr. Tack at the Illinois Bone and Joint Institute for a second opinion. Dr. Tack summarized her medical care, examined her, and diagnosed her with left periscapular sprain.

On July 25, 2019, Petitioner returned to NorthShore University Health System and was seen by Dr. Olinger. He diagnosed Petitioner with strains of her neck and back with spasms. He prescribed physical therapy to continue and medications. He anticipated her return to work to be August 12, 2019.

Petitioner testified that she was paid full salary while off work under the Extended Benefits program provided by her employer when a Petitioner is injured from an assault while at work. Her initial time period off work for this injury covered May 9, 2019 to August 12, 2019.

Petitioner was released to return to work on August 12, 2019, but she remained off work for nonwork-related reasons until she returned to work on January 27, 2020. Petitioner continued to be seen by her Dr. Olinger

during the Spring of 2020. On June 24, 2020, Dr. Olinger diagnosed her with continuing cervical spine pain and strain of the right trapezius muscle.
On August 11, 2020, Dr. Olinger examined Petitioner for continuing pain in her back. Petitioner's history explained that she was cleaning her own home and she tried to move her own sofa on August 8, 2020. As she was bending over to move the sofa "a little bit" (Tr. p. 25), her back gave out. Petitioner credibly testified that any comments in the medical records suggesting she was moving her daughter's furniture is a mistake. Petitioner testified that her daughter has been living in her own home for many years and has not moved.

On August 11, 2020, Dr. Olinger diagnosed Petitioner with chronic left sided back pain and left scapular pain. He prescribed her to be off work from August 8, 2020, and Petitioner has not returned to work since.

Petitioner testified that she was never paid any Temporary Total Disability benefits from August 8, 2020 to the present. She did receive an alternative disability benefit called Temporary Disability from the State Employees' Retirement System from August 8, 2020 through July of 2022.

On September 1, 2020, Dr. Olinger examined Petitioner and assessed neck and back pain with left scapular pain. He referred her to physical therapy again. Petitioner started her next round of physical therapy on September 23, 2020 at Athletico.

On October 5, 2020, Dr. Olinger wrote a causation opinion in his medical records explaining that, "Patient was at work and attacked by a resident…was treated and returned to work by August 2019. Her claim was reopened after a chair incident on August 8, 2020 when she reinjured her back. It was an exacerbation of the back pain. The pain is from the left scapular region to her left neck." His assessment of Petitioner this day was pain in the left scapular region, cervical region, and chronic left sided lumbar back pain. He prescribed her to be off work.

On October 12, 2020, Dr. Olinger continued to prescribe Petitioner to be off work and referred her to and orthopedic spine specialist.

On November 2, 2020, the spine specialist Dr. Nolden examined Petitioner. His medical records provided a consistent history of Petitioner's accident and treatment. He stated that she was being evaluated for chronic and recurrent pain. His examination revealed reduced right lateral rotation and her extension was limited. He ordered a MRI.

On November 10, 2020, the cervical MRI was done and showed central disc protrusions at C2-C5.

On November 16, 2020, Dr. Nolden's assessment was that Petitioner should continue with physical therapy and not pursue any surgery at this time.

On December 17, 2020, Dr. Olinger wrote a letter "To Whom It May Concern" stating that Petitioner was still under his care for low back and parascapular pain. She was to continue with physical therapy and should consider seeing a pain specialist. He continued to keep Petitioner off work for her injury.

On March 25, 2021, Dr. Olinger continued to keep Petitioner off work for the thoracic and left scapular pain, plus cervical spondylosis and left shoulder pain.

On August 19, 2021, Dr. Olinger examined Petitioner and his assessment was the same as before. He continued to keep her off work.

Finally, on March 17, 2022, Dr. Olinger completed a CMS-95 Physician's Statement. He placed Petitioner on permanent and total disability from her employment. (PX 2)(Tr. pp. 29-30)

Petitioner testified that she had group health insurance through February 2022.
She also testified that the work related injury has changed her life. Prior to the injury, Petitioner was active, healthy, and full of life. (Tr. p. 31) As a result of the work injury, Petitioner no longer can walk long distances. When she sits in a chair, she sits tilted to the right. There is a constant pain she feels every day from her neck down to her buttocks. She can only do light sweeping around the house while using her right arm. Since her health insurance was terminated in February 2022, Petitioner continued with her home exercises despite professional physical therapy not accepting her without healthcare insurance. Petitioner notices that when she drives she has to turn her whole body to change lanes. Her range of motion has been reduced. Her sleep pattern has been disrupted by pain. She has reduced range of her left arm. She cannot reach behind her back anymore.

CONCLUSIONS OF LAW

"F" (Is Petitioner's current condition of ill-being causally related to the injury?)

The Arbitrator finds that Petitioner's current condition of ill-being is related to the injury of May 8, 2019. The Respondent has stipulated that the Petitioner was assaulted by a resident on that date. The medical records are consistent and substantiate her history of the events. The Petitioner credibly testified that she continued to have medical care subsequent to her injury. She consistently treated from 2019 to the present for her neck, left shoulder, left scapula, thoracic, and low back pain.

The events of August 8, 2020 were not an intervening event that broke the chain of causation. The Petitioner credibly testified that she was simply sliding a sofa at her home about 1 inch from the wall to try and sweep behind it. Dr. Olinger determined that the pain she felt was a continuation of her pain from the assault at work. The medical records indicate that Dr. Olinger was treating Petitioner as recently as 6 weeks prior to the sofa incident. There was no contrary medical opinion provided by the Respondent. The Respondent never requested an IME.

In addition, in the case of Mapp v. Jackson Park Hospital, 30ILWCLB4 (2021), the Commission held that the claimant's temporary pain spike experienced while carrying groceries at home would not have occurred but for the unresolved work-related lumbar strain, there is no independent intervening accident breaking the chain of causation.

In the matter at hand, Petitioner's spike in pain came from her unresolved injury for which she still was treating as recently as 6 weeks prior to the sofa incident.

"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?)

The Arbitrator, having found in favor of Petitioner for accident and causation, also finds that Respondent is liable for all medical bills related to the May 8, 2019 date of injury. The medical bills total approximately $27,721.00.

The Respondent has proven that they paid $5,997.47 in related medical bills of which the Respondent is entitled to an 8j credit.

"K" (What temporary benefits are in dispute?)

The Arbitrator finds that Respondent is liable for Temporary Total Disability benefits covering the time periods of May 9, 2019, through August 12, 2019, and August 8, 2020, to May 30, 2023, which totals 160 2/7 weeks.

The Respondent is entitled to a credit of $6,696.80.

"N" (Is the Respondent due any credit?)

As a preliminary matter at the trial, Petitioner's Counsel and Respondent's Counsel discussed the TTD credit. It was agreed that Petitioner was paid her full salary between May 9, 2019 and August 12, 2019 for a total of $10,502.72. Respondent paid full salary because the Union contract provides for full salary to a Petitioner who was injured at work from an assault. As we know, the Illinois Workers' Compensation Act provides a Petitioner only 2/3 of their salary for their time off.

Thus, Respondent is entitled to a credit for benefits paid equal to 2/3 of Petitioner's salary, not her full salary for the specified time off above. That time period totals 88 days. Petitioner's daily TTD rate is $76.10. When we multiply 88 days x $76.10 per day it equals $6,696.80. Respondent's credit for TTD paid shall be $6,696.80.

"L" (What is the nature and extent of the injury?)

Permanent Partial Disability with 8.1b language (For injuries after 9/1/11)

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a **Mental Health Technician II** at the time of the accident and that she ***is not*** able to return to work in her prior capacity as a result of said injury. The Arbitrator therefore gives ***greater*** weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was **59** years old at the time of the accident. Because of **her advanced age**, the Arbitrator therefore gives ***greater*** weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator **gives *greater*** weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner testified that the work-related injury has changed her life. Prior to the injury, the Petitioner was active, healthy, and full of life. (Tr. p. 31) As a result of the work injury, Petitioner no longer can walk long distances. When she sits in a chair, she sits tilted to the right. There is a constant pain she feels every day from her neck down to her buttocks. She can only do light sweeping around the house while using her right arm. Since her health insurance was terminated in February 2022, Petitioner has had to do only home exercises because professional physical therapy would not accept her. The Petitioner notices that while she drives, she has to turn her whole body to change lanes. Her range of motion has been reduced. Her sleep pattern has been disrupted by pain. She has reduced range of motion to her left arm. She cannot reach behind her back anymore. Because of **the permanent restrictions to her employment**, 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 **45% loss of use of her person as a whole** pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC014533
Case Name	Thomas Lundemo v. Vertical Holdings, LLC
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	24IWCC0104
Number of Pages of Decision	5
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Matthew Jones
Respondent Attorney	Matt Gorski

DATE FILED: 3/4/2024

/s/Maria Portela, Commissioner

Signature

24IWCC0104

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

THOMAS LUNDEMO,

Petitioner,

vs. NO: 21WC014533

VERTICAL HOLDINGS, LLC,

Respondent.

DECISION AND OPINION ON PETITION FOR PENALTIES

This matter comes before the Commission on Petitioner's "Petition for Penalties and Attorney's Fees" under §19(l), §19(k) and §16 of the Act (hereafter "Petition"), filed on August 22, 2023. A hearing was held before Commissioner Maria Portela on January 10, 2024, in Chicago, Illinois and a record was made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1) On April 22, 2023, a settlement contract was approved in this matter by Arbitrator Hegarty.

2) On July 27th, Petitioner's attorney emailed Respondent's attorney asking about the status of the settlement check because it had not been received.

3) Later that day, Respondent's attorney replied that he emailed the adjuster to see if the check had been mailed.

4) On August 3rd, Petitioner's attorney emailed requesting an update.

5) On August 4th, Respondent's attorney replied, "Not yet […] he's been battling a combo of covid and shingles the past few months and hasn't been able to get to his office. He's apparently the only guy authorized to sign checks too. I'll give him a call see what the situation here is[.]"

6) On August 8th, Petitioner's attorney again emailed asking for an update and Respondent's attorney replied, "I'll follow up."

7) On August 21st, Petitioner's attorney emailed that he still had not received the check and would "have to file a motion with the IWCC at this point."

8) On August 22nd, Petitioner's attorney filed the Petition at issue here claiming penalties under §19(l) and §19(k) plus attorney's fees under §16 of the Act.

9) On November 15th, Respondent's attorney emailed inquiring if Petitioner's attorney had received the check, which had been mailed the day before, and wrote, "I know this has been hassle. The guy who owns this risk management company was the only guy who could write checks. He's had quite the medical year. He got hit with a COVID/shingles combo back in April would [sic] he got parasites from the sores, which laid him up for quite some time. I was having difficulties getting a hold of him and I finally got a hold of him in October when he advised he had a brain aneurysm at the end of September."

10) Petitioner's attorney replied with his calculations of Respondent's "potential penalties exposure," agreed to a continuance of the hearing on the Petition to December and offered to withdraw the Petition in exchange for a compromised settlement.

11) On November 16th, Petitioner emailed that he received the $16,000.00 check that day and inquired about "what your client wants to do about the penalties."

12) At the hearing on January 10, 2024, no witnesses were presented. Petitioner's attorney stated, "email correspondence will show an allegation that the relevant individual for the Respondent who is responsible for cutting the checks suffered a series of serious illnesses throughout the spring and summer of 2023. We do not have any evidence to dispute that allegation, nor do we have any reason to believe it's untrue. So the facts in this matter are undisputed." *T.5*. Petitioner's attorney argued, "If there's only one individual responsible for cutting checks with no succession plan in place and no mechanism for, you know, getting petitioners their due benefits in a timely basis when they're owed under the Act, we would view that as unreasonable and vexatious." *T.6-7*.

13) At the hearing, Respondent's attorney admitted that there was a late payment of the settlement but focused primarily on whether §19(k) penalties were warranted. *T.11*. Respondent's attorney stated that the claims manager was also the owner of the company and:

> in his plan – and I'm not saying it's not flawed -- he was the only person that was allowed to cut checks for the company for these matters. After he underwent his aneurysm in fall of 2023, he finally changed that plan. We're not saying it's perfect. We know it, but that's what it was.
>
> …
>
> He was the only one responsible for being able to cut the checks. *T.7-8*.

The Commission finds that Respondent's delay in payment of the settlement was an

unreasonable delay "without good and just cause" under §19(l) of the Act. As the Supreme Court in *McMahan v. IC* stated, "[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of the statutorily specified additional compensation is mandatory." *183 Ill. 2d 499, 515 (1998)*. Here, although the significant health difficulties of the insurance claims manager who was also the owner of the risk management company was the reason for the delay, they are not an adequate justification for a delay in payment.

Therefore, we find Petitioner is entitled to §19(l) penalties of $5,340.00 calculated as $30 per day for 178 days from May 23, 2023, when the time period for review of the settlement contract expired, through November 16, 2023, when Petitioner's attorney received the check.

Regarding the issue of §19(k) penalties, the Act provides:

> where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award.

We note that the Act uses the phrase "unreasonable *or* vexatious delay." In *McMahan*, the Court wrote:

> In contrast to section 19(l), section 19(k) provides for substantial penalties, imposition of which are discretionary rather than mandatory. See *Smith v. Industrial Comm'n*, 170 Ill. App. 3d 626, 632, 121 Ill. Dec. 275, 525 N.E.2d 81 (1988). The statute is 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. This is apparent in the statute's use of the terms "vexatious," "intentional" and "merely frivolous." Section 16, which uses identical language, was intended to apply in the same circumstances.

McMahan at 515. The Court continued:

> The employer's conduct was not the result of simple inadvertence or neglect. More was involved than a lack of good and just cause. The employer made an intentional decision not to honor its statutory obligations to the employee, and it did so simply because it had not complied with the requirements of its insurance policy and was unwilling to absorb the cost itself. Compounding the situation is that the employer's violation of its insurance policy was not accidental or inadvertent. It was the product of an established company policy, a policy which, as the dissenting commissioner observed, also contravened the provisions of section 6 of the Workers' Compensation Act (820 ILCS 305/6 (West 1992)).

Id. at 515-16.

In the case at bar, the failure to timely pay the settlement does not appear to have been vexatious. Nevertheless, it was due to a deliberate, established company policy, which did not allow for any other person to sign and issue checks when the owner was unavailable or incapacitated. We find that this company policy could qualify as unreasonable under §19(k) of the Act but we exercise

our discretion and decline to award §19(k) penalties in this case. We are not finding that the nearly six-month delay in payment was reasonable. However, we note that the attorneys were in communication regarding the reason for the delay, which was not "the result of bad faith or improper purpose" and, according to the representation by Respondent's attorney at the hearing, the insurance risk management company has changed its policy so there is no longer only one individual allowed to issue checks. Therefore, we trust this scenario will not occur again and, under the limited circumstances of this case, we decline to award §19(k) penalties.

Since attorney's fees under §16 are only available on §19(k) penalties and not §19(l) penalties, we deny Petitioner's request for attorney's fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's "Petition for Penalties and Attorney's Fees" is hereby granted in part.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner $5,340.00 as further compensation pursuant to §19(l) of the Act.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $5,400.00. 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.

March 4, 2024

/s/ *Maria E. Portela*

SE/
R: 1/10/24
49

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC010506
Case Name	Tony Ellis v. City of Georgetown
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0105
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Gary Stokes
Respondent Attorney	Robert Doherty

DATE FILED: 3/5/2024

/s/*Deborah Simpson, Commissioner*

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TONY ELLIS,

Petitioner,

vs. NO: 18 WC 10506

CITY OF GEORGETOWN,

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.

Following a careful review of the entire record, the Commission affirms and adopts the Arbitrator's finding that Petitioner has established permanent and total disability pursuant to §8(f) of the Illinois Workers' Compensation Act under an odd-lot analysis. The Commission agrees that Petitioner demonstrated permanent and total disability through both a diligent but unsuccessful job search and a showing that his age, experience, training, and education resulted in him being unable to perform any but the most menial tasks for which no stable labor market exists. Respondent too failed to establish through its vocational efforts with David Patsavas of Independent Rehab Services that some type of regular and continuous employment was reasonably available to Petitioner. Although the Commission thus affirms and adopts the Arbitrator's finding of permanent and total disability, the Commission modifies the dates of which Petitioner's maintenance ends and the permanent and total disability begins.

When this matter proceeded to hearing on September 16, 2022, the Request for Hearing marked the date range of maintenance benefits in dispute with Petitioner claiming entitlement to maintenance from February 4, 2021 through July 11, 2022, and Respondent claiming a longer period of maintenance from February 4, 2021 through September 7, 2022. The Arbitrator, however, awarded maintenance benefits through August 17, 2022 with permanent and total disability benefits beginning on August 18, 2022. The Commission finds these dates of August

17, 2022 and August 18, 2022 to be arbitrary, as they do not correspond with anything on the Request for Hearing or in the evidentiary record. Instead, the Commission finds that Petitioner's claim that maintenance should be awarded through July 11, 2022 and permanent and total disability benefits should begin on July 12, 2022 to be appropriate, because these dates correspond with the last vocational report issued by Mr. Patsavas on July 11, 2022 in which Mr. Patsavas thereafter ceased vocational efforts due to a lack of employment opportunities available to Petitioner.

The Commission modifies the dates accordingly to reflect that maintenance benefits end on July 11, 2022 and permanent and total disability benefits begin on July 12, 2022. 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 October 5, 2022 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 ORDERED that Respondent shall pay Petitioner permanent and total disability benefits of $811.00 per week for life, commencing July 12, 2022, as provided in §8(f) of the Act, because the injuries caused the permanent and total disability of Petitioner. 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 §8(g) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner maintenance benefits of $811.00 per week for 74 5/7 weeks, commencing February 4, 2021 through July 11, 2022, as provided in §8(a) of the Act.

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

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

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

March 5, 2024

DLS/mek

O- 1/10/24

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

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

/s/*Marc Parker*

46 Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC010506
Case Name	Tony Ellis v. City of Georgetown
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Gary Stokes
Respondent Attorney	Robert Doherty

DATE FILED: 10/5/2022

THE INTEREST RATE FOR THE WEEK OF OCTOBER 4, 2022 3.85%

/s/*Maureen Pulia, Arbitrator*
Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [x] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [ ] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION
NATURE AND EXTENT ONLY

TONY ELLIS,
Employee/Petitioner

v.

CITY OF GEORGETOWN,
Employer/Respondent

Case # **18** WC **10506**

Consolidated cases: ____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Champaign**, on **9/16/22**. By stipulation, the parties agree:

On the date of accident, **12/31/17**, 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 $**63,225.80**, and the average weekly wage was $**1.216.50**.

At the time of injury, Petitioner was **57** years of age, ***married*** with **no** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**106,011.91 for agreed TDD benefits paid for the period 7/30/18-2/3/21**, $**00.00** for TPD, $**64,881.52 for agreed maintenance benefits paid for the period 2/4/21 through 8/17/22**, and $**00.00** for other benefits, for a total credit of $**170,893.42**.

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 permanent and total disability benefits of $**811.00**/week for life, commencing **8/18/22**, as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in Section 8(g) of the Act

RULES REGARDING APPEALS Unless a 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.

OCTOBER 5, 2022

Signature of Arbitrator

ICArbDecN&E p.2

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACTS:

Petitioner, a 57 year old supervisor of streets and alleys, and water and sewers, sustained an accidental injury that arose out of and in the course of his employment by respondent. Petitioner's duties included maintaining the water system, and overseeing the employees at the water plant. He also patched holes, built, poured and formed new sidewalks, trimmed trees, and used a lot of tools.

On Sunday, December 31, 2017, Petitioner Tony Ellis was employed by Respondent, City of Georgetown, as supervisor of streets and alleys and the water and sewer plant. Petitioner had been so employed for approximately thirty years. (T-8,9) A problem arose at the water plant in Cayuga, Indiana and Petitioner was sent to fix the problem. The exterior staircase that leads to the facility was covered in snow and ice. (T-10).

While ascending the staircase, Petitioner lost his footing on the snow and ice and fell down the stairs landing on the ground below. Petitioner immediately experienced pain in his right shoulder, right hand and right hip. Petitioner taped his thumb to prevent movement and completed the job. (T-10,11) Petitioner kept plowing snow that night with the brace on his thumb. He testified that he put the tape on his thumb so that he would not move it much. (T-11)

Petitioner presented himself to Carle Occupational Medicine and physician assistant Jacobs a few days after the shoulder and thumb pain failed to improve. A history of injury was recorded by Mr. Jacobs and Petitioner was diagnosed with a right shoulder contusion and right thumb sprain with possible fracture (T-11,PX1, p.1-3). Petitioner was placed in a sling for the shoulder, a splint for the thumb and was released to light duty, left-handed work only (PX1, p. 3).

After Petitioner's condition failed to improve, an MRI of the right shoulder was taken on January 30, 2018. Findings were reported as a tearing of the anterior portion of the supraspinatus tendon (PX3, p.1). Petitioner was immediately referred to orthopedic surgeon, Dr. Paul Plattner for a consultation. Dr. Plattner immediately referred Petitioner on to Dr. Gurtler, another surgeon at Carle Clinic (PX4, p. 1-2).

Dr. Gurtler concluded Petitioner's fall had caused the condition in his right arm and shoulder (PX4, p.4) and recommended arthroscopic surgery. (PX4, p. 8). Respondent sought a medical records review with their first IME physician, Dr. N. Verma (PX16). Dr. Verma concurred with Dr. Gurtler (PX16, p.5) and Petitioner underwent his first shoulder surgery on July 30, 2018 (PX5).

Petitioner worked a one-handed, light duty position from his initial appointment with assistant Jacobs on January 3, 2018, through the date of surgery on July 30, 2018. Petitioner has never been released to full duty

work or returned to work in any capacity since July 30, 2018. Respondent terminated Petitioner from his 30-year position of employment on October 20, 2020, having been off work for a period exceeding two years (PX13).

While convalescing from the July 30, 2018 shoulder surgery, Petitioner was referred to a hand surgeon, Dr. Sobeski, for a consultation regarding the ongoing complaints in the right thumb and hand. Dr. Sobeski diagnosed Petitioner with a right trigger thumb and recommended surgery (PX2, p.4).

Respondent sought a second opinion with Dr. J. Williams which was conducted on January 21, 2019. Dr. Williams concurred with the surgical recommendations of Dr. Sobeski (PX17) and Petitioner proceeded with his first thumb surgery on May 2, 2019 (T-15, PX7). Surgery was described as a right trigger thumb release (PX7).

Petitioner continued to experience severe shoulder pain after his first shoulder surgery, and he was sent for a second MRI on March 6, 2019. MRI revealed a persisting tear in the supraspinatus tendon (PX3, p. 4-5) and Dr. Gurtler thereupon recommended revision surgery on the right shoulder (PX4, p.31).

Respondent sought another record review with Dr. Verma. Dr. Verma concurred with the need for the revision surgery. The second surgery on the right shoulder was conducted on May 31, 2019, and was described as a decompression with clavicle resection and cuff repair (T-16, PX16, p.7).

While convalescing from his second shoulder surgery, Petitioner consulted his hand surgeon, Dr. Sobeski, regarding the ongoing pain and difficulties with his right thumb. After his examination, Dr. Sobeski felt a fusion of the MP joint would be appropriate but recommended a second opinion consult. Respondent sought review with Dr. Williams again. Petitioner was examined by Dr. Williams on October 24, 2019. Dr. Williams agreed that a fusion surgery of the MCP joint was appropriate to treat the ongoing pain Petitioner suffered in the right thumb (PX17, p.7). Surgery was put on hold, however, until the post-operative shoulder therapy had concluded on the shoulder. (PX2, p.13).

Meanwhile, Petitioner continued to experience painful popping and cracking in his right shoulder after surgery number two. He testified he experienced no improvement in his pain in the shoulder following the second surgery. (T-17) Dr. Gurtler recommended a third MRI which was conducted on November 1, 2019. The MRI reported a high-grade near-full-thickness tearing of the right supraspinatus (PX3, p.8). Dr. Gurtler thereupon recommended a third surgical procedure (PX4, p.45). Respondent once again sought a review with

their IME, Dr. Verma, who, once again, agreed that surgical repair of the torn rotator cuff was necessary (PX16, p.10).

Petitioner proceeded to his third shoulder surgery on January 13, 2020 (PX10). Post-operative shoulder therapy was conducted from February through March 2020 (PX11) and follow-ups with Dr. Gurtler's physician assistants, Mr. Cummings and Mr. McFarlin, continued from April 2020 through September 2020 (PX4, p. 54 - 61).

On June 5, 2020, Petitioner underwent his fifth and final surgery described as a fusion of the MP joint of the right thumb (PX12). Though improved, Petitioner's right thumb pain persisted, and he was sent by Respondent for a consultation with their new IME physician, Dr. Biafora. Dr. Biafora concluded that a screw and plate installed in the prior fusion surgery was causing Petitioner's ongoing right thumb pain and should be removed (PX18, p.8).

Upon his return to Dr. Sobeski, Petitioner was advised by the doctor that he could not guarantee the surgery would improve his condition and could leave Petitioner more susceptible to future fractures of the thumb after removal. Petitioner declined the surgery and was released from care. (T-21, PX 2 p. 24)

On September 14, 2020, Petitioner saw Dr. Gurtler's physician assistant Mr. McFarlin for a final visit. Mr. McFarlin placed permanent shoulder restrictions of lifting limited to five pounds with no overhead work, and no repetitive use of the right arm and shoulder (T-18,19, PX4, p.61).

On October 21, 2020, Dr. Biafora placed restrictions relative to the right thumb and hand of no lifting over five pounds and avoiding forceful gripping (PX18, p.9). On February 4, 2021, Dr. Sobeski's physician assistant Mr. Berkes, concluded that Petitioner had reached maximum medical improvement and released him from care (T-21, PX2, p.21). Petitioner chose not to undergo the third surgery since Dr. Sobeski would not guarantee the removal of the hardware and a thumb fusion would alleviate petitioner's pain, and there was a chance of fracture of his hand and thumb. (T-20).

Since his release from care by surgeons Gurtler and Sobeski, Petitioner's primary care physician, Dr. Halloran, and his physician assistant Deb O'Brien, manage Petitioner's chronic pain, prescribing the narcotic pain-killer Hydrocodone. Usage is monitored with routine drug screens (PX6, p. 34, 55, 58). Petitioner takes three tablets per day for pain control. His pain is at a three when he takes medication. Petitioner continues to receive narcotic pain medication from either Dr. Halloran, and/or Dr. Gurtler. (T-47)

At the time of Arbitration, Petitioner testified he cannot run a screwdriver anywhere up in the air. Reaching up into a cabinet causes problems and he cannot do it. He has problems tucking in his shirt because his right arm won't work and he even experiences aching in the shoulder trying to brush his teeth. (T-

24) Petitioner had to sell his boat because he cannot crank it up on the trailer any more. (T-24,25). He can no longer hunt, due to pain in his shoulder when even trying to hold up a heavy gun. (T-25)

Petitioner applied for and received Social Security Disability benefits January 20, 2021 (PX 14). He receives $800.00 per month in SSDI benefits. (T-31) Respondent retained Independent Rehab Services in September 2021 to conduct a vocational evaluation of Petitioner. Certified rehabilitation counselor David Patsavas was assigned by the rehabilitation company and met with Petitioner on September 1, 2021. An initial report was filed regarding that evaluation dated October 7, 2021. (T-27, PX15 p. 1-12).

Respondent then retained Independent Rehabilitation Services to provide vocational assistance and placement services. Petitioner worked with Independent Rehabilitation Services from December 2021 through July 11, 2022, when assistance was stopped pending a determination as to whether petitioner would continue to receive job leads on a weekly basis, and whether the consultant would continue to schedule meetings with petitioner on a biweekly to monthly basis. Since July 11, 2022 peitioner has not be contacted by the consultant regarding this determination. (PX15). Despite his efforts he has not received an offer of even part-time employment during this time. (T-29). Mr. Ellis believes he has performed all requirements that were asked of him during vocational rehabilitation . (T-31) He made it through his junior year in high school, but was in special ed for 4 years. Petitioner has been unable to secure a GED since leaving school. (T-29). He does not own a computer and does not know how to operate a computer keyboard. (T-30). Mr. Ellis testified he did not get any more information after July of 2022 about vocational rehabilitation efforts. (T-44) They did not provide any further leads after that point. Id.

While petitioner has been going through vocational rehabilitation efforts, he is receiving approximately $3,100.00 in monthly municipal benefits, $800.00 a month in Social Security benefits and he has also been receiving TTD benefits. (T-31) Petitioner admitted he was to fill out 3-5 job applications a week according to his agreement with Independent Rehabilitation Specialists, but he had not filled out any Applications since the beginning of August. (T-32,33) Mr. Ellis did not know when he last completed a job application but testified it was after the Fourth of July, but he did not know the name of the company that Application was for. (T-35) Mr. Ellis admitted if he secured employment there could be a potential reduction in the benefits he is receiving. (T-34)

He explained that the vocational process involved Independent Rehabilitation Services sending him a phone number by text and he would follow up with them, and at the end of the conversation he would tell them he had restrictions. (T-39). Petitioner testified he might be able to drive a tractor as long as he didn't have to climb a lot. He was concerned about driving a truck as his thumb was still a problem even if he was not required to climb in and out of the cab too frequently. He had experience driving those vehicles in the past so he is aware of what driving would entail. (T-41). Petitioner admitted he did not know of any doctor who had restricted him from driving a truck. (T-42) He has not tried driving a truck since his accident so he doesn't know for sure he wouldn't be able to drive one. (T-42) Petitioner testified that he did not take pain medication on the date of the hearing as he was driving to the hearing site. His pain level was up to a 5 as he had not taken any medication. He testified that one cannot drive a truck if they are on narcotic pain medication. (T-45.)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS AS TO THE ISSUE OF NATURE AND EXTENT OF THE PETITIONER'S INJURIES:

The sole issue in this case is whether or not petitioner is permanently totally disabled, or if petitioner sustained a specific loss of use to his person as whole. It is undisputed that petitioner sustained an accidental injury to his right shoulder on 12/31/17 when he slipped and fell on some ince/snow on the exterior steps, bouncing down approximately 8-10 steps. Petitioner noticed immediate pain in his right arm, right hip, and right thumb.

Petitioner's treatment is also undisputed and included surgeries to his right shoulder on 3/30/18, 5/31/19 and 1/13/20. Petitioner also underwent surgeries to his right thumb on 5/2/19 and 6/5/20. Following all these surgeries and post-operative treatment, it was determined by Dr. Gurtler and Dr. Sobeski, the treating surgeons, that petitioner had reached maximum medical improvement, but required significant permanent restrictions. Dr. Biafora placed permanent restrictions on the right hand that included avoiding lifting, pushing and pulling greater than 5 pounds. Dr. Biafora also placed permanent restrictions on petitioner's right shoulder that included avoiding lifting, pushing, and pulling greater than 15 pounds from ground to chest height, and avoiding lifting above chest height. The arbitrator notes that these restrictions prevented petitioner from returning to his regular duty job.

As a result, at the request of the respondent, petitioner was evaluated by David Patsavas at Independent Rehabilitation Services regarding potential vocational rehabilitation on 10/7/21. Patsavas was of the opinion that petitioner not only had significant physical issues that would impair his ability to return to work, but also had vocational issues that included lack of computer skills, and a GED degree. Based on this evaluation, Patsavas concluded that he did not believe a viable and stable labor market existed for petitioner.

Nonetheless, petitioner underwent job placement services with Independent Rehabilitation Services from 12/23/21 through 7/11/22. During this period petitioner performed all job placement activites that were requested of him. On 7/11/22 Patsavas indicated that he and Independent Rehabilitation Services had searched for employment opportunities for petitioner with his overall physical capabilities and transferable skills witin a 50 mile radius of his residence. These efforts were focused on full time, which was later changed to part time employment opportunities since April of 2022. On 7/11/22 Patsavas expressed concern to respondent about continuing job place activities with petitioner, as the number of employment opportunities for petitioner to apply were extremely limited given his physical restrictions, lack of transferable skills, level of education and no computer skills. Patsavas noted that a determination would be made as to whether petitioner would continue to receive job leads on a weekly basis, and whether he would schedule meetings with petitioner on a biweekly or monthly basis. Since 7/11/22 petitioner has received no determination from Patsavas, Independent Rehabilitation Services, or respondent, as to the continuation of his job placement vocational services. Based on this, the arbitrator finds that respondent abandoned job placement vocational rehabilitation services for petitioner on 7/11/22.

Following the abandonment of job placement vocational rehabilitation services on 7/11/22, petitioner testified that he got no more job leads from Patsavas. Petitioner testified that the last job application he completed was after 7/11/22, but he could not recall the name of the company. Petitioner admitted that if he found employment that there could be a potential reduction in the Social Security and Worker's Compensation benefits he was receiving.

Petitioner testified that he might be able to drive a tractor as long as he did not have to climb a lot, but was concerned about driving a truck because of his thumb, even if he was not required to climb in and out of the cab frequently. Petitioner testified that he never received a job offer, the entire time he was in receiving job placement vocational services with Patsavas. Petitioner also testified that he takes three hydrocodone a day, and you cannot drive a truck if taking narcotic medication.

Given that no doctor has opined that petitioner is permanently totally disabled, the issue is whether petitioner is an odd-lot permanent total, as petitioner claims, or if he just sustained a loss of use to his person as a whole, as respondent claims.

An employee is permanently totally disabled when he cannot perform any services except those for which no reasonably stable labor market exists. E.R. Moore Co. v. Indus. Commission, 71 Ill.2d 353, 361, 362 (1978). An employee need not be reduced to a state of total physical or mental incapacity or helplessness to be

permanently totally disabled (Arcole Midwest Corp. v. Industrial Commission, 81-6-Ill.2d 11, 15 (1980)), and the ability to earn occasional wages or to perform some useful services does not preclude a finding of total disability. E.R. Moore Co. v. Indus. Commission, 71 Ill.2d 353, 361 (1978). However, when the services which the employee can reasonably provide are so limited in quality, dependability and quantity that no reasonably stable market for them exists, then the employee is permanently totally disabled. Nile Police Department v. Industrial Commission, 83 Ill.2d 528, 534 (1981).

"Odd-lot" permanent total disability is defined as one who, though not altogether incapacitated for work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market (2 A. Larson, Workmen's Compensation sec. 57.51, at 10-164.24 (1980)). Valley Mould & Iron Company v. Industrial Commission, 84 Ill.2d 538, 547 (1981). An employee's burden of proof to establish permanent total disability under the "odd-lot" analysis is met by making one of two showings: (1) a diligent but unsuccessful job search, or (2) a showing that in light of his age, experience, training and education, he is unable to perform any but the most menial tasks, for which no stable market exists. Interlake, Inc. v. Industrial Commission, 86 Ill.2d 168, 178 (1981).

Once an employee establishes that he is permanently totally disability under the "odd-lot" analysis, it is incumbent upon the employer to present evidence that not only is the employee capable of engaging in some type of regular and continuous employment, but that such employment is reasonably available to the employee. Placing the burden on the employer is justified in that it is much easier for the employer, by virtue of his contact with the labor market, to prove the claimant's employability than it is for the employee to prove the universal negative of being totally unemployable. E.R. Moore Co. v. Industrial Commission, 71 Ill.2d 353, 361 (1978).

In the case at bar, the arbitrator finds the petitioner is not permanently disabled based solely on medical evidence, because no doctor has opined that he is permanently totally disabled, and in fact he was given permanent restrictions to return to work. Therefore, the question is whether petitioner has proven by a preponderance of the credible evidene that he is an "odd-lot" permanent total.

In order to prove "odd-lot" permanent total disability the petitioner's burden of proof is to show that he made: (1) a diligent but unsuccessful job search, or (2) a showing that in light of his age, experience, training and education, he is unable to perform any but the most menial tasks, for which no stable market exists. In the case at bar it is unrebutted that petitioner underwent job placement services at the respondent's request with David Patsavas at Independent Rehabilitation Services beginning 10/7/21. Petitioner provided full effort with his job seeking in order to obtain part or full-time employment. However, on 7/11/22 Patsavas expressed to

respondent concern about continuing job place activities with petitioner, as the number of employment opportunities for petitioner to apply were extremely limited given his physical restrictions, lack of transferable skills, level of education, and no computer skills. Patsavas also noted that a determination would be made as to whether or not petitioner would continue to receive job leads on a weekly basis, and whether or not he would schedule meetings with petitioner on a biweekly or monthly basis. Since 7/11/22 Patsavas has never been in contact with petitioner.

Given that petitioner had provided full effort with his job seeking under the guidance of Patsavas in order to obtain full or part time employment from 10/7/21 through 7/11/22 without any success; that Patsavas had expressed on 7/11/22 to respondent that he was concerned about continuing job place activities with petitioner, as the number of employment opportunities for petitioner to apply were extremely limited given his physical restrictions, lack of transferable skills, level of education and no computer skills; and, that Patsavas, Independent Rehabilitation Services, or respondent has not contacted petitioner since 7/11/22 regarding additional job placement activites, the arbitrator finds the petitioner has (1) shown a diligent and unsuccessful search for employment, and, (2) a showing that in light of his age, experience, training and education, he is unable to perform any but the most menial tasks, for which no stable market exists.

Based on the above, the arbitrator finds the burden of proof shen shifts to respondent to establish that petitioner is capable of engaging in some type of regular and continuous employment and that such employment is reasonably available. The arbitrator finds that since respondent has offered no evidence since 7/11/22 to show that petitioner was capable of engaging in some type of regular and continuous employment and that such employment is reasonably available to petitioner, the arbitrator finds the respondent has failed to meet this burden.

The arbitrator finds it significant that despite the opinion of its own expert Patsavas on 10/7/21 that there existed no viable and stable labor market for petitioner, petitioner still took part in job placement vocational rehabilitation services with Patsavas through 7/11/22, at the request of the respondent. Despite the fact that petitioner provided a full effort during this time, and followed-up on all the job leads Patsavas gave him, on 7/11/22 Patsavas could not find a part time or full time job for petitioner in a 50 mile radius from his home. At that time, Patsavas again expressed concern about continuing job placement activities with petitioner, and abandoned any further job placement activities at that time.

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 is permanently totally disabled pursuant to Section 8(f) of the Act, under the "odd-lot" analysis.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC007348
Case Name	Angelique Jones v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0106
Number of Pages of Decision	10
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Martha Niles
Respondent Attorney	Elizabeth Meyer

DATE FILED: 3/7/2024

/s/Carolyn Doherty, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANGELIQUE JONES,

Petitioner,

vs. NO: 17 WC 7348

CHICAGO TRANSIT AUTHORITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of evidentiary rulings, causal connection, medical expenses, 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 modifies the Decision of the Arbitrator on the issue of causal connection. The record establishes that Petitioner had some condition of ill-being following the work accident. On February 20, 2017, Petitioner saw Dr. Scott Martin, D.O., who diagnosed a lumbar sprain and a right knee sprain. Petitioner was released Petitioner to modified work duty and in fact returned to light duty work. On February 22, 2017, Petitioner reported spasms from her back into her posterior thigh while at work, adding that she was walking and climbing stairs a lot as part of her light duty. Dr. Martin slightly modified Petitioner's work restrictions that day. Thereafter, the record contains only a February 23, 2017, referral for a lumbar MRI (absent the MRI record itself) and an October 11, 2017, bill indicating Petitioner received anesthesia through Windy City Anesthesia in connection with a lumbar injection performed by Dr. Neeraj Jain (with no record of the injection itself). Accordingly, the Commission finds that the record fails to include the treatment records which would allow the Commission to determine whether Petitioner's condition of ill-being continued after February 22, 2017. "Liability for workers' compensation cannot rest on imagination, speculation or conjecture, but must be based solely upon the facts contained in the record." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.

2d 52, 61 (1989). Accordingly, the Commission concludes that Petitioner failed to prove that a causal connection between her accident and her lumbar sprain and right knee sprain extended beyond February 22, 2017.

The Commission's finding regarding causal connection requires a modification of the Decision of the Arbitrator regarding the issue of medical expenses. The Commission awards Petitioner's reasonable and necessary medical expenses for her treatment by Little Company of Mary Hospital and Concentra for her lumbar sprain and right knee sprain through February 22, 2017. Respondent shall be entitled to a credit for medical expenses already paid.

The Commission's finding regarding causal connection does not require a modification of the Decision of the Arbitrator to deny temporary total disability. However, the Commission notes that Petitioner is not entitled to any temporary total disability based on the fact that she suffered an accident on February 18, 2017, but had returned to light duty work no later than February 21, 2017. Petitioner's period of temporary total incapacity for work did not last more than three working days and therefore no temporary total disability benefits are due to be paid. 820 ILCS 305/8(b) (West 2016).

The Commission's finding regarding causal connection requires a modification of the Decision of the Arbitrator regarding the issue of permanent partial disability (PPD). In awarding PPD benefits, the Commission considers the following factors: (i) the level of impairment contained within a permanent partial disability impairment report; (ii) the claimant's occupation; (iii) the claimant's age at the time of injury; (iv) the claimant's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. See 820 ILCS 305/8.1b(b) (West 2016). However, "[n]o single enumerated factor shall be the sole determinant of disability." *Id.* § 305/8.1b(b)(v).

The Commission places no weight on factor (i), as neither party submitted an impairment report. The Commission places lesser weight on factor (ii), Petitioner's occupation as a bus operator, as Petitioner has returned to her job, while acknowledging that the nature of the employment may place some continued stress on Petitioner's lumbar spine and right knee. The Commission places greater weight on factor (iii), Petitioner's age, as a 49-year-old may be expected to have over a decade of work life remaining before retirement. The Commission places no weight on factor (iv), Petitioner's future earning capacity, as Petitioner testified to no change in her income earning capacity. Lastly, the Commission places significant weight on factor (v), the evidence of disability corroborated by the treating medical records. Although scant, the records submitted corroborate Petitioner's testimony that she sustained injury to her lumbar spine and right knee, that she received minimal treatment for those conditions through February 22, 2017, that she generally recovered from those injuries with minimal residual disability and that she returned to work. Given this record, the Commission awards Petitioner PPD benefits representing a 2% loss of use of the right leg and a 1% loss of use of the person as a whole.

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 July 25, 2023, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner for reasonable and necessary medical services in the amount of $3,444.24 for treatment by Little Company of Mary Hospital on February 18, 2017, and $777.80 for treatment by Concentra through February 22, 2017, pursuant to the fee schedule and as provided in Sections 8(a) and 8.2 of the Act. Respondent shall have a credit for amounts already paid pursuant to Section 8(j) and Respondent will hold Petitioner's harmless for such payments as agreed to by the parties on the record.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $589.94 per week for 5 weeks representing a 1% loss of the person as a whole for the lumbar spine injury under Section 8(d)(2) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $589.94 per week for 4.3 weeks representing a 2% loss of use for the right leg for the knee injury under Section 8(e) of the Act.

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.

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 Circuit Court.

March 7, 2024

o: 2/15/24
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	17WC007348
Case Name	Angelique Jones v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Martha Niles
Respondent Attorney	Elizabeth Meyer

DATE FILED: 7/25/2023

/s/Jeffrey Huebsch, Arbitrator

Signature

INTEREST RATE THE WEEK OF JULY 25, 2023 5.27%

A Jones v. CTA, 17 WC 007348

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

Angelique Jones
Employee/Petitioner

Case # **17** WC **007348**

v.

Chicago Transit Authority
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **November 29, 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 **2/18/2017**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**51,127.96**; the average weekly wage was $**983.23**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **0** dependent children.

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

Respondent ***has*** paid all reasonable and necessary medical expenses.

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.

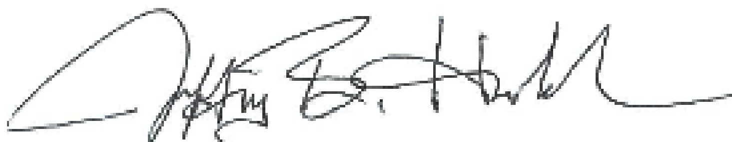
ORDER

No Benefits are awarded based upon the Arbitrator's finding on the issue of causation and for the reasons set forth below regarding TTD and medical expenses.

Respondent shall pay Petitioner the compensation benefits that have accrued from 2/18/2017 through 11/29/2022 in a lump sum, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

JULY 25, 2023

STATEMENT OF FACTS

This matter was tried with four companion cases (14 WC 013956, 15 WC 036195, 20 WC 003826 and 20 WC 027092).

Petitioner's oral motion to amend the application for adjustment of claim herein to change the claimed accident date to February 18, 2017 was granted at trial.

Petitioner was employed by Respondent as a bus operator, having been hired in January of 2000.

Petitioner testified that on February 18, 2017 she was driving a bus for Respondent on the Halsted route. She was at a service stop and her bus was hit by a green pick-up truck. The truck hit the bus from the back up to the middle and continued on. (T. 35) Petitioner testified that she was in the driver's seat and was jerked by the impact. Her head was flexed and her chin was pushed against her breastbone. Petitioner testified that she experienced pain in her right shoulder, neck and right waist/hip area. (Tr. 37-38)

Respondent submitted video of Petitioner's accident as RX 1. The Arbitrator believes that there was an impact and Petitioner was moved by the impact of the accident. This was not a heavy impact, but some force was applied to Petitioner. (RX 1)

Respondent stipulated to notice. Petitioner called control and requested an ambulance. Petitioner was taken by ambulance to Little Company of Mary Hospital, where she was treated in the emergency room for neck pain, right leg and knee and hip pain. The CFD ambulance report does state that damage to the bus was observed. (PX 10)

Petitioner testified that she had follow-up care with Dr. Jain at Premier Healthcare, consisting of epidurals and PT. The Arbitrator notes that no records from Premier were submitted into evidence, although PX 14 was records from Windy City Anesthesia for a Lumbar TFL injection on 10/11/2017 and PX 8 shows an order for a Lumbar MRI, dated 2/23/2017.

Petitioner received follow-up care at Concentra, beginning on February 20, 2017. PT was ordered. It appears that the last Concentra treatment was 2/22/2017 and the diagnosis was lumbar sprain and right knee sprain. Concentra placed Petitioner on restricted duty, including no driving of company vehicles. (PX 2)

Petitioner claimed TTD from 2/19/2017 through 11/12/2017. She testified that she returned to work in late 2017. She returned to work as a bus operator and was able to do her job. She made a full recovery form her injuries and had no problems at home or at work related to the 2/18/2017 accident. She thought that the treatment that she received helped her.

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 her claim O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between her 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)

WITH RESPECT TO 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 her employment by Respondent on February 18, 2017.

This finding is based on the testimony of Petitioner and the records of Little Company of Mary Hospital and Concentra.

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

The records of Premier Healthcare and Dr. Jain were not submitted into evidence. The only post accident medical records adduced is the ER visit at Little Company of Mary and two days of treatment at Concentra.

Given the dearth of medical records regarding treatment for alleged injuries related to the February 18, 2017 work accident, the Arbitrator finds that Petitioner failed to prove a causal connection between the said work accident and any current condition of ill-being that she has.

WITH RESPECT TO ISSUE (G), WAGES, THE ARBITRATOR FINDS:

Petitioner claimed an AWW of $1,441.60. Respondent claimed that the AWW was $983.23. RX 6 was a wage audit for this case. Petitioner submitted no evidence on the issue of wages.

The AWW is $982.23. Walker v. Industrial Comm'n, 345 Ill. App. 3d 1084 (2004)

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

Petitioner's Bills Exhibit was PX 17. The Parties agreed that Respondent would be entitled to a §8(j) credit for awarded bills that were paid by its group carrier and would also, therefore have §8(j) hold harmless obligations to Petitioner regarding same.

There do not appear to be any unpaid bills related to treatment for the 2/18/2017 accident included in PX 17. Additionally, there are no supporting medical records for any treatment beyond Little Company of Mary Hospital and Concentra. Accordingly, no bills are awarded.

WITH RESPECT TO ISSUE (K), WHAT TTD BENEFITS ARE OWEDS?, THE ARBITRATOR FINDS:

Based upon the Arbitrator's finding above on the issue of causation and the absence of supporting medical records and off-work documentation, Petitioner's claim for TTD is denied.

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

Based upon the Arbitrator's finding above regarding the issue of causation, no PPD benefits are awarded.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC012387
Case Name	Melinda Tarver v. Sage Hospitality
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0107
Number of Pages of Decision	28
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Michael Casey
Respondent Attorney	Nicholas Rubino

DATE FILED: 3/8/2024

/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

MELINDA TARVER,

Petitioner,

vs. NO: 18 WC 12387

SAGE HOSPITALITY,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission corrects a scrivener's error in the Arbitrator's Decision, on page three, paragraph two, first sentence, and strikes "medical" and replaces it with "medial."

The Commission corrects a scrivener's error in the Arbitrator's Decision, on page three, paragraph three, second sentence, and strikes "email" and replaces it with "female."

The Commission corrects a scrivener's error in the Arbitrator's Decision, on page four, paragraph one, line ten, and strikes "havoc" and replaces it with "having."

The Commission corrects a scrivener's error in the Arbitrator's Decision, on page five, paragraph four, line four, and strikes "T6 57" and replaces it with "T6-T7."

The Commission corrects a scrivener's error in the Arbitrator's Decision, on page fourteen, line seven, and strikes "1/5/12" and replaces it with "1/5/18."

The Commission modifies the Arbitrator's Decision, under Conclusions of Law, on page twenty-one, Issue L, Factor (ii), to state that "Petitioner is currently working a desk job and has no permanent restrictions." Based on this, the Commission strikes "greater weight" and assigns the factor "moderate weight."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 12, 2023, is otherwise, 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.

March 8, 2024

o-2/20/24
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC012387
Case Name	Melinda Tarver v. Sage Hospitality
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Michael Casey
Respondent Attorney	Nicholas Rubino

DATE FILED: 5/12/2023

THE INTEREST RATE FOR THE WEEK OF MAY 9, 2023 4.89%

/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

Melinda Tarver
Employee/Petitioner
v.
Sage Hospitality
Employer/Respondent

Case # **18** WC **12387**

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 **May 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 **January 2, 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 $**N/A**; the average weekly wage was $**664.80**.

On the date of accident, Petitioner was **48** 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 $**4,571.42** for TTD, $**0** for TPD, $**0** for maintenance, and $**5,952.75** for other benefits, for a total credit of $**10,524.17**.

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

ORDER

The Arbitrator finds Petitioner's condition of ill-being is causally related to her work-accident on 1/2/18.

Respondent shall pay reasonable, necessary, and related medical services pursuant to the fee schedule, as provided in Sections 8(a) and 8.2 of the Act. See attached Rider to the Decision which lists the awarded medical bills. Respondent shall be given a credit for any payments made towards these same medical services awarded.

Respondent shall pay Petitioner permanent partial disability benefits of $398.88/week for 75 weeks, because the injuries sustained caused the 15 % loss of the person as a whole for the lumbar spine and thoracic spine injuries, as provided in Section 8(d)2 of the Act.

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

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

Signature of Arbitrator

MAY 12, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

MELINDA TARVER,)
)
Petitioner,)
)
v.) Case No.: 18 WC 012387
)
SAGE HOSPITALITY,)
)
Respondent.)

RIDER TO DECISION

This matter proceeded to hearing on May 20, 2022 in Chicago, Illinois before Arbitrator Jacqueline Hickey on Petitioner's Request for Hearing. Issues in dispute include causal connection, medical bills and nature & extent. Arbitrator's Exhibit "Ax" 1.

FINDINGS OF FACT

Job Duties

Petitioner testified that she was an employee of respondent, Sage Hospitality, at a Starbucks franchise in the Blackstone Hotel, on the date of accident. She started work with respondent in November 2012. Prior to her working with respondent, she worked for Starbucks Corporate, starting there in 2002. She worked for respondent as a barista/shift lead. Her job duties were to serve customers, make drinks, run her shift with various staff. She worked 5 days a week, 40 hours per week.

Prior Medical Condition and Prior Accidents

Prior to her reported 1/2/18 work-accident, Petitioner testified she was involved in a motor vehicle accident as of March 13, 2015 that injured her neck, lumbar spine and mid to upper back (T. 33). Petitioner acknowledged her accident from March 13, 2015, necessitated an MRI to both her thoracic and lumbar spines. (T. 35). Petitioner stated she sought medical leave for her injuries (T. 35). Petitioner testified as a result of that accident she suffered a spine herniation. (T. 36).

Petitioner then also testified she sustained another work injury while working for Sage Hospitality in 2016. (T. 33). Petitioner was unsure if the accident was December 10, 2015. (T. 38). The Arbitrator finds the corresponding paperwork admitted into evidence confirms a December 10, 2015 work accident. Petitioner agreed she again injured her thoracic and lumbar spine. (T. 38). Petitioner again completed FMLA paperwork and missed two to three months from work. (T. 39). Petitioner was on light duty work restrictions for another two to three months thereafter. (T. 39). Petitioner returned to work in mid-to-late 2016. (T. 39).

Petitioner also testified she missed another four to five months of work, May through August 2016, for unrelated health conditions. (T. 40). Petitioner she had returned to work in a full duty capacity prior to the work-accident alleged in this cause of action. (T. 40). Petitioner testified as a result of this condition, she only missed work from January 3, 2018 until March 26, 2018. (T. 40).

Accident

Petitioner testified the day before January 2, 2018, she was "doing some deep cleaning," then the next day, she was "pulling stuff off the shelve and putting it in the sanitizer tray." (T. 15). She added, "then I went to go pick all the stuff up, and I just felt an extremely sharp pain in my back." (T. 15). Petitioner testified the pain was along her bra line at the middle of her back. (T. 16). Petitioner reported the event a few hours after the onset of her pain. (T. 17).

During cross examination, the Petitioner testified the sanitizer tray weighed eight to ten pounds. (T. 45). Petitioner testified five pumps were on the tray. (T. 45). She testified the pumps weighed three to four pounds each. (T. 45-46). Petitioner testified the sanitizer was on the floor and maybe two to three feet tall. (T. 46). Petitioner testified the tray sat maybe seven inches off the ground. (T. 46). Petitioner bent over at her waist to grab the sanitizer. (T. 47). Petitioner testified the pain started when she came back up from picking up the sanitizer. (T. 47).

Petitioner testified she provided this same history of accident to Concentra Occupational Health (T. 48); her chiropractor Dr. Shamsu Raheem at ES3 Fitness Rehab (T. 48); Dr. Jain (T. 49), Northwestern Memorial Hospital (T. 49), and Dr. Anwar (T. 49).

Summary of Medical Records

Petitioner testified that she was sent to Concentra on the date of accident complaining of an injury to her mid-back at work, as a result of bending and lifting. On January 5, 2018 she started treating with ES3 and Dr. Shamsu Raheem, D.C. and treated with him through April 5, 2018. At the various visits, Chiropractic manipulation was administered. Diagnoses were radiculopathy, lumbar region, strain of back wall of thorax, strain of lower back, strain of pelvis, segment and somatic dysfunction of thoracic, lumbar and sacral regions. Muscle wasting and atrophy multiple sites was noted, as well as contracture of muscle, muscle spasm of back. PX 2, p 48-50, 51-146.

Petitioner testified she consulted Dr. Neeraj Jain MD of Pinnacle Pain Management on January 8, 2018. Dr. Jain reported the following: she has pain at the mid thoracic area with palpation hypertonicity in the thoracoparaspinsous muscles, pain increases with thoracic extension. She has severe hypertonicity going on the right than the left in the mid and lower lumbosacral area. Patient has significant hypersensitivity associated with palpation, possibly very limited in extension 15 to 20° on mid flexion. Straight leg raise reproduce hamstring tightness. There is no gross lower extremity motor or sensory deficits. Reflexes are normal. Range of motion of the hips and knees is maintained. Recommendation: the patient has severe recalcitrant pain. PX3. Petitioner testified she thought she had told Dr. Jain on January 8, 2018, that she injured bending down to pick up dishes out of a sanitizer. T 54. Dr. Jain ordered a lumbar MRI to delineate the nature of the internal derangement.

On 1/10/18 Bright Light Imaging records, admitted in evidence as Petitioner Exhibit 4, document MRI lumbar spine ordered by Dr. Jain with impression: mild multilevel lumbar spondylosis

without significant spinal canal or foraminal stenosis; no impinging sequela of recent trauma. PX 4, p 5.

On January 26, 2018, Dr. Jain documents he reviewed the prior MRI in comparison to the MRI he ordered which showed changes in the spine when compared. The doctor diagnoses Petitioner with having lumbar facet syndrome, lumbar discogenic pain and thoracic strain. Px3. He orders a LSO brace, tens unit and a series of facet injections. Petitioner undergoes bilateral L4-5 and L5-S1 facet injections on 1/31/18.

Petitioner underwent bilateral L3-4 and L4-5 medical branch block injections on March 7, 2018 and March 14, 2018 with Dr. Jain. She underwent left L3, L4, and L5 medical branch radiofrequency ablation on April 4, 2018

On 4/24/18 Petitioner went to Northwestern Memorial emergency department. Records show: Melinda Tarver is a 48-year-old email with a history of chronic back pain and asthma presents with back pain. The location of the pain is the mid upper back. Diagnosis: Acute chronic mid back pain. PX 6, p 12. Petitioner testified that she did not make complaints at Northwestern Memorial Emergency Department regarding her foot but only regarding her upper mid back. She did not file a Worker's Compensation claim for the scratch she had on her foot. T 26-27. Petitioner testified she notified Loss Prevention of Starbucks in order to get first aid for the scratch on her foot. T 27-28.

Petitioner testified she then presented to Dr. Zaki Anwar/Pain Management Institute on June 21, 2018. (T. 28). Petitioner testified she informed Dr. Anwar on June 21 of 2018, that she was cleaning up the dishwasher while picking up some metal instruments and she felt a stabbing pain in her back she thought was the same as picking stuff up out of the sanitizer. T 54. The PMI records document injuries to her middle back and lower back on 1/2/18 cleaning up the dishwasher and while she was picking up some metal instruments felt a stabbing pain in the upper part of the back as well as lower back; states she worked for a few hours and then went to Concentra urgent care where she was given Tylenol and was treated in physical therapy sessions were recommended; patient underwent 2 physical therapy session; stated that she continued to have problems and she took time off work; continue to have issues of burning aching and stabbing pain in her upper middle back as well as low back pain; not feeling better with limited amount of therapy went to see a chiropractor who had treated her in the past; she was treated for lower back and was referred to Dr. Jain pain management physician who ordered an MRI of the diagnosis of facet joint injection and aspiration of the facet joints; she stated that he was recommended a middle back brace by Dr. Jain; stated she felt really good after the facet joint injection which was done by Dr. Jain continue to have aggravation of pain in the middle part of the back and Dr. Jain did not recommend anything regarding her middle back and she was sent to us for further recommendations; has noticed upper back pain getting worse with time; reported she had a history of upper middle back pain in an auto accident in 2015 when she was treated with physical therapy, medications and she did well. Also said she had MRI done at that time which showed patient had T8-9 and T9-10 disc bulging. Physical examination: lumbar spine mild paravertebral spasms in the lower lumbar spine, facet loading is positive in the lower lumbar spine, straight leg raise is negative in lower extremities, no sensorimotor deficit noted, reflexes are 2+ positive,. Thoracic spine exam: tenderness on palpation

of the middle thoracic spine between T7 and T10, paraspinal spasms and tightness noted in the middle thoracic spine, mild facet loading is positive in the thoracic spine between T7-T10. PX7.

Dr. Anwar assessment and recommendations: 1. Axial low back pain with no radicular symptoms; 2. Lumbar facet joint effusions with aggravation of low back pain the recent work related injury and patient was treated lumbar facet joint injections and aspiration of the facet joint by Dr. Jain; 3. Mid thoracic back pain which is getting worse since the work injury and has not been treated; patient stated that she had requested several times with treating pain management physician about her middle back and there was never given a satisfying answer; 4. Excellent relief with the facet joint injections and relief of low back pain; 5. History of previous auto accident injury 2015 with thoracic disc bulging at T8-T9 and T9-T10 patient was treated with physical therapy and indication and MRI was recommended at that time in the patient did well without any treatments; 6. Thoracic spine MRI April 6, 2015 showed patient havoc disc bulging at T8-9 T9-T10 levels; 7. MRI lumbar spine April 6, 2015 showed patient have unremarkable spine; 8. Recent shoulder dated 1/10/18 lumbar spondylosis, trace facet infusions on the L4-L5 and L5-S1 and left L5-S1 is seen; 9. Patient is currently using tramadol up to 4 tablets a day and Flexeril of 2 tablets per day with no significant benefit of pain; 10. Patient has underwent physical therapy with the chiropractor but failed to show any response to the treatment; 11. Thoracic spine MRI without contrast is recommended for comparison with the old MRI; 12. Probability of aggravation of middle thoracic spine with the current work related injury and needs further recommendations; 13. Patient is aware that urine drug screens will be ordered on every visit so as to continue monitoring the patient compliance during the active treatment chronic pain condition and to confirm the adherence to the treatment plan; 14. Discussed with patient and include but not limited to the risk of headaches, infection, neurologic damage, paralysis and death; 15. Risk of repeat steroid demonstration, the risks and benefits of repeat depot, steroid administration including but not limited to osteoporosis, avascular necrosis, immunosuppression, cataract formation, glaucoma, and Cushing syndrome was discussed with the patient; 16. Blood thinners and intravenous treatment, the risks of intervention treatment explained. PX 7, p 89-90.

On 6/27/18 Preferred Open MRI records document MRI of the thoracic spine. Comparison 2015. Referring physician Dr. Zaki Anwar, MRI thoracic spine without contrast. Impression: 1. T5-6 and T6-7 disc bulge since the previous exam; 2. Chronic bulging of the T7-8 and T9 discs; 3. Chronic minor compression fracture T4. PX 8, p 3-4.

In July 2018, Dr. Anwar noted that subjective findings were consistent with objective findings based on the recent MRI. On 7/25/18 Dr. Zaki Anwar provided a thoracic epidural steroid injection under fluoroscopy. PX 7, p 3. PX 7, p 80-81. On 8/15/18 Dr. Zaki Anwar provided another thoracic epidural steroid injection under fluoroscopy. PX 7, p 3. PX 7, p 80-81.

On 8/27/18 Dr. Anwar saw petitioner again and noted Patient stating greater than 50% reduction in symptoms of pain and improvement in functions. Patient reported improvement in activity level as well as quality of life. Based on patient's subjective and objective findings of T4 compression fracture recommendation is to proceed with T4 kyphoplasty. Patient understands risks and benefits of the procedure signed and consented. Patient stated she is having also complains of low back pain with noticeable radiating pain to the right leg. She has noticed gradual deterioration in the right side of her leg over time. She has received some facet joint injection Dr. Jain. Examination:

lumbar spine, thoracic spine T4 dermatomal pain and pain across the bra line. Based on patient's right-sided low back pain with radiating pain to right lower extremity and excellent response with the previous L4-5 and L5-S1 lumbar facet joint/medial branch block treatments I recommended another treatment for the patient, I have a detailed discussion with the patient about possibility of moving forward with radiofrequency ablation therapy in future since she had significant relief with the diagnostic and therapeutic treatment of the lumbar facet joints which were done by Dr. Jain, patient does understand the risk and benefits of treatment and would like to proceed with the treatment. PX 7, p 80-81.

Ultimately on 9/12/18, Petitioner underwent a T4 kyphoplasty, followed by injections to her thoracic spine. PX7. Petitioner testified that after the series of injections and after the T-4 kyphoplasty, she did have relief of her pain in her mid-back. T 29. Petitioner continued to follow up with Dr. Anwar from 9/24/18 through August 23, 2019. On 1/16/19 and 2/6/19, Dr. Anwar performed thoracic epidural injections to Petitioner. PX7 p 47-49.

On 2/18/19 Pain Management Institute/Dr. Zaki Anwar MD, records document: patient is here today and reporting 60% relief in stiffness and pain in the mid thoracic area after her last thoracic epidural treatment; patient works 5-6 days with our last work restriction; she was having trouble at work as they are not happy with the restriction, patient is currently off now. History physical examination same. Assessment: 1-28 same as prior note. 29. Patient reported that her job description requires to lift case of milk from gallon of milk up to 75 pounds which is her job description, even lifting 1 gallon of milk repeatedly worsens pain. PX 7, p 47-49.

On 3/25/19 Pain Management Institute/Dr. Zaki Anwar MD, records document the following. She has noticed some stiffness and pain in the mid thoracic spine area; she stated that she does not have severe pain like she used to have, benefit with the treatment; stated that she is not working on her existing job which she did in the past it involves lifting; she is currently working as a uber driver. History physical examination same. Assessment: 1-28 same as prior note; 29. Patient is taking Norco 5/325 mg only on an as needed basis she is recommended to take one pill for acute flareups once a day; 30. Follow-up in one month is recommended. PX 7, p 43-45.

On 5/24/19 Pain Management Institute/Dr. Zaki Anwar MD, records document: examination history identical as before. Assessment: 1 through 15, same as prior note. Plan: 1. Pain in thoracic spine 2. Low back pain lab 3. Long-term prescription opiate use lab. 4. Thoracic transforaminal injection of fluoroscopy at T5-T6 and T6 57 level is recommended on an as-needed basis to alleviate the pain in the upper mid back area and chest wall pain; 2. Patient to continue taking Norco 5/323 mg tablets on a daily basis only for flareups. 3. Patient reported that her job description requires lifting cases of milk from the up to 75 pounds. Lifting one-year-old male repeatedly worsens pain. Patient is currently working as a uber driver, 4-5 hours a day. PX 7, p8-10.

On 8/23/19 Pain Management Institute/Dr. Zaki Anwar MD, follow-up. She is not complaining of intractable pain in the chest wall at the present time she continued good benefit from the previous epidural treatment which was done in the past. Assessment: 1. Pain thoracic spine; 2. Low back pain; 3. Long-term prescription opiate use; 4. Off spondylosis radiculopathy lumbar region; 5. Wedge compression fracture 4th 6. Thoracic radiculopathy due to trauma; 48-year-old female with working diagnosis of axial low back pain with no radicular symptoms; 2. Lumbar facet joint

effusion aggravation of low back pain after recent work related injury one through 11 same. 12. Patient injuries to the mid thoracic spine which is symptomatic as well as lumbar facet joint pain are all possibly related to work related injuries dated 1/2/18 while she was working at Starbucks. 13. Patient lumbar spine pain is related to meta-facet joint L4-5 and L5-S1 level due to facet joint effusion which cause aggravation of pain in her lower back and was treated with facet joint injection under fluoroscopy by Dr. Jain; 14. Based on patient lumbar spine injuries she has a high risk of facet joint arthritis in the future and may need further treatments with lumbar facet joint injections in the future. 15. Based on the patient mid thoracic disc displacement at T5-T6 and T6-T7 level, patient is high risk of developing thoracic arthritis and thoracic degenerative disc disease. Plan: 1. thoracic transforaminal injection of fluoroscopy at T5-T6 and T6-T7 level is recommended on an as-needed basis to alleviate the pain in the upper mid back area and chest wall area. 2. Patient to continue taking Norco 5/2 325 mg tablets on a daily basis as needed only for flareups once a day. Patient reported that her job description requires to lift case of milk from the up to 75 pounds. Lifting one-year-old male repeatedly worsens pain. Patient stated she is not working on her existing job which she had involved repeatedly lifting. Patient is currently working as an Uber driver 4 to 6 hours per day. PX 7, p5-6.

Petitioner testified she has not sought any medical treatment to her low back or thoracic spine since her last appointment with Dr. Anwar on August 23, 20219. (T. 29). As of the last visit, Petitioner was still taking Norco 5/2 325mg tablets, once per day as needed for flare ups. Petitioner has no pending medical appointments as of the date of trial. (T. 63).

Petitioner's Current Condition

Petitioner testified that after the last appointment she still takes medication "from time to time." (T. 31). Petitioner reported she still gets backaches at the top of her back with certain activities. (T. 30-31).

Petitioner testified she has returned to work in a full duty capacity. Petitioner testified as of the date of hearing that she now cannot stand as long as she used to, especially if she is doing a lot of activities with her hands by preparing dinner or such. She will have to take a break because she gets back aches in the area around her bra strap at the top of her back. T. 30-31. Petitioner now works for Knight-Swift Transportation as a trailer planner without any restrictions. (T. 31-32). Petitioner worked at that job for approximately six months at the time of trial. (T. 32). Petitioner classified the work as a desk job. (T. 32). However, in her new job, she testified she sits a lot so there are times when she has to put the TENS unit in order to be able to go through the day. T. 31. She takes medication from time to time in order to tolerate the pain. There are times when there is a lull in the pain and times when it is excruciating. T. 31. She essentially locates vehicle to be picked up by carriers to be delivered to locations and she tracks for those vehicles are. She is been in that job a little over 6 months. She testified she was terminated by Sage hospitality in March 2019. T 31-32.

Petitioner also testified she began working for Uber prior to last date of treatment (T. 64). Petitioner testified she was working on and off through the time frame of January 2018 through June 2018. (T. 64). Petitioner admitted she drove at her will and drove however long the Uber route required at the time. (T. 65). Petitioner testified she also worked an office job shortly after she left her

Employment with Respondent. (T. 66). Petitioner worked for SMS Assist. (T. 66). Petitioner testified this was a desk job as well. (T. 67). Petitioner was working full duty, without any restrictions. (T. 67). Petitioner does not currently have any work restrictions. (T. 69).

Treating Physician – Dr. Zaki Anwar
Dr. Anwar testified by way of evidence deposition testimony. (Petitioner's Exhibit 9). Dr. Anwar is a board-certified pain management physician. (PX9, p. 8). Dr. Anwar did not begin treatment of the Petitioner until June 28, 2018 (PX9, p. 8). Dr. Anwar testified Petitioner reported middle back and lower back injuries from January 2, 2018, while working at Starbuck's (which is part of Sage Hospitality). (PX9, p. 10). Petitioner reported she was cleaning up the dishwasher, and while she was picking up some metal instrument, she felt snapping-like pain in her back. (PX10, p. 10). Dr. Anwar testified Petitioner treated for lower back pain with Dr. Jain, and felt "really good" after the facet injections performed by Dr. Jain. (PX9, p. 11). Dr. Anwar testified Petitioner's upper back pain had worsened with time. (PX9, p. 11). Dr. Anwar testified Petitioner admitted to a history of an upper middle back injury in an auto accident in 2015, which also showed Petitioner had a T8-9 and T9-10 disc bulge. (PX9, p. 12).

Dr. Anwar testified Petitioner underwent an MRI on June 27, 2018, which he reviewed. The MRI showed petitioner had disc displacement at T5-6 and T6-7 level. The patient also has compression deformity with anterior wedging at T4. Findings on the MRI as chronic compression fracture T4, T5-T6 and T6-T7 bulging discs and chronic bulging at T7-T8 and T9 discs. Based on the history and the MRI and patient's mid thoracic pain the pain she's experiencing her bra line around the trust wall area was consistent with compression fracture. PX 9, p 19-20. There was a bulging disc below the fracture site at T5-6 and T6-7, which is a new injury. These discs were never displaced are bulging as they are shown 2015. This is a new onset of pain the patient is experiencing and is causally related with the recent trauma. He testified that she was never treated for thoracic pain in the past, she was not complaining of any pain, she was working at that time and then could not work and had to take time off at that point. He also stated she looked like she was in pain and she has been treated for the low back but it looks like the upper middle back was also causally related in addition to the lower back with the recent trauma she had. The recent trauma was the injury she had while working at Starbucks. PX 9, p 20.

The doctor then testified that epidural treatment of the thoracic spine was recommended at T5-6 and T6-7. PX 9, p 24. Transforaminal epidural injection of under fluoroscopy at T5-6 and T6-7 area was recommended bilaterally. PX 9, p 24. The patient had a thoracic compression fracture at T4 and possibly need the kyphoplasty as the patient complaint of pain around the bra line assistant with her T4 dermatome and is related to the compression fractures which she suffered during her work, so these 2 treatment options were recommended. PX 9, p 24-25. On the next visit of July 19, 2018 there was nothing that changed his opinions. PX 9, p 26. Petitioner received injection on July 25 and August 15 and after those injection she felt relief. PX 9, p 26. The significance of her getting benefit from those injections what she had almost 50% benefit. PX 9, p 27. She had significant pain in her mid-back and it is better to treat the fracture when you're pain is controlled. It was decided to proceed with the kyphoplasty. PX 9, p 28. A kyphoplasty is a procedure done under anesthesia in which a cement mixture is injected into the vertebrae which has the compression deformity. If the compression fracture is not treated, the discs below and above the compression fracture sites will get worse in the future. PX 9, p 29. Attempt was made to get the

patient's pain level down from her disc displacement before the kyphoplasty. The kyphoplasty was performed on September 12, 2018. PX 9, p 29. She did well after the kyphoplasty. PX 9, p 29-30.

Dr. Anwar testified that there are different kinds of compression fractures. They are normally seen in trauma. They are seen in patients with weaker spines for any reason. This patient did have a previous degenerative disc condition. This kind of pain which she was experiencing in her chest wall and bra area seems to be related with the acute fracture. We treat the acute fracture but she's also experiencing pain around the discs which were displaced so we decided that were going to treat the fracture. PX 9, p 30. He stated that petitioner had a one level compression fracture, not a multiple level fracture. (PX9, p. 31). Dr. Anwar testified that multiple-level compression fractures on patients who are aging and have osteoporosis, but a single fracture is usually seen in much younger patients from traumatic injuries, such as an accident. (PX9, p. 31). Dr. Anwar testified Petitioner's compression fracture and the need for the kyphoplasty was causally related to the January 2, 2018, work accident. (PX9, p. 48).

The patient was next seen on September 24, 2018. She did very well. The pain she was experiencing in her bra line is not present. She does have some localized pain around the injection site. She had about 70% relief with the bra line pain. PX 9, p 34. There was no other recommendation for treatment at that point. PX 9, p 34. In follow-up visit she continued to report significant reduction in her pain after the kyphoplasty. PX 9, p 35. On November 9, 2018, she stated she had mid back pain which is gradually coming back across her bra line area she had felt the pain on one occasion. She said the pain was not as intense as before and is very localized. PX 9, p 36. She continued to have some mid thoracic pain on 11/9/18 and she was not at maximum improvement. PX 9, p 37. The IME report of Dr. Wellington Hsu dated March 23, 2018 was reviewed at that time. Report of Dr. Hsu did not recommend anything with regard to the compression injuries in the thoracic distal space. PX 9, p 37. Dr. Anwar did not treat the patients low back at all during the course of his treatment. PX 9, p 38.

The doctor testified that the patient was seen for follow-up on 11/29/18 and she was having some pain in the same mid thoracic area and therapeutic epidural treatment at the levels below the fracture site T5-6 and T6-7 were recommended. These injections were done prior to the kyphoplasty, and she had good benefit with injections for a few months. The fracture was already treated by the kyphoplasty, and the epidurals were to <u>help</u> her with the pain. T. 39. Those injections were performed on January 16, 2019, in February 6, 2019. PX 9, p 40. She had 60% relief in the mid thoracic area after those injections. PX 9, p 40-41. It is common for patients to have thoracic pain in the discs which were displaced in the past. PX 9, p 41. There were 2 different things that were being treated. One is the fracture to prevent long-term injuries. The other is the patient's acute pain which is causally related to her T5-6 and T6-7 disc displacements. PX 9, p 42. Once she got the diagnostic and therapeutic relief from 2 injections that was the best time for us to do the kyphoplasty and then continue to treat her. PX 9, p 42. The subsequent two treatments were for therapeutic purposes. These treatments were to treat the patient's pain which is related to the disc displacement. PX 9, p 42. That was treated on January 16 and February 6, 2019. PX 9, p 43. Dr. Anwar opined that the injections that were performed on January 16 and February 6 of 2019 were causally related to the work accident which she had described on her first visit.

Dr. Anwar opined that when the patient was injured, she had complaints of mid-thoracic pain. Initially subjective findings and objective findings were consistent with T5-T6 and T6-T7 disc displacement which were treated. She got therapeutic relief with those treatments. PX 9, p 43. On April 25, 2019, the patient stated that her chest wall and pain around the thoracic area is not intractable and intended to show benefit of the existing epidural treatment which was done. PX 9, p 44. The patient was taking Norco on an as-needed basis. PX 9, p 45. Work restrictions were ordered as reflected in the medical records. PX 9, p 47. As of August 23, 2019, the doctor's opinion that the work accident of January 2, 2018, at Starbucks was the cause of the condition and need for treatment of the thoracic spine and compression fracture had not changed. PX 9, p 47-48. The charges that the doctor made for the treatment identified in his records was for necessary treatment and was causally related to the work accident. PX 9, p 49.

On cross examination, Dr. Anwar testified he did not know how much weight Petitioner was lifting when she lifted up instruments. (PX9, p. 50; 51). Dr. Anwar further admitted she did not mention to him how much the instruments weighed. (PX9, p. 50). Dr. Anwar opined if Petitioner lifted something light, it could "potentially have not caused those types of pains, right?" (PX9, p. 51). Dr. Anwar agreed he only knew she was working with some metal instruments and a dishwasher (PX9, p. 52 - 53). In response to question whether it is possible for the patient to suffer wedge fracture and compression fracture under the circumstances that the patient described, Dr. Anwar testified that she had trauma, she felt pain and he was connecting the dots of the incident, pain she had, and that is the way it was diagnosed. PX 9, p 82. Dr. Anwar opined that a wedge fracture or compression fracture can happen while the patient is doing something like what this patient described. PX 9, p 83-84.

Petitioner's last date of treatment was August 23, 2019, and at that time he did not order any FCE, recommend any work capability testing, or provide any final work status report. (PX9, p. 77-78).

Independent Medical Examiner- Dr. Wellington Hsu

Dr. Hsu testified by way of evidence deposition testimony. (Respondent's Exhibit 5). Dr. Hsu is a board-certified orthopedic spine surgeon. (RX5, p. 6).

Overall, Dr. Hsu diagnoses Petitioner as having a lumbar strain and lumbar spondylosis which resolved as of March 19, 2018 exam. He believes she reached MMI as of the March 2018 exam. As of the November 2020 IME, Dr. Hsu diagnosed Petitioner with having thoracolumbar spondylosis, a resolved lumbar strain and was status post T4 kyphoplasty, which Petitioner reported that symptoms improved after the procedure. Dr. Hsu did not believe any of these diagnoses were related to the work incident of 1/2/18.

Dr. Hsu opined that Petitioner did not have any inconsistencies between objective findings and subjective complaints. (Rx4 P. 4) Dr. Hsu also opined that treatment through 3/19/18 was reasonable and necessary, as well as related to the work incident. Lastly, he stated that Petitioner required work restrictions of no heavy lifting over 50 lbs, and bending, crouching, or stooping on an occasional basis, which are secondary to her thoracolumbar spondylosis and not related to the 1/2/18 work incident. (Rx4 P. 5)

Dr. Hsu performed two Section 12 independent medical examinations, the first of which was March 23, 2018. (RX5, p. 12). At the time of the first examination, Petitioner complained of low back stiffness. (RX5, p. 13). Petitioner reported taking items out of a sanitizer weighing about five pounds, and that she was required to stoop, bend, and twist at the same time. (RX5, p. 14). After taking her history, reviewing the medical treatment records, and performing the physical examination, Dr. Hsu opined Petitioner suffered from a lumbar strain, which was a temporary soft tissue injury. (RX5, p. 17). Dr. Hsu did opine Petitioner's lumbar strain was causally related to the work injury of January 2, 2018. (RX5, p. 17). Dr. Hsu opined Petitioner also suffered from lumbar spondylosis, but that condition was a preexisting condition, not in any way related to trauma or Petitioner's January 2, 2018, work accident. (RX5, p. 18). Dr. Hsu opined this opinion was true both under the theory of direct causation and under the theory of aggravation, acceleration, and/or exacerbation. (RX5, p. 18-19). The low back stiffness, Petitioner complained of at the time of the examination was related to the preexisting lumbar spondylosis and not the lumbar strain. (RX5, p. 19). Dr. Hsu opined Petitioner's lumbar strain had resolved by the time of the evaluation, or March 23, 2018; likewise, she had reached maximum medical improvement as of same date. (RX5, p. 19-20). Dr. Hsu opined the medical treatment Petitioner incurred through March 19, 2018, had been reasonable, necessary, and related to the January 2, 2018, work accident. (RX5, p. 21).

Dr. Hsu re-evaluated Petitioner on October 28, 2020. (RX5, p. 22). Dr. Hsu had now reviewed the thoracic spine treatment records including the prior thoracic spine MRI and lumbar spine MRI. (RX5, p. 23-24). Dr. Hsu testified Petitioner never provided thoracic spine complaints during the first IME. (RX5, p. 24). Dr. Hsu testified Petitioner's post-accident MRI did reveal a "chronic minor compression fracture at T4 with minimal wedging and no evidence of acute signal abnormalities." (RX5, p. 25). However, the MRI report did not provide any indication of an acute fracture to the T4 level; there was no edema, or swelling, which would be associated with an acute fracture. (RX5, p. 26). Dr. Hsu opined Petitioner's history of accident did not describe any movement that would have impacted the thoracic spine. (RX5, p. 25).

Dr. Hsu opined his diagnosis remained a lumbar strain, as to work related diagnoses, but now believed Petitioner had thoracolumbar spondylosis and that Petitioner underwent a T4 kyphoplasty, which were unrelated to Petitioner's work accident from January 2, 2018. (RX5, p. 30). These opinions remained the same as it related to both direct causation and the theory of aggravation, acceleration, or exacerbation. (RX5, p. 31). Dr. Hsu opined the treatment incurred by Petitioner subsequent to his last IME report was not causally related to his work accident from January 2, 2018. (RX5, p. 32). He opined Petitioner did not necessitate any further medical treatment. (RX5, p. 33). He opined Petitioner did not necessitate any causally related work restrictions. (RX5, p. 33-34).

Finally, Dr. Hsu confirmed he provided an impairment rating on Petitioner. (RX5, p. 34-35). Dr. Hsu followed the AMA guides, Sixth Edition. (RX5, p. 34). Dr. Hsu provided an impairment rating of zero percent. (RX5, p. 35). Dr. Hsu explained that Petitioner did not suffer a structural injury to her lumbar spine, which lead to the impairment rating provided. (RX5, p. 35).

On cross-examination Dr. Hsu acknowledged that the day of accident treatment at Concentra document petitioner complaining of mid back pain which was diagnosed as acute thoracic myofascial strain and there was no indication in the record about complaint of lumbar pain. He

acknowledged that on the follow-up treatment at Concentra on January 4, she underwent physical therapy and notes indicate she was having mid back pain and there was no documentation of any complaints of low back pain. RX 5, p 38-39. Dr. Hsu acknowledged that in his report he notes that the first mention of low back pain is when she saw Dr. Jain on January 8, 2018 but at the same time she was seeing a chiropractor. He did not recall what body parts the chiropractor was treating. He stated, "they usually treat everything in the spine, cervical, thoracic, lumbar, regardless complaint." RX 5, p 40. He stated that in his practice if there is complaint of only one body part, he doesn't treat all body parts, but chiropractors typically are different. RX 5, p 40. If a patient complained only of thoracic spine Dr. Hsu would expect the chiropractor to additionally treat cervical and lumbar spine "because that's what they do." RX 5, p 41. They treat the entire spine for spinal related complaints. RX 5, p 41.

Dr. Hsu opined that the T4 kyphoplasty was not reasonable and necessary because she was not diagnosed with an acute fracture and kyphoplasty is indicated for an acute fracture that occurs within 4 to 6 months of the injury. RX 5, p 51-52. Dr. Hsu opined that the significant relief of symptoms petitioner reported to him after the kyphoplasty was performed could have been a placebo effect. RX 5, p 52. Dr. Hsu opined that the symptoms that the petitioner complained of to Dr. Anwar regarding the thoracic spine were genuine, but his best guess was that her symptoms were secondary to spondylosis which is in arthritis-related condition. RX 5, p 53. He had no information that the patient was suffering from these types of symptoms before the work accident. RX 5, p 53. He was not sure what caused or precipitated the symptoms that were addressed in the kyphoplasty to come out after the work accident. T 53-54. In the 2nd IME report, he noted that the patient does continue to have mid-back pain. RX 5, p 57. Dr. Hsu did not include the condition that caused petitioner to undergo the kyphoplasty in his impairment rating because he did not think it was related. RX 5, p 57. Dr. Hsu opined that kyphoplasty is not supposed to improve spondylosis of the thoracic spine. RX 5, p 61.

Lejla Suvalija- Respondent's director of human resources

Ms. Suvalija is the director of human resources for Respondent and has been for almost seven years. (T. 72). As part of her job duties, she oversaw Workers' Compensation claims filed against Sage Hospitality. (T. 72). She was familiar with the claims filed by Petitioner. (T. 73). Ms. Suvalija testified Respondent did not have a policy to bring injured employees to Northwestern Memorial Hospital. (T. 75). It is also optional for employees to go to Concentra. (T. 76). Employees have the ability to choose where they seek treatment. (T. 76). If there is concern over an employee's general health, which Ms. Suvalija called "reasonable suspicion," then an employee may be taken to Concentra, but could also seek their own treatment and medical release. (T. 77-78).

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).

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).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. None of the physicians who treated or examined her noted any symptom magnification that the Arbitrator read.

Overall, Petitioner's testimony is found to be credible. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the records as a whole. She does not appear to be a sophisticated individual and any inconsistencies in her testimony are not attributed to an attempt to deceive the finder of fact.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC, ¶ 1, 11 N.E.3d 453. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury,

recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982). In *Schroeder v. IWCC,* 2017 IL App (4th) 160192WC, the Appellate Court clarified that the "chain of events" principle does not apply solely where a claimant is in a condition of absolute good health. Rather, a claimant need only establish that an accident was a cause of his condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill.2d 193, 205 (2003). A claimant such as Petitioner, with a pre-existing condition, may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill.2d 30, 36 (1982).

In the instant case, Petitioner went from working full duty, full time as a coffee shop worker, to having sudden pain, requiring treatment the same day. Petitioner was given work restrictions as a result of the incident and eventually taken off of work for a period of time. She underwent injections and chiropractic therapies to relieve her pain and return to work. It appears undisputed that a work accident took place on 1/2/18 while petitioner was employed by Respondent and that the lumbar spine injury she sustained brought about change in her spine. The IME physician did not agree that the thoracic compression fracture was related but does relate the lumbar spine to the work incident and agrees all treatment Petitioner underwent through March 19, 2018 was reasonable, necessary and related to the work accident. The primary dispute remaining at trial was regarding the additional diagnoses provided by the treating physicians for the thoracic spine and lumbar spine were causally connected to the work incident described above and whether the treatment provided to Petitioner to cure her of her injury/complaints were reasonable and necessary, in addition to any additional back treatment Petitioner received post March 2018.

Petitioner testified that she did have pain in her low back and mid back prior to the date of the accident on January 2, 2018. She had a motor vehicle accident in 2015 and a work accident in 2016 both of which caused some injury to her low and mid back. T 13-14. She also had another motor vehicle accident in Los Angeles before those two injuries in which she sustained back injury and was treated by a chiropractor. There were no other accidents in which she injured her middle or low back prior to January 2, 2018. She never had any injections or any type of procedure or surgery for her low back or middle back before January 2, 2018. T 15. She had not injured her middle or low back in any accidents after January 2, 2018. T 15. Petitioner credibly testified that on the day of the accident she was bending to place equipment in a sanitizer when she felt a sharp pain where her bra crosses her middle back. She had never felt that type of pain at that intensity before this accident. T 16. She testified she tried to keep working as she was the only person opening the store. Should took periodic breaks leaning against things. When the pain became overwhelming, she was sent by respondent to Concentra. T 19. The records of Concentra on the day of the accident, 1/2/18, document complaints of injury to the mid back that date as a result of bending and lifting. The symptoms were worsening; the symptoms were located midline of the mid back. The pain was constant and reported at 7/10 pain level. The assessment was 1. Acute thoracic myofascial strain.

Concentra note of 1/4/18 generated by the physician, documents that the patient presents today slight mid back pain and that she is approximately 25% of the way toward meeting the physical requirements of her job. The assessment was acute thoracic myofascial strain. This note also documents petitioner had prior back injuries and on-and-off back pain with no radiation and no spasms. She was directed to return for follow-up and continue therapy with modified work restrictions. PX 1, p 18-21. Petitioner chose to treat with a chiropractor whom she has seen in the past. On 1/5/12 medical records of Dr.Shamsu Raheem, D.C., document injury to her back on 1/2/2018, at work, as result of job activity, bending, carrying and lifting. She felt pain in the right mid back, central mid back, right low back left lower back and central low back. Pain has worsened since the onset and is presently 6/10. Assessment was based on the patient's report and reviewed history and was stated to be consistent and appears causally related to the work-related accident in question. Plan was chiropractic treatment of the thoracic spine and lumbosacral spine region and sacroiliac spinal region. PX 2, p 45-47. Chiropractic treatment continued from 1/8/18 through 4/5/18 with treatment directed to the thoracic, lumbar and sacral region. PX 2, p 48-50, 51-146.

Petitioner consulted with Dr. Neeraj Jain MD, a pain management specialist, on 1/8/18. History documents that she was bending down to pick up dishes out of the sanitizer when she had sudden onset of mid and low back pain. Treatment to date had not resolved the pain which was described as moderate to severe low back pain going into the mid spine. It was noted that she had previous history of spine pain from a motor vehicle accident in 2015 which resolved. Physical therapy and not resolved the pain. Examination documented that she had pain at the mid thoracic area with palpation hypertonicity in the paraspinal muscles, and pain increases with thoracic extension. She had severe hypertonicity going on the right then the left in the mid and lower lumbosacral area. After physical examination recommendation was for lumbar MRI and to continue physical therapy and to remain off work. Dr. Jane opined that the patient symptoms for which she is being treated today are directly related to the injury and that the treatment rendered thus far has been reasonable and of necessary frequency and duration. Those opinions were stated with a reasonable medical probability based upon the patient's history, physical exam, imaging studies and medical records that were provided and reviewed. PX 3, p3-4. In follow-up treatment notes, Dr. Jain documented that the pain persists and recommended LSO brace and TENS unit. Diagnosis was lumbar facet syndrome, lumbar discogenic pain, thoracic strain. PX 3, p5-6. The records of Dr. Jain for subsequent treatment document ongoing treatment of the lumbar complaints including injections. However, during the course of treatment by Dr. Jain, the records of Dr. Raheem, D. C. who was providing chiropractic therapy treatment, document from 1/8/18 through 4/5/18 complaints of thoracic and lumbar pain with therapy administered, e.g. on 4/5/18 complaints of thoracic pain 3/10 and lumbar pain 2/10 therapy administered. PX 2, p 144-146; PX 2, P 48-146. The arbitrator notes that although Dr. Jain in his initial encounter with petitioner on 1/8/18 on examination identified "pain at the mid thoracic area with palpation hypertonicity in the paraspinal muscles, and pain increases with thoracic extension," none of the treatment from Dr. Jain was directed to the thoracic spine and muscles.

Petitioner underwent examination by respondent's Section 12 examining physician, Dr. Wellington Hsu, on 3/19/18. After examination and review of records, Dr. Hsu opined his impression/diagnosis as: 1. Lumbar strain resolved; 2. Lumbar spondylosis. RX 3, p 4. Dr. Hsu opined that the lumbar spondylosis was a pre-existing condition not caused by the work accident; the diagnosis of lumbar strain is related to the injury of January 2, 2018; that diagnosis has since resolved; her stiffness is secondary to her pre-existing lumbar spondylosis and is not related to any work related condition; she has no functional disability; no further medical treatment is required; no physical restrictions are required and she is capable of returning to work full duty without restrictions; she has reached maximum medical improvement on the date of the IME evaluation based upon physical examination and the natural history of the lumbar strain. RX 3, p4-5. In a 2nd IME examination performed by Dr. Wellington Hsu on November 3, 2020, he opines the diagnoses as: 1. Thoracolumbar spondylosis; 2. Lumbar strain, resolved; 3. Status post T4 kyphoplasty. RX 4, p 4. Dr. Hsu opined that she likely suffers from thoracolumbar spondylosis at this time and continues to have mid back pain but now has no low back pain upon examination. He again opined that none of her current conditions are secondary to her work related activity of January 2, 2018. He stated that his opinions stated in his prior report, have not changed in any way; her current complaints are different from when he last saw her in March 2018; he did not believe that any additional injuries have occurred since then. RX 4, p 4. He noted that she does not have any inconsistencies between the objective findings and the subjective complaints. RX 4, p 4. Additionally, Dr. Wellington Hsu opined that the medical treatment provided has been reasonable and necessary and she has received appropriate medical treatment for her lumbar strain that subsequently resolved as of his last independent medical evaluation in March 2018. He also stated that he did not believe that any of her treatment that she has received since then has been in any way related to the work related injury of January 2, 2018; all of the treatment she has had since that time is secondary to her pre-existing condition of thoracolumbar spondylosis. He reiterated that his previous opinions regarding this have not changed in any way. He opined no further medical treatment is necessary; she has not had any recent treatments for her mid back region and her symptoms appear to be stable. His opinion regarding maximum medical improvement, that she reached maximum medical improvement as of the last independent medical evaluation, has not changed in any way. He opined that she needs work restrictions with no heavy lifting over 50 pounds and bending, crouching or stooping on an occasional basis but these work restrictions would be secondary to her thoracolumbar spondylosis condition that is causing her pain at this time; these restrictions would be permanent; she is able to return to work with restrictions, but the restrictions would in no way be related to the work injury of January 2, 2018. RX 4, p 5. Dr Hsu in his deposition opined that the injections that were given by Dr. Jane to the lumbar spine were causally related to the work accident up until March 19, 2018. That would include the last injection on March 14, 2018 and the bilateral L3 L4 L5 medial branch blocks. RX 5, p 43.

The arbitrator finds, based upon a chain of events analysis and based upon the opinions of the treating physicians and opinions of Dr. Wellington Hsu, respondent's IME section 12 examining physician, that all of the treatment received by petitioner up to March 19, 2018, was causally related to her work injury. There remains the issue of whether medical treatment rendered after March 19, 2018, is causally related to the work injury.

Petitioner sought treatment from a pain management specialist, Dr. Zaki Anwar MD. In his initial pain management consult on 6/21/18 Dr. Anwar noted injuries to her middle back and to her lower back on 1/2/18, cleaning up the dishwasher and while she was picking up some metal instruments felt a stabbing pain in the upper part of the back as well as the lower back. Dr. Anwar documents the history of treatment noting that the injections from Dr. Jain did provide some relief but that Dr. Jain did not recommend any treatment regarding her middle back which was getting worse with time. He noted that she had upper middle back pain in an auto accident in 2015 which was treated with physical therapy and medication and she did well. A thoracic spine examination was performed which documented tenderness on palpation of the middle thoracic spine between T7 and T10, paraspinal spasms and tightness noted in the middle thoracic spine, mild facet loading is positive in the thoracic spine between T7-T10. Assessment and recommendations were low back pain with no radicular symptoms; lumbar facet joint effusions aggravation of low back pain with recent work related injury treated by lumbar injections and aspiration of the facet joint by Dr. Jain; mid thoracic back pain which is getting worse since the work injury and has not been treated; excellent relief with facet joint injections and relief of low back pain; history of previous auto accident injury 2015 with thoracic disc bulging at T8-T9 and T9-T10 treated with physical therapy and that at that time patient did well without any treatments.

Dr. Anwar went on to perform thoracic epidural steroid injection on 7/25/18 and 8/15/18 PX 7, p3. He noted that the patient had 50% reduction in symptoms in pain and improvement in function after those injections. PX 7, p 80-81. Dr. Anwar performed T4 kyphoplasty in 9/12/18. PX 7, p 3. In follow-up after that procedure, Dr. Anwar noted that she respondent very well to the treatment and that the pain across her bra line is not present although she does have a localized pain around the injection site. PX 7, p 74-75. Petitioner also testified that she did have relief of her pain in her mid back after the injections and T-4 kyphoplasty. T 29. The records of Dr. Anwar indicate that although she did have relief of pain after the kyphoplasty and was able to do more activities and significant reduction of pain in her upper back area, she has started to notice some tightness in the upper mid back for which physical therapy is recommended. Dr. Anwar went on to perform thoracic epidural steroid injection on 1/16/19 and 2/6/19 after which the patient reported 60% relief in pain in the mid thoracic area. PX 7, p3, p47-49. Petitioner last saw Dr. Anwar on August 23, 2019 at which time Dr. Anwar noted that she is not complaining of intractable pain in the chest wall at the present time continue to get good benefit from the previous epidural treatment which was done in the past. She was to continue with Norco on a daily basis as needed for flareups. PX 7, p5-6.

Dr. Anwar opined in his evidence deposition that there was bulging discs at T5-6 and T6-7 which is a new injury; these discs were never displaced and are bulging as they are shown in 2015; this is a new onset of pain the patient is experiencing and is causally related with the recent trauma; the recent trauma was the injury she had while working at Starbucks. PX 9, p 20. Dr. Anwar explained that the petitioner had a compression fracture at T4. He stated that the compression fracture is not treated, the discs below and above the compression fracture site will get worse in the future. PX 9, p 29. The patient had a single compression fracture which is usually seen in much younger patients from traumatic injuries some kind of accident or trauma. PX 9,p 31. After the kyphoplasty performed at T4 on September 12, 2018 she had about 70% relief with the bra line pain area PX 9, p 34. In follow-up visits she continued to report significant reduction in her

pain after the kyphoplasty. PX 9, p 35. The mid back pain that gradually did return was not as intense as before and was very localized. PX 9, p 36.

Dr. Anwar noted that Dr. Wellington Hsu in his IME report dated March 23, 2018 did not make any recommendation with regard to the compression injuries in the thoracic distal space. PX 9, p 37. Dr. Anwar did not treat the patient's low back at all during the course of his treatment. PX 9, p 38. It appeared to Dr. Anwar that Dr. Wellington Hsu did not evaluate the thoracic injury. Dr. Anwar noted that there were 2 different things that were being treated by him. One was the compression fracture to prevent long-term injuries. The other is the patient's acute pain which is causally related to her T5-6 and T6-7 disc displacements. PX 9, p 42. Once she got the diagnostic and therapeutic relief from the 2 injections, this was the best time for the doctor to do the kyphoplasty and then continue to treat the patient. PX 9, p 42. The subsequent two injections were for the therapeutic purposes to treat the patient's pain related to the disc displacement. PX 9, p 42. Dr. Anwar opined that the injections that were performed on January 16 and February 6, 2019, were causally related to the work accident which he had described to him in her first visit. PX 9, p 43. Dr. Anwar opined that as of August 23, 2019, his opinion that the work accident of January 2, 2018 at Starbucks was the cause of the condition and need for the treatment of the thoracic spine and compression fracture had not changed. PX 9, p 47-48. The charges that the doctor made for treatment was for necessary treatment and was causally related to the work accident. PX 9, p 49. There is nothing about this patient to suggest she was abusing or misusing pain medication. PX 9, p 80. Dr. Anwar opined in response to a question whether it is possible for the patient to suffer ledge fracture and compression fracture under the circumstances that the patient described, that she had trauma, she felt pain and he was connecting the dots of the incident, the pain that she had and that is the way it was diagnosed. PX 9, p 82. He opined that a wedge fracture or compression fracture can happen while the patient is doing something like what the patient described. PX 9, p 83-84.

Dr. Hsu acknowledged in his deposition that when he took the history from petitioner in his first examination, petitioner had complaints of upper and lower back pain after the injury. RX 5, p 44. When he wrote upper back, he meant that as the thoracic spine. RX 5, p 45. He thought that the thoracic pain that she had was radiating from the lumbar injury. RX 5, p 46. Because her later treating physicians found her injuries not to be of the thoracic spine, he went with those opinions. RX 5, p 46. It was his opinion that the symptoms that the patient explained and identified in the history and on his examination were not the result of a thoracic myofascial strain. RX 5, p 47. He did not perform a thoracic spine examination. RX 5, p 47. He stated that is because the thoracic spine doesn't move, so there is nothing to examine in terms of range of motion that would be test for cervical and lumbar. RX 5, p 47. He stated there is no exam for the thoracic spine as it pertains to range of motion, provocative maneuvers, and other kinds of testing; you test the thoracic spine through neurological examination; indirectly, that's testing the thoracic spine. RX 5, p 48. He stated as part of his orthopedic surgeon examination of the spine lumbar, thoracic, or cervical he does not perform palpation, in this scenario. He said he would do that for someone who fell off a 10-foot building, a trauma setting, but this is not the type of exam he would give for this kind of patient. RX 5, p 48-49. He does not find palpation helpful. RX 5, p 49.

Dr. Hsu did not have an MRI of the thoracic spine and he did not think one was necessary. RX 5, p 49-50. He opined that T4 kyphoplasty was not reasonable and necessary because she did not

have an acute fracture and it was his opinion that kyphoplasty is indicated for an acute fracture that occurs within 4 to 6 weeks of the injury. RX 5, p 51-52. He was not sure why the patient's symptoms were significantly relieved after the T4 kyphoplasty, but thought it certainly could have been a placebo effect. RX 5, p 52. He opined that the symptoms that petitioner complained of to Dr. Anwar were genuine, and not something more in the patient's head. RX 5, p 52-53. He opined that his "best guess" as to the cause of the thoracic symptoms that resulted in the kyphoplasty performed by Dr. Anwar which reduce the reduction of those symptoms, was secondary to spondylosis, which is arthritis -related condition. RX 5, p 53. He was not sure what precipitated these genuine symptoms that resulted in the T4 kyphoplasty, but she did not have those symptoms when he saw her in 2018. He stated that it must have been something after that which cause those symptoms, and it is most likely spondylosis, which is an arthritis -related condition. RX 5, p 53-54. It was his understanding that her thoracic symptoms were first reported in June 2018 when she had her thoracic MRI. RX 5, p 54. When he performed his first IME report it was his understanding that she had no thoracic symptoms that she was complaining of. RX 5, p 55. In his first report, Dr. Hsu made a diagnosis of lumbar spondylosis and in his 2nd report he made a diagnosis of thoracolumbar spondylosis. The reason for that is he was given a thoracic spine MRI report and for the first report, he was not. RX 5, p 56.

The weight of persuasive evidence in this record, including the testimony of petitioner and Dr. Anwar, medical records in evidence, demonstrates that petitioner had thoracic complaints of pain immediately with the work accident that continued up to and including the time that petitioner was seen and treated by Dr. Anwar. Those complaints are documented in the initial examination and evaluation history of both Dr. Jain and Dr.Hsu. The medical records document that petitioner continued to make these complaints of thoracic spine pain throughout the period she was receiving therapy from the chiropractor. The records of Dr. Anwar document petitioner's continuing complaints of thoracic spine pain from the date of the accident and specifically document petitioner's questioning of why Dr. Jain was treating only the lumbar complaints. Dr. Hsu's testimony that there is no examination for thoracic spine complaints is in conflict with documented thoracic examination in the medical records: the medical records of Concentra, "pain increases with thoracic rotation" (PX 1, p 11-15); the medical records of Northwestern Memorial Emergency Room, "acute on chronic mid back pain" and "worse with movement" (PX 6, p 12-13); the records of Dr. Anwar, "thoracic spine exam: tenderness on palpation of the middle thoracic spine between T7 and T10, paraspinous spasms and tightness noted in the middle thoracic spine, mild facet loading is positive in the thoracic spine between T7-T10." (PX 7, p 89-90).

Dr. Hsu opines that petitioner's complaints of thoracic spine pain documented in the records were genuine. There is no mention of symptom magnification that the Arbitrator found. Dr. Hsu stated that his best guess was that the thoracic spine symptoms were precipitated by something after his March 19, 2018 IME examination. Dr. Hsu's opinion on fixating the date of Maximum Medical improvement as of the date of his March, 19 2018 IME examination appears to have been based upon incomplete information and failure to make an examination of the thoracic spine. Dr. Hsu did not explain petitioner's substantial relief of thoracic spine symptoms after the T4 kyphoplasty other than speculating it might be a placebo effect.

The arbitrator finds the opinions of Dr. Anwar with regard to the causal connection of these thoracic spine condition and treatment he rendered to address that condition of ill being to be consistent with all of the other evidence in this record and to be more credible than the opinions expressed by Dr. Hsu for the reasons stated above. The arbitrator gives greater weight to the opinions of Dr. Anwar with regard to causal connection of the thoracic condition to the work accident. Based upon the weight of credible evidence in this record, the opinions expressed by the treating physicians and the opinions expressed by the respondent's IME, the arbitrator finds that petitioner's current condition of ill being with regard to the thoracic spine, in addition to the lumbar spine was causally related to the work accident of January 2, 2018.

The arbitrator notes that the weight of credible evidence in this record demonstrates that petitioner had pre-existing condition of her lumbar and thoracic spine. There is no evidence in this record that the pre-existing condition of petitioner's spine, lumbar and thoracic, prevented her from performing all of the duties of her job with respondent which included significant lifting. There is no evidence in this record that the pre-existing condition of petitioner's thoracic and lumbar spine at advanced to the condition that any activity of daily living would have caused the onset of the pain in her lumbar spine and cervical spine documented in the evidence in this record. Further there is no evidence in this record that restrictions of any kind nor treatment to or for the spine was ongoing, at the time of or shortly before the work incident.

It is well established that an accident need not be the sole or primary cause of a claimant's condition. *Sisbro, Inc. v Industrial Commission*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth Hospital v Worker's Compensation Commission*, 371 App 3rd 882, 888 (2007). A claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v Industrial Commission*, 92 Ill 2nd 30, 36 (1982). The arbitrator gives more weight to the opinions of the treating physicians like Dr. Anwar, which are supported by credible explanation of causation for both thoracic and lumbar spine as opposed to the opinions of Dr. Hsu. Further, the arbitrator found Petitioner to be credible in the description of her lifting injury, the pain she reported and the injuries she claimed, as well as the timeline of events/treatment that she testified to. The arbitrator finds based upon the weight of credible evidence in this record that petitioner's current condition of ill-being with regard to her cervical spine and her lumbar spine are causally related to the work accident of 1/2/18. Additionally, the arbitrator finds under a chain of events analysis, petitioner's current condition of ill-being with regard to the thoracic and lumbar spine are causally related to the work accident of 1/2/18.

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 incorporates findings and conclusions stated in paragraph F above. Overall, the Arbitrator finds Petitioner's treatment to both the thoracic spine and lumbar spine since the date of accident of 1/2/18 be reasonable, necessary and related, and finds that Respondent has not paid for all of said treatment.

In addition to the statements of causal connection in the treating physician records, Dr. Wellington Hsu opined that all medical treatment up to the date of his IME on March 19, 2018, was reasonable, necessary and causally related treatment of the work injury. The arbitrator finds based upon the weight of credible evidence in this record and the opinions of the treating physicians and the opinions of respondent IME that all medical treatment up to the date of March 19, 2018 was reasonable, necessary and causally related treatment of the work injury. That finding is made in consideration of respondent's utilization review reports (RX 11) which the arbitrator finds to be less credible than the opinions of the treating doctors and the IME physician. Additionally, with regard to medical treatment after March 19, 2018 the arbitrator has found that the opinion stated by Dr. Hsu were less credible after all testimony and medical records were reviewed. The arbitrator finds the opinions of the treating physicians more credible regarding reasonableness, necessity, and causal relation of the medical treatment after March 19, 2018 to the work injury and the fact that Petitioner sustained pain relief and better function following said related treatment by Dr. Anwar and the other treating physicians listed in Petitioner's exhibit 10.

The arbitrator finds based upon the weight of credible evidence in this record that petitioner's medical treatment as documented in the evidence submitted at trial and unpaid medical bills as referenced in the medical evidence and also identified in petitioner Exhibit 10, are reasonable necessary and causally related medical treatment and bills relating thereto. 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, as identified and enumerated in Petitioner's Exhibit 10. Respondent will be given a credit of $5,952.75 for any of the above mentioned bills that Respondent has already made payment to/for.

The outstanding medical bills to be paid are as follows:
Frankfort Medical Surgical Care Center $105,558.32
Pain Management Institute $68,504.52
Pinnacle Interventional Pain $45,495.77
Windy City Medical Specialists $29,020.00
ES3 Fitness Rehab $10,270.00

<u>Issue K, what Total Temporary Benefits Are in Dispute?</u>

For clarity sake, the arbitrator notes that Petitioner claims TTD from 1/6/18 through 3/26/18 representing 11 3/7 weeks. Respondent stipulated to the same at trial and has paid TTD in the amount of $4571.42 with which petitioner agreed as well. Respondent is ordered to pay TTD from 1/6/18 through 3/26/18, if not already paid and respondent is given credit in the amount of $4571.42 for any prior payment of TTD.

<u>Issue L, the nature and extent of the injury, the Arbitrator finds as follows:</u>

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n,* 2016 IL App (1st)

152576WC, ¶ 22, 67 N.E.3d 959. “No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b). “None of the factors set forth in section 8.1b is to be the sole determinant of the claimant’s disability.” *Corn Belt Energy Corp. v. Illinois Workers’ Compensation Comm’n*, 2016 IL App (3d) 150311WC, ¶ 49.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that while no formal impairment report was submitted into evidence, the record contains an impairment rating of 0% of person as a whole as determined by IME Dr. Wellington Hsu, pursuant to the most current edition of the American Medical Association’s Guides to the Evaluation of Permanent Impairment. (Exhibits #3, 4 and 5). 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. The Arbitrator has already found Dr. Anwar’s testimony regarding diagnoses, causation, necessity of treatment and overall explanation of the medical condition of Petitioner to be more persuasive that Dr. Hsu limited interactions and review, and therefore the Arbitrator gives little weight to the 0% impairment rating by Dr. Hsu.

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 barista at the time of the accident and that she did return to work however in a desk job at another company. The Arbitrator notes the Petitioner also worked three additional jobs since her work accident, without restrictions, but again as a desk job. The arbitrator notes that formal release with permanent restrictions was not given but Petitioner testified credibly as to her limitations and change in spinal condition following the work incident of 1/2/18. The Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 48 years old at the time of the accident. Because petitioner will the spinal issues she testified to for another approximately 20 years of work life, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner’s future earnings capacity, the Arbitrator notes Petitioner has continued to work and has not established any loss in future earnings capacity. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes as a result of the work injury petitioner now cannot stand as long as she used to especially if she is doing a lot of activities with her hands by preparing dinner. She has to take breaks because she gets back aches in the area around the bra strap at the top of her back. Continues to use the TENS unit prescribed by her treating physician in order to be able to get through the day. She takes over-the-counter medication in order to tolerate the pain. There is sometimes a lull in the pain and sometimes when it becomes excruciating. 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 15% loss of use of man as a whole, pursuant to §8(d)2 of the Act which corresponds to 75 weeks of permanent partial disability benefits at a weekly rate of $398.88/week.

It is so ordered:

____
Jacqueline C. Hickey
Arbitrator

5/11/23
Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC001126
Case Name	Milton Townsend Jr v. City of Chicago Department of Forestry
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0108
Number of Pages of Decision	12
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Michael Casey
Respondent Attorney	John Morris

DATE FILED: 3/8/2024

/s/*Amylee Simonovich, Commissioner*

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Milton Townsend, Jr.,

Petitioner,

vs. NO: 18 WC 001126

City of Chicago Department of Forestry,

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 causal connection, prospective 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 Arbitrator concluded Petitioner sustained a 6% loss of the whole person for his back injury, 1.5% loss of use of the whole person for the shoulder injury, 1.5% loss of use of the whole person for the right eye injury, and 10 additional weeks for facial disfigurement. While the Commission agrees with the Arbitrator's analysis of the five factors pursuant to Section 8.1b(b) of the Act, it finds modification of the permanent partial disability award to be appropriate.

In his analysis of the low back injury award, the Arbitrator noted Petitioner continued to experience low back pain when lifting at work after he was released from medical care. He also relied upon Petitioner's testimony that due to the continuing pain in his low back and his dependence on others to assist him in performing his duties, Petitioner retired. The Commission agrees with these findings but adds consideration of the Petitioner's own testimony that his decision to leave his employment was voluntary. T. 36. The Petitioner's decision was further demonstrated in his choice to forgo additional medical treatment or to seek formal accommodations for his complaints from Respondent. T. 36. Finally, as the medical treatment records stop as of December 29, 2017, the Petitioner's testimony of continued low back pain since the accident was not corroborated by the medical records. PX 2. The Commission finds the above facts impact the analysis under Section 8.1b(b) (ii), (iii) and (v). Based upon a consideration of the totality of the evidence, the Commission finds an award of 3% loss of use of the person as a whole to be appropriate for the low back injury.

As it relates to the left shoulder injury, Petitioner testified he had very little disability following the conservative treatment provided. T. 19-20. As of November 22, 2017, the medical records noted Petitioner had almost complete resolution of his left shoulder symptoms and full range of motion. PX 2, p. 18. In addition, Petitioner denied having any ongoing problems with his left shoulder at the time of hearing. T. 20. These facts impact the analysis under Section 8.1b(b)(v). Based upon a totality of the evidence, the Commission finds an award of 1% loss of use of the person as a whole to be appropriate for the left shoulder injury.

Finally, as it relates to the award of 1.5% loss of use of the whole person for his right eye injury, the Commission finds the injury and associated complaints were not systemic in nature. The medical records were clear that Petitioner sustained a direct injury to his right eye, an identified member detailed within Section 8(e) of the Act. The injury resulted in significant and ongoing tearing since the accident, but no loss of visual acuity. There was no impact to the body as a whole as a result of this injury. As such, the award should have been made as a loss of use of the right eye pursuant to Section 8(e) of the Act. Based upon consideration of the totality of the evidence, the Commission finds an award of 5% loss of use of the right eye to be appropriate for the right eye injury.

The Commission affirms and adopts the Arbitrator's award of 10 weeks of permanent partial disability for disfigurement pursuant to Section 8(c) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION Respondent shall pay petitioner the sum of $790.64 per week for 38.1 weeks because the work accident caused 4% loss of the person as a whole pursuant to Section 8(d)(2) (1% person as a whole for injury to the left shoulder, 3% person as a whole for the low back); 5% loss of use of a right eye; plus 10 weeks disfigurement for the right-sided facial scar pursuant to section 8(c) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on November 18, 2022, is modified as stated herein, and otherwise 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.

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.

March 8, 2024

O: 2/20/24
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	18WC001126
Case Name	TOWNSEND JR, MILTON v. CITY OF CHICAGO
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	Michael Casey
Respondent Attorney	John Morris

DATE FILED: 11/18/2022

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

/s/Charles Watts, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Milton Townsend, Jr.
Employee/Petitioner
v.
City of Chicago
Employer/Respondent

Case # **18** WC **001126**

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 **Charles Watts**, 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 ______

FINDINGS

On **10/7/2017**, 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 $**77,101.44**; the average weekly wage was $**1482.72**.

On the date of accident, Petitioner was **66** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**12,144.18** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**12,144.18**.

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

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

Respondent shall pay petitioner the sum of $790.64 per week for 55 weeks because the work accident caused 9% loss of the person as a whole pursuant to section 8(d)(2) (1.5% person as a whole for injury to the left shoulder, 6% person as a whole for the low back, and 1.5% loss man as a whole for the injury to the right eye); plus 10 weeks of disfigurement for the right-sided facial scar pursuant to section 8(c) 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 18, 2022

Signature of Arbitrator

FINDING OF FACTS

On October 11, 2017, Milton Townsend, Jr (hereinafter "Petitioner") was a 66-year-old male employed as a tree trimmer for the City of Chicago Department of Forestry (hereinafter "Respondent"). He testified he worked for Respondent for 35 years prior to that date in a number of different positions, the last 19 to 20 years in the Department of Forestry. T7 His duties in the Forestry Department included cutting down and removing trees, trimming trees, loading the trucks, and then loading the logs into a truck, either manually or with a clamp. T8-9 On October 11, 2017, Petitioner was unloading a truck with logs, at which time the logs on the top rolled off the truck, striking Petitioner in the left shoulder and face, and knocking him down. T9 He was taken to Mercy Works. T9

Petitioner first presented for treatment on October 11, 2017 at MercyWorks Occupational Medicine. PX 2 He reported the accident and initially just reported an injury to the left shoulder and a laceration right eye. The eye laceration was cleaned and he got one suture. He was given ibuprofen and ointment for the eye and taken off work.

Petitioner returned to MercyWorks Occupational Medicine on October 13, 2017 and complained of low back pain without radiation into the legs. Petitioner testified prior to October 11, 2017, he had no problems with his low back, left shoulder or right eye that kept him from doing his job in the Forestry Department. T7-8. His left shoulder was less painful but he still had pain at the eye laceration with edema. Petitioner underwent x-ray scans of the low back and left shoulder, which were both negative for acute fractures. The lumbar x-ray was positive for degenerative changes, most prominent at L3-L4. Petitioner returned to MercyWorks on October 18, 2017 with ongoing complaints to the low back, shoulder and eye, at which point he was referred to physical therapy.

Petitioner began physical therapy on October 24, 2017. His biggest complaint was sharp low back pain which radiated to the lateral aspect of his right shoulder.

On November 8, 2017, Petitioner returned to MercyWorks with ongoing complaints to all injured areas. He still had right eye "tearing", though also confirmed he was using ointment after being instructed to stop. He was given a new prescription of eye drops but otherwise was continued on pain medications. When the eye issue had still not resolved when Petitioner followed up on November 27, 2017, he was referred to an eye specialist. That day, he also stated his left shoulder was almost completely resolved, but not his low back.

Petitioner entered the medical records of Dr. Gary Rubin as Petitioner's Exhibit 3. The arbitrator notes Dr. Rubin certified the records as a complete copy of all treatment records for Petitioner and signed the certification on December 2, 2019. The arbitrator also notes the records are all hand-written and at times illegible. The records contain one date of treatment on November 28, 2017. Petitioner was diagnosed with a laceration to the right side of his face near his eye which was causing severe tearing. He said he had tearing all the time, yet not when driving, though he did say he struggled to see while backing up his car. The medical history also notes prior issues which required use of glasses, but is not legible.

Petitioner testified he had additional at least one more visit with Dr. Rubin, including in 2018. The arbitrator notes the certified exhibit does not contain any records of such visits.

On December 6, 2017, Petitioner returned to MercyWorks and reported he had seen Dr. Rubin for his eye. Petitioner still reported low back pain but denied radiation. Petitioner continued his physical therapy and returned on December 29, 2017. He reported he still had some lower back pain with activities but was ultimately placed at MMI and given a full duty work release effective January 4, 2018.

Petitioner testified he never returned for treatment for his spine after December 29, 2017. He testified he did not attempt to return for treatment, and no requests for further treatment were denied. When asked whether he had returned for treatment for the low back, Petitioner stated he did not as he was not overly active, and only experienced back pain more active, such as when doing yard work or moving a couch. T21 Petitioner also testified he was put on Medicare and did not seek treatment given he would have had to choose from a list of their doctors. T33 Petitioner also testified he never returned to MercyWorks because they said they could not help further and just told him not to lift anything. T36

Petitioner testified he returned to work but found his tasks more difficult due to his ongoing back pain. T18 He testified he therefore chose to retire. T36 Petitioner testified he never asked Respondent about the possibility of lighter work. T36 He testified Respondent would accommodate restrictions, but that it could have required him to work in a different position. T35 Petitioner testified that, because he had enough years to retire, he chose to do so instead. T35

Petitioner testified he continues to have tearing in his eye, worst when he stares at something for a long time, such as long drives. T22 He testified the tears would run down his face, but did not affect his function or visibility. T22, T37

Over Respondent's objections, Petitioner entered exhibit 4, a picture of Petitioner's scar near his eye. Petitioner testified the picture was taken at MercyWorks, but the picture was not included with any of the records. The arbitrator also personally viewed the scar and described it as 1/2 inch long scar, well healed and visible.

Petitioner testified he was never prescribed any low back or shoulder treatment beyond the physical therapy. T34 He was never prescribed an injection. T34 Petitioner did not undergo an MRI scan, and none was recommended in the records. T34, PX2 Petitioner testified he never experienced any numbness or tingling symptoms into his lower extremities. T31 He testified his shoulder did not cause any ongoing problems. T20

CONCLUSIONS OF LAW

F. Is Petitioner's Current Condition of Ill-Being Causally Related to the Work Accident?

The weight of credible evidence in this record demonstrates that Petitioner had no problem with his low back, left shoulder, or right eye before the accident date of October 11, 2017. He was able to perform all duties of his physically demanding job in the Forestry Department of the City

of Chicago for 19 to 20 years before the date of the accident, without any problem in his low back, left shoulder or right eye. His job in the Forestry Department required him to cut down trees, remove trees, trim trees, load the trees onto a truck, load logs onto the truck that at times required two-man assistance. The onset of pain in his left shoulder and laceration of his right face and pain in his right eye was immediate with the accident. He was taken from the scene of the accident to Mercy Works giving history of the onset of the pain consistent with his testimony at hearing. PX 2, p5-6. In his follow-up visit to Mercy Works 2 days later, on 10/13/17, it is noted in the medical record that Petitioner reported his back started hurting later that night. PX 2, p6-8. Medical records document resolution of the left shoulder pain, but ongoing complaints of and treatment of continuing low back pain and continuing watering of petitioner's right eye. Petitioner was referred by Mercy Works to ophthalmologist, Dr. Rubin, because of the continuing tearing of the right eye. PX 2, p 10. Physical therapy, medication and off work restrictions lessened petitioner's complaints of low back pain, but records document the low back pain and tearing of the right eye did not fully resolve.

Petitioner was released to return to work full duty on 1/4/18 and discharged from Mercy Works with no restrictions, with an order for 400 mg ibuprofen every 6 hours as needed. PX 2, p 12. Petitioner credibly testified that he returned to work full duty because there was no light duty in the Forster Department. He worked for 6 months and retired because of difficulty in performing his physically demanding job, specifically the lifting component of his job caused strain in his back requiring him to seek assistance of coworkers. Petitioner credibly testified that up to the date of hearing the pain in his low back never completely resolved and he still has limitations in his activities relating to lifting because of pain in the back. He takes over-the-counter medication when needed. He also credibly testified that his right eye continues to water when he stares for a length of time as when he is driving. The scar on the right side of petitioner's face next to his right eye was caused by the accident as demonstrated in petitioner Exhibit 4. The scar remained visible at the time of the hearing. The arbitrator notes that at the time of the accident, petitioner was 66 years old and was 70 years old at the time of the hearing.

It is well established that prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. Navistar International Transportation Co. v. Industrial Commission, 315 Ill. App. 3rd 1197, 1205 (2000). Compass Group v. Illinois Worker's Compensation Commission, 2014 Ill. App. 2nd, 12128WC. A causal connection between a condition of ill-being and a work-related accident can be established by showing a chain of events where an employee has a history of prior good health, and, following the work accident, the employee is unable to carry out his duties because of a physical or mental condition. (See Pullman Masonry v. Industrial Commission (1979), 77 Ill. 2nd 469, 471; Darling v. Industrial Commission, (1988), 176 Ill. App. 3rd 186, 193). BMS Catastrophe v Industrial Commission (1993) 245 Ill. App. 3rd 359, 365.

The arbitrator finds, based upon a chain of events analysis, that Petitioner's current condition of ill-being with regard to his low back, right eye, right-sided facial scar, and left shoulder are causally related to the work accident of October 11, 2017.

L. What Is the Nature and Extent of the Injury?

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a laborer in the Forestry Department of the City of Chicago 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. The Arbitrator notes that upon return to work petitioner continued to experience low back pain when lifting which was a part of his job duties for respondent. Because of continuing pain in his low back and dependence on others to assist him in performing his duties petitioner retired. The Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 66 years old at the time of the accident. Because of his advanced age, the injury to his low back has greater impact than on a younger employee, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes there is no evidence in this record of impairment of petitioner's future earning capacity. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes petitioner's left shoulder pain resolved. Medical records document petitioner's ongoing complaints of low back pain which were improved with substantial physical therapy and medication, but which continued after discharge from medical care up to the date of hearing. The back condition required petitioner to seek assistance of coworkers when lifting after he returned to work. The records of the ophthalmologist, Dr. Rubin, document complaints of severe tearing with a diagnosis of right eye epiphora. PX 3, p 3. Petitioner's eye continues to water when he stares for a length of time, such as when driving. Petitioner did not, however, lose any vision acuity. Petitioner's right side facial scar adjacent to his right eye which medical records document was sutured on the date of initial treatment, remains visible from a medium to short distance and slightly elevated. 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 9% loss of the person as a whole pursuant

to section 8(d)(2) (1.5% person as a whole for injury to the left shoulder, 6% person as a whole for the low back, and 1.5% loss man as a whole for the injury to the right eye); plus 10 weeks of disfigurement for the right-sided facial scar pursuant to section 8(c) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC002167
Case Name	Nancy Wood v. Lake Land College
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0109
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Reed Nelson
Respondent Attorney	Patrick Keefe

DATE FILED: 3/11/2024

/s/Carolyn Doherty, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NANCY WOOD,

Petitioner,

vs. NO: 17 WC 2167

LAKE LAND COLLEGE,

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, mileage charges, 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.

I. Causal Connection

The Commission affirms the Decision of the Arbitrator that Petitioner's condition of ill-being as it relates to the lumbar spine was causally related to the November 18, 2016 accident. However, the Commission also modifies the Decision of the Arbitrator to find that Petitioner has proved a causal connection between the condition of her left leg and the November 18, 2016 work accident.

Petitioner claims that her knee injury, caused by the September 23, 2018 fall in her garage, is related to the accident because she had a left foot drop resulting from the spine surgery related to the work accident. Prior to the spine surgery, on April 28, 2017, Dr. David Raskas (the orthopedist) noted weakness in plantar flexion and dorsiflexion at 4+/5 on the right, compared to full strength on the left. Accordingly, it appears that the left foot was in a state of good health prior to the surgery. On June 26, 2017, underwent the spine surgery. Dr. Raskas was deposed prior to Petitioner's fall at home and was not asked whether Petitioner suffered from foot drop

after the surgery. However, on July 11, 2017, during the initial post-operative visit, Dr. Raskas noted numbness in Petitioner's toes at the S1 nerve root distribution. On October 3, 2017, Petitioner reported no feeling in the right foot, but Petitioner maintains that in the context of the entire record, this report should be interpreted as referring to the left foot. Petitioner's contention finds support in the December 15, 2017 record, in which Dr. Rakas noted numbness in the left S1 nerve root distribution. On June 15, 2018, several months prior to the fall in the garage, Dr. Raskas noted that at the time of her surgery, Petitioner was complaining of left foot numbness and described it as persistent and as presenting a problem at that time. Although Dr. Roger Fulton (the primary care physician) did not record Petitioner's foot drop until 2020, he testified that he noticed the foot drop "at some point several months after the back surgery." Dr. Fulton opined that the back injury and subsequent treatment caused Petitioner's foot drop, which was the likely cause of Petitioner's falls and the injury of Petitioner's knee.

Dr. David Robson, Respondent's records reviewer, testified that typically, when foot drop is caused by spine surgery, the patient would instantly wake up with a weak foot. However, he also acknowledged that the term "foot drop" propagated through the medical records off and on. Dr. Robson also acknowledged that he had not examined Petitioner or reviewed deposition testimony from the other physicians.

In sum, the treatment records indicate that Petitioner reported persistent foot numbness from the initial post-operative follow-up visit, with Petitioner's primary physician testifying that Petitioner had foot drop long before her September 23, 2018 fall in her garage. Given this record, the Commission finds that Petitioner proved a causal connection regarding the condition of her left knee because her fall at home was due to left foot numbness or a left foot drop produced by the spine surgery for her work accident.

II. Medical Expenses

Given the Commission's findings of causal connection regarding both the lumbar spine and left knee, the Commission modifies the Decision of the Arbitrator to order Respondent to pay Petitioner's necessary and reasonable medical expenses as documented in Petitioner's Exhibit 20, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid.

III. Temporary Total Disability

The Commission affirms the Decision of the Arbitrator awarding temporary total disability (TTD) benefits related to Petitioner's lumbar spine from November 23, 2016 through December 15, 2017, a period of 55 and 3/7ths weeks, at $680.12 per week. The Commission also affirms the Arbitrator's award of a credit to Respondent for $14,282.52 in TTD benefits already paid. Given the Commission's additional finding of causal connection regarding the left knee, the Commission modifies the Decision of the Arbitrator to award additional TTD benefits for the period from September 24, 2018 (following Petitioner's fall at home), through June 9, 2021 (the date when Petitioner was released from care by Dr. Paulo Bicahlo, the orthopedic surgeon), a period of 141 and 3/7ths weeks, at $680.12 per week.

IV. Permanent Partial Disability

The Commission affirms the Decision of the Arbitrator awarding Petitioner permanent partial disability (PPD) benefits for the lumbar spine representing a loss of 30% of the person as a whole. The Commission also affirms the Arbitrator's award of a $5,781.02 credit to Respondent for advance PPD benefits. Given the Commission's additional finding of causal connection regarding the left knee, the Commission shall award additional PPD benefits after consideration of the following factors: (i) the level of impairment contained within a permanent partial disability impairment report; (ii) the claimant's occupation; (iii) the claimant's age at the time of injury; (iv) the claimant's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. See 820 ILCS 305/8.1b(b) (West 2022). However, "[n]o single enumerated factor shall be the sole determinant of disability." *Id.* § 305/8.1b(b)(v).

The Commission gives no weight to factor (i), the level of impairment contained in a PPD impairment report, because no impairment report was submitted by the parties in this case.

The Commission gives lesser weight to factor (ii), the claimant's occupation, because Petitioner has retired from her occupation as an instructor, a position which in any event did not appear to require heavy physical labor regarding her leg.

The Commission also places lesser weight on factor (iii), Petitioner's age, as she was 65 at the time of her injury and could not be expected to have an extended work life.

The Commission gives some weight to factor (iv), Petitioner's future earnings, because she testified without rebuttal that her disability may have affected her pension payments. However, this factor is not given substantial weight, as there is no evidence regarding the magnitude of any effect on the pension payments.

The Commission gives the greatest weight to factor (v), the evidence of disability corroborated by the treating medical records. Petitioner underwent revision surgery and still has continuing pain in her leg, as well as difficulty using stairs. Petitioner also testified that her knee stiffens and her leg swells after sitting or standing for too long.

Based on the above factors, and the record taken as a whole, the Commission finds that Petitioner sustained permanent partial disability to the extent of a 40% loss of use of the left leg pursuant to section 8(e)12 of the Act.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated August 7, 2023, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner established a causal connection between the November 18, 2016 accident and the condition of ill-being of her lumbar spine and left leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner her reasonable and necessary medical services, as provided in Petitioner Exhibit 20, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for all amounts paid by Respondent.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $680.12 per week for 196 and 6/7ths weeks, commencing November 23, 2016 through December 15, 2017, and from September 24, 2018 through June 9, 2021, that being the period of temporary total incapacity for work under Section 8(b) of the Act. Respondent shall be awarded a credit of $14,282.52 for benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $612.11 per week for 150 weeks, representing the loss of 30% person as a whole for the lumbar spine injury under Section 8(d)(2) of the Act. Respondent shall be awarded a $5,781.02 credit for benefits already advanced and paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $612.11 per week for 86 weeks representing a 40% loss of use for the left leg for the knee injury under Section 8(e)12 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 the removal of this cause to the Circuit Court 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.

March 11, 2024

o: 3/7/24
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	17WC002167
Case Name	Nancy Wood v. Lake Land College
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Reed Nelson
Respondent Attorney	Patrick Keefe

DATE FILED: 8/7/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 1, 2023 5.27%

/s/*Edward Lee, Arbitrator*

Signature

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

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Nancy Wood
Employee/Petitioner
v.
Lake Land College
Employer/Respondent

Case # **17** WC **002167**

Consolidated cases: ______

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Herrin**, on **5/8/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [ ] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [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 [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [x] Is Respondent due any credit?
O. [ ] Other ______

FINDINGS

On **11/18/2016**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**53,054.56**; the average weekly wage was $**1,020.19**.

On the date of accident, Petitioner was **65** 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 $**14,282.52** for TTD, $ for TPD, $ for maintenance, and $**5,781.02 - PPD advance** for other benefits, for a total credit of $**20,063.54**.

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

ORDER

RESPONDENT SHALL PAY PETITIONER THE AMOUNT OF $612.11 PER WEEK FOR A PERIOD OF 150 WEEKS BECAUSE THE INJURIES SUSTAINED HEREIN RESULTED IN PERMANENT PARTIAL DISABILITY TO THE PERSON AS A WHOLE TO THE EXTENT OF 30% THEREOF UNDER SECTION 8(D)(2) OF THE ACT FOR INJURIES SUSTAINED TO HER LUMBAR SPINE. PETITIONER'S CLAIM FOR DISABILITY RELATED TO HER LEFT KNEE REPLACEMENT IS DENIED AS NOT BEING CAUSALLY RELATED TO THE ACCIDENT. RESPONDENT TO PAY PETITIONER BENEFITS WHICH HAVE ACCRUED FROM 6/15/2028 THROUGH 5/8/2023 IN A LUMP SUM AND THE REMAINDER OF BENEFITS, IF ANY, IN WEEKLY PAYMENTS OF $612.11 PER WEEK UNTIL ALL AWARDED BENEFITS ARE PAID. RESPONDENT IS ENTITLED TO CREDIT FOR PPD BENEFITS ALREADY PAID IN THE AMOUNT OF $5,781.02 AS STIPULATED BY THE PARTIES.

RESPONDENT SHALL PAY PETITIONER THE AMOUNT OF $680.12 PER WEEK FOR A PERIOD OF 55 3/7 WEEKS FOR THE PERIOD FROM 11/23/2016 THROUGH 12/15/2017 REPRESENTING THE TIME DURING WHICH PETITIONER WAS TEMPORARILY TOTALLY DISABLED FROM PERFORMING HER JOB DUTIES FOR RESPONDENT UNDER SECTION 8(B) OF THE ACT AS A RESULT OF INJURIES AND TREATMENT TO HER LUMBAR SPINE. RESPONDENT IS ENTITLED TO CREDIT FOR TTD PAID IN THE AMOUNT OF $14,282.52 AS STIPULATED BY THE PARTIES.

RESPONDENT SHALL PAY REASONABLE AND NECESSARY MEDICAL BILLS FOR SERVICES RELATED TO TREATMENT DIRECTED TO PETITIONER'S LUMBAR SPINE UNDER SECTION 8(A) OF THE ACT, SUBJECT TO THE FEE SCHEDULE OR NEGOTIATED RATE, WHICHEVER IS LESS, PURSUANT TO SECTION 8.2 OF THE ACT. RESPONDENT IS ENTITLED TO CREDIT FOR MEDICAL BILLS ALREADY PAID AND FOR MEDICAL BILLS PAID BY ANY GROUP HEALTH INSURANCE UNDER SECTION 8(J) OF THE ACT. RESPONDENT TO HOLD PETITIONER HARMLESS IN ANY PROCEEDINGS TO RECOVER FOR MEDICAL BILLS PAID BY GROUP HEALTH INSURANCE OR ANY OTHER COLLATERAL PAYOR(S) FOR LUMBAR SPINE TREATMENT.

PETITIONER'S CLAIM FOR REIMBURSEMENT OF MILEAGE EXPENSE IS DENIED AS NOT BEING A REASONABLE AND NECESSARY EXPENSE UNDER SECTION 8(A) OF THE ACT. PETITIONER'S CLAIM FOR REIMBURSEMENT OF OUT-OF-POCKET EXPENSES IS DENIED BASED ON LACK OF FOUNDATION.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment;

however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Edward Lee________
Signature of Arbitrator

AUGUT 7, 2023

Findings of Facts and Corrected Conclusions of Law

Wood v. Lake Land College

17 WC 002167

In support of the arbitrator's decision on the issues of causal connection, TTD, medical bills and PPD, the arbitrator finds the following facts:

Petitioner worked as a teacher for Respondent Lake Land College. She worked as a computer technology instructor to inmates at a state correctional facility in Pinckneyville, IL. She did that job from 1999 to 2016. She lives in Trenton, IL, and her travel to and from work was 65 miles each way; she was not paid for or reimbursed for her daily travel expenses to and from work. At the conclusion of her daily work shift she and the other instructors met in an office so that all could leave and be checked out of the prison facility at the same time. When she arrived for the post-work meeting on November 18, 2016, she sat in a chair that had previously been repaired. The chair broke causing her to fall to the concrete floor and injure her right lower back and right elbow. She first sought medical treatment with Dr. Fulton, her primary care physician, on 11/23/2016, with complaints of pain in her low back and down her right leg. He ordered physical therapy, which she said did not help.

Dr. Fulton testified he is board certified in internal medicine. He first saw Petitioner on 11/23/2016. She presented with complaints of pain and numbness in the right leg after she had fallen at work on a concrete floor. He prescribed pain medication; she was already taking anti-inflammatory medication for osteoarthritis in her back, knee and hands. He also prescribed physical therapy and muscle relaxants. He gave her cortisone injections. His initial examination revealed the probability of an irritated nerve in the lower back. Dr. Fulton's records reflected continued complaints of pain in the right leg; there was no mention of pain or numbness in the left lower extremity. Petitioner asked Dr. Fulton to refer her to Dr. Raskas, an orthopedic spine surgeon in St. Louis, and he did so. Dr. Raskas performed lumbar spine surgery on Petitioner on 6/26/17, and she followed post-operatively with Dr. Raskas. She also continued to follow up with Dr. Fulton. He testified when he saw her on 5/31/18, which was approximately 11 months after her surgery by Dr. Raskas, she said she was walking about a mile a day. He testified that when he saw her on 9/24/2018 she complained of some spasms in her left foot and some lower back pain. He also noted a contusion to her left knee from a fall she had recently. Dr. Fulton testified that he did not recall if Petitioner was suffering from a foot drop when she complained of left foot spasm on 9/24/2018. Dr. Fulton administered an injection into Petitioner's left knee for her osteoarthritis. He referred her to Dr. Bicalho to pursue further left knee treatment.

Dr. Fulton testified that Petitioner's fall at work caused the need for a referral to Dr. Raskas and his subsequent surgical treatment. He said that his first notation about spasm and limited range of motion in her foot was 9/24/2018, which was 15 months after her back surgery. Dr. Fulton testified he didn't know one way or the other whether Dr. Raskas' records contained a diagnosis of foot drop. He testified that he does not know which nerve is impacted when someone has a foot drop. He said that the only mention of a foot drop in his records was in the first week of June, 2020, which was three years after Petitioner's back surgery by Dr. Raskas. He said he thought it had been diagnosed by one of the other doctors, but he didn't know which one. Dr. Fulton testified that he used the term because he said the patient told him she was diagnosed with it. She was wearing a brace on her left foot, but he said he did not know what kind of brace she was wearing.

Petitioner was referred to Dr. Raskas by Dr. Fulton. Dr. Raskas is a board-certified orthopedic spine surgeon. He said he sees and treats patients with spinal disorders of the cervical, thoracic and lumbar spine. He first saw Petitioner on 4/28/2017 and took the history of her falling when the chair she sat in at work broke. On examination he noted weakness in her right leg and right foot. It was normal on the left side. He diagnosed lumbar radiculopathy, lumbar degenerative disc disease and lumbar stenosis. He testified that her low back pain and lumbar radiculopathy were caused by the fall at work. Dr. Raskas performed surgery on June 26, 2017, involving an L5-S1 laminectomy with resection of the facet joint, decompression of the nerve and a transforaminal lumbar interbody fusion with a pedicle screw fixation and bone grafting. When Dr. Raskas saw her post-operatively on 12/15/2017 she was doing very well. He said she was able to do most anything she wanted to do. She complained of a little bit of numbness in her left S1 nerve root distribution but Dr. Raskas stated that it was nothing that was too bad or bothersome to her. Her strength was normal in her lower extremities. He released her to return to work with no restrictions. Dr. Raskas testified that the fall Petitioner had at work was the cause of her lumbar pain and radiculopathy, and the need for the surgery he performed. Dr. Raskas last saw Petitioner on 6/15/2018. His report from that date stated Petitioner had some left foot numbness which was improved and her level of pain was 0/10. She could do most of her daily activities and things that she likes to do without too much difficulty. On examination he noted some decrease to light touch sensation along the S1 nerve root distribution. He said her strength remained strong in the lower extremities bilateral and equal with no obvious weakness. He placed her at MMI and discharged her from care.

Petitioner underwent a Section 12 Independent Medical Examination by Dr. Anderson at Respondent's request on 3/16/2017. He testified that he is a board-certified orthopedic surgeon and practices general orthopedic surgery. He said his last spine surgery was 25 years ago. He testified that based on his evaluation of Petitioner he said neither the MRI nor the CT scan he reviewed supported an acute injury or the need for surgery. He thought she strained

her back and SI region. He said the injury was a temporary exacerbation of her underlying conditions and should settle down with time. He testified she didn't need any additional treatment and that she could work. He would consider her to be at maximum medical improvement and that she did not sustain any type of permanent injury as a result of the fall at work. He reviewed the records from the surgery performed by Dr. Raskas and considered it to be a procedure to address a chronic degenerative condition. He said the surgery was not done due to the accident.

Petitioner testified that she developed a left foot drop right after her back surgery. She said the first two weeks after surgery she was in bed and taking a lot of medication. But she said after that she started having the problem. She said she told Dr. Raskas about it. Dr. Raskas' records do not contain any mention or diagnosis of a foot drop. Petitioner had a fall at home in September, 2018, which was 15 months after her surgery by Dr. Raskas. She said she went out to her garage in bare feet, her foot went down, and she fell on her left knee on the concrete floor. She felt severe pain and it swelled up and turned black and blue. The fall happened on a Saturday, and she went to Dr. Fulton on the following Monday. Dr. Fulton took x-rays and gave her pain medication. He then referred her to Dr. Bicalho.

Dr. Bicalho Is an orthopedic surgeon who evaluated and treated Petitioner for her left knee pain. Dr. Bicalho testified he does general orthopedics but he does not do spine surgery. He testified he first saw Petitioner on 12/17/2018, which was 18 months after her back surgery by Dr. Raskas. He said she stated that she had injured her knee as a result of a fall. He said he did not have information about a reason why she fell. He said he did not note a certain cause for the fall, just that she injured herself as a result of a fall. He said her examination was typical for people that have arthritis in their knees. Dr. Bicalho testified that Petitioner told him she had a foot drop resulting from her back surgery. Dr. Bicalho's initial examination of claimant did not include any findings related to the left foot and no findings which would account for a foot drop diagnosis. Dr. Bicalho administered a cortisone injection in the left knee and then performed a left total knee arthroplasty on 5/1/2019 for the arthritis in her knee. On 9/26/2019, Dr. Bicalho reported no weakness in Petitioner's left lower extremity and normal gait. Due to continued complaints of post-operative pain by Petitioner, Dr. Bicalho performed a revision surgery of the left knee implant on 8/26/2020. Dr. Bicalho said that Petitioner had ruptured her PCL. Dr. Bicalho last saw Petitioner on 3/15/2021 and discharged her from his care on 6/9/2021. Dr. Bicalho testified that the cause of Petitioner's fall could have been a foot drop, but he said he did not have that noted. He said her fall aggravated her left knee arthritis.

Dr. Bicalho testified that he did not review the records from Petitioner's spine surgery. He said when he first examined Petitioner on 12/17/2018 he did not do any type of range of motion or strength testing on her left foot. He did not record any examination findings related

to the left foot. He said she had end stage arthritis in her left knee before she fell at home and that he did not have any evidence that the arthritis was altered in any way by the fall. When he did the left total knee arthroplasty he considered her arthritis to be severe. He agreed that based on the extent of her arthritis she was likely going to need a knee replacement at some point regardless of the fall at home. Dr. Bicalho testified that Petitioner appeared to have done too much activity after the knee replacement leading to the PCL rupture and need for the revision surgery.

Dr. Bicalho testified that Petitioner told him that her spine surgeon told her she had a foot drop as a result of her spine surgery. Dr. Bicalho testified that his opinions regarding the foot drop issue were based on his understanding that Petitioner's spine surgeon told her she had a foot drop. Dr. Bicalho testified that after Petitioner's total knee arthroplasty Petitioner's foot drop resolved. Petitioner testified it didn't. He said that resolution certainly could be an indication that the nerve problem was in the area of the knee. He also said that the extent of arthritis the Petitioner had in her left knee certainly could have been the cause for her fall at home.

Dr. Robson reviewed records and expressed expert opinions at Respondent's request. Dr. Robson is a board-certified orthopedic spine surgeon who treats patients conservatively and operatively for any disorder of the cervical, thoracic and lumbar spine and sacrum. After reviewing records Dr. Robson issued an opinion report on 1/12/2021. Dr. Robson testified he is familiar with the term foot drop and has encountered it in his surgical practice. He said it usually comes from a palsy of the L5 nerve root. He said he did not see any evidence that Petitioner had a foot drop. He said he did not see any evidence in Dr. Raskas' final records that would indicate a foot drop. He testified that if a foot drop is the result of a lumbar surgery, then the patient would wake up from surgery with a weak foot and he did not see that in this case. He testified that he did not see it documented anywhere that Petitioner had a consistent foot drop in reviewing the records of multiple treating physicians.

Petitioner testified at the time of trial that she is retired, is receiving a company pension and Social Security benefits. She applied for her pension benefits on 10/23/2017, which was before she completed treatment with Dr. Raskas. She was 66 years old at that time. She said her employer had indicated to her that she was going to be terminated, which she was on 10/23/2017. She said she had hoped to work five more years in order to increase her pension. There is no evidence that she considered or sought employment elsewhere after her termination and after she completed her medical treatment. She testified that after her back surgery her right leg numbness resolved, and her back pain was improved. She said that she cannot dance, work in her garden, hike or go bowling because of her back and left knee. She said she wears a back brace when doing certain activities and said she wears it about once a

week. She does not wear a brace on her left foot. She wears boots she bought to support her left foot. They are not prescribed by a doctor and are not custom made. She was not observed with any type of limp or altered gait when walking in the hearing room at the time of trial.

Based on the foregoing facts, the arbitrator reaches the following conclusions on the issues of causal connection, TTD, medical bills and PPD:

1. The arbitrator concludes that Petitioner's condition of ill-being as it relates to the lumbar spine is causally related to the accident at work on 11/18/16. She had consistent complaints following the incident of falling when the chair broke. The opinions of Dr. Raskas, who performed the L5-S1 laminectomy, decompression and posterior fusion and causally related that treatment to the accident, are more persuasive than those of Dr. Anderson, who performed a Section 12 IME at Respondent's request but who is not a spine surgeon. The arbitrator concludes that Petitioner has permanent partial disability to the person as a whole to the extent of 30% thereof as result of the low back injury and resultant lumbar fusion surgery. Respondent is entitled to credit for the PPD advance paid in the amount of $5,781.02 as stipulated by the parties.

2. The arbitrator concludes that Petitioner is entitled to TTD benefits from 11/23/2016 through 12/15/2017, a period of 55 3/7 weeks, which represents the time during which she was temporarily totally disabled from performing her job as a result of the injury sustained to her low back and resultant surgery. She was released to return to work with no restrictions by Dr. Raskas on 12/15/2017.

3. The arbitrator concludes that Respondent is responsible for payment of medical bills set forth in Petitioner's Exhibit 20 related to treatment directed to Petitioner's lumbar spine subject to the fee schedule or negotiated rate, whichever is less, as set forth in Section 8.2 of the Act. Respondent is entitled to credit for payments already made and is to hold Petitioner harmless regarding bills related to lumbar spine treatment paid by any health insurance under Section 8 (j) of the Act.

4. The arbitrator concludes that Petitioner's left knee condition and resultant surgeries are not causally related to the work accident or her lumbar spine surgery. Her claims for the left knee replacement, and any TTD, PPD or medical benefits related hereto, are denied. Petitioner has not proven that the fall she experienced in her garage at home in September, 2018, which injured her left knee, was the result of a foot drop

related to the lumbar spine surgery performed by Dr. Raskas. The records and examination findings of Dr. Raskas would be the most reliable sources for determining whether Petitioner suffered a foot drop as a result of her lumbar surgery. Neither Dr. Raskas' deposition nor his treatment records contain any mention or diagnosis of a foot drop. There were no examination findings made by Dr. Raskas to support a diagnosis of foot drop when he saw Petitioner post-operatively. When he last saw her on 6/15/2028, which was one year after her lumbar surgery, he recorded good strength in both lower extremities and no evidence of obvious weakness. His examination did not contain any findings which would be consistent with a foot drop. Dr. Fulton, who acknowledged that he didn't even know which nerve is involved in a foot drop, said he used the term foot drop because Petitioner told him the condition had been diagnosed by one of her other doctors, which is not supported by the evidence. It was not until September, 2018, 15 months after spine surgery, that Dr. Fulton mentioned anything about spasm in Petitioner's left foot, and, according to his deposition testimony, the only mention of the term foot drop in his records is in June, 2020, which was three years after the spine surgery. Dr. Bicalho testified that his opinions regarding the causal relationship between Petitioner's fall at home leading to the total knee arthroplasty and her lumbar surgery was based on his understanding that Petitioner's spine surgeon (Dr. Raskas) told her she had a foot drop caused by the surgery, which also is not supported by the evidence. Dr. Bicalho's finding that Petitioner's foot drop resolved after her knee replacement surgery is also not consistent with a foot drop caused by a lumbar surgery. It is more likely that Petitioner fell in her garage at home and injured her left knee because of instability caused by the severe arthritis in her knees, which Dr. Bicalho said certainly could have been the reason. Dr. Robson, a spine surgeon with experience in foot drop cases, testified that a foot drop after a spine surgery would show up shortly after the surgery. Whereas Petitioner testified that she developed a foot drop right after the surgery, the evidence in the record does not support that contention.

5. In light of the arbitrator's conclusions on the issue of causal connection related to the left knee, Petitioner's claims for additional TTD, PPD and medical benefits related to the left knee treatment and recovery are denied.

6. The arbitrator concludes that Petitioner's claims for reimbursement for out-of-pocket payments and mileage expense related to her travel for treatment as set forth in Petitioner's Exhibit 23 are denied. There is not sufficient evidence or foundation to support the claim for reimbursement of alleged out-of-pocket

payments. The claim for mileage expense related to medical treatment is not reasonable and necessary in this case. Petitioner selected her treatment providers and was not directed to any of them by Respondent. The distances traveled for treatment were considerably less than she traveled each day to and from work, for which she received no reimbursement or compensation.

7. With regard to the factors for determining disability set forth in Section 8.1(b) of the Act, the Arbitrator finds the following with regard to the lumbar spine:

(i) There was no impairment rating performed by a physician according to the AMA Guides submitted by either party. No significance is given to this factor.

(ii) Petitioner's occupation was that of a computer teacher for Respondent. She was given a full-duty release with no restrictions to return to that job by Dr. Raskas on 12/15/2017. She had been terminated and was receiving her pension and Social Security retirement benefits at that time, but Dr. Raskas said from his perspective she could work as a teacher if she chose to do so. Considerable significance is given to this factor.

(iii) Petitioner was 65 years of age at the time of the injury and 71 years old at the time of trial. Considerable significance is given to this factor.

(iv) There was no evidence presented that Petitioner's current or future earning capacity has been affected by her injury. Petitioner received a full-duty releases from Dr. Raskas, but she had already retired and taken her pension and Social Security retirement prior to concluding her treatment with Dr. Raskas. There is no evidence in the record that she sought employment elsewhere. Moderate significance is given to this factor.

(v) Petitioner testified that her main complaints are some back pain and left knee pain. She said she wears a back brace about once a week when performing certain activities. She said she cannot dance, hike, garden or bowl, because of both her back and her left knee. The office note of Dr. Raskas from 12/15/2017, when she was released to full duty, stated there was a little numbness in her left S1 nerve root distributions but nothing too bad or bothersome to her. The last medical report in the records regarding her low back is Dr. Raskas' final office note on 6/15/2018 when she was placed at MMI, which reported some residual left foot numbness but no pain. Strength in the lower extremities remained strong with no obvious weakness. Considerable significance is given to this factor.

Based on the above the Arbitrator finds the Petitioner pursuant to 8d2 of the Act sustained a loss of 30% on a person as a whole basis.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC024852
Case Name	Mindy Radcliff v. Alton School District
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0110
Number of Pages of Decision	22
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Matthew Terry

DATE FILED: 3/11/2024

/s/Marc Parker, Commissioner

Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 5, 2024 5.105%

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 JEFFERSON	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mindy Radcliff,

Petitioner,

vs. NO: 22 WC 24852

Alton School Distrcit,

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, temporary total disability, causal connection, medical expenses, 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 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.

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.

March 11, 2024
MP:yl
o 3/7/24
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	22WC024852
Case Name	Mindy Radcliff v. Alton School District
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Matthew Terry

DATE FILED: 3/10/2023

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

/s/*Linda Cantrell, Arbitrator*
Signature

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

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

MINDY RADCLIFF
Employee/Petitioner

Case # **22** WC **024852**

v.

Consolidated cases: ______

ALTON SCHOOL DISTRICT
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **1/19/23**. 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. [x] 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] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other ____________

FINDINGS

On the date of accident, **8/26/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**82,385.68**; the average weekly wage was $**1,584.34**.

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

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**TBD and any and all medical expenses paid**, for a total credit of $**TBD and any and all medical expenses paid,** pursuant to the stipulation of the parties.

Respondent is entitled to a credit of $**TBD and any and all medical expenses paid** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 16, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall be given a credit for any and all medical bills previously paid and a credit for any and all medical bills paid through its group medical plan under Section 8(j) of the Act. Respondent shall indemnify and hold Petitioner harmless from any expenses for which it receives such credit.

Respondent shall further pay Petitioner **$1,275.76** for reimbursement of out-of-pocket medical expenses.

The Arbitrator finds that Petitioner is entitled to receive the additional care recommended by Dr. Lyons related to post-concussion syndrome and TMJ (Temporomandibular Joint) dysfunction. Therefore, Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, occupational therapy for post-concussion syndrome and physical therapy for TMJ dysfunction, until Petitioner reaches maximum medical improvement.

The Arbitrator further finds that Petitioner is not entitled to prospective medical care related to her cervical or lumbar spine.

The Arbitrator finds there are no treatment recommendations for injuries to Petitioner's face, left side of head, left eye, right foot/ankle, or right great toe; and therefore, finds Petitioner is not entitled to prospective medical care related to these body parts.

Respondent shall pay Petitioner temporary total disability benefits of $**1,056.23**/week for **16-4/7** weeks, commencing **8/27/22 through 12/20/22**, 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.

______________________________________ **MARCH 10, 2023**

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

MINDY RADCLIFF,	)	
	)	
Employee/Petitioner,	)	
	)	Case No.: 22-WC-024852
v.	)	
	)	
ALTON SCHOOL DISTRICT,	)	
	)	
Employer/Respondent.	)	
	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on 1/19/23, pursuant to Section 19(b) of the Act. On 9/21/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to her head, foot, leg, and body as a whole as a result of slipping and falling on a wet floor on 8/26/22. The issues in dispute are accident, causal connection, medical expenses, temporary total disability, and prospective medical care.

TESTIMONY

Petitioner was 62 years old, married, with no dependent children at the time of the alleged accident. She has been employed by Respondent as a Special Education teacher for 20 years. Petitioner testified that on the alleged date of accident she was not under any medical restrictions for any conditions. On 8/26/22, one of Petitioner's students vomited on a large carpet in her classroom. Petitioner identified a photograph of the area on the carpet where the student vomited. (PX1) She testified that a janitor cleaned the area and she later slipped on the wet carpet while walking to place her lesson book on a nearby cabinet. She could not recall how much time had passed between the student vomiting and the carpet being cleaned. Petitioner testified that no one witnessed her fall and her door to the classroom was closed when the incident occurred pursuant to school policy. She stated the carpet was still wet when she slipped and fell.

Petitioner testified that when she fell, she struck her head on a birch cabinet and felt "loopy". She identified and marked the birch cabinet as "#1" on the photograph admitted into evidence as PX1. She testified she also struck her right foot and ankle on another cabinet that she identified and marked "#2" on PX1. Petitioner identified photographs taken by her husband on 8/29/22 or 8/30/22 that depicted bruising and discoloration of her left eye, head, right foot/ankle, and right great toe. (PX6, 7, 8) Petitioner testified she went to the emergency room the day of the

accident and underwent CT scans and x-rays. She exchanged text messages with her supervisor Cindy Schuenke while in the emergency room to reported her accident and provide an off work slip. Petitioner identified the text messages entered into evidence as PX2.

Petitioner testified she returned to the emergency room early the next morning with complaints of pain in her arm and pain and bruising in her right foot. She underwent x-rays of her foot and was placed off work until she followed up with her primary care physician.

Petitioner identified an email she received from Respondent's Director of Finance, Mary Schell, on 8/29/22 and stated the email was an accurate copy. Petitioner testified she was instructed to complete an accident report which she identified as PX5 and stated it was an accurate copy. Petitioner was examined by her primary care physician Dr. Timothy Lyons on 8/31/22 who continued her off work. Dr. Lyons ordered an MRI and referred her to a neurologist which Respondent initially denied. Dr. Lyons continued her off work until cleared by a neurologist. She underwent an MRI of her head on 10/3/22. Petitioner testified she developed back and neck pain following her accident and treated with chiropractor Dr. Hamel for those conditions beginning 10/27/22. Dr. Hamel provided chiropractic therapy and acupuncture for her headaches and pain. She continues to treat with Dr. Hamel and stated the treatment is helping. Petitioner testified she initially treated with chiropractor Sherer on one occasion, but he did not accept workers' compensation.

Petitioner was examined by neurologist Dr. Sherwood on 10/18/22 who prescribed medication and referred her for physical therapy and occupational therapy for concussion protocol. Dr. Sherwood called her two days later and told her he did not accept workers' compensation. He placed her off work until she was cleared by a neurologist. Petitioner began treating with Dr. Liu on 12/16/22 at the referral of Dr. Lyons. Dr. Liu prescribed medication and released Petitioner to return to work with restrictions. Petitioner returned to light duty work on 12/20/22 and continues to work within those restrictions. Petitioner is still treating with Dr. Liu, Dr. Lyons, and Dr. Hamel. She began concussion therapy on 1/16/23 at the referral of Dr. Liu and Dr. Sherwood.

Petitioner testified she has headaches and dizziness several times per week. She has chronic ringing in her ears. She has blurred vision on a daily basis depending on how much computer work she does. Petitioner testified that computer work is part of her job. She has memory loss where she has slow recall when there are multiple tasks. She has to do things one at a time and sometimes forgets doing things like drinking a second cup of coffee. Petitioner has difficulty concentrating, particularly with multiple tasks. Lights and loud noises increase her symptoms. She has anxiety attacks 2 to 3 times per week, particularly in high stress situations, that cause sweaty palms, nausea, diarrhea, and fearfulness. She stated her symptoms come on randomly and unexpectedly. She limits her driving to work and in-town errands due to anxiety attacks. She stated she had no history of anxiety attacks prior to her accident.

Petitioner testified she has numbness on the top of her right foot that runs from her second toe over the instep up to the ankle. She still has back pain that is triggered by repetitive movement and reaching behind her when dressing. She has pain with turning her head too much or too quickly. She stated the pain shoots up through her neck into her head. She has dizziness

when she looks up toward the ceiling. She has occasional numbness/tingling down her left arm. Petitioner testified she struck her jaw hard when she fell, and it is out of alignment. She has an upcoming dental exam to address her condition as she bites her tongue and cheek when she talks and chews.

Petitioner testified she injured her neck prior to 8/26/22 while working for Respondent. She underwent a cervical MRI and physical therapy related to that incident. She stated her neck pain radiated to her left arm. Petitioner testified that her symptoms resolved, and she had no neck or arm pain at the time of her accident on 8/26/22. Petitioner testified that in her lifetime she has experienced nausea, vomiting, diarrhea, and dizziness and told Dr. Lyons about her symptoms. She testified she did not have any of those symptoms at the time of her accident. Petitioner testified she is restricted from and careful with lifting.

On cross-examination, Petitioner testified that the student vomited just prior to dismissal at 3:00 p.m. She estimated the vomit was the size of a softball. She placed a chair over the area so other students would not step in it before the janitor could clean it.

Petitioner observed a video at arbitration. (RX1) Petitioner agreed the janitor came to her room at approximately 2:56 p.m. to clean and empty trash. The janitor left Petitioner's classroom at 2:58 p.m. Petitioner exited her classroom at 4:13 p.m. and walked down the hallway to the office. Petitioner reentered her classroom at 4:15 p.m. and exited again at 4:23 p.m. to leave the building. She agreed she fell between 4:15 and 4:23 p.m.

Petitioner identified photographs admitted into evidence. (RX2) Petitioner testified she does not have a memory of her fall. She stated she was loopy after she fell and sat up and the cabinets were moved. She testified that her body and shoe were wet from sitting on the area that was cleaned of vomit. She testified she was wearing sandals on the day of the accident and denied having tripped over her sandals. She estimated the vomit spot was 18 inches away from the cabinet. She testified she used her cell phone to call her supervisor Ms. Schuenke while she was still laying on the floor. Petitioner's cell phone records were then marked PX17 and admitted into evidence. The phone records reflect Petitioner called Ms. Schuenke at 4:19 p.m., her husband at 4:21 p.m., and Ms. Schuenke again at 4:22 p.m. The records show that Ms. Schuenke called Petitioner at 4:23 p.m. and Petitioner called Dr. Lyons' walk-in clinic at 4:29 p.m. Petitioner testified that Dr. Lyons' office told her to go to the emergency room.

Petitioner testified she did not drive straight to the emergency room when she left school that day. She stated she drove a distance and realized she could not drive and called her husband. Her husband picked her up and took her to the hospital. She left her car at one of her husband's worksites not far from the school. Petitioner denied having any back pain on Friday morning prior to the work accident as stated in Dr. Lyons' medical record dated 8/31/22. She did not know why Dr. Sherwood indicated in his medical record of her first visit on 10/18/22 that she had no issues with concentration or attention and good memory for recent and remote events. Petitioner stated she had a history of headaches related to sinuses, but not the type of headaches and migraines she has had since her accident. She denied any history of anxiety. Petitioner testified that bright lights and fluorescent lighting affect her concentration.

Petitioner observed a clip of video surveillance at arbitration. (RX11) The video clip was identified as Radcliff - 13:58 – pushing cart. She agreed the video depicts her lifting a bag of dog food into her car. She did not know how much the bag of dog food weighed.

On re-direct examination, Petitioner was reminded of an incident involving her father's legal and debt issues. She stated it was a long time ago and it was devastating to her. She agreed the event caused her anxiety.

Jessica Barth testified on behalf of Respondent. Ms. Barth has been employed by Respondent for three years as a certified nursing assistance who cares for disabled children. Ms. Barth was assigned to a student in Petitioner's classroom on 8/26/22. She testified that shortly prior to 3:00 p.m. on 8/26/22, the student she was assigned to began jumping around after eating and drinking. The student went to the carpet and spit-up after burping. Ms. Barth testified that the spit-up was approximately half dollar in size. Ms. Barth testified she was going to clean it up when Petitioner told her she would do it. Ms. Barth handed Petitioner napkins and she watched Petitioner clean up the spit. She stated Petitioner then placed a chair over the area. Ms. Barth testified she was with Petitioner the entire school day and she did not notice anything on Petitioner prior to her fall, including a black eye or bruising on her head.

Danny Gerdt testified on behalf of Respondent. Mr. Gerdt worked for Respondent from 1994 through 2005 and then became employed by Aramark as a custodian at Petitioner's school. Mr. Gerdt identified himself on a video and agreed he entered Petitioner's classroom at 2:56 p.m. to clean vomit. He stated he entered the classroom with a spray bottle and shop towel. He testified that he sprayed the cloth one or two times and then wiped the area. Mr. Gerdt identified himself exiting Petitioner's classroom at 2:58 p.m. and taking a barrel in the hallway to perform his regular custodial duties. At 4:06 p.m., Mr. Gerdt arrived back at Petitioner's classroom to vacuum. He testified he does not vacuum carpet if it is very wet.

On cross-examination, Mr. Gerdt estimated the vomit was approximately the size of a quarter or half dollar. He does not recall if it was covered with paper towels. He does not recall if he vacuumed the spot where the vomit was when he vacuumed Petitioner's classroom, but he believed that he did. He does not recall if he specifically checked the spot to see if it was still wet when he returned to vacuum, stating the spot was so small.

Joe Beliveau testified on behalf of Respondent. Mr. Beliveau is a private investigator who performed surveillance on Petitioner on 11/21/22 and 11/23/22. Mr. Beliveau observed a video clip dated 11/23/22 of Petitioner lifting a 44-pound bag of dog food. He testified he watched Petitioner lift the bag in the grocery store aisle and he could read the weight written on the bag. He testified that the video also depicts the bag label and shows it weighs 44 pounds. He testified he could not recall all of the things in Petitioner's shopping cart as he did not follow her around the entire time she was shopping.

Mr. Beliveau testified he surveilled Petitioner for eight hours on both days, but he did not obtain eight hours of video on each day. He testified that he was told Petitioner had a head injury and was ordered to record what he could.

Petitioner called Cindy Schuenke as an adverse witness. Ms. Schuenke is the Director of Early Childhood for Respondent. She worked from 7:30 a.m. to 4:30 p.m. on 8/26/22 at different schools within the district. She does not recall seeing Petitioner on the day of the accident and stated her office is located in a different building. Ms. Schuenke recalled texting Petitioner on 8/26/22 and providing her with the workers' compensation phone number. She did not recall Petitioner texting her from the hospital.

MEDICAL HISTORY

Petitioner reported to Jersey Community Hospital's emergency room at 5:12 p.m. on the day of accident. She reported that one of her students vomited on the floor and she slipped on the floor that was still wet from being cleaned. She fell onto a hard surface while walking and landed on her head. Location of injuries were noted to her head and neck and Petitioner reported mild pain. Review of symptoms indicated no numbness or weakness and all other systems reviewed were negative. Physical examination revealed mild tenderness to the left frontal area of Petitioner's head, muscle spasms and painless range of motion of the cervical spine, and no tenderness and normal range of motion of the back. CT scans of her cervical spine revealed straightening of the lower cervical lordosis, mild to moderate facet hypertrophy and degenerative changes with severe right neural foraminal stenosis at C3-4. (PX9, p. 14) CT scan of the head revealed minimal swelling of the left frontal scalp. (RX9, p. 13) Clinical impression was single contusion to the scalp and head without hematoma. She was ordered to take over-the-counter Motrin, apply ice, and to follow up with her primary care physician as needed. (PX9, p. 1-2)

Petitioner returned to the emergency room on 8/27/22 at 12:04 a.m. Triage examination performed at 12:16 a.m. indicated Petitioner slipped and fell on a tile floor while walking. (PX9, p. 19) She landed on her head with no loss of consciousness. CT scans from 8/27/22 indicate concussion. Her arms were numb earlier today, right head and neck now hurt, with her worse pain in her right ankle/foot. Injuries were noted to her left frontal area, right anterior ankle, right dorsal foot, and right great toe. Physical examination revealed a Glasgow Coma Score of 15, tenderness to the left side of her head, and tenderness and ecchymosis of the tip of the right great toe without swelling.

Physician's notes taken at 12:26 a.m. indicate Petitioner returned with moderate pain and injuries to her head, neck, right ankle, and right foot due to injuries that occurred at work yesterday. (PX9, p. 16) Review of symptoms were negative for numbness, dizziness, loss of vision, chest pain, weakness, nausea, abdominal pain, laceration, or vomiting. Examination of her neck and back were normal. A small ecchymosis was noted to her right great toe. X-rays of her right ankle were negative for fracture and a moderate heel spur was noted. X-rays of her right foot was negative for fracture or dislocation and positive for heel spur and minimal first MTP bunion. Clinical impression was single contusion with soft tissue hematoma to the right foot. She was placed off work until she followed up with her primary care physician. (PX9, p. 27). Pain level upon discharge at 1:40 a.m. was 7/10 with neck pain, pain in the right foot and great toe up ankle.

On 8/31/22, Petitioner followed up with Dr. Timothy Lyons who noted Petitioner fell on a wet floor and struck her face. (PX10) He noted Petitioner had a left black eye. Petitioner

reported pain in her head radiating down her neck. He noted Petitioner has had sinus issues, but she denies having headaches like this. Petitioner complained of ringing in her ears, nausea, blurred vision, numbness and tingling in her arms, bruising and swelling in her right foot with a burning pain to touch, soreness in the bottom of her foot, mood swings, hip pain, and she woke with back pain on Friday morning. Review of symptoms and physical findings were positive for headache, blurry vision, tinnitus, contusion to the left side of head with swelling on anterior lateral side of forehead, soft tissue injury to right foot with bruising on top of foot past ankle approximately 2 to 3 inches. Dr. Lyons discussed concussion syndrome with Petitioner and advised against reading and computer work. She was ordered to return in one week for post-concussion syndrome evaluation. Petitioner was placed off work until reevaluated.

On 9/7/22, Dr. Lyons noted continued nausea, ears ringing, and foot pain. He noted Petitioner still had knots on her head, with continued blurry vision and headaches. He continued her off work. (PX10, p. 5-7)

On 9/16/22, Petitioner returned to Dr. Lyons and reported continued ringing in her ears that increased with physical activity, blurred vision especially when using a computer, improvement in nausea, pain and swelling in the top of her right foot into the second and third toes, loss of balance, dizziness, short-term forgetfulness, and daily headaches. Dr. Lyons diagnosed bilateral tinnitus, concussion syndrome, daily headaches, and dissociative neurological syndrome disorder with dizziness. He recommended a referral to a concussion specialist and an MRI of the brain. Petitioner was continued off work. (PX10, p. 8-12)

Dr. Lyons records reflect Petitioner called him on 9/27/22 and advised she could not get a claim number from workers' compensation. Her neurological examination was scheduled on 10/18/22 and she would submit the expense, along with the MRI bill, to her health insurance. She asked if she could return to work with restrictions on 10/3/22 as her classroom was "falling apart". She stated she was still having issues and was not sure if she could work, but she wanted to give it a try. (PX10, p. 13) Dr. Lyons advised Petitioner she should not return to work until cleared by neurology.

On 9/30/22, Dr. Lyons noted Petitioner continued to have headaches, trouble sleeping, dizziness with fast movement of her head, and occasional nausea that was severe. (PX10, p. 15-18) Dr. Lyons performed a standardized assessment of concussion and Petitioner scored 2/6 sensitivity to light, 2/6 nausea, headaches, dizziness, and blurry vision. She scored moderate in severe fatigues, tinnitus, and headaches. Dr. Lyons stated Petitioner definitely exhibited post-concussive symptoms. He noted Petitioner was still doing online work that exacerbated her symptoms and he restricted her from same.

On 10/3/22, Petitioner underwent an MRI of her head that was interpreted as showing changes that "are nonspecific but are probably at least in part microvascular related." (PX 11) It showed no acute intracranial findings or acute infarction.

On 10/6/22, Petitioner presented to chiropractor Dr. Jacob Sherer who diagnosed segmental dysfunction of the cervical, thoracic, and lumbar spine and pelvis. He recommended adjustments once per week with postural and core exercises. (PX 12)

On 10/17/22, Petitioner was examined by chiropractor, Dr. Justin Hamel. (PX13) Petitioner reported her work accident and listed her chief complaints in order of severity as: (1) head/neck ache; (2) ringing in ears (new); and (3) back occasional. She reported numbness/tingling in her arms and hands, occasional neck pain/stiffness, loud ringing in her ears that upsets sleep patterns, change in vision since her accident, change in mood/behavior since fall, loss of consciousness on 8/26/22, nausea since head injury on 8/26/22, diarrhea associated with IBS, and asthma. Dr. Hamel noted discomfort in the left TMJ, left side of neck, bilateral trapezius, posterior neck, all levels of thoracic, bilateral sacroiliac, lumbar, headaches, and ringing in ears since fall. Her pain level was 7/10. Her symptoms radiated to the front of her left face. Dr. Hamel implemented a regimen of chiropractic care and acupuncture. He projected 12 therapy sessions. (PX13, p. 6) Petitioner underwent 13 therapy sessions through 12/21/22 as of the date of arbitration. Dr. Hamel's records from 10/17/22 through 12/12/22 state Petitioner is to continue care as necessary; however, his records related to Petitioner's last two visits on 12/15/22 and 12/21/22 indicate continued care cannot be determined at this time.

On 10/18/22, Petitioner was examined at OSF Neurology by Michelle Lovsey, APRN, CNS (Dr. Sherwood's office) at the referral of Dr. Lyons. (PX14) Petitioner reported her work accident and stated she did not remember her fall and is not sure if she lost consciousness. She reported she hit the left side of her head on a shelf and the floor. Petitioner complained of horrible nausea, headaches, and brain fog. Ms. Lovsey noted Petitioner continued to work 4 hours per day on the computer after her injury. Petitioner reported severe ringing in her ears that wakes her at night. Ms. Lovsey noted Petitioner had no problem with concentration or attention, normal verbal recall, normal visuospatial skills, good memory for recent and remote events, normal muscle testing, and normal gait. Ms. Lovsey referred Petitioner for occupational therapy for a concussion program, prescribed Medrol dose pack, encouraged brain rest, and continued her off work until cleared by a neurologist.

On 10/21/22, Petitioner returned to Dr. Lyons and advised that Dr. Sherwood's office told her they do not accept workers' compensation and she could not follow up with them. She requested a referral to a different neurologist. Her symptoms remained unchanged. (PX10, p. 19)

On 11/23/22, Petitioner completed an intake form for Dr. Michael Liu at BJCMG Neurology Associates. (PX15, p. 7-9) Petitioner reported constant ringing in her ears that disrupts her sleep, headaches with computer work, nausea due to headaches and ringing in her ears, neck pain, and occasional dizziness since her accident.

Dr. Liu examined Petitioner on 12/16/22 and noted she slipped and fell on the left side of her face in 8/2022. He recorded that Petitioner was out for a period of time and woke up on the floor. The accident was witnessed. Petitioner reported over time her memory and concentration improved. She was still having 2 to 3 headaches a week on the top of her head that lasts for one day, nausea with headaches, daily ringing in her ears, with improved dizziness and fatigue. Dr. Liu diagnosed brain concussion, with loss of consciousness of 30 minutes or less. He prescribed Amitriptyline and recommended she keep physically and mentally active as tolerated. Dr. Liu released Petitioner to return to work from a neurology standpoint but ordered her to work light duty for 3 to 6 months. (PX10, p. 4) Dr. Liu ordered Petitioner to return if her symptoms worsened or failed to improve.

On 12/20/22, Dr. Liu clarified his work restrictions to state Petitioner's light duty restrictions are no lifting greater than 30 pounds. (PX15, p. 6)

On 12/23/22, Petitioner followed up with Dr. Lyons. (PX10, p. 33-39) Petitioner noted no improvement in headaches or ringing in her ears with medication. She reported recent anxiety attacks. She reported she returned to work on 12/19/22 and was told she could not return until Dr. Liu clarified her light duty restrictions. She was able to return to work on 12/21/22. Petitioner continued to treat with Dr. Hamel with mild improvement. Petitioner requested a referral for anxiety treatment. She reported that Dr. Liu gave her medication to help her sleep and she was scheduled to follow up with him in February 2023. Dr. Lyons noted Petitioner had hand tremors with anxiety attacks and her husband was driving her. She had persistent ringing in her ears. Dr. Lyons diagnosed bilateral tinnitus, synovitis of the left side of the TMJ, concussion, post-concussion syndrome, vertebral contusion with concussion, cervalgia, dissociative neurological syndrome disorder with dizziness, and contusions of the right foot, second and third toes. He referred Petitioner to physical therapy for synovitis and tenosynovitis and occupational therapy for post-concussion syndrome.

On 1/4/23, Dr. Lyons authored a work slip stating Petitioner is currently under his care and she may need to step out of a meeting or group setting on occasion for upwards to 30 minutes at a time to allow for selfcare and preservation. He stated the necessity is required from 12/26/22 through 6/26/23 at which time the restriction will be reevaluated. (PX10, p. 40)

Medical records that pre-date Petitioner's accident were admitted into evidence. (RX3-9) Petitioner reported having headaches on 5/13/11 when she was examined by Dr. Lyons for pain in her arms and fluttering in her chest. (RX3, p. 1) Petitioner reported headaches at six additional checkup appointments with Dr. Lyons from 5/30/13 through 2/7/22. (RX3, p. 3-9, 19, 32, 48-52, 53, 57) Petitioner reported headaches after a work-related incident on 11/8/19 and throughout her subsequent physical therapy treatment. (RX5, p. 2-4, 7-8, RX6)

On 8/6/20, Petitioner reported to Dr. Lyons she had vertigo that started on 7/23/20. She took Bronine and Mucinex sinus. She complained of dizziness, lightheadedness, nausea, loss of appetite, and the room was spinning. Petitioner reported she was not driving due to her symptoms. Dr. Lyons suspected fluid and crystals in her ears and prescribed over-the-counter Zyrtec. (RX3, 23-27)

On 5/13/11, Petitioner presented to Dr. Lyons and reported a lot of stress going on in her life and she requested medication for depression. (RX3, 1-4) On 10/27/11, Petitioner reported symptoms of vomiting and diarrhea followed by abdominal pain three times in the past month. This morning she had heart palpations and had testing in September for same that was normal. Dr. Lyons assessed acute sinusitis, irritable bowel syndrome, anxiety disorder, and overanxious disorder. (RX3, 5-8) On 5/30/13, Petitioner reported no headache, nausea, vomiting, or diarrhea. She had a normal examination. Assessment remained asthma, irritable bowel syndrome, adjustment insomnia, mixed anxiety disorder, adjustment disorder with anxiety and depressed mood. (RX3, 9-12) On 3/6/14, Petitioner reported sinus pain and pressure with vomiting and

diarrhea that has passed. Petitioner was positive for fever and assessed with acute sinusitis. (RX3, 13-17)

On 3/6/02, Petitioner underwent x-rays of her thoracic and cervical spine that were normal. Petitioner reported she fell at work and reported a history of a motor vehicle accident two years prior. (RX4, 1-2) On 11/6/19, Petitioner presented to Alton Memorial Hospital after a work-related accident while assisting a disabled child. She was diagnosed with a strain of the cervical spine and left shoulder. X-rays of her cervical spine showed multilevel osteoarthritis. (RX4, 3-32) Petitioner underwent 26 physical therapy treatments through 3/18/20. (RX 6) She underwent cervical spine x-rays on 1/22/20 that revealed degeneration at C5-7. (RX7, p. 1) She treated with orthopedist Dr. James Doll for her work-related injury through 9/17/20. (RX7) Final diagnosis was cervical/parascapular strain and cervical spondylosis with mild left shoulder degenerative joint disease. On 10/5/20, Petitioner presented to Dr. Lyons and reported pain in her knees, left arm, and neck as a result of a car accident a week ago. (RX3, p. 28-31) On 8/27/21, Dr. Lyons noted Petitioner had fluid discharge from both ears, ongoing pain related to a knot on the side of her neck, and knee pain. (RX3, 37-41) On 9/14/21, Petitioner presented to Dr. Lyons following a work-related incident where she was attacked by a disabled child. She complained of multiple bruises and redness on her chest, legs, and arm. He noted Petitioner aggravated her collarbone issues from a previous injury and she had pain in the lower back of her head. (RX3, 42-47; RX9-36) On 4/4/22, Petitioner presented to Dr. Lyons following a work-related accident where a child pulled on her arm and hurt her neck. (RX 3, 61-65)

Petitioner complained of numbness and tingling in her left arm while undergoing physical therapy for her work-related accident that occurred in November 2019. She reported low back pain in November 2018. (RX3, 18-22)

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, an injury must "arise out of" and "in the course of" employment. 820 ILCS 305/1(d). An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. *Orsini v. Indus. Comm'n*, 117 Ill.2d 38, 509 N.E.2d 1005 (1987). In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work or that he or she is exposed to the risk of injury to a greater degree than the general public. Id. "In the course of employment" refers to the time, place and circumstances surrounding the injury. *Lee v. Industrial Comm'n*, 167 Ill. 2d 77, 656 N.E.2d 1084 (1995); *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 362 N.E.2d 325 (1977). That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003).

It is undisputed Petitioner was at work performing her duties as a special education teacher when she slipped and fell on wet carpet in her classroom. It is undisputed that a student vomited or "spit-up" on the carpet just prior to school dismissal and the janitor cleaned the carpet at approximately 2:56 p.m. Mr. Gerdt testified he entered the classroom with a spray bottle and shop towel. He sprayed the cloth one or two times and then wiped the area. There was no testimony as to what type of liquid was in the spray bottle. Mr. Gerdt exited the classroom at 2:58 p.m. and returned to the classroom to vacuum at 4:06 p.m. He does not specifically recall if he vacuumed the entire carpet, and he did not feel the carpet to see if it was still wet. Petitioner testified that she slipped on the wet carpet between 4:15 and 4:23 p.m. which is supported by the evidence.

Petitioner testified she felt loopy after she fell and does not have a memory of her fall. She testified that when she sat up the cabinets were moved, and her body and shoe were wet from sitting in the area that was cleaned of vomit. She testified she was wearing sandals on the day of the accident and denied having tripped over her sandals. She estimated the vomit spot was 18 inches away from the cabinet that she struck her head on. Petitioner's cell phone records show she called her supervisor Ms. Schuenke at 4:19 p.m. Petitioner testified she was still on the floor when she called Ms. Schuenke. Petitioner then called her husband at 4:21 p.m. She called Ms. Schuenke again at 4:22 p.m. and Ms. Schuenke called her back at 4:23 p.m. Petitioner called Dr. Lyons' walk-in clinic at 4:29 p.m. Petitioner testified that Dr. Lyons' office told her to go to the emergency room.

Falling on slippery ground at the work site is a specific example of an employment-related risk. The Arbitrator finds that Petitioner's injuries arose out of and in the course of her employment with Respondent.

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

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

When a pre-existing condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the pre-existing [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Comp. Comm'n*, 371 Ill. App. 3d 882, 888, 864 N.E.2d 266, 272 (2007). Accidental injury need only be a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 673 (2003) (emphasis added). Even when a pre-existing condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 797 N.E.2d 665 (2003). Allowing a claimant to recover

under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 359 Ill. App. 3d 582, 834 N.E.2d 583 (2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Industrial Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982). The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill. 2d 234, 362 N.E.2d 339 (1977).

Petitioner had been employed by Respondent as a special education teacher for 20 years when she slipped and fell in her classroom on 8/26/22. Petitioner testified that immediately prior to her fall, she was under no medical restrictions for any reason. She admitted she had a history of nausea, vomiting, diarrhea, and dizziness and told Dr. Lyons about her symptoms. Dr. Lyons records support a sporadic history of such symptoms dating back to 2011. Petitioner testified that her headaches were related to sinuses and not the type of headaches and migraines she has had since her accident. Dr. Lyons' medical records consistently relate Petitioner's headaches to acute sinusitis and there is no evidence of a previous head injury or concussion syndrome contained in the records.

Petitioner also admitted she injured her neck at work prior to 8/26/22, for which she underwent a cervical MRI and physical therapy. The medical records reflect a date of accident of 11/6/19. Petitioner presented to the emergency room at Alton Memorial Hospital on that date with neck and left shoulder pain after a disabled child pulled her left arm while she was carrying the child. She was diagnosed with a strain of the cervical spine and left shoulder. She had radiating pain in her left arm. X-rays of her cervical spine showed multilevel osteoarthritis. Petitioner underwent 26 physical therapy treatments through 3/18/20 and remained under orthopedist Dr. James Doll's care through 9/17/20. Dr. Doll's final diagnosis was cervical/parascapular strain and cervical spondylosis with mild left shoulder degenerative joint disease.

There is evidence in the records of another work-related accident that occurred on 9/14/21. Petitioner presented to Dr. Lyons and reported she was attacked by a disabled child. She complained of multiple bruises and redness on her chest, legs, and arm. She aggravated her collarbone issues from a previous injury and had pain in the lower back of her head. On 4/4/22, Petitioner presented to Dr. Lyons following another work-related accident where a child pulled on her arm and hurt her neck. Prior to those injuries, on 10/5/20, Petitioner presented to Dr. Lyons and reported pain in her knees, left arm, and neck as a result of a car accident a week ago.

Petitioner testified that her symptoms resolved following her work-related accident. The Arbitrator assumes Petitioner was referencing her accident in November 2019 as that is the incident that resulted in significant physical therapy and diagnostic testing. Petitioner testified that she had no neck or arm pain at the time of her accident on 8/26/22. The Arbitrator notes that the relevant symptoms Petitioner complained of in the year preceding her accident was headaches, neck pain, and a painful knot on the left side of her neck.

The Arbitrator does note a history of vertigo in August 2020. Petitioner reported to Dr. Lyons she had vertigo that started on 7/23/20 that caused dizziness, lightheadedness, nausea, loss of appetite, and the room was spinning. Petitioner reported she was not driving due to her symptoms. Dr. Lyons suspected fluid and crystals in her ears and prescribed over-the-counter Zyrtec. He also noted on 8/27/21 that Petitioner had fluid discharge in both of her ears; however, Petitioner did not report ongoing symptoms between August 2020 and August 2021.

Petitioner testified that since her accident on 8/26/22, she has had headaches and dizziness several times per week, chronic ringing in her ears, blurred vision on a daily basis depending on how much computer work she does, memory loss where she is slow to recall, difficulty concentrating when multitasking, sensitivity to florescent lights and loud noises, anxiety attacks 2 to 3 times per week, pain and numbness on the top of her right foot that runs from her second toe over the instep up to her ankle, neck and back pain with certain movements, and an unaligned jaw where she bites her tongue when she talks and chews.

Petitioner was diagnosed with concussion syndrome by multiple physicians following her work accident. She presented to the emergency room approximately one hour after her accident and reported a consistent history of injury. Injuries were noted to her head and neck. She had tenderness to the left frontal area of her head with objective swelling of the left frontal scalp. Petitioner was positive for muscle spasms in her neck. She returned to the emergency room approximately seven hours later and it was noted that a CT scan indicated concussion and a Glasgow Coma Score was 15. She was placed off work. On 8/31/22, Dr. Lyons diagnosed Petitioner with post-concussion syndrome and continued her off work. Dr. Lyons referred Petitioner to neurologist Dr. Sherwood for evaluation of post-concussion syndrome. On 10/18/22, Petitioner saw Michelle Lovsey, APRN, CNS in Dr. Sherwood's office who referred Petitioner for occupational therapy for a concussion program and continued her off work. Dr. Sherwood's office called her two days later and declined to treat her because they did not accept workers' compensation. On 12/16/22, Dr. Liu diagnosed Petitioner with a brain concussion and ordered her to return to light duty work for up to six months. He stated she could perform activities as tolerated.

There is no evidence Petitioner had concussion-related symptoms, right foot/ankle/toe pain, or injuries to her jaw prior to 8/26/22. There is minimal evidence of lumbar spine pain prior to the work accident. Petitioner had prior treatment, including diagnostic studies and physical therapy, to her cervical spine resulting from multiple acute work-related injuries. Petitioner testified that her cervical spine symptoms resolved prior to the work accident on 8/26/22 and she was not under any restrictions or care related to her neck at the time of accident.

Photographs taken on or around 8/29/22 depict bruising to Petitioner's left eye, face, and right ankle/foot. Jessica Barth testified she worked with Petitioner in her classroom all day on 8/26/22 and she did not notice anything wrong with Petitioner, including a black eye or facial contusions. Petitioner's phone records reflect Petitioner called Ms. Schuenke at 4:19 p.m., her husband at 4:21 p.m., and Ms. Schuenke again at 4:22 p.m. The records show that Ms. Schuenke called Petitioner at 4:23 p.m. and Petitioner called Dr. Lyons' walk-in clinic at 4:29 p.m. She testified that she called Ms. Schuenke while she was still on the floor after her fall and that Dr. Lyons' office told her to go to the emergency room.

Ms. Schuenke texted Petitioner on 8/26/22 acknowledging she had gone to the emergency room, and she provided Petitioner with the workers' compensation phone number. Ms. Schuenke told Petitioner she had to fill out paperwork first thing Monday morning and to call the company nurse as soon as possible. (PX2) Petitioner texted Ms. Schuenke on 8/27/22 and advise she would be off work until released by her doctor and provided a copy of an off work slip.

On 8/26/22, a Provider Injury Alert was prepared by medical professional, Joyce R, at Company Nurse. (PX3) The report was directed to Jersey Community Hospital ER and indicated Petitioner would be coming to their facility seeking treatment for a reported workplace injury involving a concussion that occurred that day. The medical complaint listed headache and pain in the head. A history of accident was provided that Petitioner slipped on a wet floor after a student vomited in the classroom. Petitioner hit her head and landed on her left side.

On 8/29/22, Respondent's Director of Financial Services, Mary Schell, emailed Petitioner and stated Ms. Schuenke informed her of the accident and acknowledged that Petitioner called Company Nurse and sought treatment in the emergency room. Ms. Schell informed Petitioner she would need a statement of injury and provided Petitioner with the necessary forms to fill out. (PX4) On 8/29/22, Petitioner completed an Employee Statement of Injury. (PX5) Petitioner stated she slipped and fell on a wet floor. She further stated, "When I came around I was loopy. I must of hit cabinets with head and foot they were moved". Petitioner listed her injured body parts as "head on left side, right foot, ringing in ears, tingling down arms, black eye, bruising and swollen foot, nausea, blurred vision."

Based on the totality of the evidence, the Arbitrator finds that Petitioner's current conditions of ill-being related to her head, face, left eye, concussion, post-concussion syndrome, right foot/ankle, right great toe, cervical spine, lumbar spine, and TMJ (Temporomandibular Joint) are causally connected to the work accident of 8/26/22.

Issue (J): **Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?**

Issue (K): **Is Petitioner entitled to 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).

Based upon the above findings as to accident and causal connection, the Arbitrator finds Petitioner's medical treatment has been reasonable and necessary to treat her work-related injuries. There was no testimony that Petitioner's medical treatment was unreasonable or unnecessary. Respondent shall therefore pay the expenses contained in Petitioner's Group

Exhibit 16, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall be given a credit for any and all medical bills previously paid and a credit for any and all medical bills paid through its group medical plan under Section 8(j) of the Act. Respondent shall further pay Petitioner $1,275.76 for reimbursement of out-of-pocket medical expenses.

The Arbitrator further finds Petitioner is entitled to receive the additional care recommended by Dr. Lyons related to post-concussion syndrome and TMJ dysfunction. On 10/21/22, Dr. Sherwood's office recommended an occupational therapy program for post-concussive syndrome. Unfortunately, Dr. Sherwood's office declined to continue treating Petitioner because it did not accept workers' compensation. Dr. Lyons then referred Petitioner to Dr. Liu whom Petitioner saw on 12/16/22. Dr. Liu released Petitioner to light duty work for 3 to 6 months with a lifting restriction of 30 pounds. He ordered Petitioner to return to his office if her symptoms failed to improve. Petitioner testified she is still under the care and treatment of Dr. Liu. On 12/23/22, Petitioner informed Dr. Lyons she was scheduled to follow up with Dr. Liu in February 2023. There is no evidence in the record that this follow up appointment is scheduled, which is after the arbitration date of 1/19/23. Nevertheless, on 12/23/22, Dr. Lyons referred Petitioner for occupational therapy for post-concussive syndrome. Petitioner testified she started occupational therapy on 1/16/23, just three days prior to arbitration. Although there is no evidence where or with whom Petitioner is receiving therapy, the Arbitrator finds that Petitioner is entitled to occupational therapy as recommended by Dr. Lyons for post-concussive syndrome.

With respect to Petitioner's TMJ (Temporomandibular Joint) dysfunction, on 10/17/22, Dr. Hamel noted Petitioner's complaints of pain in her left TMJ. Petitioner testified she struck her jaw hard when she fell, and it feels like her jaw is out of alignment. Petitioner testified that she bites her tongue and cheek when she speaks and chews. She testified she has an upcoming dental examination to address her condition. On 12/23/22, Dr. Lyons diagnosed synovitis and tenosynovitis of the left side of Petitioner's TMJ for which he recommends physical therapy. The Arbitrator finds that Petitioner is entitled to the care and treatment recommended by Dr. Lyons for TMJ dysfunction, including physical therapy.

With respect to Petitioner's cervical and lumbar spine, Petitioner began treating with Dr. Hamel on 10/17/22 who at that time projected 12 therapy sessions. Petitioner underwent 13 therapy sessions which included chiropractic treatment and acupuncture through 12/21/22. Dr. Hamel's medical records from 10/17/22 through 12/12/22 state Petitioner is to "continue care as necessary"; however, his records of Petitioner's last two visits on 12/15/22 and 12/21/22 indicate "continued care cannot be determined at this time". There is no evidence that Dr. Hamel recommends continued care and treatment. On 12/23/22, Dr. Lyons noted Petitioner continued to treat with Dr. Lyons with mild improvement. The Arbitrator finds that Petitioner is not entitled to prospective medical care related to her cervical or lumbar spine.

The Arbitrator finds there are no treatment recommendations for injuries to Petitioner's face, left side of head, left eye, right foot/ankle, or right great toe; and therefore, finds Petitioner is not entitled to prospective medical care related to these body parts.

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

Petitioner claims entitlement to temporary total disability benefits from 8/27/22 through 12/20/22, representing 16-4/7 weeks. Petitioner was placed off work by emergency room personnel on 8/27/22 until she followed up with her primary care physician. On 8/31/22, Dr. Lyons continued Petitioner off work and continuously placed her off work until she was examined by Dr. Liu. On 12/16/22, Dr. Liu released Petitioner to return to work from a neurology standpoint but ordered her to work light duty for 3 to 6 months. Petitioner testified that Respondent did not allow her to return to work until her light duty restrictions were clarified. On 12/20/22, Dr. Liu clarified Petitioner's restrictions were limited to no lifting greater than 30 pounds. Petitioner testified she returned to work and continues to work within her restrictions.

Therefore, Respondent shall pay Petitioner temporary total disability benefits for the period 8/27/22 through 12/20/22, representing 16-4/7 weeks, pursuant to Section 8(b) of the Act.

This award shall in no instance be a bar to further hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005135
Case Name	Jennifer Westerfield v. ABF Freight Systems
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0111
Number of Pages of Decision	19
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Charles Given
Respondent Attorney	Lindsay Vanderford

DATE FILED: 3/12/2024

/s/Amylee Simonovich, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JENNIFER WESTERFIELD

Petitioner,

vs. NO: 21 WC 05135

ABF FREIGHT SYSTEMS,

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, 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 30, 2022, 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.

March 12, 2024

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AHS/ldm
051

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

/s/*Maria E. Portela*
Maria E. Portela

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005135
Case Name	Jennifer Westerfield v. ABF Freight Systems
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	David Kane, Arbitrator

Petitioner Attorney	Charles Given
Respondent Attorney	Lindsay Vanderford

DATE FILED: 12/30/2022

THE INTEREST RATE FOR THE WEEK OF DECEMBER 28, 2022 4.60%

/s/*David Kane, 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)
- x None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Jennifer Westerfield
Employee/Petitioner

v.

ABF Freight System, Inc.
Employer/Respondent

Case # **21**WC **5135**

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 **David Kane**, 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. 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. ☐ 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 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 21, 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 $**42,500.64**; the average weekly wage was $**817.32**.

On the date of accident, Petitioner was **37** 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 $**22,262.24** for TTD**, $0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**22,262.24**.

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

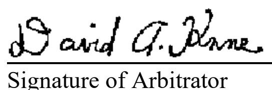
ORDER

The Arbitrator finds the treatment recommended by Dr Nho on May 12, 2022, specifically the left hip arthroscopy, primary labral repair, femoral osteochondroplasty and capsular plication, to be reasonable, necessary and causally related to the work accident Petitioner suffered on October 21, 2020. The Arbitrator awards this treatment and orders the Respondent to pay for the treatment pursuant to the Medical Fee Schedule or contract with provider, whichever is less.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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



Signature of Arbitrator

December 30, 2022

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jennifer Westerfield Case #21WC5135
Employee/Petitioner

v.

ABF Freight System, Inc.
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

INTRODUCTION

This matter was tried before Arbitrator David Kane in Chicago on November 30, 2022. No issues related to the right hip treatment or condition will be addressed in this Decision. The issues in dispute were causal connection with respect to the left hip only and prospective medical under Sections 8a/19b with respect to the left hip only.

FINDINGS OF FACT

At the time of her accident, Jennifer Westerfield ("Petitioner") was a 37-year-old Clerk who had worked for ABF Freight System, Inc. ("Respondent") for a little over a year. On October 21, 2020, Petitioner injured her right hip after her right foot went through a broken skid. She felt immediate pain in her right hip following the accident.

On October 24, 2020 Petitioner was examined at the emergency room at Franciscan Health. Petitioner complained of a "burning" feeling in her right hip. X-rays of her right hip were performed and negative for fracture and she was advised to follow up with her primary care physician with any on-going issues. PX2.

Petitioner's next medical treatment was at Advocate Occupational Health on December 23, 2020. She complained of right hip pain and underwent conservative treatment with medications. On January 25, 2021 she underwent a MRI of the right hip that revealed a short segment tear in the anterior-superior right acetabular labrum. At the next office visit on January 27, 2021, she was referred

for orthopaedic evaluation. PX3.

On February 9, 2021 Petitioner was examined at Orthopaedic Specialists of NW Indiana by Dr Sunil Dedhia. Dr Dedhia reviewed the right hip MRI and referred Petitioner to a hip surgeon. PX4.

On March 8, 2021, Petitioner was examined by Dr Shane Nho, an orthopaedic surgeon with Midwest Orthopaedics at Rush. Dr Nho examined Petitioner and reviewed the January 25, 2021 right hip MRI. The MRI confirmed femoral acetabular impingement and an acetabular tear. Dr Nho provided light duty work restrictions and prescribed right hip surgery. PX1.

On July 16, 2021, Petitioner underwent surgery performed by Dr Nho. The procedures performed included right hip arthroscopy, labral repair, acetabuloplasty, femoroplasty, synovectomy, and capsular plication. The postoperative diagnoses included right labral tear and femoroacetabular impingement syndrome. PX1, PDX3.

Petitioner started a postoperative course of physical therapy at Athletico on July 29, 2021. PX5.

On October 19, 2021, Petitioner attended a follow up examination with Dr Nho. Petitioner made complaints of left hip pain that radiates into the groin which she attributed to deep squatting exercises in physical therapy on October 6, 2021. Dr Nho questioned whether Petitioner had a left hip labral tear versus musculoskeletal flare up and recommended a MRI if the symptoms continued. He also recommended Petitioner start a course of left hip therapy. PX1.

On November 15, 2021, Petitioner was examined by Dr Ritesh Shah, a Section 12 independent medical examiner hired by the Respondent. On physical examination the bilateral hips exhibited positive impingement test and Patrick's test to the groin consistent with intraarticular origin of pain from her hip joints. Dr Shah related the right hip condition to the work accident but did not feel her left hip condition was related to the work accident. RX1.

Petitioner returned to work full duty February 4, 2022.

On February 23, 2022, Petitioner underwent a MRI of

her left hip. PX1, PDX4. On March 31, 2022, Dr Nho reviewed the MRI and examined Petitioner. The MRI revealed an acetabular labral tear and confirmed femoral acetabular impingement (“FAI”). Dr Nho prescribed and performed an injection to the left hip. PX1.

On May 12, 2022, Petitioner was re-examined by Dr Nho. She had some benefit from the left hip injection but the hip pain had increased to the same level her right hip pain had been prior to the surgery. Petitioner was released at maximum medical improvement with respect to the right hip. She was prescribed left hip surgery which would include arthroscopy, primary labral repair, femoral osteochondroplasty and capsular plication. PX1.

Petitioner was discharged from therapy on May 18, 2022. PX5.

Respondent declined to authorize the left hip surgery prescribed by Dr Nho. Petitioner attributes her left hip pain to deep squatting exercises she performed in physical therapy on October 6, 2021. She has experienced pain in her left hip since this date. Sitting and standing long periods increase her pain level. She is able to sit for around 45

minutes at a time before she has to stand up and stretch. She is able to stand around 20 minutes before her left leg gets tired. For pain relief she does a home exercise program and uses Tylenol 2 to 3 times per day. She has been working full duty since February 4, 2022 but she notices pain with sitting at work. She would like to undergo the surgery recommended by Dr Nho.

Testimony of Dr Shane Nho – PX1

Dr Nho testified via Zoom deposition on July 22, 2022. He is an orthopaedic surgeon who devotes two-thirds to three-quarters of his practice to the treatment of hips. The remainder of his practice is devoted to knees and shoulders. His initial examination of Petitioner took place on March 8, 2021. At that time, Petitioner complained of right hip pain following an accident at work on October 21, 2020. Petitioner did not initially complain of left hip pain. A review of the right hip MRI taken on January 25, 2021 revealed a right hip labral tear and femoroacetabular impingement. Dr Nho prescribed surgery to the right hip. This surgery was performed on July 16, 2021 and included right hip arthroscopy, labral repair, acetabuloplasty, femoroplasty, synovectomy and capsular plication.

At the October 19, 2021 office visit, Petitioner complained to Dr Nho about left hip pain. On provocative testing during physical examination Petitioner had positive subspine and positive FADIR with a painful arc from one o'clock to three o'clock. She was diagnosed with musculoskeletal flare versus a hip labral tear. Dr Nho prescribed a course of physical therapy for the left hip to be performed at the same time the right hip therapy was performed. The doctor opined the left hip condition could have been from overcompensation and overuse since the right hip surgery or the activities performed in physical therapy on October 6, 2021 could have aggravated or exacerbated the left hip symptoms.

Dr Nho reviewed the February 23, 2022. Left hip MRI films and found there were findings consistent with an acetabular labral tear and femoroacetabular impingement. An intra-articular injection of Lidocaine and Depo-Medrol was injected in Petitioner's left hip on March 31, 2022.

Petitioner's last office visit with Dr Nho was on May 12, 2022. Petitioner was released at maximum medical improvement with respect to the right hip.

She was provided with no restrictions on the right hip. With respect to the left hip, Petitioner had only transient relief from the injection and had exhausted conservative treatment. Dr Nho recommended left hip surgery to include arthroscopy, primary labral repair, femoral osteochondroplasty, and capsular plication.

Dr Nho opined the right hip condition and the need for all treatment to the right hip is causally related to the work accident of October 21, 2020.

Dr Nho opined the left hip condition and the need for all treatment to the left hip is causally related to the work accident of October 21, 2020. Specifically, the doctor believes Petitioner overused the left hip while undergoing treatment on the right side and this eventually caused the left hip labral tear. In addition, while in therapy for the right hip, on October 6, 2021, she was doing a lot of bending and squatting and this could have aggravated her left hip too.

On cross examination, Dr Nho testified that Petitioner's left hip complaints began with the October 6, 2021 incident in physical therapy, and it is more likely this incident caused her

condition than overuse or altered gait because of the right hip condition, but altered gait and mechanics could have contributed to her left hip condition too.

Testimony of Dr Ritesh Shah - RX1

Dr Shah testified via Zoom deposition on August 12, 2022. He is an orthopaedic surgeon who devotes approximately 65% of his practice to the treatment of hips. He performed a Section 12 Independent Medical Examination at the request of the Respondent on November 15, 2021. Petitioner admitted, and the medical records confirm, she did not have pain in her left hip immediately following the work accident of October 21, 2020. Petitioner informed the doctor that she attributed the left hip pain to events in physical therapy performed in October 2021.

With respect to the bilateral hips, Dr Shah diagnosed Petitioner with cam-type femoroacetabular impingement, and for the right hip, the diagnosis included post right hip surgery. Diagnosis for the left hip included possible labrum tear. Dr Shah found the right hip condition and need for all treatment, including surgery and post-operative

physical therapy, was related to the work accident of October 21, 2020, but the left hip condition was not related. Regardless of causation, Dr Shah recommended a MRI arthrogram of the left hip. Dr Shah recommended continued physical therapy for the right hip.

On left hip examination, Petitioner exhibited a positive anterior impingement test and a positive Patrick's test to the groin indicative of a possible labrum tear.

Dr Shah never reviewed the February 23, 2022 left hip MRI.

On cross-examination, Dr Shah testified that if a patient has impingement and they perform repetitive deep squats, then labrum pathology could occur. It is also possible an existing labrum tear could be aggravated during physical therapy activities.

CONCLUSIONS OF LAW

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

F. Is Petitioner's current condition of ill-being

causally related to the injury?

K. Is Petitioner entitled to any prospective medical care?

Petitioner alleges she suffered injuries to her bilateral hips as a result of the October 21, 2020 work accident. Petitioner testified she was not having issues with her bilateral hips before the accident. Immediately after the accident she noticed pain in her right hip. She started experiencing pain in her left hip during physical therapy on October 6, 2021.

There is no dispute the right hip condition and need for surgery and postoperative therapy is related to the work accident. Dr Nho and Dr Shah both causally related the right hip condition. There is also no dispute that Petitioner did not have left hip symptoms at the time of her work accident on October 21, 2020. Instead, Petitioner alleges left hip pain manifested while she was completing therapy at Athletico for her right hip condition on October 6, 2021.

A review of the Athletico records shows a new exercise was added to improve squat depth and strength on October 6, 2021. PX5, p 138-145.

Petitioner testified the pain in her left hip manifested and increased after performing this deep squatting exercise. The October 13, 2021 Athletico note indicates Petitioner had been sore in the bilateral hips since October 6, 2021. The October 15, 2021 Athletico note indicated the left hip was still sore from the October 6, 2021 therapy session. PX5.

Dr Nho testified the Petitioner’s left hip complaints began with the October 6, 2021 incident in physical therapy, and it is more likely this incident caused her condition than overuse or altered gait because of the right hip condition, but altered gait and mechanics could have contributed to her left hip condition too. PX1.

Dr Shah testified that if a patient has impingement and they perform repetitive deep squats, then labrum pathology could occur and it is possible an existing labrum tear could be aggravated during physical therapy activities. RX1.

The Arbitrator has reviewed the testimony of the Petitioner and the medical opinions of Dr Nho and Dr Shah. The Arbitrator finds the Petitioner’s current conditions of ill-being to the bilateral

hips are causally related to the work accident of October 21, 2020. The Arbitrator acknowledges Petitioner did not suffer the left hip injury at the time of the accident. Instead, the evidence shows the left hip was injured during the physical therapy she was completing for the right hip condition.

Petitioner’s last office visit with Dr Nho was on May 12, 2022. Petitioner was released at maximum medical improvement with respect to the right hip. With respect to the left hip, Petitioner had only transient relief from the injection and had exhausted conservative treatment. Dr Nho recommended left hip surgery – arthroscopy, primary labral repair, femoral osteochondroplasty, and capsular plication. Dr Shah did not review the left hip MRI and did not review the surgery recommendation of Dr Nho. PX1 and RX1.

The Arbitrator finds Petitioner’s current left hip condition and need for surgery is related to the work accident. The Arbitrator awards the surgery prescribed by Dr Nho at the May 12, 2022, office visit.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC003264
Case Name	Joshua Cornman v. Coal Field Construction, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0112
Number of Pages of Decision	14
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Haris Huskic
Respondent Attorney	Gregory Keltner

DATE FILED: 3/12/2024

/s/Kathryn Doerries, 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 JEFFERSON	)	☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☒ Modify down, PAW	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOSHUA CORNMAN,

Petitioner,

vs. NO: 18 WC 03264

COAL FIELD CONSTRUCTION, LLC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of permanent partial disability-nature and extent only, 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 modifies the Arbitrator's decision as to the permanent partial disability award, as stated below. The Commission performs an analysis under Section 8.1b(b) as follows:

(i) Level of Impairment: Neither party submitted an AMA impairment rating, so this factor is given no weight.

(ii) Occupation: Petitioner's job with Respondent involved working the belts which was heavy labor. Petitioner was terminated by Respondent. Petitioner is currently employed at Special Mine Services where he makes electrical fittings for coal mines, power plants, and concerts, and he makes heavy duty rubber electrical fittings. Petitioner's current position is physically a hands-on job. Petitioner testified his employer accommodates him when he needs assistance. This factor is given significant weight.

(iii) Age: Petitioner was 39 years old at the time of his work-related accident. He is a

younger individual and will have to work with his disability for an extended period of time. This factor is given significant weight.

(iv) Earning Capacity: Petitioner did not present any evidence of an impairment in earnings. This factor is given no weight.

(v) Disability: As a result of the work-accident, Petitioner sustained multiple injuries. He was diagnosed with a cervical strain, right shoulder pain, concussion with no loss of consciousness, post-concussion syndrome, post-traumatic stress disorder, scalp laceration, headache, permanent visual and hearing impairment, and tinnitus. Petitioner's complaints of headaches, vision and hearing issues, neck pain, increased pain with light and stress, personality issues, memory issues, sleep and fatigue issues are well documented in the medical records. Petitioner continues to have annual visits for vision and hearing loss and utilizes his prism glasses and hearing aid at home and at work. This factor is given greater weight.

In reviewing the totality of the evidence and applying the five factors as enumerated above, the Commission finds that the Petitioner sustained a permanent partial disability of 30% loss of use of a person as a whole.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 24, 2023, is, otherwise, hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $474.10 per week for a period of 150 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 30% loss of Petitioner's person as a whole.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $71,200.00. 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.

March 12, 2024

/s/*Kathryn A. Doerries*

Kathryn A. Doerries

o-2/20/24
KAD/jsf

/s/*Maria E. Portela*_____
Maria E. Portela

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC003264
Case Name	Joshua Cornman v. Coal Field Construction, LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Gregory Keltner

DATE FILED: 4/24/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 18, 2023 4.87%

/s/*Linda Cantrell, Arbitrator*

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Joshua Cornman
Employee/Petitioner

v.

Coal Field Construction, LLC
Employer/Respondent

Case # **18** WC **003264**

Consolidated cases: ______

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **216/23**. By stipulation, the parties agree:

On the date of accident, **1/2/18**, 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 $**41,088.84**, and the average weekly wage was $**790.17**.

At the time of injury, Petitioner was **39** years of age, ***married*** with **2** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent. Respondent stipulated to liability for Petitioner's medical expenses through the date he reached maximum medical improvement. It is undisputed that Dr. Wolf placed Petitioner at MMI on 4/1/19.

Respondent shall be given a credit of $**25,357.50** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**25,357.50**.

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 $**474.10**/week for a further period of **200** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused permanent partial disability to the extent of **40% loss of the body as a whole.**

Respondent shall pay Petitioner compensation that has accrued from 4/1/19 through 2/16/23, 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.

______________________________________ **APRIL 24, 2023**

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
Nature and Extent Only

JOSHUA CORNMAN,)
)
Petitioner,)
)
v.) **Case No: 18-WC-003264**
)
COAL FIELD CONSTRUCTION, LLC,)
)
Respondent.)

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on February 16, 2023. The parties stipulated that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent on January 2, 2018, and that Petitioner's current condition of ill-being is causally connected to the injury.

Respondent stipulated to liability for Petitioner's medical expenses through the date he reached maximum medical improvement. It is undisputed that Dr. Wolf placed Petitioner at MMI on 4/1/19. Petitioner's medical expenses contained in PX8 reflect treatment related to his work injury through 4/1/19. The parties stipulated that Respondent is entitled to a credit of $25,357.50 in temporary total disability benefits paid. The sole issue in dispute is the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 39 years old, married, with two dependent children at the time of accident. Petitioner was hired by Respondent on 1/4/16. At the time of his accident, Petitioner was a belt repairman and was required to inspect and repair all belt lines above and below ground. Petitioner testified that on 1/2/18 he was cranking up a roll-up door in the mechanic shop when a long angle that holds the door fell from the rafters and struck him on the top of his head. He stated that prior 1/2/18 he did not have any complaints or seek any medical treatment for his head, ears, neck, back, or shoulders. He testified that prior to the accident his hearing was in good condition.

Petitioner presented to SIH Hospital on 1/8/18 with complaints of vomiting and headaches. He provided a history of a 40-pound steel bar falling on his head. He attempted to return to work, but he started vomiting, seeing blurry lines while driving, and had neck pain.

Petitioner was diagnosed with a head injury and concussion without loss of consciousness. He was prescribed medication and discharged. Petitioner testified he returned to SIH Hospital again on 1/10/18 with complaints of head pain, confusion, personality change, visual disturbance, and numbness in his forehead and lips. Dr. Workman diagnosed concussion syndrome and neck pain. Petitioner was placed off work and underwent physical therapy. Petitioner continued to treat with multiple doctors due to his ongoing symptoms.

Petitioner testified that when he saw Dr. Manescalco on 7/17/18 he had headaches in the front and back of his head and pain in the back of his eyes. He testified that his symptoms prevented him from driving, concentrating, and conversating. Petitioner attempted to return to work but was terminated on 3/29/18.

Petitioner wears a permanent hearing aid in his left ear and is examined by Dr. Shandy on an annual basis. He has already had one hearing aid replaced as they last one to two years. Petitioner testified he has to wear the hearing aid at all times, and he cannot hear his children without it. Petitioner also visits his eye doctor once a year to have his prism glasses checked. Petitioner testified he is currently employed by Special Mine Services where he makes electrical fittings. He described his job duties as physical, and he can perform them. Petitioner testified that his employer accommodates him when he needs assistance.

Petitioner testified that since his accident he has difficulty welding because he cannot see through the lens as well as he used to. He testified that his injuries have significantly affected his life. He stated he has had to rethink his life and he is not as easy to live with anymore. He testified that his wife had to help him bathe and shave for the first seven months after the accident because he had difficulty seeing. He has "screaming headaches" with weather changes.

On cross-examination, Petitioner agreed that Dr. Wolf released him to full duty work on 11/6/18 but he had to work with corrective eyewear. He agreed that Dr. Wolf released him at MMI on 4/1/19. Petitioner did not recall ever being released from wearing prism glasses. He testified he is still prescribed prism glasses today because he cannot keep his "eyes together" without them. He has not returned to Dr. Wolf since being released on 4/1/19.

Petitioner testified he only has hearing loss in his left ear, but he has difficulty with tinnitus in both ears which the hearing aid helps muffle. Petitioner testified he has not had any additional treatment for his head or right shoulder since he last saw Dr. Wolf. He testified he was terminated by Respondent because he did not have a work slip to give them to return to work.

MEDICAL HISTORY

On 1/8/18, Petitioner presented to SIH Hospital with complaints of headache and vomiting. (PX7, p. 305) Petitioner reported he was struck by a 40-pound steel bar on his head. He attempted to return to work but was vomiting and seeing blurry lines while driving. He also complained of neck pain. A CT scan of Petitioner's head revealed a subcutaneous lesion of the left occipital scalp possibly representing scarring or resolving hematoma. Petitioner was diagnosed with injury to his head and concussion without loss of consciousness. He was prescribed Benadryl, Reglan, and Zofran.

On 1/10/18, Petitioner returned to SIH Hospital complaining of head pain, confusion, personality change, visual disturbance, and numbness in the forehead and lips. (PX7, p. 285) Dr. Michael Workman diagnosed Petitioner with post-concussion syndrome and neck pain. Dr. Workman ordered a course of physical therapy for Petitioner's neck pain and placed him off work.

On 1/11/18, Petitioner presented to Dr. James Alexander complaining of constant headache, nausea, memory issues, and personality change. (PX4, p. 85) Dr. Alexander diagnosed a cervical sprain, concussion with no loss of consciousness, and a scalp laceration. He ordered physical therapy and continued Petitioner off work.

On 1/15/18, Petitioner began physical therapy at SIH Hospital. He reported pain and tenderness of the head and neck area with limited range of motion, strength deficits, and postural compensations.

On 1/23/18, Petitioner returned to Dr. Workman and reported poor sleep, dizziness, poor balance, memory change, and visual disturbance. He reported his pain increased with lights or stressful events. (PX7, p. 286) Dr. Workman diagnosed post-concussion syndrome, neck pain, and post-traumatic headache. He instructed Petitioner to continue with the neurologist's recommendations and continued Petitioner off work.

On 1/25/18, Petitioner was examined by neurologist Dr. David Peeples. Petitioner reported that some of his symptoms included non-vertiginous dizziness, tinnitus, decreased vision, and headaches. Dr. Peeples diagnosed concussion with transient amnesia and scalp laceration, post-concussive symptoms, and non-focal neurologic examination with the exception of truncal ataxia. Dr. Peeples continued Petitioner off work and increased his Amitriptyline dosage.

On 2/21/18, Petitioner followed up with Dr. Workman and reported dizziness, memory loss, and ringing in his ears. (PX7, p. 288) Dr. Workman diagnosed post-concussion syndrome, traumatic brain injury with loss of consciousness, and scalp laceration. Petitioner was continued off work.

On 4/12/18, Petitioner returned to Dr. Workman complaining of right shoulder and neck pain. (PX7, p. 290) He had persistent memory loss/change and dizziness. Dr. Workman diagnosed traumatic brain injury with no loss of consciousness, post-concussion syndrome, neck pain, intractable post-traumatic headache, and acute pain of the right shoulder. Dr. Workman ordered MRIs of the brain, cervical spine, and right shoulder. He prescribed Ondansetron and Norco and placed Petitioner's physical therapy on hold.

The MRI of the brain revealed mild chronic small vessel ischemic changes seen within the supratentorial white matter. (PX7, p. 295) The cervical spine MRI revealed mild multilevel degenerative changes within the uncovertebral joints and facet joints. (PX7, p. 296-297) The MRI of Petitioner's right shoulder revealed marked rotator cuff tendinosis; partial-thickness articular surface/rim rent tear of the insertional fibers of the supraspinatus with no full-thickness

rotator cuff tear or tendon retraction; a small amount of fluid in the subacromial/subdeltoid bursa; marked hypertrophic degenerative changes of the acromioclavicular joint; and mild degenerative changes of the glenohumeral joint. (PX7, p. 299)

On 5/21/18, Petitioner was examined by Dr. Christopher Wolf who diagnosed concussion with no loss of consciousness, headache, balance impairment, minimal cognitive impairment, and visual impairment. Dr. Wolf recommended an evaluation by a neuro-optometrist and neuropsychologist.

On 7/17/18, Petitioner was examined by Dr. Kelsey Manescalco at Center for Vision & Learning for complaints of headaches in the front and back of his head since the work injury. (PX3, p. 39) He described his headaches as constant and a dull ache. His average pain was 2-3/10 and at worse it was 10/10. He reported that Topamax provided some relief and his symptoms were aggravated with bright lights and crowded/busy environments. Petitioner also reported double vision, blurred vision, light sensitivity, and dizziness. Dr. Manescalco performed numerous tests and diagnosed periodic headache symptoms, convergence insufficiency, glare sensitivity, dizziness and giddiness, visual discomfort, bilateral OU, regular astigmatism, myopia, and hypermetropia. She prescribed updated prescriptions with a prism base and vision therapy to improve binocular function and visual comfort. Petitioner was instructed to follow up in 4 to 6 weeks to assess status of binocular system with prism prescription.

On 7/24/18, Petitioner saw Dr. Michael Oliveri for a neuropsychological evaluation. (PX5, p. 94) Petitioner complained of visual change and double vision, persistent ringing in his left ear, persistent light sensitivity, variable short-term memory, occasional word-finding problems, headaches that varied with weather, sleep disturbance, fatigue, and diminished concentration. Dr. Oliveri ordered neuropsychological tests.

On 7/30/18, Petitioner followed up with Dr. Alexander who diagnosed refractive diplopia, sensorineural hearing loss of combined types in the left ear, and closed cerebral contusion. Due to the significant loss of hearing in the left ear, Dr. Alexander ordered an audiometric test.

On 8/9/18, Petitioner returned to Dr. Alexander with complaints of headaches and dizziness. (PX4, p. 53) Dr. Alexander noted the audiometric test revealed severe hearing loss in the left ear. He diagnosed concussion, headache, impairment of balance, and visual impairment. Dr. Alexander increased Petitioner's Lexapro dosage and prescribed Topamax. He ordered Petitioner to continue therapy and released him to sedentary work.

On 8/28/18, Petitioner followed up with Dr. Manescalco and reported continued light sensitivity and inconsistent sleep. (PX3, p. 35) Dr. Manescalco diagnosed concussion and convergence insufficiency. Petitioner was instructed to continue using prism glasses and to return in three months for a binocular vision test.

On 9/6/18, Petitioner returned to Dr. Wolf and reported the Topamax and prism glasses were helping and although Lexapro was helping his mood, it produced sexual side effects. (PX6,

p. 178) Dr. Wolf diagnosed concussion, headache, and visual impairment. He prescribed Effexor for headaches and released Petitioner to sedentary work.

On 9/10/18, Dr. Alexander opined that Petitioner had substantial hearing loss in the left ear and tinnitus. He related both conditions to Petitioner's work accident. (PX6, p. 173)

On 10/10/18, Petitioner followed up with Dr. Wolf complaining of headaches. (PX2, p. 16) He reported the prism glasses and Topamax were helping and his memory was slightly off. Dr. Wolf increased Petitioner's Effexor XR 150 daily, refilled Topamax, prescribed work hardening, and referred Petitioner back to audiology for hearing aid evaluation. Petitioner was ordered to remain on sedentary work.

On 10/15/18, Petitioner presented to SIH Hospital for work hardening. (PX7, p. 205) Therapy was ordered five times per week for three weeks.

On 11/6/18, Petitioner returned to Dr. Wolf complaining of headaches. (PX2, p.13) He reported the Effexor was helping with his mood. Dr. Wolf recommended hearing aids and instructed Petitioner to continue Effexor and Topamax. Dr. Wolf released Petitioner to return to work with proper eyewear.

On 11/19/18, Petitioner was examined by Dr. James Benecke at Otology Associates. (PX6, p. 116) Petitioner reported having hearing loss in his left ear, loud tinnitus in the left ear which required background noise to mask it, and left ear discomfort with a few spells of otorrhea. Dr. Benecke reviewed the audiology and comprehensive audiometric results and found his left ear showed signs of mild chronic otitis externa which was the source of discomfort and occasional drainage. Dr. Benecke opined Petitioner had unilateral sensorineural hearing loss in the left ear with subjective tinnitus as a result of the hearing loss and chronic otitis external. He opined that Petitioner's sensorineural hearing loss and attendant tinnitus was casually related to the work accident. He opined that the work injury caused a concussive injury to the cochlea and auditory system on the left side. Dr. Benecke opined that because Petitioner suffered a sensorineural hearing loss, there was no medical or surgical management that would improve his condition. He opined that the only option for Petitioner from the standpoint of hearing improvement and possibly tinnitus abatement would be the use of hearing aids. He opined that Petitioner's injury was permanent and he would require hearing aids for the rest of his life.

On 11/27/18, Petitioner followed up with Dr. Manescalco. (PX3, p. 31) Petitioner was instructed to continue wearing prism glasses and to follow up with Dr. Wolf for vision therapy. Petitioner was instructed to follow up in three months for a binocular vision assessment.

On 12/4/18, Petitioner returned to Dr. Wolf complaining of headaches and mild memory and cognitive impairments. (PX2, p.19) Dr. Wolf instructed Petitioner to return in two months once he consulted with the optometrist.

On 12/18/18, Petitioner presented to SIH Hospital for visual therapy. (PX3, p. 30)

On 1/9/19, Petitioner was examined by Dr. Dan Shandy. (PX1, p.5) Dr. Shandy performed a hearing assessment and diagnosed sensorineural hearing loss of the left ear and unrestricting hearing on the right. Dr. Shandy recommended Oticon Opn1 or Signia Inx technologies that were rechargeable due to having the maximum noise reduction and the ability to boast soft speech.

On 2/7/19, Petitioner returned to Dr. Manescalco and reported post-concussion symptoms such as occasional headaches. Petitioner was instructed to return to annual care with a primary care optometrist.

On 4/1/19, Dr. Wolf placed Petitioner at MMI. (PX2, p.22) Petitioner was instructed to continue using Effexor for two more weeks.

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 was terminated by Respondent on 3/29/18. He is currently employed by Special Mine Services where he makes electrical fittings. He is able to perform his job duties which he described as physical. Petitioner testified that his employer accommodates him when he needs assistance. The Arbitrator places greater weight on this factor.

(iii) **Age**: Petitioner was 39 years of age at the time of accident. He is a younger individual and must live and work with his 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). Petitioner will require a hearing aid necessitated by the undisputed work accident for the remainder of his life. The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: There is no direct evidence of reduced earning capacity contained in the record. Petitioner is currently employed by Special Mine Services. No evidence was admitted to support an impairment in earnings. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of the undisputed work accident, Petitioner sustained multiple injuries to his head. He was diagnosed with a cervical strain, scalp laceration, right shoulder pain, post-concussive syndrome, and permanent vision and hearing impairments. Some of his symptoms include head pain, confusion, headaches, vomiting/nausea, personality change, vision disturbance, memory loss, dizziness, poor balance, sleep disturbance, and fatigue. Petitioner has permanent loss of hearing in his left ear and must wear a hearing aid for the remainder of his life. He is examined by Dr. Shandy on an annual basis. He testified that if he does not wear the hearing aid he cannot hear his children. Petitioner has tinnitus in both ears which the hearing aid helps muffle.

Petitioner has to wear prism glasses as a result of the accident. He has an annual checkup to have his prescription assessed. Petitioner testified he cannot keep his "eyes together" without wearing the glasses. Petitioner testified that since his accident he has difficulty welding because he cannot see through the lens as well as he used to. He testified that his injuries have significantly affected his life. He has "screaming headaches" with weather changes. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% loss of use of his body as a whole, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 4/1/19 through 2/16/23, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC009429
Case Name	Thane Hunt v. City of Peoria Police Department
Consolidated Cases	17WC033893;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0113
Number of Pages of Decision	38
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jeff Green, Patrick Jennetten
Respondent Attorney	Kevin Day

DATE FILED: 3/12/2024

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS	)		
	) SS.		
COUNTY OF PEORIA	)		

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

THANE HUNT,

Petitioner,

vs. NO: 10 WC 09429

CITY OF PEORIA,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, benefit rates, medical expenses, temporary total disability, statute of limitations, 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 July 21, 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.

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.

March 12, 2024
o030524
AHS/ldm
051

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

/s/*Maria E. Portela*
Maria E. Portela

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC009429
Case Name	Thane Hunt v. City of Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	35
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Jeff Green, Patrick Jennetten
Respondent Attorney	Kevin Day

DATE FILED: 7/21/2022

THE INTEREST RATE FOR THE WEEK OF JULY 19, 2022 2.91%

/s/Bradley Gillespie, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Thane Hunt
Employee/Petitioner
v.
City of Peoria
Employer/Respondent

Case # **10** WC **009429**

Consolidated cases:

Applications for Adjustment of Claim were filed in these matters, and a *Notice of Hearing* was mailed to each party. These matters were heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Peoria**, on **January 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 **Collateral Estoppel, Law of the Case**

FINDINGS

On **January 25, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On **January 25, 2010**, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of these accidents ***was*** given to Respondent.

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

In each year preceding the injuries, Petitioner earned $**68,182.88**; the average weekly wage was $**1,311.21**.

On the dates of accident, Petitioner was **31** years of age, ***married*** 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 $ for other benefits, for a total credit of $.

ORDER

- Petitioner did not sustain an accident on January 25, 2010.
- The law of the case doctrine does not apply.
- The doctrine of collateral estoppel does apply to the issue of causation.
- Independent of the Arbitrator's findings with regard to statute of limitations, accident, and collateral estoppel, Petitioner's alleged conditions of ill-being are not causally related to the alleged accidents.
- Petitioner has received all temporary total disability benefits due and owing under the Act.
- Respondent has paid all appropriate charges for all reasonable and necessary medical services.
- Petitioner's claims for permanent partial disability benefits and loss of occupation under §8(d)(2) of the Act are denied.
- *Please see* Decision of the Arbitrator for Cases 10WC009429 & 17WC033893 attached hereto.

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 — JULY 21, 2022

Signature of Arbitrator

BEFORE THE WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

THANE HUNT,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No: 10 WC 009429
	)	17 WC 033893
CITY OF PEORIA,	)	
	)	
Respondent.	)	
	)	

DECISION OF THE ARBITRATOR

FINDINGS OF FACT

I. Alleged Accidents and Claims for Compensation

A. Case Number 10 WC 009429

On or about March 9, 2010, Thane Hunt [hereinafter "Petitioner"] filed an Application for Adjustment of Claim alleging injuries to "man as a whole," specifically his back, "while in the course of employment" for the City of Peoria Police Department [hereinafter "Respondent"] on January 25, 2010. (Pet. Ex. 1); (Arb. Tr. p. 43-44). Respondent submitted a Non-Crime Report and core training documents into evidence, establishing Petitioner participated in the morning session of mandatory training on January 25, 2010. (Resp. Ex. 2, 3). In the Non-Crime Report, Petitioner stated he performed gun take-away drills and gun retention drills. He then indicated, "Upon going home that night, my back became very sore and I started having muscle spasms." (Resp. Ex. 2). In addition to Petitioner's own testimony, the parties offered sworn testimony from officers and supervisors involved in the training into evidence. (Pet. Ex. 25; Resp. Ex. 9, 10).

This claim proceeded to hearing on January 21, 2022, in Peoria, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Accident;
- Collateral Estoppel;
- Law of the Case;
- Causal Connection;
- Medical Expenses; and
- Nature and Extent.

B. Case Number 17 WC 033893

On or about November 9, 2017, Petitioner filed an Application for Adjustment of Claim alleging injuries to "man as a whole," specifically his back, as a result of an automobile accident while working for Respondent on September 27, 2009. (Pet. Ex. 1); (Arb. Tr. p. 44). Multiple police reports and accident reports were offered into evidence, along with photos of the vehicles involved and a repair estimate for Petitioner's squad car.

Petitioner also submitted documents and testimony from his common law case in the Tenth Judicial Circuit. (Pet. Ex. 2, 3, 4, 27-31; Resp. Ex. 1, 4, 5).

The evidence establishes Petitioner was rear-ended at low-speed while waiting at a red light in his squad car. The evidence submitted by the parties uniformly shows there was minimal impact between the vehicles. (Pet. Ex. 2, 3, 4, 27-31; Resp. Ex. 1, 4, 5). Petitioner's squad car only required $795.50 in repairs. (Resp. Ex. 5). The other vehicle sustained very minor front bumper and license plate damage. The other driver claimed no injuries from the accident. (Pet. Ex. 2).

This matter was consolidated with Case Number 10 WC 009429 and was also arbitrated on January 21, 2022, in Peoria, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Statute of Limitations;
- Collateral Estoppel;
- Law of the Case;
- Causal Connection;
- Medical Expenses; and
- Nature and Extent.

II. Petitioner's Testimony at Arbitration

Petitioner testified he graduated from police training and began working as a police officer for Respondent in or around 2001. (Arb. Tr. p. 17-18) He started out in the problem-oriented policing unit, transitioned to the street crimes unit, and then he went to the traffic unit, where he ended his career. (Arb. Tr. p. 18).

Petitioner acknowledged he had a prior history of back problems, dating back to when he was in high school. (Arb. Tr. p. 18). He testified, prior to 2009, he had multiple accidents while working for Respondent, including back injuries, and he was cleared to return to work after each incident. (Arb. Tr. p. 19). Respondent required him to be seen at OSF Occupational Health to be cleared to return to work after each injury. (Arb. Tr. p. 20).

On September 27, 2009, Petitioner was responding to a possible burglary in progress when he was involved in a motor vehicle accident. He testified he was rear-ended by a vehicle while waiting at a stop light. (Arb. Tr. p. 21). He was examined at the OSF Emergency Department after the accident. (Arb. Tr. p. 21). He was then seen by OSF Occupational Health, and an MRI was ordered. (Arb. Tr. p. 21-22). Petitioner underwent some physical therapy. (Arb. Tr. p. 22). He then followed up with OSF Occupational Health and was returned to full-duty work with no restrictions. (Arb. Tr. p. 22). Petitioner testified he believes he worked about two (2) weeks of light duty before being cleared to work full-duty. (Arb. Tr. p. 22).

Petitioner testified, after returning to work in late 2009, he had some days with no pain and some days with mild pain. (Arb. Tr. p. 23). He felt he had returned to a level of symptoms consistent with his condition prior to the September 27, 2009, accident. (Arb. Tr. p. 23). He still had back problems, but they were not significant enough to cause him to be unable to work. (Arb. Tr. p. 23-24).

Petitioner testified he slipped and fell on ice while performing a total station investigation on or about December 30, 2009. (Arb. Tr. p. 25). He did not seek any medical attention, and he did not miss any work as a result of this incident. (Arb. Tr. p. 25).

On January 25, 2010, Petitioner attended an annual core training session, which was required by Respondent. (Arb. Tr. p. 26). The training was related to defensive tactics. (Arb. Tr. p. 26). Petitioner participated in the morning training session but did not participate in the afternoon session. (Arb. Tr. p. 26). He had a scheduled court appearance in the afternoon. (Arb. Tr. p. 26. Petitioner testified the training activities involved significant bending and twisting of the lumbar spine. (Arb. Tr. p. 27). He felt the twisting performed during the training exercise was consistent with rotating his spine while golfing. (Arb. Tr. p. 27-28). Petitioner testified he was a little sore during the training. He acknowledged he left the training and attended his court appearance. (Arb. Tr. p. 28). He further testified the pain continued to get worse that evening, and he started having numbness and tingling in his saddle area and down his right leg. (Arb. Tr. p. 28). Either that night or early the next morning, Petitioner called in to work to report a work accident. (Arb. Tr. p. 28).

Petitioner testified he called in and spoke with the training sergeant, who told him he needed to report the incident to the sergeant who ran the training. (Arb. Tr. p. 29). Petitioner attempted to contact that sergeant and did not hear back from him. (Arb. Tr. p. 29). Petitioner called in sick on January 26, 2010 due to pain in his back and numbness in his right leg. (Arb. Tr. p. 29-30). When asked if the numbness in his right leg had been there prior to January 25, 2010, Petitioner responded, "Not in that way, no." (Arb. Tr. p. 30). At that time, Petitioner contacted Sergeant Flatko in order to report a work injury. (Arb. Tr. p. 30).

On Friday, January 29th, 2010, Petitioner was seen at OSF Occupational Health. (Arb. Tr. p. 31). An MRI was ordered. (Arb. Tr. p. 31). Petitioner underwent an MRI the same day at Methodist Hospital and returned home. (Arb. Tr. p. 31). As soon as he got home, he received a phone call telling him he needed to go see Dr. Dzung H. Dinh, a neurosurgeon. (Arb. Tr. p. 31-32).

Petitioner was examined by Dr. Dinh, who told him he would need surgery immediately. (Arb. Tr. p. 32). Dr. Dinh was concerned because Petitioner was unable to physically lift his leg to walk into the office. (Arb. Tr. p. 42). Dr. Dinh told Petitioner he might lose control of his bowel and bladder function or lose the use of his right leg if surgery was not performed immediately. (Arb. Tr. p.43). Surgery was performed the same evening. (Arb. Tr. p. 32). Petitioner testified the medical histories he provided to his doctors are accurately contained in his medical records. (Arb. Tr. p. 33). Petitioner testified he later had a second surgery to debride an area of skin near the incision from the first surgery. (Arb. Tr. p. 33). After the second surgery, he continued to treat with Peoria Surgical Group for his surgical incision for a period of time. (Arb. Tr. p. 34). Petitioner testified he still has lower back pain and still has paralysis in his lower right leg. (Arb. Tr. p. 33-34).

Petitioner testified he does not know Dr. Kern Singh and had never spoken with him. (Arb. Tr. p. 35). Petitioner acknowledged he saw Dr. Kube for an independent medical examination. (Arb. Tr. p. 36).

After surgery, Petitioner returned to work with light duty restrictions from July 11, 2010, to January 19, 2011. (Arb. Tr. p. 36-37). He never returned to full duty. (Arb. Tr. p. 37). He retired on June 21, 2011. (Arb. Tr. p. 37). He was awarded a temporary pension while he awaited the Pension Board hearing. (Arb. Tr. p. 37).

Petitioner testified he is seeking a loss of occupation, person-as-a-whole award under Section 8(d)(2) of the Illinois Workers' Compensation Act. (Arb. Tr. p. 38). He testified, as of the date of the arbitration, he was still experiencing daily pain. (Arb. Tr. p. 38). He rated the severity of his back pain as two (2) to four (4) out of ten (10) daily, going up to a six (6) or seven (7) at times. (Arb. Tr. p. 39, 61). He testified he has not regained any use or function of his right leg or his ankle. (Arb. Tr. p. 38). He has drop foot and uses a cane for mobility. (Arb. Tr. p. 38). He testified his condition has not improved since his postoperative recovery in 2010. (Arb. Tr. p. 38). Petitioner testified he has trouble with balance due to pain in his lower back and paralysis in his right leg. (Arb.

Tr. p. 39). He testified he still performs stretches at home and takes medication for neuropathy in his right leg and foot. (Arb. Tr. p. 39).

Petitioner was put on a disability pension because he was unable to return to work as a police officer. (Arb. Tr. p. 39-40). He has since held other sedentary jobs, which comply with his back condition. (Arb. Tr. p. 40-41).

On cross-examination, Petitioner confirmed he filed a workers' compensation claim in 2010 alleging an accident occurring on or about January 25, 2010, resulting in a back injury. (Arb. Tr. p. 44). He then filed a second workers' compensation claim in 2017, alleging an accident occurring on September 27, 2009, which also resulted in a back injury. (Arb. Tr. p. 44). He affirmed these are the only two (2) accident dates for which he was seeking compensation. (Arb. Tr. p. 44).

With regard to his history of back problems dating back to approximately late 1994, Petitioner said he would not dispute his medical records or his testimony before the Pension Board. (Arb. Tr. p. 45). He testified he recalled having back pain while playing football his senior year in 1995. (Arb. Tr. p. 45-46). Petitioner acknowledged he was seen at Great Plains Orthopedics in 1995 for lower back pain. (Arb. Tr. p. 46). As a result of his back injury in 1995, Petitioner missed most of his senior football season. (Arb. Tr. p. 46). He underwent physical therapy at Great Plains Orthopedics in 1995. (Arb. Tr. p. 46). Petitioner testified his back pain subsided in 1996. (Arb. Tr. p. 47).

Petitioner did not dispute he experienced recurrent back pain in November of 1997 after lifting some steel doors. (Arb. Tr. p. 47). He did not recall receiving physical therapy at Great Plains Orthopedics from 1998 through 1999 as a result of his flare up in November of 1997 but testified he would not dispute this treatment occurred if it is reflected in the medical records. (Arb. Tr. p. 48). Although Petitioner testified on direct examination, he had not experienced right leg pain prior to his January 25, 2010, accident, on cross-examination, he testified he would not dispute the fact he had right leg pain as early as 1998, in addition to back pain, if it was reflected in the medical records. (Arb. Tr. p. 48).

Petitioner recalled experiencing back pain while performing police training at the University of Illinois in April of 2001. (Arb. Tr. p. 48-49). Petitioner testified he experienced back pain again in February of 2003 after catching a detainee who fell out of a paddy wagon. (Arb. Tr. p. 49). He was released from care in March of 2003 for pain he had as a result of the February 24, 2003, accident. (Arb. Tr. p. 49). Petitioner filed a workers' compensation claim against Respondent in 2007 for a back injury, which resulted in a settlement between the parties. (Arb. Tr. p. 49-50).

Petitioner admitted the motor vehicle accident on September 27, 2009, involved a low-impact collision. (Arb. Tr. p. 50). His emergency lights were not activated at the time of the accident, and his airbag did not deploy. (Arb. Tr. p. 50). After the accident, Petitioner got out of his squad car and spoke to the driver of the other vehicle. (Arb. Tr. p. 50). They examined the vehicles for damage. (Arb. Tr. p. 50). Petitioner then drove his vehicle to the city garage to drop it off. (Arb. Tr. p. 51). He then got in a different squad car and drove himself to the emergency department. (Arb. Tr. p. 51). He was released from the emergency department the same day. (Arb. Tr. p. 51). Petitioner returned to work the next day and continued to work full duty. (Arb. Tr. p. 51-52.

As of approximately December 3, 2009, Petitioner was fully able to perform all of his job duties for Respondent. (Arb. Tr. p. 52). At that time, Petitioner was assigned to the traffic division, and his duties included traffic enforcement, writing tickets, investigating accidents, crime scene photography, responding to patrol calls, and proactive traffic stops. (Arb. Tr. p. 52-53). He also acknowledged he would have been required, if the situation

arose, to chase a suspect and engage in a physical confrontation with a suspect. (Arb. Tr. p. 53). He felt he was capable of performing those duties after his release from care in late 2009. (Arb. Tr. p. 53).

At the beginning of the January 25, 2010, core training, Petitioner was asked if he had any physical limitations preventing him from performing the training. (Arb. Tr. p. 54). Petitioner testified he reported back pain prior to the training. (Arb. Tr. p. 54). He acknowledged he left the training during a lunch break to attend a previously scheduled court appearance. (Arb. Tr. p. 54). Petitioner affirmed he did not report any issues with his lower back as a result of the training to any other officer on January 25, 2010. (Arb. Tr. p. 55).

Petitioner testified the gun retention and gun control portion of the training involved maneuvers simulating taking a gun from a suspect and preventing a suspect from taking a gun from the officer. (Arb. Tr. p. 55). Those activities are performed with another officer who acts as a training partner. (Arb. Tr. p. 55-56). Petitioner testified these maneuvers were not to be performed at full speed or full strength. (Arb. Tr. p. 56). He agreed the idea is to learn the technique you may use if you encounter a real physical confrontation. (Arb. Tr. p. 56). He testified they typically go seventy-five (75) to eighty (80) percent. (Arb. Tr. p. 56). In subsequent treatment visits, Petitioner reported he was lying on the floor at home on his abdomen that evening when he experienced pain and a back spasm. (Arb. Tr. p. 56-57).

Petitioner acknowledged he filed an application for a line-of-duty disability pension with the Peoria Police Pension Fund, and his application was denied. (Arb. Tr. p. 57). He was awarded a non-duty disability pension. (Arb. Tr. p. 57). Petitioner was represented by counsel during those proceedings. (Arb. Tr. p. 57). He acknowledged he had every opportunity to present testimony and evidence during the hearing process. (Arb. Tr. p. 57). He fully participated in those proceedings, with the assistance of his counsel. (Arb. Tr. p. 57-58).

Petitioner testified he has an LLC called Hunt's Gun Getaway, LLC. He has a business partner, B&H Suppliers, LLC, which sells firearms. (Arb. Tr. p. 58). Petitioner testified they began selling firearms in 2018 or 2019. He has provided concealed carry classes at Hunt's Gun Getaway, LLC. (Arb. Tr. p. 58). For the sale of firearms, Petitioner uses multiple wholesalers. (Arb. Tr. p. 59). Since 2018, Petitioner has not felt any limitations in his ability to run B&H Suppliers or sell firearms. (Arb. Tr. p. 59). He testified supplies can be hard to obtain since they are a small company placing small orders. (Arb. Tr. p. 59-60). He further testified during the pandemic, there was a nationwide increase in gun sales. (Arb. Tr. p. 60).

Petitioner testified he never objected to the treatment directed by OSF Occupational Health or other groups within its chain of referral. (Arb. Tr. p. 60). He never reported any issue with this medical treatment and never sought out second opinion. He affirmed he did not utilize the choices of physicians afforded to him under the Workers' Compensation Act to seek treatment outside of what was offered by Respondent. (Arb. Tr. p. 61).

On re-direct examination, Petitioner testified he was not having any significant low back or leg pain prior to the combat training incident in January of 2010. In regard to lying on the floor on his abdomen the night of the training, Petitioner testified this was not something he normally did. (Arb. Tr. p. 63). He testified he laying on the floor due to his back pain. (Arb. Tr. p. 63). While he was lying on the floor, he was having back spasms and started having pain, numbness, and tingling in his leg. (Arb. Tr. p. 63).

III. Petitioner's Medical Treatment

Voluminous medical evidence was submitted by the parties at arbitration addressing Petitioner's extensive medical treatment. Having reviewed said evidence, the Arbitrator makes the following factual findings with regard to the medical treatment relevant to the conclusions of law set forth herein.

At arbitration, Petitioner testified he had a prior history of back problems dating back to high school. (Arb. Tr. p.18, 44-48). On September 14, 1995, he reported to Great Plains Orthopaedics with complaints of left groin pain radiating into the left buttock. He also reported intermittent back pain throughout the prior year. Petitioner stated that he development groin pain on September 4, 1995, while running sprints during football practice at Woodruff High School. On examination, pain was reproduced most easily with standing lumbar flexion. The primary diagnosis was inguinal and left buttock pain most consistent with discogenic cause. L4 motor dysfunction and toe weakness were noted in an L3-L4 dermatomal pattern. Physical therapy was recommended to address Petitioner's discogenic pain. (Resp. Ex. 22).

Petitioner began physical therapy the following day, September 15, 1995. He reported an incident of prior low back pain during the previous track season. At the time of therapy, he had lower back pain and decreased range of motion. He was given home exercises to perform every one (1) to two (2) hours and advised to restrict activities, including sports. (Resp. Ex. 22).

On September 19, 1995, Petitioner reported a slight increase in his back discomfort. He indicated the exercises were not improving his symptoms. (Resp. Ex. 22).

Petitioner returned to Great Plains Orthopaedics on September 21, 1995, with complaints of continued lower back, inguinal, and buttock pain. A recent bone scan revealed no evidence of stress fracture in the lumbar spine, pelvis, hips, or femurs. However, minor asymmetry of activity in the facet joints was noted at several levels of the lumbar spine. Overall, the bone scan was considered to be within normal limits.

Petitioner continued attending physical therapy and follow-up examinations for his back pain at Great Plains Orthopaedics through October 10, 1995. At that time, he indicated his lower back and inguinal pain had been improving. His lumbar range of motion was normal and pain free. The diagnosis was discogenic pain, with improvement, but progressive weakness in the L4 root distribution. (Resp. Ex. 22).

Petitioner was also seen at OSF Medical Center on October 10, 1995, for an unrelated medical issue. He provided a history of a bulging disc in his back. (Resp. Ex. 28).

On November 14, 1997, Petitioner returned to Great Plains Orthopaedics with back pain across his beltline after moving large steel doors. A lumbar spine MRI was recommended. (Resp. Ex. 9, 10, 21, 22).

The lumbar spine MRI was performed on November 22, 1997 at OSF Medical Center. The findings were as follows: (1) moderately large disc herniation centrally and to the right in the right lateral recess and right neural foramen, L5/S1, causing moderate impingement and posterior and rightward shift of the dural sac and marked impingement on the right S1 nerve root; (2) a small central to left-sided disc herniation causing mild impingement on the dural sac and left L5 nerve root; (3) a central disc herniation extending slightly to the right at the L3-4 causing moderate impingement on the dural sac; and (4) multilevel disc space narrowing and osteophytes, especially at L3 through S1, with disc desiccation at these levels. The impression was multilevel degenerative changes and disc herniations. (Resp. Ex. 21).

On November 26, 1997, Petitioner attended a follow-up exam at Great Plains Orthopaedics. He reported persistent back pain, but not as severe, with some thigh numbness while standing. (Resp. Ex. 22).

Petitioner returned to Great Plains Orthopaedics on December 1, 1997. He reported lower back pain after lifting a heavy steel panel at his family farm on November 8, 1997. Over the next several days, he developed numbness and tingling in the medial aspect of both thighs and into the calf. At one point, he was on the floor and could hardly move. He stated he was approximately seventy percent (70%) improved. (Resp. Ex. 21).

On exam, an x-ray of the spine was unremarkable. However, it was noted the November 22, 1997, MRI showed very significant congenital spinal stenosis at L3 through S1, central disk herniation, which was large at L3-L4, left sided disk herniation at L4-L5, and a large right sided disk herniation at L5-S1. Petitioner was told he had very significant spine problems with multi-level disk herniations and congenital stenosis. Dr. Maxey recommend weight loss and an active exercise program. He instructed Petitioner to do everything he could to keep his spine in good health. (Resp. Ex. 21).

Petitioner continued to follow-up with Great Plains Orthopaedics in December of 1997, reporting improvement in his thigh soreness with minimal central low back pain. He was advised to continue with his home exercise program and proceed with limited activity. (Resp. Ex. 22).

On January 2, 1998, Petitioner returned to Great Plains Orthopaedics. He reported being pain free for one (1) to two (2) days at a time, but stated his symptoms always returned. He stated the symptoms were located in his lower back region about ninety percent (90%) of the time. He rarely had leg symptoms. Petitioner indicated his symptoms worsened when performing any kind of activity for a prolonged period of time, including standing, sitting, and sleeping. Del Nance, PTA felt Petitioner had made significant progress. He was able to relieve his symptoms with repeated extension in prone position but, continued to struggle with his posture at rest. (Resp. Ex. 22).

Petitioner continued his treatment and physical therapy with Great Plains Orthopaedics on January 8, 1998, January 23, 1998, February 6, 1998, and February 20, 1998. (Resp. Ex. 22).

On March 11, 1998, Petitioner returned to Great Plains Orthopaedics without a scheduled appointment. He reported increased left, low back pain over the weekend without injury or accident. The pain was fairly constant but was improving daily. He had to discontinue weight training activities but could bike without issue. (Resp. Ex. 22).

Petitioner returned to Great Plains Orthopaedics on March 18, 1998, to discuss improvement in his lower back pain. He was still refraining from activities but had no present complaints. He was advised to reimplement strengthening efforts and activities as tolerated, using his pain as a guide. (Resp. Ex. 22).

On April 2, 1998, Petitioner followed-up at Great Plains Orthopaedics. He reported occasional central, low back pain. He would have one (1) to (2) weeks without symptoms and then two (2) to three (3) days of consecutive soreness. He was compliant with his home exercise program, but still limited with weight training and biking activities. Petitioner was to continue with posture correction efforts, stretching, and home exercise program. He could progress to full weight training and biking activities as his symptoms allowed. (Resp. Ex. 22).

Petitioner returned to Great Plains Orthopaedics on August 9, 1999. He indicated he faithfully worked at the gym for the remainder of 1998 and lost forty (40) to fifty (50) pounds. As a result, his back felt much better. He would have occasional soreness, but it would improve with his exercise. He began classes at Western Illinois University in January of 1999 and regained ten (10) pounds. During his spring semester, he began having increased right, low back pain with greater frequency. This would subside with his exercises. Over the summer,

he began having increased low back pain for no specific reason. He also development intermittent right calf cramping. This also improved somewhat with his extension exercises. However, his back pain had progressively gotten worse recently. (Resp. Ex. 22).

On exam, Petitioner had a limp favoring his right leg. He had moderately decreased lumbar flexion and, normal extension, and some pain and decreased range of motion with other testing. He had a positive single leg raise sign bilaterally with right-sided low back pain. He performed physical therapy exercises and was pain free upon completion. The assessment was reoccurrence of discogenic pain pattern of D5 with Dural tension and symptoms. Petitioner was advised to continue with physical therapy and home exercise program. Weight loss was also recommended. (Resp. Ex. 22).

Petitioner continued with physical therapy on August 11, 1999, August 16, 1999, and August 25, 1999, before returning to college. As of August 25, 1999, he felt approximately sixty percent (60%) to seventy percent (70%) better. He had occasional right, lower back pain and right calf pain, which improved with extension exercises. (Resp. Ex. 22).

On September 8, 1999, Petitioner contacted Great Plains Orthopaedics and reported eighty percent (80%) improvement in his back and right leg symptoms. He reported minimal lower back pain and three (3) days of no leg pain the week prior. However, he then began experiencing increased right leg pain for no reason. Over the weekend, he caught someone from falling at a fraternity party and experienced increased lower back pain and leg pain. (Resp. Ex. 22).

Petitioner attended physical therapy again on September 15, 1999, but canceled his remaining appointments due to scheduling conflicts. (Resp. Ex. 22).

On February 23, 2001, Petitioner attended his police candidate physical at OSF Occupational Health. On his OSHA Respirator Medical Evaluation Questionnaire, Petitioner stated he had no current back pain, no pain or stiffness when leaning forward or backward at the waist, and no other muscle or skeletal problems that would interfere with his use of a respirator. On his OSF Medical Examination Form, Petitioner indicated he had trouble with his back in "1995," which was "thought to be a bulging disk [*sic*]was found to be a kidney stone." He reported the outcome of the injury was "resolved." Petitioner further checked the box for "no" when asked if he had a "back (spine) disease." (Resp. Ex. 27).

Dr. Homer Pena performed a physical examination and reported no abnormal findings. Petitioner was two hundred and fifteen (215) pounds at the time of the exam. A lumbosacral spine x-ray was also performed, which indicated diminished disc space at L5-S1, but within normal limits, and mild anterior marginal osteophyte at T11-T12. The overall impression was an essentially normal lumbosacral spine with minimal anterior marginal osteophyte at T11-T12. Based on the examination, Dr. Pena's disposition was a recommendation for placement without restrictions. Dr. Pena felt Petitioner was capable of performing the required activities at the University of Illinois Police Training Institute. (Resp. Ex. 27).

On April 11, 2001, Petitioner contacted Great Plains Orthopaedics from the police training institute and reported he had developed left and right lower back pain from the physical activities he was performing. He complained of constant lower back pain with inconsistent buttock pain. He participated in a lengthy discussion concerning rehabilitation efforts, including exercised, stretching, posture, and activity tolerance. (Resp. Ex. 22).

On February 24, 2003, Petitioner reported to the Unity Point Emergency Department with lower back pain after catching a suspect. He awoke with back pain and stiffness. He reported back problems, specifically a bulged

disk, since high school. The assessment was a lower back strain. Petitioner was prescribed Vicodin and released from care. (Resp. Ex. 27).

Petitioner also attended an initial occupational injury examination with Dr. Pena at OSF Occupational Health on February 24, 2003. Two days earlier, he caught an unruly female suspect who feigned a seizure while transporting her to the Peoria County jail. He felt immediate left-sided lower back tightness. He went home, took Aleve, and called his boss before going to bed at 8:00 a.m. When he woke at 4:00 p.m., Petitioner was experiencing significant pain with tingling in his left buttock. He rated his pain as a constant six (6) to seven (7) out of ten (10), increasing to an eight (8) with certain movement. Petitioner provided a history of a lower back injury while playing high school football in 1995. He also reported bulging discs were noted on an MRI. He further reported the injury resolved with physical therapy over four (4) weeks. (Resp. Ex. 27).

On exam, Petitioner had limited range of motion with consistent pain. He was two hundred and sixty-five (265) pounds. Dr. Pena ordered lumbosacral x-rays, which were unremarkable. The dictating physician, Dr. Kenneth Fraser, felt an MRI may be helpful to identify a non-osseous etiology. Dr. Pena's assessment was a left-sided lumbosacral strain with subjective sensory loss suggesting an L4 radiculopathy. Dr. Pena prescribed Norflex and recommended a home exercise program. He was released to modified duty. (Resp. Ex. 27).

Petitioner was re-examined by Dr. Pena on February 28, 2003. He reported his lower back pain was improving. He had no radicular pain. On physical exam, he had forward flexion of twenty (20) degrees with complaints of pain and posterior extension of fifteen (15) degrees. Petitioner was continued on modified duty. (Resp. Ex. 27).

On March 7, 2003, Petitioner followed-up with Dr. Pena for his left-sided lumbosacral strain. His pain was improving, and he was feeling better. However, Petitioner noted he was "not feeling great by any means." Dr. Pena's objective examination was essentially normal. Dr. Pena opined the lumbosacral strain had resolved. Petitioner indicated he would be leaving for vacation that week and requested additional modified duty to continue recovery, as he felt he couldn't engage in a confrontational situation with a suspect. Dr. Pena noted, "This same manipulative behavior had been noted on the previous occasion. I do not feel that the employee needs to be off further, especially if he is going on vacation." Dr. Pena released him to modified duty for the next three (3) days with a return to full-duty thereafter. (Resp. Ex. 27).

Petitioner returned to OSF Occupational Health with lower back complaints on August 12, 2004. He stated he developed back pain over the weekend and felt it potentially occurred the prior Tuesday or before. He denied a specific injury but reported recurrent back pain for a year. On physical examination, Dr. Moran noted Petitioner was grossly overweight. He had full range of motion. Dr. Moran's assessment was recurrent or chronic lumbosacral pain. Dr. Arlene Burke, the supervising physician, noted Petitioner had undergone extreme weight changes before and after he began his employment. She indicated Petitioner's change in weight must be considered in addressing the current symptoms. Dr. Moran placed Petitioner on modified duty. (Resp. Ex. 27).

Petitioner was re-examined by Dr. Moran on August 16, 2004. Dr. Moran noted Petitioner previously treated for lower back pain after an injury a year ago. He was subsequently released from treatment and had been performing full-duty without issue. Petitioner could not recall a specific injury. He stated his primary care physician felt it was a work-related injury and recommended an MRI. Dr. Moran noted Petitioner was over three hundred (300) pounds before going on a diet and reducing his weight to two hundred and fifteen (215) pounds to enter the Police Department. Dr. Moran then noted Petitioner's weight had increased to two hundred and eighty-five (285) pounds at the time of the exam. Petitioner felt his back pain was caused by an injury, rather than his weight gain. (Resp. Ex. 27).

On physical exam, Petitioner had full range of motion and no palpable spinal pain. He was unable to perform a single leg stand with either leg. Dr. Moran's assessment was lumbosacral pain without definite injury. Dr. Moran ordered an MRI and an x-ray of the back and advised Petitioner to lose weight immediately to help his back. Petitioner was continued on sedentary duty. (Resp. Ex. 27).

A lumbosacral spine MRI was performed on August 17, 2004. The findings were as follows: (1) disc degenerative change with diminution in disc height and disc desiccation from L3-L4 through L5-S1; (2) moderate-sized broad-based central disc protrusion at L3-L4, more prominent to the right, resulting in right greater than left lateral recess stenosis; (3) relatively broad-based central to leftward disc protrusion at L4-L5, contributing to greater left lateral recess encroachment; (4) moderate to large middle to rightward disc protrusion, resulting in significant encroachment upon the right lateral recess; and (5) at least mild lower lumbosacral facet joint degenerative changes present slightly more prominently involving L5-S1 interval. (Resp. Ex. 21, 27, 28). Lumbosacral spine x-rays were also performed on August 17, 2004, which indicated at least mild diminution in disc height at L4-L5 and L5-S1 and sclerosis present about the L4-L5 subluxation. The impression was probable evidence of lower lumbosacral degenerative disc disease and facet joint degenerative change. (Resp. Ex. 21, 27, 28).

On August 23, 2004, Petitioner was examined by Dr. Barry L. Miller. Dr. Miller indicated Petitioner had visited for intermittent lumbar back pain over the last year since a work-accident where he caught a prisoner. Petitioner had experienced intermittent flare-ups every three (3) months. He denied any traumatic injuries in the past and any back problems prior to the referenced work-accident. Petitioner said he was unable to do some activities he used to do such as weightlifting and judo. He was afraid of pain reoccurrence. He further indicated he was having difficulty with light duty and could not bend over at all. Dr. Miller's assessment was lumbar back pain, secondary to an injury at work causing disc abnormalities as seen on MRI. He recommended physical therapy for the next two (2) weeks. (Resp. Ex. 26).

Petitioner was also examined by Dr. Pena on August 23, 2004. Petitioner stated his low back pain was "just like when he first injured it" in February of 2003." He further indicated he had been having flare-ups every three (3) to four (4) months since that time. He denied having any other accidents or low back injuries. (Resp. Ex. 27).

Dr. Pena reviewed the MRI and x-ray results with Petitioner. He opined there was a lack of focalization on Petitioner's objective exam in comparison to the MRI findings. Dr. Pena further noted comparison of the most recent x-rays to 2003 results showed changes, primarily mild diminution of disc spaces at the L4-L5 and L5-S1 levels and sclerosis of the facet joints at these levels. Dr. Pena drew a correlation between Petitioner's current symptoms and his nearly seventy (70) pound weight increase. He then inquired how Petitioner was able to perform his full job duties over the past year-and-a-half, to which he replied, "I've got my mother's high pain tolerance and my dad's work ethic; I've only used three (3) to five (5) sick days in the past three-and-a-half years." Dr. Pena felt Petitioner's symptoms were unrelated to the February 2003 accident and reasoned there had to be an intervening event or an anatomically-related cause. He continued Petitioner on sedentary duty and recommended he address his declining fitness and health. (Resp. Ex. 27).

Petitioner followed-up with his primary care physician, Dr. Miller, on September 22, 2004. He reported physical therapy was improving his back pain and left leg paresthesia. However, he felt occasional soreness with certain movements. Dr. Miller's assessment was lumbar back pain, secondary to injury, improving with physical therapy. (Resp. Ex. 26).

Petitioner returned to Dr. Miller on September 29, 2004. He reported continued improvement with physical therapy. He was still having some achiness, especially first thing in the morning, on his right side. He indicated his physical therapist had recommended another week of physical therapy and a few days of occupational therapy before a return to full-duty. Dr. Miller's assessment remained lumbar back pain, secondary to the February 2003 injury, improving with physical therapy. Dr. Miller agreed with the plan established in physical therapy. (Resp. Ex. 26).

On October 6, 2004, Petitioner followed-up with Dr. Miller and reported his lower back pain had resolved. Petitioner expressed his desire to return to full-duty, and Dr. Miller agreed, based on his normal objective exam. However, Dr. Miller expressed some concern the lumbar strain may re-occur due to Petitioner's noted degenerative joint. Petitioner was released to full-duty and advised to continue physical therapy and strengthening. (Resp. Ex. 26).

Petitioner attended a fitness for duty evaluation with Dr. Pena on October 8, 2004. Dr. Pena noted Petitioner treatment with Dr. Miller and continued work hardening therapy. On exam, Petitioner had full range of motion, full strength, and no tenderness along the vertebral column with palpation. Petitioner denied any back pain or discomfort. Dr. Pena's assessment was disc protrusions at L3-L4, L4-L5, and L5-S1. However, he questioned the significance of the protrusions based on Petitioner's rapid improvement. Dr. Pena opined degenerative disc disease of the lumbar spine had contributed to Petitioner's issues. Dr. Pena released Petitioner to full-duty without restrictions. (Resp. Ex. 27).

On October 27, 2004, Petitioner was re-examined by Dr. Miller. He reported improved lumbar back pain. He had been performing his full work duties and noted some lower back discomfort at times. However, the discomfort generally improved as the day progressed. (Resp. Ex. 26).

On February 12, 2007, Petitioner began receiving regular chiropractic treatment at JSK Chiropractic. He continued this treatment through April 4, 2007. (Resp. Ex. 25).

On April 4, 2007, Petitioner reported to the Methodist Emergency Department with right, lower back pain. He reported feeling a "pop" while chasing a suspect a few days before. X-rays revealed no acute abnormality. He was discharged from care with prescriptions for Norflex and Vicodin. (Resp. Ex. 22).

Petitioner was examined at Great Plains Orthopaedics the following day. At that time, his chief complaint was a back injury at work. He reported a pulling sensation and a "pop" while chasing a suspect. He worked the next day but had increasing pain and by the third day he was in a lot of pain with radiation into the hamstring. His main complaint was "seizing up" of the back. Dr. Clark Rians felt Petitioner was experiencing muscle spasms. He noted Petitioner's previous back injury in 2003 and an MRI showing 2 bulging discs. An exam was not possible due to Petitioner's considerable pain. Dr. Rians diagnosis was acute lumbar strain disc pathology. (Resp. Ex. 22).

On April 16, 2007, a lumbar spine MRI was performed at Methodist Medical Center. The findings were as follows: (1) mild central disc protrusion at L3-L4; (2) Central and left paracentral disc extrusion at L4-L5, which causes mass-effect on the thecal sac, but does not affect the exiting L4 nerve root; and (3) large extrusion of disc at L5-S1 paracentrally to the right causing mass-effect on the thecal sac as well as abutting right L5 nerve root in the neuroforamina and right S1 nerve root in the central canal. (Resp. Ex. 21).

Petitioner followed-up with Dr. Rians on April 18, 2007. Dr. Rians reported the MRI showed mild central disc protrusion at the L3-L4 level, central and left paracentral disc extrusion at the L4-L5 level causing some

mass effect on the thecal sac, and a large extrusion of the disc at L5-S1 on the right with a mass effect and impingement on the right L5 nerve and right S1 nerve root in the canal. Petitioner's condition was improved and he was able to walk without pain. Dr. Rians diagnosis was extruded discs at two (2) levels with the L5-S1 right-sided disc extrusion causing most of the symptoms. Dr. Rians recommended a consultation with a neurosurgeon to evaluate whether surgery was necessary. Petitioner was ordered off work for one month. (Resp. Ex. 22).

Petitioner was also examined by Dr. Burke at OSF Occupational Health on April 18, 2007. Dr. Burke compared the recent MRI to prior findings and noted no significant changes, except perhaps further degenerative changes. Dr. Burke felt it was too soon to determine if the pain was acute or chronic in nature. (Resp. Ex. 27).

On April 27, 2007, Petitioner was examined by Dr. Patrick Tracey at Associated University Neurosurgeons. Petitioner reported he an onset of severe right-sided low back after chasing a suspect. Dr. Tracey noted a recent MRI of the lumbar spine showed multilevel stenosis at L3-L4, L4-L5, and L5-S1. In addition, he felt there may be a tiny right posterolateral L5-S1 disc herniation. Dr. Tracey recommended conservative treatment. He referred him to physical therapy three (3) times a week for the next month. He felt Petitioner would be a good candidate for either epidural steroid injections or surgical treatment, if conservative treatment failed. If it came to surgical treatment, Dr. Tracey was inclined to perform not only a right L5-S1 discectomy, but probably a decompressive lumbar laminectomy, given the degree of stenosis that he has on his MRI. (Resp. Ex. 23).

Petitioner attended physical therapy at IPMR from May 1, 2007, through June 19, 2007. (Resp. Ex. 24).

On June 4, 2007, Petitioner followed-up with Dr. Burke and reported no lower back pain or lower extremity weakness. Dr. Burke's assessment was stabilizing back pain. He released Petitioner to full duty. (Resp. Ex. 27).

Petitioner was re-examined by Dr. Tracey on June 19, 2007. Petitioner reported good recovery with conservative treatment. He had returned to light duty work on May 21, 2007, and regular duty two (2) weeks later. He was generally tolerating full-duty well. He had some back pain, mostly in the morning, and few radicular symptoms. Overall, Dr. Tracey felt Petitioner was making an excellent recovery with conservative treatment. He released him from further care and returned him to full physical activities, as tolerated. He recommended Petitioner continue his home exercise program. (Resp. Ex. 23).

Petitioner resumed chiropractic treatment at JSK Chiropractic on September 19, 2007 and continued this treatment through June 12, 2009. (Resp. Ex. 25). On January 22, 2009, Petitioner reported increased back pain after he twisted while sitting in court and felt a "pop" in his back. On April 3, 2009, he again reported increased back pain after aggravating it while working on the lawn and moving trees. (Resp. Ex. 25).

On September 28, 2009, Petitioner reported to the OSF Emergency Department after being involved in a motor vehicle accident a few hours earlier. He indicated he was rear-ended at a stoplight while wearing a seatbelt. He confirmed there was no airbag deployment. His primary complaints were a headache and lower back, neck, and lower head pain. At discharge, his primary diagnosis was a lumbosacral strain with a secondary diagnosis of neck pain. Petitioner was prescribed Norco and Norflex and discharged in a stable, ambulatory state with three (3) out of ten (10) pain. (Pet. Ex. 35).

Petitioner was also examined by Dr. Burke at OSF Occupational Health on September 28, 2009. He reported he was in his patrol car going anywhere from zero (0) to one (1) mile per hour at a red light when he was rear-ended by a solo driver. Petitioner confirmed he was restrained and the air bag did not deploy. He stated his head and upper trunk jerked back and forth after the impact, and the back of his head impacted the headrest. He

exited the vehicle and spoke with a fellow officer. At that time, his pain was a five (5) or six (6) out of ten (10). He then drove himself to the St. Francis Medical Center for treatment. He took one (1) Norflex and one (1) Norco when he returned home. (Pet. Ex. 35).

When he awoke, he had no head or neck pain, but some residual left, lower back pain. He reported no tingling, numbness, weakness, or radiating pain in his upper or lower extremities. On exam, Petitioner was three hundred and thirty-five (335) pounds. His pain score was a one (1) or two (2) out of ten (10). There was no tenderness, pain, spasm, or swelling noted during examination of his cervical or lumbar spine. Petitioner stated he was otherwise feeling well and asked to return to work on second shift that day, as he had volunteered for overtime duty. (Pet. Ex. 35).

Dr. Burke noted Petitioner's medical history was significant for low-back strain with herniated discs at L3-L4 and L5-S1 in 2003, 2004, and 2007. Conservative treatment had successfully resolved his symptoms most recently in 2007. (Pet. Ex. 35).

Dr. Burke's impression was an acute cervical lumbar spine myofascial strain with no neurological findings and a mild posterior head contusion with resolved pain. Petitioner was released to regular duty without restrictions and cautioned not to take any sedating medications during work hours or when driving. Dr. Burke opined permanent impairment was not anticipated as the result of the injuries. (Pet. Ex. 35).

On October 5, 2009, Petitioner returned to OSF Occupational Health for an examination with Dr. Burke. He was doing well and performing his regular job duties without issue. He still had some intermittent lower back pain, with no radiating symptoms. He was using back exercises, heat and ice, Ibuprofen, and Vicodin, as needed, to manage his symptoms. Dr. Burke continued Petitioner on regular duty. (Pet. Ex. 35).

Petitioner followed-up with Dr. Burke again on October 20, 2009. He reported increased lower back pain over the weekend, which necessitated him calling off work the day before. He reported having more neck pain than lower back pain at the time of the motor vehicle accident but felt his neck pain had completely resolved. Petitioner complained of continued lower back pain radiating into both buttocks. He was also having lower back spasms and stiffness. He felt his pain was similar to what he experienced in 2007. Petitioner could not identify any one aggravating factor or re-injury. Dr. Burke recommended a lumbar spine MRI to compare with his 2007 findings. (Pet. Ex. 35). Petitioner was advised not to work until his next follow-up.

A lumbar spine MRI was performed at Methodist Medical Center on October 22, 2019. Dr. James A. McGee noted Petitioner presented with lower back pain radiating down the posterior side of both legs to the knees. Petitioner was having difficulty walking. Dr. McGee obtained new images and compared them to the MRI study from April 16, 2007. The findings were as follows: (1) interval development of a large posterior central and right paracentral disc herniation at the L3-L4 level, measuring ten (10) millimeters in cephalocaudal extent by approximately six-and-a-half millimeters in AP dimension, which produced significant mass effect upon the dural sac and significant central spinal stenosis; (2) features of congenital spinal stenosis; (3) a large posterior central and right paracentral disc herniation at L5-S1, which produced mass effect upon the thecal sac and right S1 nerve root, similar to the previous examination; (4) disc bulging and posterior marginal osteophyte formation at L4-L5, asymmetrically greatest to the left of the midline producing a mild degree of mass effect upon the dural sac; (5) degenerative disc signal changes with disc space narrowing at L3-L4, L4-L5, and L5-S1, with disc space narrowing greatest at the lower 2 levels associated with small marginal osteophyte formation and mild degenerative endplate irregularity and signal at L4-L5; and (6) facet degeneration at L4-L5, L5-S1, and, to a mild degree, the remaining lumbar levels. (Resp. Ex. 21).

Dr. McGee's impression was a large posterior central disc herniation at L3-L4, producing significant mass effect upon the dural sac and cauda equina, congenital spinal stenosis, and degenerative changes of the lower three (3) lumbar intervertebral disc space levels with a large posterior right lateral disc herniation at L5-S1, producing mass effect upon the right S1 nerve root. The other findings noted appeared similar to the 2007 MRI. (Resp. Ex. 21).

Lumbosacral x-rays were also performed at Methodist Medical Center on October 22, 2009. Dr. Gordon Cross, the reading radiologist, noted degenerative disc space narrowing at L4-L5 and L5-S1. He felt these findings were "little changed" when compared to 2007 images. (Pet. Ex. 35).

On October 23, 2009, Petitioner returned to Dr. Burke to discuss the recent MRI and radiograph results. He was still having lower back pain, but the radiation into his legs had resolved. Petitioner's back pain was an eight (8) out of ten (10) when he awoke but decreased to a four (4) or five (5) with medication. Dr. Buke felt there was no significant change between Petitioner's recent MRI and x-ray studies and the 2007 findings. Dr. Burke recommended physical therapy and released Petitioner to light duty. (Pet. Ex. 35).

Petitioner attended physical therapy at Illinois Neurological Institute from October 26, 2009 through December 3, 2009. (Pet. Ex. 35).

On December 3, 2009, Petitioner attended a follow-up examination at OSF Occupational Health and reported no lower back pain. Petitioner and Dr. William Scott discussed the need for core muscle strengthening and overall conditioning to control his weight status. Dr. Scott opined Petitioner's weight would continue to affect his occupation and back condition, placing him at risk for future back problems and possible surgery. Petitioner was placed at maximum medical improvement and released to regular duty. He was advised he could use a suspender system for his service weapon. (Pet. Ex. 35).

On January 29, 2010, Petitioner reported to OSF Occupational Health with increased lower back pain. He had been having some minor lower back pain, but no lower extremity symptoms until he was recently involved in a tactical training exercise on January 25, 2010. Petitioner reported this training involved a lot of spine rotation, which increased his lower back pain. The pain grew progressively worse throughout the day, and he developed numbness in his right foot and gluteal regions. He had not had any bladder dysfunction. He was using a cane at the exam and complained of right leg weakness. Dr. Edward Moody's assessment was right lower extremity radiculopathy with L5 weakness. Dr. Moody counseled Petitioner regarding cauda equina syndrome symptoms and the need for immediate medical attention should they occur. He also ordered a new lumbar spine MRI. Petitioner was to remain off work until his next follow-up. (Pet. Ex. 7).

A lumbar spine MRI was performed on January 29, 2010. Dr. Matthew J. Kuhn noted Petitioner's history consisted of a motor vehicle accident, a herniated disc at L3-L4, and numbness to Petitioner's right leg and foot since yesterday. Dr. Kuhn obtained new images and compared them to the October 22, 2009, MRI. The L1-L2 intervertebral disc appeared normal. At L2-L3, there was a mild diffuse disc bulge with mild facet joint hypertrophy. This finding was unchanged from the 2009 MRI. At the L3-L4 level, there was a large right paracentral disc herniation compressing the ventral thecal sac and extending to the right L3-L4 neural foramen with compression of the L4 nerve root. The herniation was moderately larger at that time when compared to the 2009 study. At L4-L5, there was a moderate left paracentral focal disc bulge with moderate facet joint hypertrophy and left-sided neural foraminal narrowing. This was unchanged from the 2009 study. At the L5-S1 level, there was a large right paracentral disc herniation compressing the thecal sac and extending into the right L5-S1 neural foramen. There was also compression at the right L5 and S1 nerve. These finding were not significantly changed. (Resp. Ex. 21).

Dr. Kuhn's impression was an enlarging right paracentral herniated nucleus pulposus at L3-L4, a moderate left-sided disc bulge at L4-L5, and a large right paracentral disc herniation at L5-S1 compressing the thecal sac and right S1 nerve. (Resp. Ex. 21).

After the MRI study and radiographs, Petitioner was immediately examined by Dr. Dzung H. Dinh at Illinois Neurological Institute. Dr. Dinh indicated this was an urgent consult to assess possible cauda equina syndrome. Dr. Dinh noted Petitioner's long history of lower back pain and back injuries. He also noted Petitioner had historically undergone physical therapy and conservative treatment to address these issues, most recently being returned to full-duty police work in December of 2009. (Pet. Ex. 10).

Petitioner told Dr. Dinh he was performing defensive training tactics on January 25, 2010, involving bending and twisting at the waist and one (1) fall to the side. Petitioner indicated he returned home that evening and developed severe lower back pain and spasms while lying on the floor on his abdomen. He then noticed right foot weakness on January 28, 2010, and numbness in his buttock region on the morning of the exam. He noticed this numbness while taking a shower. Petitioner also reported worsening right lower extremity numbness and weakness. (Pet. Ex. 10).

Dr. Dinh reviewed the MRI results from earlier that day and noted a large disc herniation at L3-L5 with severe cord stenosis and a disc herniation at L5-S1, worse on the right. On exam, Dr. Dinh noted Petitioner was three hundred and forty (340) pounds. Dr. Dinh's examination revealed right-sided weakness and decreased sensation. Based on his examination and review of the MRI, Dr. Dinh felt Petitioner had signs and symptoms of cauda equina. He diagnosed Petitioner with a large disc herniation at L3-L5 causing severe canal stenosis, lumbar myelopathy, and symptoms of cauda equina. Petitioner was also diagnosed with a right L5-S1 disc herniation. Dr. Dinh recommended an emergency bilateral lumbar laminectomy and diskectomy at L3-L4 and L5-S1. (Pet. Ex. 10).

Petitioner was admitted to OSF Medical Center for emergency surgery on January 29, 2010. He presented with lower back pain and right lower extremity weakness and numbness. A history was taken from Petitioner indicating he performed defensive tactics training on January 25, 2010, which mainly consisted of upper extremity activity and some bending. He reported he had one slight fall towards the right but did not notice much back pain. That evening, he was lying on the floor on his abdomen and developed a severe back spasm. A few days later, he noticed right foot numbness and weakness. Petitioner then experienced numbness in his groin and rectal area during examinations with Dr. Moody and Dr. Dinh. The MRI findings from earlier that day were confirmed, as well as Dr. Dinh's diagnoses. The consensus was to proceed with emergency surgery. (Pet. Ex. 11).

Dr. Dinh performed an emergent decompressive lumbar laminectomy from L3 to S1 with a right L3-L4 and L5-S1 diskectomy. The preoperative and postoperative diagnoses were cauda equina syndrome secondary to spinal stenosis and disc herniation right L3-L4 and L5-S1. Petitioner tolerated the procedure well with no complications. (Pet. Ex. 11).

In his operative report, Dr. Dinh stated, "[Petitioner] was doing tactical training on [January 25, 2010]. That night, he developed severe back spasm and pain that continued to progress." According to Dr. Dinh, the January 29, 2010, MRI showed a much larger disc herniation at L3-L4 compared to the 2009 MRI with worsening stenosis. However, the disc herniation at L5-S1 was the same or maybe slightly worse. (Pet. Ex. 11).

Petitioner was discharged from OSF Medical Center on February 2, 2010. He was doing well postoperatively. His surgical incision had developed a small necrotic center, which was evaluated and treated

with topical cream and an antibiotic. Petitioner was provided discharge instructions, including a medication schedule, a wound assessment appointment in one (1) week, and a postoperative exam in four (4) weeks. (Pet. Ex. 11).

Petitioner's surgical incision was evaluated on February 9, 2010, and February 11, 2010. He was advised to continue using the topical cream and antibiotic to address the necrosis at the upper portion of the incision site. On February 11th, a possible need for debridement and reclosure was discussed with Petitioner in the event conservative treatment did not resolve the issue. (Pet. Ex. 13).

On February 15, 2010, Petitioner followed-up with Dr. Eric Elwood to assess his surgical incision. Dr. Elwood removed the final surgical staples and debrided a localized area. He felt the wound was healing uneventfully. Dr. Elwood confirmed this treatment plan after Petitioner's February 22, 2010, exam. (Pet. Ex. 13).

On February 25, 2010, Petitioner attended his first postoperative follow-up at Illinois Neurological Institute. He was progressing well at home with home health and had participated in one (1) home physical therapy session. On exam, he had tingling in both hamstrings and numbness along his right calf. Petitioner was to continue taking Norflex and pain medication as needed. Outpatient physical therapy was ordered, and Petitioner was to remain off work. (Pet. Ex. 10).

Petitioner returned to OSF Occupational Health on March 1, 2010, for his first examination with Dr. Scott after his discharge on December 3, 2009. Dr. Scott noted his prior treatment of Petitioner in late 2009 and obtained a subsequent treatment history from Petitioner and other provider's treatment notes. At the time of the exam, Dr. Scott indicated Petitioner was receiving wound care management at home and was being monitored by a wound care nurse and Dr. Elwood. Overall, Dr. Scott felt Petitioner was progressing well from a neurological perspective. He had no thigh weakness or pain in his legs but did have some residual weakness to the right great toe and foot. Petitioner had been ambulating with a four-point walker. Dr. Scott felt Petitioner would benefit from a wound vac system to aid in his healing process. It was his understanding this would be coordinated with the home care nurses. Dr. Scott continue Petitioner off work until his next follow-up in approximately six (6) weeks. (Pet. Ex. 7).

Petitioner began physical therapy at IPMR on March 8, 2020. He continued with therapy at IPMR until his surgical debridement procedure with Dr. Elwood. (Pet. Ex. 18).

On March 15, 2010, Petitioner followed-up with Dr. Elwood to assess his surgical incision and discuss debridement and reclosure. Dr. Elwood noted there were areas of skin and fat loss around the incision site. He recommended proceeding with operative debridement and reclosure on April 7, 2010, at OSF Medical Center. (Pet. Ex. 13).

On April 7, 2010, Petitioner underwent surgical debridement and reclosure of his initial incision site. Dr. Elwood debrided a one-hundred-centimeter square portion of the wound and completed a complex closure of the chronic lower back wound. (Pet. Ex. 12).

Petitioner resumed physical therapy at IPMR on April 20, 2010. He continued with therapy two (2) to three (3) times per week until his pain complaints increased in June of 2010. (Pet. Ex. 18).

On April 27, 2010, Petitioner was re-examined at Illinois Neurological Institute. His surgical incision was closed and was healing well. Sutures at the incision site were dry and intact. Petitioner had progressed to walking with a cane. He was also driving and progressing with other activities. Dr. Dinh recommended outpatient water

therapy two (2) to three (3) days per week for six (6) to eight (8) weeks for gentle core strengthening. He felt the Petitioner could then progress to land therapy, work conditioning, and work hardening with an eventual functional capacity evaluation to assess a return to work. (Pet. Ex. 10).

Petitioner followed-up with Dr. Scott at OSF Occupational Health the following day, April 28, 2010. At that time, he was approximately three (3) post-surgery. He felt his wound was healing well but reported no improvement in his back condition. He still felt quite a bit of pain in his lower back and weakness in his right foot. On exam, Petitioner's surgical site appeared to be healing well with no redness or swelling. His range of motion was decreased with forward flexion to his knees, but he had full range of motion with hyperextension and lateral bending. He was negative for radicular symptoms in his lower extremities. Dr. Scott agreed with Dr. Dinh's therapy recommendations and scheduled a two (2) month follow-up appointment to assess his progress. (Pet Ex. 7).

On May 6, 2010, Dr. Elwood removed Petitioner's final sutures. The incision was nicely healed, and Petitioner was pleased with the result. Dr. Elwood recommended a follow-up appointment in two (2) months to further monitor Petitioner's progress. (Pet. Ex. 13).

On or about June 1, 2010, Petitioner complained of increased soreness with physical therapy. He felt it was potentially due to progressing with weights and starting aquatic therapy. He canceled his next appointment on June 3, 2010, indicating he was in too much pain. (Pet. Ex. 18).

On June 7, 2010, Petitioner attended an outpatient rehabilitation session at Illinois Neurological Institute. (Pet. Ex. 10). He reported increased lower back pain after hearing a "pop" during aquatic therapy a few days prior. He had experienced difficulty with sitting and standing since that time. His lower back pain was consistently between a four (4) to six (6) out of ten (10). Continued aquatic and land physical therapy was recommended.

Petitioner attended a follow-up examination with Dr. Dinh on June 25, 2010. Dr. Dinh noted Petitioner had been doing well postoperatively and was performing land-based and aquatic therapy. However, Petitioner contacted Dr. Dinh's office on July 3, 2010, stating he felt a pop on the left side of his lower back during aquatic therapy. Petitioner reported the pain has continued to increase in severity. On physical examination, Petitioner had good motor strength with some weakness noted. Dr. Dinh recommended a lumbar spine MRI to address Petitioner's ongoing pain. Petitioner was to discontinue therapy until his follow-up with Dr. Dinh after the MRI. (Pet. Ex. 10).

A lumbar spine MRI was performed on July 8, 2010. Dr. Michael T Zagardo, the reading radiologist, compared the images to Petitioner's August 17, 2004, MRI findings. Dr. Zagardo noted Petitioner had previously undergone posterior decompressive surgery with laminectomy and removal of the spinous processes from L3 down to the L5-S1 level. Dr. Zagardo's impression was as follows: (1) postoperative changes and distortion of the fat planes within the surgical bed; (2) residual postoperative seroma/fluid collection posterior to the L4-L5 level, likely an evolving sterile postoperative fluid collection; (3) ventral epidural tissue at the L3-L4 level, potentially representing disc and/or post-operative change/fibrosis; (4) a potentially small, extruded disc fragment at L4; (5) a mild disc bulge L4-L5, slightly more prominent on the left, with no significant neural encroachment; and (6) a residual disc bulge/protrusion at the L5-S1 level centrally positioned, with enhancing tissue within the ventral epidural space on the right potentially corresponding to a partial discectomy/postoperative change. Dr. Zagardo did not feel the nerve root sheath at L5-S1 was displaced or compressed and did not think there was evidence of a recurrent disc protrusion at that level. (Pet. Ex. 10, 19).

Petitioner was also re-examined by Dr. Elwood on July 8, 2010. His incision was nicely healed, and Dr. Elwood released him from further care. (Pet. Ex. 13).

On July 16, 2010, Dr. Dinh entered an office note stating, "[S]eriously loose [*sic*] weight. shows disc protrusion at L3-4 and L5-S1 same as 2004. No further surgery.no other surgeries will help him. Try gastric bypass." (Pet. Ex. 13). Dr. Dinh ordered continued land-based and aquatic therapy for the next four (4) to six (6) weeks. He also recommended a gastric bypass consultation. Effective July 19, 2010, Dr. Dinh released Petitioner to "limited employment activities," light duty only, at any time. (Pet. Ex. 10).

On July 20, 2010, Petitioner was examined by Dr. Pena at OSF Occupational Health. Dr. Pena noted Petitioner's recent MRI films were reviewed by Dr. Dinh. Petitioner reported Dr. Dinh indicated there were two bulged discs, which were not touching the nerve roots. Petitioner further reported Dr. Dinh recommended rapid weight loss as the only remaining option. Dr. Dinh felt no further surgery was reasonable. Petitioner's primary complaint was central lower back pain with right foot weakness and tingling and paresthesia in his right great toe, heel, and posterior calf. Dr. Pena's physical exam was poorly focalized. He noted the exam was "all of the place" with no real dermatomal distribution. Dr. Pena felt Petitioner's obesity had contributed significantly to his current problem. Dr. Pena opined Petitioner's deconditioned state had contributed to the recurrent injuries throughout his career. He agreed Petitioner's obesity needed to be addressed. Petitioner was released to modified duty, sedentary work only. (Pet Ex. 7).

Petitioner resumed physical therapy on July 22, 2010. He attended therapy two (2) to three (3) times a week through December 10, 2010. (Pet. Ex. 18).

On September 22, 2010, attended a consultation with Dr. Ghafoor Baha at Central Illinois Pain Center. Petitioner complained of constant lower back pain, upper posterior buttocks pain, and numbness and tingling in his right foot. He stated he was two hundred and ten (210) pounds when he joined the police force and was three hundred and seventy-three (373) pounds at the exam. He reported his symptoms developed after a training accident on January 25, 2010. Dr. Baha recommended a right L4-L5 transforaminal lumbar epidural steroid injection. (Pet Ex. 15).

Petitioner received the L4-L5 transforaminal lumbar epidural steroid injection on October 7, 2010. Dr. John Marshall indicated Petitioner tolerated the procedure well. (Pet Ex. 15).

On October 20, 2010, Petitioner followed-up with Dr. Marshall and reported a forty (40%) to fifty percent (50%) reduction in pain. Dr. Marshall performed a second lumbar epidural steroid injection at L4-L5. Petitioner was discharged in good condition. (Pet Ex. 15).

On November 12, 2010, Petitioner was re-examined by Dr. Pena. He reported a decrease in his lower back pain and better flexibility after two (2) steroid injections. The injections were so successful a third injection was not needed. Based on his improvement, a functional capacity evaluation had been recommended. Petitioner asked Dr. Pena to complete a certification of disability form from the Police Pension Fund. Dr. Pena noted several inconsistencies with Petitioner's examination, including, but not limited to, the following: (1) the lack of strength indicated would be inconsistent with any ambulation; (2) a sharp, unexplained increase in symptoms at the exam, compared to his physical therapy notes; (3) he told Dr. Pena a third steroid injection had been canceled, but told other staff a third injection would be needed in two (2) weeks; and (4) inconsistencies in his balance and strength testing. Dr. Pena recommended an EMG/NGV. He continued Petitioner on modified duty. (Pet Ex. 11).

An EMG study was performed on November 24, 2010, by Dr. Frank Russo. The findings were consistent with chronic right L5-S1 radiculopathy with some mild involvement at L3-L4. Dr. Russo noted decreased responses were particularly significant at L5-S1. (Pet Ex. 18).

Petitioner underwent a functional capacity evaluation on December 20 and 21, 2010. His primary complaints were lower back pain, difficulty with balance, foot numbness, leg weakness, and difficulty with walking long distances. He demonstrated limitations with range of motion, right leg strength, and balance. Petitioner failed to demonstrate the physical abilities necessary to perform full-duty police work. (Pet. Ex. 21).

On February 3, 2016, Petitioner reported to OSF Glen Park for a physical therapy evaluation. Petitioner reported chronic back problems with an initial onset on October 1, 2009. He believed his problems were initially caused by a rear-end accident in 2009. He also reported a motor vehicle accident in 2010. He reported constant back pain and no feeling in his right leg and right foot. The therapist noted compounding factors of obesity, diabetes, and high blood pressure. On exam, Petitioner had diminished range of motion and pain with flexion and lateral bending. The clinical impression at that time was central sensitization and mechanical back pain. Physical therapy once to twice a week for four (4) to six (6) weeks was recommended. (Pet. Ex. 19).

Petitioner received physical therapy at OSF Glen Park from February 3, 2016 through April 25, 2016. Petitioner responded well to treatment with no increase in symptoms. His quality of life improved with therapy and his tolerance with activities of daily living also improved. Mark A. Buettner, PT felt Petitioner had progressed nicely toward his established goals and had an excellent prognosis secondary to compliance with treatment, a positive response to treatment, and motivation. (Pet. Ex. 19).

IV. Disability Pension Proceedings

A. Pension Board Hearings

Petitioner applied for a line-of-duty disability pension through the Police Pension Fund of Peoria in 2010. (Resp. Ex. 8). Petitioner's claim for line-of-duty disability pension benefits was based on his lower back condition and the two (2) accidents at issue in this matter. The Board of Trustees of the Police Pension Fund heard testimony and received documentary evidence at evidentiary hearings on January 20, 2011, and May 2, 2011. (Resp. Ex. 9). Petitioner was represented by counsel during these proceedings and fully participated by presenting testimony, cross-examining witnesses, and presenting documentary evidence. (Resp. Ex. 9-10).

Petitioner testified under oath on January 20, 2011, and May 2, 2011. (Resp. Ex. 9). He provided testimony on the September 27, 2009, motor vehicle accident, the January 25, 2010, police training, his medical treatment, symptoms at the time of the hearings, and his history of back issues and treatment. (Resp. Ex. 9). Petitioner's testimony was largely consistent with his testimony at arbitration.

With regard to the September 27, 2009, accident, Petitioner testified he experienced head, neck, and lower back pain after the accident, which gradually improved with physical therapy until his return to full duty in December of 2009. (Resp. Ex. 9, p. 11-15). He reported having some lower back pain between his release to full duty and the core training on January 25, 2010. (Resp. Ex. 9, p. 14-15). He affirmed he continued to work full duty during this time. (Resp. Ex. 9, p. 15).

With regard to core training on January 25, 2010, Petitioner testified he had very minor soreness in his back that morning prior to training. Resp. Ex. 9, p. 15-16). This pain was reported to Officer Richard Glover. Resp. Ex. 9, p. 36). His pain progressed during training, but he was able to complete the morning portion of training before leaving to attend a scheduled court appearance. (Resp. Ex. 9, p. 15-16, 37). Petitioner testified he did not report the increased back pain to any supervising officer that day. (Resp. Ex. 9, p. 36-37). The pain continued to worsen after he left training, and, by the time he got home from court, he was experiencing muscle spasms. At home that evening, he laid on the floor on his stomach to do an exercise to relieve his pain. (Resp. Ex. 9, p. 38-39). Petitioner confirmed he never fell during the training. He did not recall reporting a fall during training at subsequent medical exams. Resp. Ex. 9, p. 17).

After providing testimony concerning his subsequent medical treatment, Petitioner testified he was unable to perform his duties as a police officer due to his loss of balance, loss of strength in his right leg, and continued lower back pain. (Resp. Ex. 9, p. 18-27). Petitioner also testified he had experienced back pain and issues prior to the vehicle accident and training, specifically in 1995, 1997, 1999, 2003, 2004, 2007, and October of 2009. He also acknowledged receiving medical treatment for his lower back during these time periods. (Resp. Ex. 9, p. 28-34; 2-28).

The Board also heard testimony from Officer Richard Glover, Officer Mike Flatko, and Officer Javier Grow. (Resp. Ex. 9, p. 44-61; 61-71; 72-81).

Officer Glover testified Petitioner did not report any injury or problem on January 25, 2010, while performing the training activities. (Resp. Ex. 9, p. 46-47). He further testified he did not observe Petitioner having any difficulty during the training. (Resp. Ex. 9, p. 48-49). Officer Glover noted Petitioner reported having some back pain the morning of training, prior to any activities being performed. Officer Glover stated he documented this prior back pain on Petitioner's evaluation form. (Resp. Ex. 9, p. 45-46). When asked whether he was surprised when he was informed of Petitioner's alleged injury during training, Officer Glover testified, "Yes, I was." (Resp. Ex. 9, p. 50).

Officer Glover also discussed the activities performed during the training and clarified the there is no physical contest during the training. The techniques were not to be performed at "full bore." The idea is to learn the techniques and not to have a physical confrontation. (Resp. Ex. 9, p. 47-56). Officer Glover testified each technique was performed approximately three (3) to five (5) times. (Resp. Ex. 9, p. 49-52). He estimated an officer is asked to perform approximately twenty (20) to thirty (30) movements, in total, requiring low back activity. (Resp. Ex. 9, p. 52-53).

Officer Flatko testified he was a defensive tactics instructor during core training on January 25, 2010. (Resp. Ex. 9, p. 62). Officer Flatko testified he observed Petitioner during the morning session of training. (Resp. Ex. 9, p. 63). He did not observe Petitioner having any difficulty performing the training exercises. He further testified Petitioner did not report any injury to him on the date of the training. (Resp. Ex. 9, p. 63-65). Officer Flatko also testified he was surprised to hear Petitioner claimed he injured his back during the core training.

Respondent offered documents from the core training into evidence at arbitration as Respondent's Exhibit 3.

Officer Grow testified he worked with Petitioner in the traffic unit in January of 2010. (Resp. Ex. 9, p. 72). On January 24, 2010, the day before the core training, Officer Grow spoke with Petitioner at the beginning of the work day. At that time, Petitioner told Officer Grow he slipped on ice a couple days prior and hurt his back. (Resp. Ex. 9, p. 72-73). Officer Grow indicated Petitioner stated he did not fall when he slipped. According to

Officer Grow, Petitioner told him he would be calling-in sick the following day, January 25, 2010, if his back wasn't feeling better. (Resp. Ex. 9, p. 73-75). Officer Grow testified he completed a special report concerning his conversation with Petitioner. (Resp. Ex. 9, p. 72-73). Officer Grow's report was offered into evidence at arbitration by Respondent as Respondent's Exhibit 6.

B. Medical Reports

In addition to medical records, the Pension Board reviewed and considered the opinions of multiple physicians specifically concerning Petitioner's alleged accidents and ability to perform his full duties as a police officer. Specifically, the opinions and disability certification statements of Dr. Scott, Dr. Dinh, Dr. Miller, Dr. Richard Kube, and Dr. Singh were considered by the Board.

Dr. William Scott authored a narrative report on February 4, 2010. Dr. Scott was asked by Respondent to provide an opinion on the cause for Petitioner's condition and surgical procedure. Dr. Scott opined Petitioner's underlying medical condition and 2009 motor vehicle accident put Petitioner at risk for reoccurrence of symptoms. He also opined Petitioner's weight and obesity placed him at risk. Dr. Scott concluded Petitioner's lower back condition was related to previous medical conditions, aggravation from the motor vehicle accident, and reaggravation from tactical training. (Pet. Ex. 6; Resp. Ex. 10).

Dr. Dzung Dinh completed a certification verifying Petitioner was unable to return to full duty as a police officer due to his low back condition. Dr. Dinh's certification did not specifically address causation, listing "post op," as the cause of Petitioner's disability. (Pet. Ex. 10; Resp. Ex. 10).

Dr. Barry Miller, Petitioner's primary care physician, completed a certification verifying Petitioner was limited to light duty for a low back condition. Dr. Miller felt the condition was caused by the September 27, 2009, motor vehicle accident and the January 25, 2010, tactical training. (Resp. Ex. 10).

Dr. Richard Kube performed an independent medical examination at Petitioner's request. Dr. Kube examined Petitioner on December 3, 2010. (Pet. Ex. 22). Dr. Kube's evidence deposition was then taken on February 18, 2016. (Pet. Ex. 23). Dr. Kube opined Petitioner was unable to return to work as a police officer due to his disc herniation, resulting condition, balance issues, and lower extremity weakness. (Pet. Ex. 22-23). Dr. Kube felt this condition was primarily related to the January 25, 2010, training exercise. (Pet. Ex. 22-23). According to Dr. Kube, Petitioner's bending, twisting, and "fall to the side" during training aggravated his condition, causing the need for surgery. (Pet. Ex. 22-23).

Dr. Kern Singh performed a records review at the request of the Pension Board on or about March 7, 2011. (Resp. Ex. 12). The evidence deposition of Dr. Kern Singh was subsequently taken on June 16, 2016. (Resp. Ex. 13). His curriculum vitae was offered into evidence at arbitration. (Resp. Ex. 14). Dr. Singh opined Petitioner's lower back conditions prevented him from returning to work as a police officer. (Resp. Ex. 12-13). However, based on his review of medical records, the MRI films from 1997, 2004, 2007, 2009, and 2010, and the Pension Board testimony, Dr. Singh opined Petitioner's condition was not caused, aggravated, accelerated, or further worsened by the 2009 motor vehicle accident or the 2010 training activities. (Resp. Ex. 12-13). He felt Petitioner's condition was pre-existing and degenerative. He was also of the opinion Petitioner's body habitus contributed significantly to his condition. Dr. Singh noted the findings on the 1997 MRI suggested a pre-existing genetic and body habitus component. He further noted there was no structural change shown on the 2009 and 2010 MRIs, compared to the 1997, 2004, and 2007 MRIs. (Resp. Ex. 12-13).

C. Pension Board Decision

After reviewing the evidence and deliberating in executive session on May 2, 2011, the Pension Board unanimously voted to deny Petitioner's claim for line-of-duty disability pension benefits. A written Decision was entered by the Pension Board on or about May 5, 2011. The Board held Petitioner failed to prove, by the greater weight of the evidence, his lower back condition was "caused, aggravated, or accelerated by either the rear end motor vehicle accident on September 27, 2009, or the training activities on January 25, 2010." (Resp. Ex. 10).

With regard to the two (2) alleged accidents, the Pension Board found the motor vehicle accident was a very low-speed collision, and the training exercise involved minimal physical exertion. The Pension Board concluded the physical stress applied to Petitioner's body during the low-speed vehicle collision and tactical training was very minor and not likely to cause any injury to the low back. (Resp. Ex. 10).

Medical records reviewed by the Board established Petitioner had longstanding lower back issues, which were identified and documented as early as 1995. The Board noted, in 1995, Petitioner saw Dr. Rians who diagnosed Petitioner with inguinal and left buttock pain, consistent with a discogenic cause involving the L3-L4 dermatome. The Board emphasized L3-L4 is the same level surgically treated by Dr. Dinh in 2010. (Resp. Ex. 10).

In its Decision, the Board also noted Petitioner sought treatment for his lower back numerous times, beginning in 1995. In many instances, there was either no precipitating event or a very minor incident, which supported the conclusion Petitioner had a significant problem with the lumbar spine beginning in 1995. The Board held this condition naturally progressed due to his congenital condition and body habitus until surgery became necessary in 2010. (Resp. Ex. 10).

With regard to the opinions expressed by Dr. Scott, Dr. Dinh, Dr. Miller, Dr. Richard Kube, and Dr. Singh, the Pension Board held the opinions of Dr. Singh were entitled to greater weight than the other physicians. The Pension Board emphasized Dr. Singh was the only physician to have reviewed all pertinent medical records and all of Petitioner's MRI films. The Pension Board noted there was no indication Dr. Scott had ever reviewed the medical records showing testing and treatment from 1995 to 1999, including the MRI taken in 1997. Further, the Board noted Dr. Scott had not reviewed the MRI films from 1997, 2004, 2007, 2009, or 2010. The Pension Board reached similar conclusions concerning the opinions of Dr. Miller and Dr. Kube. These physicians based their causation opinions on the histories provided by Petitioner and a portion of Petitioner's medical records, rather than the complete evidence reviewed by Dr. Singh. (Resp. Ex. 10).

Additionally, the Pension Board questioned Petitioner's credibility. The Pension Board noted Dr. Dinh's January 29, 2010, exam note indicated Petitioner developed severe lower back pain and spasm while lying on his abdomen on the floor at home. In a Non-Crime Report completed a few days after the training, Petitioner stated, "Upon going home that night my back became very sore and I started to have muscle spasms." The report did not indicate he had unusual back pain during the training. Contrary to Petitioner's subsequent explanations, the Pension Board found the most reasonable inference was Petitioner's unusual or severe back pain started when he was on the floor at home. The Pension Board also noted it found Petitioner's testimony concerning symptoms during the tactical training was not credible. This conclusion was based on Petitioner's manner of testifying, the fact he did not report any injury during the training, the fact he continued training until he went to court, his own written report, and the history he provided to Dr. Dinh. The Board finally emphasized Petitioner was not candid about his prior back issues when he completed the patient information form for his police candidate physical in 2001. (Resp. Ex. 10).

V. Petitioner's Common Law Case - Illinois Tenth Judicial Circuit Case Number 11 L 246

At arbitration, Petitioner submitted documentary evidence establishing he filed a claim against the driver of the September 27, 2009, vehicle accident, Mauro Herrod, in the Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County. (Pet. Ex. 4, 27-31). Respondent intervened in the matter to assert its lien interest under Section 5(b) of the Illinois Workers' Compensation Act. Although Petitioner settled his case with Mr. Herrod for $75,000.00, Petitioner and Respondent engaged in litigation concerning Respondent's entitlement to lien recovery through the Third District Appellate Court. (Pet. Ex. 4, 27-31).

CONCLUSIONS OF LAW

In support of the Arbitrator's Decision relating to (A). Was Petitioner's claim filed within the three-year statute of limitations period?, the Arbitrator finds the following:

At arbitration, Respondent asserted Petitioner's claim in Case Number 17 WC 033893 was not filed within the applicable statute of limitations period. It is undisputed Petitioner filed an Application for Adjustment of Claim for the September 27, 2009, automobile accident on or about November 9, 2017. Pursuant to Section 6(d) of the Illinois Workers' Compensation Act, an application for compensation must be filed with the Commission within three (3) years after the date of the accident, where no compensation has been paid, or within two (2) years after the date of the last payment of compensation, where any has been paid, whichever is later. 820 ILCS 305/6(d).

At the outset, the Arbitrator notes Petitioner's Application is barred on its face as it was filed more than eight years after the date of accident. Accordingly, it is Petitioner's burden to establish, by a preponderance of the evidence, his claim was timely filed within two (2) years after the date of the last payment of compensation. Petitioner has failed to meet this burden. The evidence establishes Respondent last paid benefits for the September 27, 2009, injury in December of 2009. Petitioner reached maximum medical improvement for this injury in December of 2009, and, shortly thereafter, Respondent paid the last benefit attributable to said injury. This conclusion is supported by the complete evidentiary record and also expressly noted within the Decision of the Third District Appellate Court. (Pet. Ex. 4 p.10 ¶22). The Third District held Respondent's payments for the vehicle accident ended when Petitioner was medically cleared to return to full duty in December of 2009. The Arbitrator's independent review of the evidence reveals that a payment was made on January 4, 2017, to Express Scripts, Inc. However, this appears to be associated with the January 25, 2010, claim. (Res. Ex. 29) No evidence suggests that this payment was attributable to Petitioner's September 27, 2009, accident. The outstanding medical bills presented in Petitioner's Exhibit 34 appear to represent bills which are associated with the January 25, 2010 claim as well. Since there is no proof that any medical bills were paid attributable to the September 27, 2009 accident within the two years preceding the filing of Case Number 17 WC 033893 on November 9, 2017, the claim is barred by Section 6(d) of the Act.

In support of the Arbitrator's Decision relating to (C). Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?, the Arbitrator finds the following:

At arbitration, Respondent disputed whether Petitioner sustained an accident arising out of and in the course of his employment with Petitioner on September 27, 2009, and January 25, 2010. Under the Illinois Workers' Compensation Act, Petitioner has the burden of establishing he suffered an accident arising out of and in the course of employment by a preponderance of the evidence. *Great American Indemnity Co. v. Industrial Comm.*, 367 Ill. 241 (1937). The words "arising out of" refer to the origin or cause of the accident and are descriptive of its character, while the words "in the course of" refer to the time, place and circumstances under which the accident occurs. *Vincennes Bridge Co. v. Industrial Comm.*, 351 Ill. 444 (1933). Both elements must

be present at the time of the injury in order to justify compensation. *Borgeson v. Industrial Comm.*, 368 Ill. 188 (1938).

Petitioner testified he was solely seeking compensation under the Act for the alleged accidents occurring on September 27, 2009, and January 25, 2010. (Arb. Tr. p. 44)

The Arbitrator finds Petitioner established an accident occurred on September 27, 2009, by a preponderance of the evidence. The evidence uniformly establishes Petitioner was involved in a reported and documented low-speed motor vehicle accident on that date while driving his squad car for Respondent. Petitioner experienced immediate head, neck, and lower back pain and sought medical treatment after the accident. Both parties offered documents, photographs, and testimony establishing Petitioner sustained an accident on September 27, 2009.

With regard to the alleged January 25, 2010, accident, the Arbitrator finds Petitioner failed to meet his burden of establishing an accident occurred, by a preponderance of the evidence. This conclusion is supported by the medical records in evidence, the testimony of Officer Glover, Officer Flatko, and Officer Grow, and Petitioner's own testimony.

On January 24, 2010, the day prior to the alleged accident, Petitioner told Officer Grow his back was hurting from slipping on ice a few days prior, and he planned to call in sick the next day for core training if he didn't feel better. (Resp. Ex. 6, 9). At the beginning of the morning training session on January 25, 2010, the participants were asked if there were any medical conditions which would affect their ability to perform the activities. It is undisputed Petitioner reported continued lower back pain before training began. (Arb. Tr. p. 54; Resp. Ex. 3, 9). Based on the testimony of Petitioner, Officer Glover, and Officer Flatko, it is further undisputed Petitioner completed the morning session of training and did not report any incident or increase in pain during training or immediately thereafter. Both Officer Glover and Officer Flatko testified they observed Petitioner during training and were surprised to learn he alleged an injury occurred during the training. (Resp. Ex. 9).

At arbitration, Petitioner testified he recalled reporting in subsequent treatment visits that he experienced pain and a back spasm while he was lying on the floor at home on his abdomen in the evening of January 25, 2010. (Arb. Tr. p 56-57). This history is consistent with Dr. Dinh's January 29, 2010 exam note, in which it was noted Petitioner developed severe lower back pain and spasm while lying on his abdomen on the floor at home. This history is also consistent with the Non-Crime Report completed a few days after the training. In the Report, Petitioner stated, "Upon going home that night my back became very sore and I started to have muscle spasms." The report did not indicate he had unusual back pain during the training. (Resp. Ex. 2, 10; Pet. Ex. 10). On re-direct examination during arbitration, Petitioner testified he laid down on the floor that night because his back was hurting. Then, while lying on the floor, he started having pain down his leg with numbness and tingling. (Arb. Tr. p. 63). Despite Petitioner's attempts to explain or amend his initial injury histories, the Arbitrator finds the preponderance of the evidence establishes Petitioner did not sustain an accident during the January 25, 2010 training.

In reaching this conclusion, the Arbitrator also considers well-documented issues with Petitioner's credibility. The evidence establishes Petitioner selectively reported information and/or omitted relevant information throughout his treatment and during Respondent's pre-employment process. On his OSF Medical Examination Form, Petitioner indicated he had trouble with his back in "1995," which was "thought to be a bulging disk [*sic*]was found to be a kidney stone." He reported the outcome of the injury was "resolved." Petitioner further checked the box for "no" when asked if he had a "back (spine) disease." (Resp. Ex. 27).

The evidence establishes Petitioner had been having lower back issues since 1995 and had received treatment for these issues and multiple exacerbations of his condition during routine activities, such as running, lifting objects, sitting for long periods, and catching a fellow student. Moreover, at that time, Petitioner was aware his November 22, 1997, MRI showed very significant congenital spinal stenosis at L3 through S1, a large central disk herniation at L3-L4, a left sided disk herniation at L4-L5, and a large right sided disk herniation at L5-S1. On December 1, 1997, Dr. Maxey told Petitioner he had very significant spine problems with multi-level disk herniations and congenital stenosis. (Resp. Ex. 21).

Additionally, at his first examination with Dr. Miller on August 23, 2004, Petitioner failed to disclose his pre-existing back problems and prior treatment. Dr. Miller's treatment note indicates Petitioner specifically denied any traumatic injuries in the past and any back problems prior to his alleged 2004 work-accident. (Resp. Ex. 26).

The evidence further establishes Petitioner failed to disclose his prior history of back problems and treatment to his selected independent medical examiner, Dr. Kube. (Pet. Ex. 22). At his deposition, Dr. Kube acknowledged his "causation opinion would be based upon the history of events." (Pet. Ex. 23 p. 53). Dr. Kube testified he was not provided any medical records prior to April of 2007. (Pet. Ex. 23 p. 53). His report supports this conclusion, and the conclusion Petitioner did not verbally disclose any treatment prior to April of 2007. (Pet. Ex. 22).

As evidenced by the foregoing, the Arbitrator finds Petitioner's testimony regarding the alleged January 25, 2010, accident is less credible than the testimony of Officer Glover, Officer Flatko, and Officer Grow. While the core training session Petitioner attended on January 25, 2010, was a work-related activity, the evidence establishes he did not suffer an accident during the training. Accordingly, the Arbitrator finds Petitioner failed to meet his burden of establishing an accident arising out of and in the course of his employment on January 25, 2010.

In support of the Arbitrator's Decision relating to (F) Is Petitioner's current condition of ill-being causally related to the injury?, the Arbitrator finds the following:

The causal relationship between Petitioner's current condition of ill-being and the alleged September 27, 2009, and January 25, 2010, accidents was also placed at issue by the parties. Respondent argues the doctrine of collateral estoppel bars Petitioner from arguing for a causal relationship as a result of the Decision entered by the Police Pension Fund of Peoria on May 5, 2011. Petitioner counters by alleging Respondent cannot assert collateral estoppel due to the law of the case doctrine. Accordingly, two threshold questions exist regarding causation in these proceedings: (1) whether the law of the case doctrine prevents Respondent from asserting collateral estoppel; and (2) if law of the case does not apply, whether Petitioner is estopped from arguing causation before the Commission.

The Arbitrator addresses the application of law of the case and collateral estoppel to both of Petitioner's claims, irrespective of the above finding Petitioner did not sustain an accident on January 25, 2010.

As fully set forth below, the Arbitrator finds the law of the case doctrine is not applicable to the present matter.

As a result of the September 27, 2009, accident, Petitioner filed a lawsuit against the other driver, Mr. Herrod. Respondent intervened. Petitioner and Mr. Herrod settled their action for $75,000.00. Respondent asserted a workers' compensation lien of $125,899.50 on the settlement. The lien was adjudicated before the Circuit Court of the Tenth Judicial Circuit. *Inter alia*, Respondent argued the doctrine of collateral estoppel barred

Petitioner from arguing his injuries were related to the training exercise at work, since that issue was already litigated before the Pension Board, which found his injuries were not related to the training exercise. The trial court denied the application of collateral estoppel and determined Respondent was entitled to 10% of the lien amount. (Pet. Ex. 4, 29, 31).

Respondent then filed a Motion for Reconsideration. On reconsideration, the circuit court determined Respondent was entitled to the full amount of the $75,000.00 settlement, minus Petitioner's court costs and 25% of the settlement, to be paid to his attorney pursuant to the Act. Petitioner then appealed this determination to the Third District Appellate Court. (Pet. Ex. 4, 29, 31).

The Appellate Court reversed and remanded the matter, finding the trial court erred in determining Respondent was entitled to the entire settlement amount without establishing a nexus between the payments and the settlement injury. The court further held Respondent, on remand, should be allowed to show what it paid for the car accident, but those payments ended when Petitioner was medically cleared to return to full duty in December of 2009. While Respondent again argued for the application of collateral estoppel as a basis to affirm the trial court's ruling, the appellate court found the issue of collateral estoppel was not properly before them, as Respondent did not appeal or cross-appeal this issue. (Pet. Ex. 4). Such a cross-appeal would have been improper because Respondent received all the relief it sought from the trial court, with the court finding Respondent was entitled to the entire lien amount in controversy.

It is a long-standing tenant in Illinois that a cross-appeal is improper when the party received all the relief it sought below. *Certain Underwriters at Lloyd's London v. Metropolitan Builders, Inc.*, 2019 IL App (1st) 190517, 4. "It is fundamental that the forum of courts of appeal should not be afforded to successful parties who may not agree with the reasons, conclusion or findings below." *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 386 (1983) (quoting *Illinois Bell Telephone Co. v. Illinois Commerce Commission*, 414 Ill. 275 (1953)). Since a cross-appeal of the issue of collateral estoppel was improper, and thus not filed, the issue of collateral estoppel was never reviewed by the appellate court.

Petitioner now argues Respondent cannot make any argument regarding collateral estoppel in the present matter because of the trial court's refusal to apply collateral estoppel to the lien argument is now the law of the case.

Under the law-of-the-case doctrine, generally, a rule established as controlling in a particular case will continue to be the law of the case, as long as the facts remain the same. *People v. Patterson*, 154 Ill.2d 414, 468 (1992) (citing 14 Ill. L. & Prac. *Law of the Case* § 74, at 233 (1968)). A holding court is bound by views of law in its previous opinion in a case, unless the facts presented require a different interpretation. *Bradley v. Howard Hembrough Volkswagen, Inc.*, 89 Ill.App.3d 121, 124. The doctrine, however, merely expresses the practice of courts generally to refuse to reopen what has been decided; it is not a limit on their power. *Patterson* at 468-469 (citing 14 Ill. L. & Prac. Law of the Case § 74, at 234 (1968)). A finding of a final judgment is required to sustain application of the doctrine. *Patterson* at 469.

The trial court's refusal to apply collateral estoppel to the lien argument raised in Petitioner's personal injury action against Mr. Herrod does not constitute the law of the case in this matter. Petitioner's personal injury action was an entirely separate case from the present workers' compensation case. "[T]he law-of-the-case doctrine applies to issues already determined in the *same* case." *People ex rel. Madigan v. Illinois Commerce Com'n*, 394 Ill.App.3d 382, 391 (2009) (holding law-of-the-case doctrine was not applicable because two separate appeals of the same order were not the same case, as one was not a continuation of another, the appeals were not consolidated, and section 10-201's reference to multiple appeals contemplates separate actions from the same order).

The doctrine does not apply to a ruling from a separate, related case. *Id*; *See People v. Tenner*, 206 Ill.2d 381, 395-396 (2002) (law-of-the-case doctrine did not apply because the case involving the defendant's second post-conviction petition was not the same case as either that involving his first post-conviction petition or that involving his federal *habeas corpus* petition). Petitioner's personal injury action against Mr. Herrod and his workers' compensation claims against Respondent are not the same case, and thus, the law-of-the-case doctrine is inapplicable.

Further, the law-of-the-case doctrine "binds a court to a view of law announced in its prior opinion in a case between the same parties. However, the doctrine is not applicable where either different parties or issues are involved." *Lake Bluff Heating and Air Conditioning Supply, Inc. v. Harris Trust and Savings Bank*, 117 Ill.App.3d 284, 290 (1983) (internal citations omitted). In the present case, the parties involved are different from those involved in Petitioner's personal injury action, as Mr. Herrod is not a party to these workers' compensation claims.

Petitioner's attempt to argue for the application of the law-of-the-case doctrine is inconsistent with his position on the legal effect, or lack thereof, of the Pension Board Decision. Assuming *arguendo* a prior ruling in a separate but related case is to be established as controlling in the immediate case, then the Pension Board's ruling which held Petitioner's injuries were not causally related to either of his two alleged work accidents should be controlling in this matter to the same extent as the trial court's ruling in regard to collateral estoppel. *See Irizarry v. Industrial Com'n*, 337 Ill.App.3d 598 (2003) (At the section 19(b) stage of the case, the arbitrator determined a causal connection existed between the industrial accident and the alleged injuries, and this ruling became the law of the case, barring the respondent from raising the causation issue again during the final proceeding) (*Irizarry* also discusses the fact that res judicata and collateral estoppel are invoked by final judgments in separate, prior actions, while Irizarry's claim had proceeded through the various stages, but still comprised only a single action and thus, the appropriate bar stemmed from the law of the case doctrine).

Petitioner's personal injury claim is clearly not the same case as the immediate workers' compensation matter, but even assuming *arguendo* the workers' compensation matter is a subsequent stage in the same case, a court is not bound by views of law in its previous opinion in a case if the facts presented require a different interpretation. *Bradley v. Howard Hembrough Volkswagen, Inc.*, 89 Ill.App.3d 121, 124. In the personal injury action, Respondent argued it should be entitled to its full lien amount because the doctrine of collateral estoppel barred Petitioner from arguing his injuries were related to the training exercise at work, since the Pension Board found his injuries were not related to the training exercise. Respondent now argues Petitioner should be barred from arguing his car accident and/or the training exercise caused his injuries because collateral estoppel bars him from relitigating these issues since the Pension Board found his injuries were not related to either of these two alleged work accidents. This is a different argument requiring a different interpretation of the facts.

As the Arbitrator finds the law of the case doctrine does not prevent Respondent from asserting collateral estoppel here, the relevant inquiry is whether Petitioner is estopped from arguing causation before the Commission

Collateral estoppel, also known as issue preclusion, is an equitable doctrine which "promotes fairness and judicial economy by preventing the relitigation of issues that have already been resolved in earlier actions." *Du Page Forklift Serv., Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 77 (2001).

It is well settled that collateral estoppel applies to the decisions of administrative agencies, including pension boards. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 121507WC; *Schratzmeier v. Mahoney*, 246 Ill. App. 3d 871, 875 (1st Dist. 1993).

The Illinois Supreme Court has held the doctrine of collateral estoppel may be applied where "(1) the issue decided in the prior adjudication is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication." *In re Owens*, 125 Ill. 2d 390, 400 (1988).

However, in *Owens*, the Illinois Supreme Court drew a distinction between offensive and defensive use of collateral estoppel. *Id.* Consistent with prior rulings of the U.S. Supreme Court, the *Owens* Court noted offensive use of collateral estoppel does not always foster judicial economy and fairness the way defensive use of collateral estoppel typically does. *Id.* At 398. The Court explained defensive use of collateral estoppel precludes a plaintiff from relitigating issues by switching adversaries or venues, while offensive use of collateral estoppel potentially incentivizes a plaintiff to use multiple avenues and a "wait and see" approach to either rely on a judgment against a defendant or avoid being bound by that judgment if the defendant prevails. *Id.* In sum, the Illinois courts generally favor defensive use of collateral estoppel, while cautiously applying offensive estoppel.

Turning toward the requirements of collateral estoppel, the Arbitrator finds Respondent has satisfied all three (3) requirements, and Petitioner is estopped from relitigating the causation issue determined by the Pension Board. It is undisputed the Pension Board's Decision is a final judgment denying Petitioner a line-of-duty disability pension. It is further undisputed Petitioner, the party to whom estoppel is asserted, was a party in the Pension Board proceedings and fully participated in those proceedings. The Arbitrator also finds the Pension Board's holding that Petitioner's lower back condition was not "caused, aggravated, or accelerated by either the rear end motor vehicle accident on September 27, 2009, or the training activities on January 25, 2010" is identical to the issue of causation here. (Resp. Ex. 10).

With regard to identity of the causation issue, Petitioner's workers' compensation claims are based upon his assertion that the alleged motor vehicle accident and/or the alleged training incident caused his condition. However, this issue was litigated before and necessarily decided by the Pension Board. The Board soundly ruled against Petitioner on this issue and denied his claim stating, "[b]ased on all of the exhibits and testimony, Hunt failed to prove by the greater weight of the evidence that there is a causal relationship between either the MVA or the tactical training activity and his disabling low back condition. For this reason, his claim for a duty related disability benefit is denied". (Resp. Ex. 10).

The Arbitrator finds the case of *McCulla v. Industrial Commission* instructive in this case. The court in *McCulla* stated:

> "In the instant case, the claimant petitioned the Firemen's Pension Board of Elk Grove Village for a pension. Following a hearing, the board awarded a 'not in duty' pension to the claimant. A 'not in duty' pension is awarded to those fire fighters who become disabled 'as a result of any cause other than an act of duty.' [citation omitted] The claimant did not appeal from this determination.
>
> In the claimant's subsequent workers' compensation action, the issue of causation was raised before the Commission. We find no difference between the issue adjudicated before the pension board and the issue of causation subsequently before the Commission. The claimant had a full opportunity to adjudicate the issue of the work-related nature of his disability before the pension board. The pension board found his disability did not arise out of his duties as a fire fighter. He did not appeal this determination. Therefore, he is collaterally estopped from relitigating that issue

> before the Commission." (*McCulla v. Industrial Commission*, 232 Ill.App.3d, at p. 521).

The case of *Schratzmeier v. Mahoney* is similarly on point. In that case, a police officer claimed before the pension board that his back injury was caused by modified seats in his squad car. *Schratzmeier*, 246 Ill. App. 3d 872, 875-876. The pension board denied the claim for a line of duty pension, and instead "…decided to grant Schratzmeier a 'not line of duty' disability payment, indicating that Schratzmeier did not prove by a preponderance of the evidence that his back injury was related to his modified squad car seat." *Id.* at 875-876.

The claimant subsequently brought a civil action against the company that modified the seats, again claiming that his back injury was caused by the modified seats. *Id.* The court found the plaintiff was precluded from making this claim in the civil action by the doctrine of collateral estoppel, and stated:

> "The Board resolved the issue of causation by rejecting Schratzmeier's claim for a line of duty pension and, instead, granting him a nonline of duty pension. Although Schratzmeier was free to appeal the Board's decision, he apparently did not do so and merely accepted the nonline of duty pension.
>
> Under the above-stated circumstances we believe that collateral estoppel must apply and that Schratzmeier is estopped from relitigating the question of whether his injuries were caused by the modified squad seats. By accepting the Board's decision and the nonline of duty pension, Schratzmeier accepted the Board's determination that his back injury was unrelated to his work, *i.e.*, the modified squad car seat." *Id*. at 875-876.

As in *Schratzmeier* and *McCulla*, the Pension Board's Decision resolved the issue of the causation of the alleged September 27, 2019 ,motor vehicle accident and the alleged January 25, 2010 training accident by denying Petitioner's claim for a line of duty pension and instead awarding a non-line of duty pension. Moreover, the Board in the present case actually made the specific finding on the issue Petitioner is attempting to relitigate, stating in clear terms that it was finding that Petitioner had not established causation. Therefore, the Petitioner is collaterally estopped from relitigating the issue of causation in this proceeding.

The finding in *McCulla* that there is no significant difference between the issue of causation as it is adjudicated before a pension board and as it is adjudicated before the Workers' Compensation Commission is well-established. *See Dempsey v. City of Harrisburg*, 3 Ill. App. 3d 696, 698 ("The issues presented in proceedings under the Workmen's Compensation Act and the Policemen's Pension Fund are much more than similar; they are sufficiently alike that it would be a pointless quibble to deny they are identical.").

The Illinois Industrial Commission has also held that a finding against causation in a pension board hearing precludes a claimant from relitigating the issue of causation before the Commission. *Gruninger v. Village of Northfield*, 02 I.I.C. 0622 (2002) ("…the issue of causation was fully adjudicated before respondent's Board of Trustees for the Police Pension Board and respondent is precluded from relitigating the issue of causation in the case at bar."); *See also Blakesley v. Village of Oak Park*, 02 I.I.C. 0522 (2002) ("The Commission finds the issue of causation presented in Petitioner's application for a line of duty pension pursuant to Section 4-110 of Article 5 of the Illinois Pension Code, 40 ILCS 5/4-110, to be indistinguishable from the issue of causation in a workers' compensation case."); *Roger Farrar v. City of Rockford Police Department*, 99 I.I.C. 1153 (1999) ("As the issue before the Commission is the same as the issue that was before the Pension Board, namely causal connection of

Petitioner's injury to his employment with Respondent, Petitioner is barred from proceeding here . . . Collateral estoppel applies.").

The case at hand is distinguishable from the case of *Demski v. Mundelein Police Pension Board*, in which collateral estoppel was found not to apply. 358 Ill. App. 3d 499. In *Demski*, a police officer filed for workers' compensation benefits after injuring her back doing sit-ups during a routine physical fitness agility examination. *Id.* at p. 500. The Illinois Industrial Commission ruled that Demski was entitled to workers' compensation benefits and found a causal connection between her injury during the agility test and her subsequent condition of ill-being. *Id*. Demski also filed an application for a line-of-duty pension and filed a petition seeking to invoke collateral estoppel, contending that the Commission's finding of causation was binding on the Pension Board proceedings. *Id.* at pp. 500-501.

The appellate court found collateral estoppel did not apply because the first of the three (3) requirements for collateral estoppel was not met, as the issue decided in the workers' compensation case was not identical to the issue decided in the pension application hearing. *Id.* at p.502. The issue before the Commission was whether Demski's accident arose out of and in the course of her employment, while the issue before the Board was whether the accident occurred during an "act of duty" as defined by section 5-113 of the Pension Code. *Id.* at pp. 502-503.

The court in *Demski* stated that *McCulla v. Industrial Commission* was not controlling because while in *McCulla*, the appellate court held that a fireman seeking workers' compensation was collaterally estopped by a prior pension board's finding that his injury was not caused while performing an act of duty, in *Demski*, the issue of whether Demski's injury was caused while performing an act of duty had never been litigated. Rather, the issue before the Commission was whether Demski's injury arose out of the course of her employment. *Id.*

In the present case, the Pension Board's decision did not rest on whether Petitioner's injury occurred while he was performing an act of duty. Rather, the Board made a specific, necessary determination as to causation, finding Petitioner's lower back condition was not "caused, aggravated, or accelerated by either the rear end motor vehicle accident on September 27, 2009, or the training activities on January 25, 2010." (Resp. Ex. 10).

Petitioner has already had a full and fair opportunity to litigate the issue of causation, and the Pension Board specifically found there was no causal relationship between these alleged accidents and Petitioner's condition. As proving a causal relationship between the alleged accidents and Petitioner's low back condition is an essential element to his workers' compensation claim, the issue is identical. Accordingly, the Arbitrator finds Petitioner is estopped from arguing causation before the Commission.

The Arbitrator further notes, irrespective of the above findings concerning statute of limitations, accident, and collateral estoppel, Petitioner independently failed to meet his burden of establishing a causal relationship between his condition of ill-being and the claimed accidents.

Petitioner bears the burden to prove, by a preponderance of evidence, his condition is causally related to the work accidents on September 27, 2009, and January 25, 2010. A complete review of the evidence establishes Petitioner failed to meet his burden.

It is well-established that recovery under the Workers' Compensation Act is denied where the claimant's health has so deteriorated that any normal daily activity is an overexertion. *Caterpillar Tractor v. Industrial Comm'n* 92 Ill. 2d 30 (1982). The evidence overwhelmingly supports a finding Petitioner's lower back injuries were the result of a non-occupational, deteriorating condition, which was exacerbated by his obesity.

The medical evidence establishes Petitioner had longstanding lower back issues, which were identified and documented as early as 1995. In 1995, Petitioner saw Dr. Rians who diagnosed Petitioner with inguinal and left buttock pain, consistent with a discogenic cause involving the L3-L4 dermatome. The L3-L4 is the same level surgically treated by Dr. Dinh in 2010. The November 22, 1997, MRI showed very significant congenital spinal stenosis at L3 through S1, a large central disk herniation at L3-L4, a left sided disk herniation at L4-L5, and a large right sided disk herniation at L5-S1. In December of 1997, Petitioner was told he had very significant spine problems with multi-level disk herniations and congenital stenosis. Petitioner sought treatment for his lower back numerous times far in advance of the claimed accidents.

The Arbitrator further notes Petitioner complained of lower back and lower extremity neuropathy on numerous occasions prior to 2009, often seeking treatment for his complaints. In many instances, there was either no precipitating event or a very minor incident. This supports a finding Petitioner's lower back condition naturally progressed due the congenital nature of the condition. The evidence further establishes Petitioner's condition was often exacerbated by his body habitus. Petitioner's reduction in symptomology and increase in lower back issues was consistently tied to his weight and the extent of his obesity. The evidence supports a finding Petitioner's lower back injuries were the result of a non-occupational, deteriorating condition, which was exacerbated by his obesity.

This conclusion is further supported by the opinion of Dr. Singh, the only physician who was granted full access to all of Petitioner's medical records and the only physician to review all of Petitioner's MRI films. Based on his review of medical records, the MRI films from 1997, 2004, 2007, 2009, and 2010, and the Pension Board testimony, Dr. Singh opined Petitioner's condition was not caused, aggravated, accelerated, or further worsened by the 2009 motor vehicle accident or the 2010 training activities. He felt Petitioner's condition was pre-existing and degenerative. He was also of the opinion Petitioner's body habitus contributed significantly to his condition. Dr. Singh noted the findings on the 1997 MRI suggested a pre-existing genetic and body habitus component. He further noted there was no structural change shown on the 2009 and 2010 MRIs, compared to the 1997, 2004, and 2007 MRIs. Dr. Dinh also acknowledged this finding in his July 16, 2010, note, stating the July 8, 2010 MRI showed a disc protrusion at L3-4 and L5-S1, which were the same as 2004.

The other physicians providing causation opinions relied upon the incomplete and/or inaccurate histories provided by Petitioner and/or a portion of Petitioner's medical records. Dr. Singh is the only physician to review all of the relevant evidence, and the Arbitrator finds his opinions are entitled to greater weight than the other physicians.

Additionally, in independently denying causation, the Arbitrator notes Petitioner's well-documented issues with credibility, and places less weight on his testimony. The evidence establishes Petitioner selectively reported information and/or omitted relevant information throughout his treatment and during Respondent's pre-employment process.

Based on the foregoing, the Arbitrator finds and concludes that Petitioner failed to establish a causal connection between his condition and the alleged work accidents on September 27, 2009 and January 25, 2010.

In support of the Arbitrator's Decision relating to (J). Where the services provided to Petitioner Reasonable and Necessary, and has Respondent paid all appropriate charges for said services? the Arbitrator finds the following:

Based on the factual findings and conclusions of law above, particularly regarding statute of limitations, accident, and causation, the Arbitrator finds and concludes that Respondent has paid all reasonable, necessary, and causally related medical expenses of Petitioner.

In support of the Arbitrator's Decision relating to (L). What is the nature and extent of the injury? the Arbitrator finds the following:

Based on the factual findings and conclusions of law above, particularly regarding statute of limitations, accident, and causation, the Arbitrator finds Petitioner is not entitled to permanent partial disability benefits under the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC033893
Case Name	Thane Hunt v. City of Peoria Police Department
Consolidated Cases	10WC009429;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0114
Number of Pages of Decision	38
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jeff Green, Patrick Jennetten
Respondent Attorney	Kevin Day

DATE FILED: 3/12/2024

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)		
) SS.		
COUNTY OF PEORIA)		

[X] 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	[X] None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

THANE HUNT,

Petitioner,

vs. NO: 17 WC 33893

CITY OF PEORIA,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, benefit rates, medical expenses, temporary total disability, statute of limitations, 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 July 21, 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.

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.

March 12, 2024

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

/s/*Maria E. Portela*
Maria E. Portela

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC033893
Case Name	Thane Hunt v. City of Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	35
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Patrick Jennetten, Jeff Green
Respondent Attorney	Kevin Day

DATE FILED: 7/21/2022

THE INTEREST RATE FOR THE WEEK OF JULY 19, 2022 2.91%

/s/Bradley Gillespie, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Thane Hunt
Employee/Petitioner
v.
City of Peoria
Employer/Respondent

Case # **17** WC **033893**

Consolidated cases:

Applications for Adjustment of Claim were filed in these matters, and a *Notice of Hearing* was mailed to each party. These matters were heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Peoria**, on **January 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. [x] 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. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [ ] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [x] Other **Collateral Estoppel, Law of the Case, Statute of Limitations**

FINDINGS

On **September 27, 2009**, Respondent ***was*** operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On **September 27, 2009**, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of these accidents ***was*** given to Respondent.

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

In each year preceding the injuries, Petitioner earned $**68,182.88**; the average weekly wage was $**1,311.21**.

On the dates of accident, Petitioner was **31** years of age, ***married*** 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 $ for other benefits, for a total credit of $.

ORDER

- Petitioner sustained an accident on September 27, 2009 while working for Respondent.
- Petitioner's claim for the September 27, 2009 accident is barred, as it was not filed within the statute of limitations period.
- The law of the case doctrine does not apply.
- The doctrine of collateral estoppel does apply to the issue of causation.
- Independent of the Arbitrator's findings with regard to statute of limitations, accident, and collateral estoppel, Petitioner's alleged condition of ill-being is not causally related to the alleged accident.
- Petitioner has received all temporary total disability benefits due and owing under the Act.
- Respondent has paid all appropriate charges for all reasonable and necessary medical services.
- Petitioner's claim for permanent partial disability benefits under §8(d)(2) of the Act is denied.
- *Please see* Decision of the Arbitrator for Cases 10WC009429 & 17WC033893 attached hereto.

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 JULY 21, 2022

Signature of Arbitrator

BEFORE THE WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

THANE HUNT,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No: 10 WC 009429
	)	17 WC 033893
CITY OF PEORIA,	)	
	)	
Respondent.	)	
	)	

DECISION OF THE ARBITRATOR

FINDINGS OF FACT

I. Alleged Accidents and Claims for Compensation

A. Case Number 10 WC 009429

On or about March 9, 2010, Thane Hunt [hereinafter "Petitioner"] filed an Application for Adjustment of Claim alleging injuries to "man as a whole," specifically his back, "while in the course of employment" for the City of Peoria Police Department [hereinafter "Respondent"] on January 25, 2010. (Pet. Ex. 1); (Arb. Tr. p. 43-44). Respondent submitted a Non-Crime Report and core training documents into evidence, establishing Petitioner participated in the morning session of mandatory training on January 25, 2010. (Resp. Ex. 2, 3). In the Non-Crime Report, Petitioner stated he performed gun take-away drills and gun retention drills. He then indicated, "Upon going home that night, my back became very sore and I started having muscle spasms." (Resp. Ex. 2). In addition to Petitioner's own testimony, the parties offered sworn testimony from officers and supervisors involved in the training into evidence. (Pet. Ex. 25; Resp. Ex. 9, 10).

This claim proceeded to hearing on January 21, 2022, in Peoria, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Accident;
- Collateral Estoppel;
- Law of the Case;
- Causal Connection;
- Medical Expenses; and
- Nature and Extent.

B. Case Number 17 WC 033893

On or about November 9, 2017, Petitioner filed an Application for Adjustment of Claim alleging injuries to "man as a whole," specifically his back, as a result of an automobile accident while working for Respondent on September 27, 2009. (Pet. Ex. 1); (Arb. Tr. p. 44). Multiple police reports and accident reports were offered into evidence, along with photos of the vehicles involved and a repair estimate for Petitioner's squad car.

Petitioner also submitted documents and testimony from his common law case in the Tenth Judicial Circuit. (Pet. Ex. 2, 3, 4, 27-31; Resp. Ex. 1, 4, 5).

The evidence establishes Petitioner was rear-ended at low-speed while waiting at a red light in his squad car. The evidence submitted by the parties uniformly shows there was minimal impact between the vehicles. (Pet. Ex. 2, 3, 4, 27-31; Resp. Ex. 1, 4, 5). Petitioner's squad car only required $795.50 in repairs. (Resp. Ex. 5). The other vehicle sustained very minor front bumper and license plate damage. The other driver claimed no injuries from the accident. (Pet. Ex. 2).

This matter was consolidated with Case Number 10 WC 009429 and was also arbitrated on January 21, 2022, in Peoria, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Statute of Limitations;
- Collateral Estoppel;
- Law of the Case;
- Causal Connection;
- Medical Expenses; and
- Nature and Extent.

II. Petitioner's Testimony at Arbitration

Petitioner testified he graduated from police training and began working as a police officer for Respondent in or around 2001. (Arb. Tr. p. 17-18) He started out in the problem-oriented policing unit, transitioned to the street crimes unit, and then he went to the traffic unit, where he ended his career. (Arb. Tr. p. 18).

Petitioner acknowledged he had a prior history of back problems, dating back to when he was in high school. (Arb. Tr. p. 18). He testified, prior to 2009, he had multiple accidents while working for Respondent, including back injuries, and he was cleared to return to work after each incident. (Arb. Tr. p. 19). Respondent required him to be seen at OSF Occupational Health to be cleared to return to work after each injury. (Arb. Tr. p. 20).

On September 27, 2009, Petitioner was responding to a possible burglary in progress when he was involved in a motor vehicle accident. He testified he was rear-ended by a vehicle while waiting at a stop light. (Arb. Tr. p. 21). He was examined at the OSF Emergency Department after the accident. (Arb. Tr. p. 21). He was then seen by OSF Occupational Health, and an MRI was ordered. (Arb. Tr. p. 21-22). Petitioner underwent some physical therapy. (Arb. Tr. p. 22). He then followed up with OSF Occupational Health and was returned to full-duty work with no restrictions. (Arb. Tr. p. 22). Petitioner testified he believes he worked about two (2) weeks of light duty before being cleared to work full-duty. (Arb. Tr. p. 22).

Petitioner testified, after returning to work in late 2009, he had some days with no pain and some days with mild pain. (Arb. Tr. p. 23). He felt he had returned to a level of symptoms consistent with his condition prior to the September 27, 2009, accident. (Arb. Tr. p. 23). He still had back problems, but they were not significant enough to cause him to be unable to work. (Arb. Tr. p. 23-24).

Petitioner testified he slipped and fell on ice while performing a total station investigation on or about December 30, 2009. (Arb. Tr. p. 25). He did not seek any medical attention, and he did not miss any work as a result of this incident. (Arb. Tr. p. 25).

On January 25, 2010, Petitioner attended an annual core training session, which was required by Respondent. (Arb. Tr. p. 26). The training was related to defensive tactics. (Arb. Tr. p. 26). Petitioner participated in the morning training session but did not participate in the afternoon session. (Arb. Tr. p. 26). He had a scheduled court appearance in the afternoon. (Arb. Tr. p. 26. Petitioner testified the training activities involved significant bending and twisting of the lumbar spine. (Arb. Tr. p. 27). He felt the twisting performed during the training exercise was consistent with rotating his spine while golfing. (Arb. Tr. p. 27-28). Petitioner testified he was a little sore during the training. He acknowledged he left the training and attended his court appearance. (Arb. Tr. p. 28). He further testified the pain continued to get worse that evening, and he started having numbness and tingling in his saddle area and down his right leg. (Arb. Tr. p. 28). Either that night or early the next morning, Petitioner called in to work to report a work accident. (Arb. Tr. p. 28).

Petitioner testified he called in and spoke with the training sergeant, who told him he needed to report the incident to the sergeant who ran the training. (Arb. Tr. p. 29). Petitioner attempted to contact that sergeant and did not hear back from him. (Arb. Tr. p. 29). Petitioner called in sick on January 26, 2010 due to pain in his back and numbness in his right leg. (Arb. Tr. p. 29-30). When asked if the numbness in his right leg had been there prior to January 25, 2010, Petitioner responded, “Not in that way, no.” (Arb. Tr. p. 30). At that time, Petitioner contacted Sergeant Flatko in order to report a work injury. (Arb. Tr. p. 30).

On Friday, January 29th, 2010, Petitioner was seen at OSF Occupational Health. (Arb. Tr. p. 31). An MRI was ordered. (Arb. Tr. p. 31). Petitioner underwent an MRI the same day at Methodist Hospital and returned home. (Arb. Tr. p. 31). As soon as he got home, he received a phone call telling him he needed to go see Dr. Dzung H. Dinh, a neurosurgeon. (Arb. Tr. p. 31-32).

Petitioner was examined by Dr. Dinh, who told him he would need surgery immediately. (Arb. Tr. p. 32). Dr. Dinh was concerned because Petitioner was unable to physically lift his leg to walk into the office. (Arb. Tr. p. 42). Dr. Dinh told Petitioner he might lose control of his bowel and bladder function or lose the use of his right leg if surgery was not performed immediately. (Arb. Tr. p.43). Surgery was performed the same evening. (Arb. Tr. p. 32). Petitioner testified the medical histories he provided to his doctors are accurately contained in his medical records. (Arb. Tr. p. 33). Petitioner testified he later had a second surgery to debride an area of skin near the incision from the first surgery. (Arb. Tr. p. 33). After the second surgery, he continued to treat with Peoria Surgical Group for his surgical incision for a period of time. (Arb. Tr. p. 34). Petitioner testified he still has lower back pain and still has paralysis in his lower right leg. (Arb. Tr. p. 33-34).

Petitioner testified he does not know Dr. Kern Singh and had never spoken with him. (Arb. Tr. p. 35). Petitioner acknowledged he saw Dr. Kube for an independent medical examination. (Arb. Tr. p. 36).

After surgery, Petitioner returned to work with light duty restrictions from July 11, 2010, to January 19, 2011. (Arb. Tr. p. 36-37). He never returned to full duty. (Arb. Tr. p. 37). He retired on June 21, 2011. (Arb. Tr. p. 37). He was awarded a temporary pension while he awaited the Pension Board hearing. (Arb. Tr. p. 37).

Petitioner testified he is seeking a loss of occupation, person-as-a-whole award under Section 8(d)(2) of the Illinois Workers’ Compensation Act. (Arb. Tr. p. 38). He testified, as of the date of the arbitration, he was still experiencing daily pain. (Arb. Tr. p. 38). He rated the severity of his back pain as two (2) to four (4) out of ten (10) daily, going up to a six (6) or seven (7) at times. (Arb. Tr. p. 39, 61). He testified he has not regained any use or function of his right leg or his ankle. (Arb. Tr. p. 38). He has drop foot and uses a cane for mobility. (Arb. Tr. p. 38). He testified his condition has not improved since his postoperative recovery in 2010. (Arb. Tr. p. 38). Petitioner testified he has trouble with balance due to pain in his lower back and paralysis in his right leg. (Arb.

Tr. p. 39). He testified he still performs stretches at home and takes medication for neuropathy in his right leg and foot. (Arb. Tr. p. 39).

Petitioner was put on a disability pension because he was unable to return to work as a police officer. (Arb. Tr. p. 39-40). He has since held other sedentary jobs, which comply with his back condition. (Arb. Tr. p. 40-41).

On cross-examination, Petitioner confirmed he filed a workers' compensation claim in 2010 alleging an accident occurring on or about January 25, 2010, resulting in a back injury. (Arb. Tr. p. 44). He then filed a second workers' compensation claim in 2017, alleging an accident occurring on September 27, 2009, which also resulted in a back injury. (Arb. Tr. p. 44). He affirmed these are the only two (2) accident dates for which he was seeking compensation. (Arb. Tr. p. 44).

With regard to his history of back problems dating back to approximately late 1994, Petitioner said he would not dispute his medical records or his testimony before the Pension Board. (Arb. Tr. p. 45). He testified he recalled having back pain while playing football his senior year in 1995. (Arb. Tr. p. 45-46). Petitioner acknowledged he was seen at Great Plains Orthopedics in 1995 for lower back pain. (Arb. Tr. p. 46). As a result of his back injury in 1995, Petitioner missed most of his senior football season. (Arb. Tr. p. 46). He underwent physical therapy at Great Plains Orthopedics in 1995. (Arb. Tr. p. 46). Petitioner testified his back pain subsided in 1996. (Arb. Tr. p. 47).

Petitioner did not dispute he experienced recurrent back pain in November of 1997 after lifting some steel doors. (Arb. Tr. p. 47). He did not recall receiving physical therapy at Great Plains Orthopedics from 1998 through 1999 as a result of his flare up in November of 1997 but testified he would not dispute this treatment occurred if it is reflected in the medical records. (Arb. Tr. p. 48). Although Petitioner testified on direct examination, he had not experienced right leg pain prior to his January 25, 2010, accident, on cross-examination, he testified he would not dispute the fact he had right leg pain as early as 1998, in addition to back pain, if it was reflected in the medical records. (Arb. Tr. p. 48).

Petitioner recalled experiencing back pain while performing police training at the University of Illinois in April of 2001. (Arb. Tr. p. 48-49). Petitioner testified he experienced back pain again in February of 2003 after catching a detainee who fell out of a paddy wagon. (Arb. Tr. p. 49). He was released from care in March of 2003 for pain he had as a result of the February 24, 2003, accident. (Arb. Tr. p. 49). Petitioner filed a workers' compensation claim against Respondent in 2007 for a back injury, which resulted in a settlement between the parties. (Arb. Tr. p. 49-50).

Petitioner admitted the motor vehicle accident on September 27, 2009, involved a low-impact collision. (Arb. Tr. p. 50). His emergency lights were not activated at the time of the accident, and his airbag did not deploy. (Arb. Tr. p. 50). After the accident, Petitioner got out of his squad car and spoke to the driver of the other vehicle. (Arb. Tr. p. 50). They examined the vehicles for damage. (Arb. Tr. p. 50). Petitioner then drove his vehicle to the city garage to drop it off. (Arb. Tr. p. 51). He then got in a different squad car and drove himself to the emergency department. (Arb. Tr. p. 51). He was released from the emergency department the same day. (Arb. Tr. p. 51). Petitioner returned to work the next day and continued to work full duty. (Arb. Tr. p. 51-52.

As of approximately December 3, 2009, Petitioner was fully able to perform all of his job duties for Respondent. (Arb. Tr. p. 52). At that time, Petitioner was assigned to the traffic division, and his duties included traffic enforcement, writing tickets, investigating accidents, crime scene photography, responding to patrol calls, and proactive traffic stops. (Arb. Tr. p. 52-53). He also acknowledged he would have been required, if the situation

arose, to chase a suspect and engage in a physical confrontation with a suspect. (Arb. Tr. p. 53). He felt he was capable of performing those duties after his release from care in late 2009. (Arb. Tr. p. 53).

At the beginning of the January 25, 2010, core training, Petitioner was asked if he had any physical limitations preventing him from performing the training. (Arb. Tr. p. 54). Petitioner testified he reported back pain prior to the training. (Arb. Tr. p. 54). He acknowledged he left the training during a lunch break to attend a previously scheduled court appearance. (Arb. Tr. p. 54). Petitioner affirmed he did not report any issues with his lower back as a result of the training to any other officer on January 25, 2010. (Arb. Tr. p. 55).

Petitioner testified the gun retention and gun control portion of the training involved maneuvers simulating taking a gun from a suspect and preventing a suspect from taking a gun from the officer. (Arb. Tr. p. 55). Those activities are performed with another officer who acts as a training partner. (Arb. Tr. p. 55-56). Petitioner testified these maneuvers were not to be performed at full speed or full strength. (Arb. Tr. p. 56). He agreed the idea is to learn the technique you may use if you encounter a real physical confrontation. (Arb. Tr. p. 56). He testified they typically go seventy-five (75) to eighty (80) percent. (Arb. Tr. p. 56). In subsequent treatment visits, Petitioner reported he was lying on the floor at home on his abdomen that evening when he experienced pain and a back spasm. (Arb. Tr. p. 56-57).

Petitioner acknowledged he filed an application for a line-of-duty disability pension with the Peoria Police Pension Fund, and his application was denied. (Arb. Tr. p. 57). He was awarded a non-duty disability pension. (Arb. Tr. p. 57). Petitioner was represented by counsel during those proceedings. (Arb. Tr. p. 57). He acknowledged he had every opportunity to present testimony and evidence during the hearing process. (Arb. Tr. p. 57). He fully participated in those proceedings, with the assistance of his counsel. (Arb. Tr. p. 57-58).

Petitioner testified he has an LLC called Hunt's Gun Getaway, LLC. He has a business partner, B&H Suppliers, LLC, which sells firearms. (Arb. Tr. p. 58). Petitioner testified they began selling firearms in 2018 or 2019. He has provided concealed carry classes at Hunt's Gun Getaway, LLC. (Arb. Tr. p. 58). For the sale of firearms, Petitioner uses multiple wholesalers. (Arb. Tr. p. 59). Since 2018, Petitioner has not felt any limitations in his ability to run B&H Suppliers or sell firearms. (Arb. Tr. p. 59). He testified supplies can be hard to obtain since they are a small company placing small orders. (Arb. Tr. p. 59-60). He further testified during the pandemic, there was a nationwide increase in gun sales. (Arb. Tr. p. 60).

Petitioner testified he never objected to the treatment directed by OSF Occupational Health or other groups within its chain of referral. (Arb. Tr. p. 60). He never reported any issue with this medical treatment and never sought out second opinion. He affirmed he did not utilize the choices of physicians afforded to him under the Workers' Compensation Act to seek treatment outside of what was offered by Respondent. (Arb. Tr. p. 61).

On re-direct examination, Petitioner testified he was not having any significant low back or leg pain prior to the combat training incident in January of 2010. In regard to lying on the floor on his abdomen the night of the training, Petitioner testified this was not something he normally did. (Arb. Tr. p. 63). He testified he laying on the floor due to his back pain. (Arb. Tr. p. 63). While he was lying on the floor, he was having back spasms and started having pain, numbness, and tingling in his leg. (Arb. Tr. p. 63).

III. Petitioner's Medical Treatment

Voluminous medical evidence was submitted by the parties at arbitration addressing Petitioner's extensive medical treatment. Having reviewed said evidence, the Arbitrator makes the following factual findings with regard to the medical treatment relevant to the conclusions of law set forth herein.

At arbitration, Petitioner testified he had a prior history of back problems dating back to high school. (Arb. Tr. p.18, 44-48). On September 14, 1995, he reported to Great Plains Orthopaedics with complaints of left groin pain radiating into the left buttock. He also reported intermittent back pain throughout the prior year. Petitioner stated that he development groin pain on September 4, 1995, while running sprints during football practice at Woodruff High School. On examination, pain was reproduced most easily with standing lumbar flexion. The primary diagnosis was inguinal and left buttock pain most consistent with discogenic cause. L4 motor dysfunction and toe weakness were noted in an L3-L4 dermatomal pattern. Physical therapy was recommended to address Petitioner's discogenic pain. (Resp. Ex. 22).

Petitioner began physical therapy the following day, September 15, 1995. He reported an incident of prior low back pain during the previous track season. At the time of therapy, he had lower back pain and decreased range of motion. He was given home exercises to perform every one (1) to two (2) hours and advised to restrict activities, including sports. (Resp. Ex. 22).

On September 19, 1995, Petitioner reported a slight increase in his back discomfort. He indicated the exercises were not improving his symptoms. (Resp. Ex. 22).

Petitioner returned to Great Plains Orthopaedics on September 21, 1995, with complaints of continued lower back, inguinal, and buttock pain. A recent bone scan revealed no evidence of stress fracture in the lumbar spine, pelvis, hips, or femurs. However, minor asymmetry of activity in the facet joints was noted at several levels of the lumbar spine. Overall, the bone scan was considered to be within normal limits.

Petitioner continued attending physical therapy and follow-up examinations for his back pain at Great Plains Orthopaedics through October 10, 1995. At that time, he indicated his lower back and inguinal pain had been improving. His lumbar range of motion was normal and pain free. The diagnosis was discogenic pain, with improvement, but progressive weakness in the L4 root distribution. (Resp. Ex. 22).

Petitioner was also seen at OSF Medical Center on October 10, 1995, for an unrelated medical issue. He provided a history of a bulging disc in his back. (Resp. Ex. 28).

On November 14, 1997, Petitioner returned to Great Plains Orthopaedics with back pain across his beltline after moving large steel doors. A lumbar spine MRI was recommended. (Resp. Ex. 9, 10, 21, 22).

The lumbar spine MRI was performed on November 22, 1997 at OSF Medical Center. The findings were as follows: (1) moderately large disc herniation centrally and to the right in the right lateral recess and right neural foramen, L5/S1, causing moderate impingement and posterior and rightward shift of the dural sac and marked impingement on the right S1 nerve root; (2) a small central to left-sided disc herniation causing mild impingement on the dural sac and left L5 nerve root; (3) a central disc herniation extending slightly to the right at the L3-4 causing moderate impingement on the dural sac; and (4) multilevel disc space narrowing and osteophytes, especially at L3 through S1, with disc desiccation at these levels. The impression was multilevel degenerative changes and disc herniations. (Resp. Ex. 21).

On November 26, 1997, Petitioner attended a follow-up exam at Great Plains Orthopaedics. He reported persistent back pain, but not as severe, with some thigh numbness while standing. (Resp. Ex. 22).

Petitioner returned to Great Plains Orthopaedics on December 1, 1997. He reported lower back pain after lifting a heavy steel panel at his family farm on November 8, 1997. Over the next several days, he developed numbness and tingling in the medial aspect of both thighs and into the calf. At one point, he was on the floor and could hardly move. He stated he was approximately seventy percent (70%) improved. (Resp. Ex. 21).

On exam, an x-ray of the spine was unremarkable. However, it was noted the November 22, 1997, MRI showed very significant congenital spinal stenosis at L3 through S1, central disk herniation, which was large at L3-L4, left sided disk herniation at L4-L5, and a large right sided disk herniation at L5-S1. Petitioner was told he had very significant spine problems with multi-level disk herniations and congenital stenosis. Dr. Maxey recommend weight loss and an active exercise program. He instructed Petitioner to do everything he could to keep his spine in good health. (Resp. Ex. 21).

Petitioner continued to follow-up with Great Plains Orthopaedics in December of 1997, reporting improvement in his thigh soreness with minimal central low back pain. He was advised to continue with his home exercise program and proceed with limited activity. (Resp. Ex. 22).

On January 2, 1998, Petitioner returned to Great Plains Orthopaedics. He reported being pain free for one (1) to two (2) days at a time, but stated his symptoms always returned. He stated the symptoms were located in his lower back region about ninety percent (90%) of the time. He rarely had leg symptoms. Petitioner indicated his symptoms worsened when performing any kind of activity for a prolonged period of time, including standing, sitting, and sleeping. Del Nance, PTA felt Petitioner had made significant progress. He was able to relieve his symptoms with repeated extension in prone position but, continued to struggle with his posture at rest. (Resp. Ex. 22).

Petitioner continued his treatment and physical therapy with Great Plains Orthopaedics on January 8, 1998, January 23, 1998, February 6, 1998, and February 20, 1998. (Resp. Ex. 22).

On March 11, 1998, Petitioner returned to Great Plains Orthopaedics without a scheduled appointment. He reported increased left, low back pain over the weekend without injury or accident. The pain was fairly constant but was improving daily. He had to discontinue weight training activities but could bike without issue. (Resp. Ex. 22).

Petitioner returned to Great Plains Orthopaedics on March 18, 1998, to discuss improvement in his lower back pain. He was still refraining from activities but had no present complaints. He was advised to reimplement strengthening efforts and activities as tolerated, using his pain as a guide. (Resp. Ex. 22).

On April 2, 1998, Petitioner followed-up at Great Plains Orthopaedics. He reported occasional central, low back pain. He would have one (1) to (2) weeks without symptoms and then two (2) to three (3) days of consecutive soreness. He was compliant with his home exercise program, but still limited with weight training and biking activities. Petitioner was to continue with posture correction efforts, stretching, and home exercise program. He could progress to full weight training and biking activities as his symptoms allowed. (Resp. Ex. 22).

Petitioner returned to Great Plains Orthopaedics on August 9, 1999. He indicated he faithfully worked at the gym for the remainder of 1998 and lost forty (40) to fifty (50) pounds. As a result, his back felt much better. He would have occasional soreness, but it would improve with his exercise. He began classes at Western Illinois University in January of 1999 and regained ten (10) pounds. During his spring semester, he began having increased right, low back pain with greater frequency. This would subside with his exercises. Over the summer,

he began having increased low back pain for no specific reason. He also development intermittent right calf cramping. This also improved somewhat with his extension exercises. However, his back pain had progressively gotten worse recently. (Resp. Ex. 22).

On exam, Petitioner had a limp favoring his right leg. He had moderately decreased lumbar flexion and, normal extension, and some pain and decreased range of motion with other testing. He had a positive single leg raise sign bilaterally with right-sided low back pain. He performed physical therapy exercises and was pain free upon completion. The assessment was reoccurrence of discogenic pain pattern of D5 with Dural tension and symptoms. Petitioner was advised to continue with physical therapy and home exercise program. Weight loss was also recommended. (Resp. Ex. 22).

Petitioner continued with physical therapy on August 11, 1999, August 16, 1999, and August 25, 1999, before returning to college. As of August 25, 1999, he felt approximately sixty percent (60%) to seventy percent (70%) better. He had occasional right, lower back pain and right calf pain, which improved with extension exercises. (Resp. Ex. 22).

On September 8, 1999, Petitioner contacted Great Plains Orthopaedics and reported eighty percent (80%) improvement in his back and right leg symptoms. He reported minimal lower back pain and three (3) days of no leg pain the week prior. However, he then began experiencing increased right leg pain for no reason. Over the weekend, he caught someone from falling at a fraternity party and experienced increased lower back pain and leg pain. (Resp. Ex. 22).

Petitioner attended physical therapy again on September 15, 1999, but canceled his remaining appointments due to scheduling conflicts. (Resp. Ex. 22).

On February 23, 2001, Petitioner attended his police candidate physical at OSF Occupational Health. On his OSHA Respirator Medical Evaluation Questionnaire, Petitioner stated he had no current back pain, no pain or stiffness when leaning forward or backward at the waist, and no other muscle or skeletal problems that would interfere with his use of a respirator. On his OSF Medical Examination Form, Petitioner indicated he had trouble with his back in "1995," which was "thought to be a bulging disk [*sic*]was found to be a kidney stone." He reported the outcome of the injury was "resolved." Petitioner further checked the box for "no" when asked if he had a "back (spine) disease." (Resp. Ex. 27).

Dr. Homer Pena performed a physical examination and reported no abnormal findings. Petitioner was two hundred and fifteen (215) pounds at the time of the exam. A lumbosacral spine x-ray was also performed, which indicated diminished disc space at L5-S1, but within normal limits, and mild anterior marginal osteophyte at T11-T12. The overall impression was an essentially normal lumbosacral spine with minimal anterior marginal osteophyte at T11-T12. Based on the examination, Dr. Pena's disposition was a recommendation for placement without restrictions. Dr. Pena felt Petitioner was capable of performing the required activities at the University of Illinois Police Training Institute. (Resp. Ex. 27).

On April 11, 2001, Petitioner contacted Great Plains Orthopaedics from the police training institute and reported he had developed left and right lower back pain from the physical activities he was performing. He complained of constant lower back pain with inconsistent buttock pain. He participated in a lengthy discussion concerning rehabilitation efforts, including exercised, stretching, posture, and activity tolerance. (Resp. Ex. 22).

On February 24, 2003, Petitioner reported to the Unity Point Emergency Department with lower back pain after catching a suspect. He awoke with back pain and stiffness. He reported back problems, specifically a bulged

disk, since high school. The assessment was a lower back strain. Petitioner was prescribed Vicodin and released from care. (Resp. Ex. 27).

Petitioner also attended an initial occupational injury examination with Dr. Pena at OSF Occupational Health on February 24, 2003. Two days earlier, he caught an unruly female suspect who feigned a seizure while transporting her to the Peoria County jail. He felt immediate left-sided lower back tightness. He went home, took Aleve, and called his boss before going to bed at 8:00 a.m. When he woke at 4:00 p.m., Petitioner was experiencing significant pain with tingling in his left buttock. He rated his pain as a constant six (6) to seven (7) out of ten (10), increasing to an eight (8) with certain movement. Petitioner provided a history of a lower back injury while playing high school football in 1995. He also reported bulging discs were noted on an MRI. He further reported the injury resolved with physical therapy over four (4) weeks. (Resp. Ex. 27).

On exam, Petitioner had limited range of motion with consistent pain. He was two hundred and sixty-five (265) pounds. Dr. Pena ordered lumbosacral x-rays, which were unremarkable. The dictating physician, Dr. Kenneth Fraser, felt an MRI may be helpful to identify a non-osseous etiology. Dr. Pena's assessment was a left-sided lumbosacral strain with subjective sensory loss suggesting an L4 radiculopathy. Dr. Pena prescribed Norflex and recommended a home exercise program. He was released to modified duty. (Resp. Ex. 27).

Petitioner was re-examined by Dr. Pena on February 28, 2003. He reported his lower back pain was improving. He had no radicular pain. On physical exam, he had forward flexion of twenty (20) degrees with complaints of pain and posterior extension of fifteen (15) degrees. Petitioner was continued on modified duty. (Resp. Ex. 27).

On March 7, 2003, Petitioner followed-up with Dr. Pena for his left-sided lumbosacral strain. His pain was improving, and he was feeling better. However, Petitioner noted he was "not feeling great by any means." Dr. Pena's objective examination was essentially normal. Dr. Pena opined the lumbosacral strain had resolved. Petitioner indicated he would be leaving for vacation that week and requested additional modified duty to continue recovery, as he felt he couldn't engage in a confrontational situation with a suspect. Dr. Pena noted, "This same manipulative behavior had been noted on the previous occasion. I do not feel that the employee needs to be off further, especially if he is going on vacation." Dr. Pena released him to modified duty for the next three (3) days with a return to full-duty thereafter. (Resp. Ex. 27).

Petitioner returned to OSF Occupational Health with lower back complaints on August 12, 2004. He stated he developed back pain over the weekend and felt it potentially occurred the prior Tuesday or before. He denied a specific injury but reported recurrent back pain for a year. On physical examination, Dr. Moran noted Petitioner was grossly overweight. He had full range of motion. Dr. Moran's assessment was recurrent or chronic lumbosacral pain. Dr. Arlene Burke, the supervising physician, noted Petitioner had undergone extreme weight changes before and after he began his employment. She indicated Petitioner's change in weight must be considered in addressing the current symptoms. Dr. Moran placed Petitioner on modified duty. (Resp. Ex. 27).

Petitioner was re-examined by Dr. Moran on August 16, 2004. Dr. Moran noted Petitioner previously treated for lower back pain after an injury a year ago. He was subsequently released from treatment and had been performing full-duty without issue. Petitioner could not recall a specific injury. He stated his primary care physician felt it was a work-related injury and recommended an MRI. Dr. Moran noted Petitioner was over three hundred (300) pounds before going on a diet and reducing his weight to two hundred and fifteen (215) pounds to enter the Police Department. Dr. Moran then noted Petitioner's weight had increased to two hundred and eighty-five (285) pounds at the time of the exam. Petitioner felt his back pain was caused by an injury, rather than his weight gain. (Resp. Ex. 27).

On physical exam, Petitioner had full range of motion and no palpable spinal pain. He was unable to perform a single leg stand with either leg. Dr. Moran's assessment was lumbosacral pain without definite injury. Dr. Moran ordered an MRI and an x-ray of the back and advised Petitioner to lose weight immediately to help his back. Petitioner was continued on sedentary duty. (Resp. Ex. 27).

A lumbosacral spine MRI was performed on August 17, 2004. The findings were as follows: (1) disc degenerative change with diminution in disc height and disc desiccation from L3-L4 through L5-S1; (2) moderate-sized broad-based central disc protrusion at L3-L4, more prominent to the right, resulting in right greater than left lateral recess stenosis; (3) relatively broad-based central to leftward disc protrusion at L4-L5, contributing to greater left lateral recess encroachment; (4) moderate to large middle to rightward disc protrusion, resulting in significant encroachment upon the right lateral recess; and (5) at least mild lower lumbosacral facet joint degenerative changes present slightly more prominently involving L5-S1 interval. (Resp. Ex. 21, 27, 28). Lumbosacral spine x-rays were also performed on August 17, 2004, which indicated at least mild diminution in disc height at L4-L5 and L5-S1 and sclerosis present about the L4-L5 subluxation. The impression was probable evidence of lower lumbosacral degenerative disc disease and facet joint degenerative change. (Resp. Ex. 21, 27, 28).

On August 23, 2004, Petitioner was examined by Dr. Barry L. Miller. Dr. Miller indicated Petitioner had visited for intermittent lumbar back pain over the last year since a work-accident where he caught a prisoner. Petitioner had experienced intermittent flare-ups every three (3) months. He denied any traumatic injuries in the past and any back problems prior to the referenced work-accident. Petitioner said he was unable to do some activities he used to do such as weightlifting and judo. He was afraid of pain reoccurrence. He further indicated he was having difficulty with light duty and could not bend over at all. Dr. Miller's assessment was lumbar back pain, secondary to an injury at work causing disc abnormalities as seen on MRI. He recommended physical therapy for the next two (2) weeks. (Resp. Ex. 26).

Petitioner was also examined by Dr. Pena on August 23, 2004. Petitioner stated his low back pain was "just like when he first injured it" in February of 2003." He further indicated he had been having flare-ups every three (3) to four (4) months since that time. He denied having any other accidents or low back injuries. (Resp. Ex. 27).

Dr. Pena reviewed the MRI and x-ray results with Petitioner. He opined there was a lack of focalization on Petitioner's objective exam in comparison to the MRI findings. Dr. Pena further noted comparison of the most recent x-rays to 2003 results showed changes, primarily mild diminution of disc spaces at the L4-L5 and L5-S1 levels and sclerosis of the facet joints at these levels. Dr. Pena drew a correlation between Petitioner's current symptoms and his nearly seventy (70) pound weight increase. He then inquired how Petitioner was able to perform his full job duties over the past year-and-a-half, to which he replied, "I've got my mother's high pain tolerance and my dad's work ethic; I've only used three (3) to five (5) sick days in the past three-and-a-half years." Dr. Pena felt Petitioner's symptoms were unrelated to the February 2003 accident and reasoned there had to be an intervening event or an anatomically-related cause. He continued Petitioner on sedentary duty and recommended he address his declining fitness and health. (Resp. Ex. 27).

Petitioner followed-up with his primary care physician, Dr. Miller, on September 22, 2004. He reported physical therapy was improving his back pain and left leg paresthesia. However, he felt occasional soreness with certain movements. Dr. Miller's assessment was lumbar back pain, secondary to injury, improving with physical therapy. (Resp. Ex. 26).

Petitioner returned to Dr. Miller on September 29, 2004. He reported continued improvement with physical therapy. He was still having some achiness, especially first thing in the morning, on his right side. He indicated his physical therapist had recommended another week of physical therapy and a few days of occupational therapy before a return to full-duty. Dr. Miller's assessment remained lumbar back pain, secondary to the February 2003 injury, improving with physical therapy. Dr. Miller agreed with the plan established in physical therapy. (Resp. Ex. 26).

On October 6, 2004, Petitioner followed-up with Dr. Miller and reported his lower back pain had resolved. Petitioner expressed his desire to return to full-duty, and Dr. Miller agreed, based on his normal objective exam. However, Dr. Miller expressed some concern the lumbar strain may re-occur due to Petitioner's noted degenerative joint. Petitioner was released to full-duty and advised to continue physical therapy and strengthening. (Resp. Ex. 26).

Petitioner attended a fitness for duty evaluation with Dr. Pena on October 8, 2004. Dr. Pena noted Petitioner treatment with Dr. Miller and continued work hardening therapy. On exam, Petitioner had full range of motion, full strength, and no tenderness along the vertebral column with palpation. Petitioner denied any back pain or discomfort. Dr. Pena's assessment was disc protrusions at L3-L4, L4-L5, and L5-S1. However, he questioned the significance of the protrusions based on Petitioner's rapid improvement. Dr. Pena opined degenerative disc disease of the lumbar spine had contributed to Petitioner's issues. Dr. Pena released Petitioner to full-duty without restrictions. (Resp. Ex. 27).

On October 27, 2004, Petitioner was re-examined by Dr. Miller. He reported improved lumbar back pain. He had been performing his full work duties and noted some lower back discomfort at times. However, the discomfort generally improved as the day progressed. (Resp. Ex. 26).

On February 12, 2007, Petitioner began receiving regular chiropractic treatment at JSK Chiropractic. He continued this treatment through April 4, 2007. (Resp. Ex. 25).

On April 4, 2007, Petitioner reported to the Methodist Emergency Department with right, lower back pain. He reported feeling a "pop" while chasing a suspect a few days before. X-rays revealed no acute abnormality. He was discharged from care with prescriptions for Norflex and Vicodin. (Resp. Ex. 22).

Petitioner was examined at Great Plains Orthopaedics the following day. At that time, his chief complaint was a back injury at work. He reported a pulling sensation and a "pop" while chasing a suspect. He worked the next day but had increasing pain and by the third day he was in a lot of pain with radiation into the hamstring. His main complaint was "seizing up" of the back. Dr. Clark Rians felt Petitioner was experiencing muscle spasms. He noted Petitioner's previous back injury in 2003 and an MRI showing 2 bulging discs. An exam was not possible due to Petitioner's considerable pain. Dr. Rians diagnosis was acute lumbar strain disc pathology. (Resp. Ex. 22).

On April 16, 2007, a lumbar spine MRI was performed at Methodist Medical Center. The findings were as follows: (1) mild central disc protrusion at L3-L4; (2) Central and left paracentral disc extrusion at L4-L5, which causes mass-effect on the thecal sac, but does not affect the exiting L4 nerve root; and (3) large extrusion of disc at L5-S1 paracentrally to the right causing mass-effect on the thecal sac as well as abutting right L5 nerve root in the neuroforamina and right S1 nerve root in the central canal. (Resp. Ex. 21).

Petitioner followed-up with Dr. Rians on April 18, 2007. Dr. Rians reported the MRI showed mild central disc protrusion at the L3-L4 level, central and left paracentral disc extrusion at the L4-L5 level causing some

mass effect on the thecal sac, and a large extrusion of the disc at L5-S1 on the right with a mass effect and impingement on the right L5 nerve and right S1 nerve root in the canal. Petitioner's condition was improved and he was able to walk without pain. Dr. Rians diagnosis was extruded discs at two (2) levels with the L5-S1 right-sided disc extrusion causing most of the symptoms. Dr. Rians recommended a consultation with a neurosurgeon to evaluate whether surgery was necessary. Petitioner was ordered off work for one month. (Resp. Ex. 22).

Petitioner was also examined by Dr. Burke at OSF Occupational Health on April 18, 2007. Dr. Burke compared the recent MRI to prior findings and noted no significant changes, except perhaps further degenerative changes. Dr. Burke felt it was too soon to determine if the pain was acute or chronic in nature. (Resp. Ex. 27).

On April 27, 2007, Petitioner was examined by Dr. Patrick Tracey at Associated University Neurosurgeons. Petitioner reported he an onset of severe right-sided low back after chasing a suspect. Dr. Tracey noted a recent MRI of the lumbar spine showed multilevel stenosis at L3-L4, L4-L5, and L5-S1. In addition, he felt there may be a tiny right posterolateral L5-S1 disc herniation. Dr. Tracey recommended conservative treatment. He referred him to physical therapy three (3) times a week for the next month. He felt Petitioner would be a good candidate for either epidural steroid injections or surgical treatment, if conservative treatment failed. If it came to surgical treatment, Dr. Tracey was inclined to perform not only a right L5-S1 discectomy, but probably a decompressive lumbar laminectomy, given the degree of stenosis that he has on his MRI. (Resp. Ex. 23).

Petitioner attended physical therapy at IPMR from May 1, 2007, through June 19, 2007. (Resp. Ex. 24).

On June 4, 2007, Petitioner followed-up with Dr. Burke and reported no lower back pain or lower extremity weakness. Dr. Burke's assessment was stabilizing back pain. He released Petitioner to full duty. (Resp. Ex. 27).

Petitioner was re-examined by Dr. Tracey on June 19, 2007. Petitioner reported good recovery with conservative treatment. He had returned to light duty work on May 21, 2007, and regular duty two (2) weeks later. He was generally tolerating full-duty well. He had some back pain, mostly in the morning, and few radicular symptoms. Overall, Dr. Tracey felt Petitioner was making an excellent recovery with conservative treatment. He released him from further care and returned him to full physical activities, as tolerated. He recommended Petitioner continue his home exercise program. (Resp. Ex. 23).

Petitioner resumed chiropractic treatment at JSK Chiropractic on September 19, 2007 and continued this treatment through June 12, 2009. (Resp. Ex. 25). On January 22, 2009, Petitioner reported increased back pain after he twisted while sitting in court and felt a "pop" in his back. On April 3, 2009, he again reported increased back pain after aggravating it while working on the lawn and moving trees. (Resp. Ex. 25).

On September 28, 2009, Petitioner reported to the OSF Emergency Department after being involved in a motor vehicle accident a few hours earlier. He indicated he was rear-ended at a stoplight while wearing a seatbelt. He confirmed there was no airbag deployment. His primary complaints were a headache and lower back, neck, and lower head pain. At discharge, his primary diagnosis was a lumbosacral strain with a secondary diagnosis of neck pain. Petitioner was prescribed Norco and Norflex and discharged in a stable, ambulatory state with three (3) out of ten (10) pain. (Pet. Ex. 35).

Petitioner was also examined by Dr. Burke at OSF Occupational Health on September 28, 2009. He reported he was in his patrol car going anywhere from zero (0) to one (1) mile per hour at a red light when he was rear-ended by a solo driver. Petitioner confirmed he was restrained and the air bag did not deploy. He stated his head and upper trunk jerked back and forth after the impact, and the back of his head impacted the headrest. He

exited the vehicle and spoke with a fellow officer. At that time, his pain was a five (5) or six (6) out of ten (10). He then drove himself to the St. Francis Medical Center for treatment. He took one (1) Norflex and one (1) Norco when he returned home. (Pet. Ex. 35).

When he awoke, he had no head or neck pain, but some residual left, lower back pain. He reported no tingling, numbness, weakness, or radiating pain in his upper or lower extremities. On exam, Petitioner was three hundred and thirty-five (335) pounds. His pain score was a one (1) or two (2) out of ten (10). There was no tenderness, pain, spasm, or swelling noted during examination of his cervical or lumbar spine. Petitioner stated he was otherwise feeling well and asked to return to work on second shift that day, as he had volunteered for overtime duty. (Pet. Ex. 35).

Dr. Burke noted Petitioner's medical history was significant for low-back strain with herniated discs at L3-L4 and L5-S1 in 2003, 2004, and 2007. Conservative treatment had successfully resolved his symptoms most recently in 2007. (Pet. Ex. 35).

Dr. Burke's impression was an acute cervical lumbar spine myofascial strain with no neurological findings and a mild posterior head contusion with resolved pain. Petitioner was released to regular duty without restrictions and cautioned not to take any sedating medications during work hours or when driving. Dr. Burke opined permanent impairment was not anticipated as the result of the injuries. (Pet. Ex. 35).

On October 5, 2009, Petitioner returned to OSF Occupational Health for an examination with Dr. Burke. He was doing well and performing his regular job duties without issue. He still had some intermittent lower back pain, with no radiating symptoms. He was using back exercises, heat and ice, Ibuprofen, and Vicodin, as needed, to manage his symptoms. Dr. Burke continued Petitioner on regular duty. (Pet. Ex. 35).

Petitioner followed-up with Dr. Burke again on October 20, 2009. He reported increased lower back pain over the weekend, which necessitated him calling off work the day before. He reported having more neck pain than lower back pain at the time of the motor vehicle accident but felt his neck pain had completely resolved. Petitioner complained of continued lower back pain radiating into both buttocks. He was also having lower back spasms and stiffness. He felt his pain was similar to what he experienced in 2007. Petitioner could not identify any one aggravating factor or re-injury. Dr. Burke recommended a lumbar spine MRI to compare with his 2007 findings. (Pet. Ex. 35). Petitioner was advised not to work until his next follow-up.

A lumbar spine MRI was performed at Methodist Medical Center on October 22, 2019. Dr. James A. McGee noted Petitioner presented with lower back pain radiating down the posterior side of both legs to the knees. Petitioner was having difficulty walking. Dr. McGee obtained new images and compared them to the MRI study from April 16, 2007. The findings were as follows: (1) interval development of a large posterior central and right paracentral disc herniation at the L3-L4 level, measuring ten (10) millimeters in cephalocaudal extent by approximately six-and-a-half millimeters in AP dimension, which produced significant mass effect upon the dural sac and significant central spinal stenosis; (2) features of congenital spinal stenosis; (3) a large posterior central and right paracentral disc herniation at L5-S1, which produced mass effect upon the thecal sac and right S1 nerve root, similar to the previous examination; (4) disc bulging and posterior marginal osteophyte formation at L4-L5, asymmetrically greatest to the left of the midline producing a mild degree of mass effect upon the dural sac; (5) degenerative disc signal changes with disc space narrowing at L3-L4, L4-L5, and L5-S1, with disc space narrowing greatest at the lower 2 levels associated with small marginal osteophyte formation and mild degenerative endplate irregularity and signal at L4-L5; and (6) facet degeneration at L4-L5, L5-S1, and, to a mild degree, the remaining lumbar levels. (Resp. Ex. 21).

Dr. McGee's impression was a large posterior central disc herniation at L3-L4, producing significant mass effect upon the dural sac and cauda equina, congenital spinal stenosis, and degenerative changes of the lower three (3) lumbar intervertebral disc space levels with a large posterior right lateral disc herniation at L5-S1, producing mass effect upon the right S1 nerve root. The other findings noted appeared similar to the 2007 MRI. (Resp. Ex. 21).

Lumbosacral x-rays were also performed at Methodist Medical Center on October 22, 2009. Dr. Gordon Cross, the reading radiologist, noted degenerative disc space narrowing at L4-L5 and L5-S1. He felt these findings were "little changed" when compared to 2007 images. (Pet. Ex. 35).

On October 23, 2009, Petitioner returned to Dr. Burke to discuss the recent MRI and radiograph results. He was still having lower back pain, but the radiation into his legs had resolved. Petitioner's back pain was an eight (8) out of ten (10) when he awoke but decreased to a four (4) or five (5) with medication. Dr. Buke felt there was no significant change between Petitioner's recent MRI and x-ray studies and the 2007 findings. Dr. Burke recommended physical therapy and released Petitioner to light duty. (Pet. Ex. 35).

Petitioner attended physical therapy at Illinois Neurological Institute from October 26, 2009 through December 3, 2009. (Pet. Ex. 35).

On December 3, 2009, Petitioner attended a follow-up examination at OSF Occupational Health and reported no lower back pain. Petitioner and Dr. William Scott discussed the need for core muscle strengthening and overall conditioning to control his weight status. Dr. Scott opined Petitioner's weight would continue to affect his occupation and back condition, placing him at risk for future back problems and possible surgery. Petitioner was placed at maximum medical improvement and released to regular duty. He was advised he could use a suspender system for his service weapon. (Pet. Ex. 35).

On January 29, 2010, Petitioner reported to OSF Occupational Health with increased lower back pain. He had been having some minor lower back pain, but no lower extremity symptoms until he was recently involved in a tactical training exercise on January 25, 2010. Petitioner reported this training involved a lot of spine rotation, which increased his lower back pain. The pain grew progressively worse throughout the day, and he developed numbness in his right foot and gluteal regions. He had not had any bladder dysfunction. He was using a cane at the exam and complained of right leg weakness. Dr. Edward Moody's assessment was right lower extremity radiculopathy with L5 weakness. Dr. Moody counseled Petitioner regarding cauda equina syndrome symptoms and the need for immediate medical attention should they occur. He also ordered a new lumbar spine MRI. Petitioner was to remain off work until his next follow-up. (Pet. Ex. 7).

A lumbar spine MRI was performed on January 29, 2010. Dr. Matthew J. Kuhn noted Petitioner's history consisted of a motor vehicle accident, a herniated disc at L3-L4, and numbness to Petitioner's right leg and foot since yesterday. Dr. Kuhn obtained new images and compared them to the October 22, 2009, MRI. The L1-L2 intervertebral disc appeared normal. At L2-L3, there was a mild diffuse disc bulge with mild facet joint hypertrophy. This finding was unchanged from the 2009 MRI. At the L3-L4 level, there was a large right paracentral disc herniation compressing the ventral thecal sac and extending to the right L3-L4 neural foramen with compression of the L4 nerve root. The herniation was moderately larger at that time when compared to the 2009 study. At L4-L5, there was a moderate left paracentral focal disc bulge with moderate facet joint hypertrophy and left-sided neural foraminal narrowing. This was unchanged from the 2009 study. At the L5-S1 level, there was a large right paracentral disc herniation compressing the thecal sac and extending into the right L5-S1 neural foramen. There was also compression at the right L5 and S1 nerve. These finding were not significantly changed. (Resp. Ex. 21).

Dr. Kuhn's impression was an enlarging right paracentral herniated nucleus pulposus at L3-L4, a moderate left-sided disc bulge at L4-L5, and a large right paracentral disc herniation at L5-S1 compressing the thecal sac and right S1 nerve. (Resp. Ex. 21).

After the MRI study and radiographs, Petitioner was immediately examined by Dr. Dzung H. Dinh at Illinois Neurological Institute. Dr. Dinh indicated this was an urgent consult to assess possible cauda equina syndrome. Dr. Dinh noted Petitioner's long history of lower back pain and back injuries. He also noted Petitioner had historically undergone physical therapy and conservative treatment to address these issues, most recently being returned to full-duty police work in December of 2009. (Pet. Ex. 10).

Petitioner told Dr. Dinh he was performing defensive training tactics on January 25, 2010, involving bending and twisting at the waist and one (1) fall to the side. Petitioner indicated he returned home that evening and developed severe lower back pain and spasms while lying on the floor on his abdomen. He then noticed right foot weakness on January 28, 2010, and numbness in his buttock region on the morning of the exam. He noticed this numbness while taking a shower. Petitioner also reported worsening right lower extremity numbness and weakness. (Pet. Ex. 10).

Dr. Dinh reviewed the MRI results from earlier that day and noted a large disc herniation at L3-L5 with severe cord stenosis and a disc herniation at L5-S1, worse on the right. On exam, Dr. Dinh noted Petitioner was three hundred and forty (340) pounds. Dr. Dinh's examination revealed right-sided weakness and decreased sensation. Based on his examination and review of the MRI, Dr. Dinh felt Petitioner had signs and symptoms of cauda equina. He diagnosed Petitioner with a large disc herniation at L3-L5 causing severe canal stenosis, lumbar myelopathy, and symptoms of cauda equina. Petitioner was also diagnosed with a right L5-S1 disc herniation. Dr. Dinh recommended an emergency bilateral lumbar laminectomy and diskectomy at L3-L4 and L5-S1. (Pet. Ex. 10).

Petitioner was admitted to OSF Medical Center for emergency surgery on January 29, 2010. He presented with lower back pain and right lower extremity weakness and numbness. A history was taken from Petitioner indicating he performed defensive tactics training on January 25, 2010, which mainly consisted of upper extremity activity and some bending. He reported he had one slight fall towards the right but did not notice much back pain. That evening, he was lying on the floor on his abdomen and developed a severe back spasm. A few days later, he noticed right foot numbness and weakness. Petitioner then experienced numbness in his groin and rectal area during examinations with Dr. Moody and Dr. Dinh. The MRI findings from earlier that day were confirmed, as well as Dr. Dinh's diagnoses. The consensus was to proceed with emergency surgery. (Pet. Ex. 11).

Dr. Dinh performed an emergent decompressive lumbar laminectomy from L3 to S1 with a right L3-L4 and L5-S1 diskectomy. The preoperative and postoperative diagnoses were cauda equina syndrome secondary to spinal stenosis and disc herniation right L3-L4 and L5-S1. Petitioner tolerated the procedure well with no complications. (Pet. Ex. 11).

In his operative report, Dr. Dinh stated, "[Petitioner] was doing tactical training on [January 25, 2010]. That night, he developed severe back spasm and pain that continued to progress." According to Dr. Dinh, the January 29, 2010, MRI showed a much larger disc herniation at L3-L4 compared to the 2009 MRI with worsening stenosis. However, the disc herniation at L5-S1 was the same or maybe slightly worse. (Pet. Ex. 11).

Petitioner was discharged from OSF Medical Center on February 2, 2010. He was doing well postoperatively. His surgical incision had developed a small necrotic center, which was evaluated and treated

with topical cream and an antibiotic. Petitioner was provided discharge instructions, including a medication schedule, a wound assessment appointment in one (1) week, and a postoperative exam in four (4) weeks. (Pet. Ex. 11).

Petitioner's surgical incision was evaluated on February 9, 2010, and February 11, 2010. He was advised to continue using the topical cream and antibiotic to address the necrosis at the upper portion of the incision site. On February 11th, a possible need for debridement and reclosure was discussed with Petitioner in the event conservative treatment did not resolve the issue. (Pet. Ex. 13).

On February 15, 2010, Petitioner followed-up with Dr. Eric Elwood to assess his surgical incision. Dr. Elwood removed the final surgical staples and debrided a localized area. He felt the wound was healing uneventfully. Dr. Elwood confirmed this treatment plan after Petitioner's February 22, 2010, exam. (Pet. Ex. 13).

On February 25, 2010, Petitioner attended his first postoperative follow-up at Illinois Neurological Institute. He was progressing well at home with home health and had participated in one (1) home physical therapy session. On exam, he had tingling in both hamstrings and numbness along his right calf. Petitioner was to continue taking Norflex and pain medication as needed. Outpatient physical therapy was ordered, and Petitioner was to remain off work. (Pet. Ex. 10).

Petitioner returned to OSF Occupational Health on March 1, 2010, for his first examination with Dr. Scott after his discharge on December 3, 2009. Dr. Scott noted his prior treatment of Petitioner in late 2009 and obtained a subsequent treatment history from Petitioner and other provider's treatment notes. At the time of the exam, Dr. Scott indicated Petitioner was receiving wound care management at home and was being monitored by a wound care nurse and Dr. Elwood. Overall, Dr. Scott felt Petitioner was progressing well from a neurological perspective. He had no thigh weakness or pain in his legs but did have some residual weakness to the right great toe and foot. Petitioner had been ambulating with a four-point walker. Dr. Scott felt Petitioner would benefit from a wound vac system to aid in his healing process. It was his understanding this would be coordinated with the home care nurses. Dr. Scott continue Petitioner off work until his next follow-up in approximately six (6) weeks. (Pet. Ex. 7).

Petitioner began physical therapy at IPMR on March 8, 2020. He continued with therapy at IPMR until his surgical debridement procedure with Dr. Elwood. (Pet. Ex. 18).

On March 15, 2010, Petitioner followed-up with Dr. Elwood to assess his surgical incision and discuss debridement and reclosure. Dr. Elwood noted there were areas of skin and fat loss around the incision site. He recommended proceeding with operative debridement and reclosure on April 7, 2010, at OSF Medical Center. (Pet. Ex. 13).

On April 7, 2010, Petitioner underwent surgical debridement and reclosure of his initial incision site. Dr. Elwood debrided a one-hundred-centimeter square portion of the wound and completed a complex closure of the chronic lower back wound. (Pet. Ex. 12).

Petitioner resumed physical therapy at IPMR on April 20, 2010. He continued with therapy two (2) to three (3) times per week until his pain complaints increased in June of 2010. (Pet. Ex. 18).

On April 27, 2010, Petitioner was re-examined at Illinois Neurological Institute. His surgical incision was closed and was healing well. Sutures at the incision site were dry and intact. Petitioner had progressed to walking with a cane. He was also driving and progressing with other activities. Dr. Dinh recommended outpatient water

therapy two (2) to three (3) days per week for six (6) to eight (8) weeks for gentle core strengthening. He felt the Petitioner could then progress to land therapy, work conditioning, and work hardening with an eventual functional capacity evaluation to assess a return to work. (Pet. Ex. 10).

Petitioner followed-up with Dr. Scott at OSF Occupational Health the following day, April 28, 2010. At that time, he was approximately three (3) post-surgery. He felt his wound was healing well but reported no improvement in his back condition. He still felt quite a bit of pain in his lower back and weakness in his right foot. On exam, Petitioner's surgical site appeared to be healing well with no redness or swelling. His range of motion was decreased with forward flexion to his knees, but he had full range of motion with hyperextension and lateral bending. He was negative for radicular symptoms in his lower extremities. Dr. Scott agreed with Dr. Dinh's therapy recommendations and scheduled a two (2) month follow-up appointment to assess his progress. (Pet Ex. 7).

On May 6, 2010, Dr. Elwood removed Petitioner's final sutures. The incision was nicely healed, and Petitioner was pleased with the result. Dr. Elwood recommended a follow-up appointment in two (2) months to further monitor Petitioner's progress. (Pet. Ex. 13).

On or about June 1, 2010, Petitioner complained of increased soreness with physical therapy. He felt it was potentially due to progressing with weights and starting aquatic therapy. He canceled his next appointment on June 3, 2010, indicating he was in too much pain. (Pet. Ex. 18).

On June 7, 2010, Petitioner attended an outpatient rehabilitation session at Illinois Neurological Institute. (Pet. Ex. 10). He reported increased lower back pain after hearing a "pop" during aquatic therapy a few days prior. He had experienced difficulty with sitting and standing since that time. His lower back pain was consistently between a four (4) to six (6) out of ten (10). Continued aquatic and land physical therapy was recommended.

Petitioner attended a follow-up examination with Dr. Dinh on June 25, 2010. Dr. Dinh noted Petitioner had been doing well postoperatively and was performing land-based and aquatic therapy. However, Petitioner contacted Dr. Dinh's office on July 3, 2010, stating he felt a pop on the left side of his lower back during aquatic therapy. Petitioner reported the pain has continued to increase in severity. On physical examination, Petitioner had good motor strength with some weakness noted. Dr. Dinh recommended a lumbar spine MRI to address Petitioner's ongoing pain. Petitioner was to discontinue therapy until his follow-up with Dr. Dinh after the MRI. (Pet. Ex. 10).

A lumbar spine MRI was performed on July 8, 2010. Dr. Michael T Zagardo, the reading radiologist, compared the images to Petitioner's August 17, 2004, MRI findings. Dr. Zagardo noted Petitioner had previously undergone posterior decompressive surgery with laminectomy and removal of the spinous processes from L3 down to the L5-S1 level. Dr. Zagardo's impression was as follows: (1) postoperative changes and distortion of the fat planes within the surgical bed; (2) residual postoperative seroma/fluid collection posterior to the L4-L5 level, likely an evolving sterile postoperative fluid collection; (3) ventral epidural tissue at the L3-L4 level, potentially representing disc and/or post-operative change/fibrosis; (4) a potentially small, extruded disc fragment at L4; (5) a mild disc bulge L4-L5, slightly more prominent on the left, with no significant neural encroachment; and (6) a residual disc bulge/protrusion at the L5-S1 level centrally positioned, with enhancing tissue within the ventral epidural space on the right potentially corresponding to a partial discectomy/postoperative change. Dr. Zagardo did not feel the nerve root sheath at L5-S1 was displaced or compressed and did not think there was evidence of a recurrent disc protrusion at that level. (Pet. Ex. 10, 19).

Petitioner was also re-examined by Dr. Elwood on July 8, 2010. His incision was nicely healed, and Dr. Elwood released him from further care. (Pet. Ex. 13).

On July 16, 2010, Dr. Dinh entered an office note stating, "[S]eriously loose [*sic*] weight. shows disc protrusion at L3-4 and L5-S1 same as 2004. No further surgery.no other surgeries will help him. Try gastric bypass." (Pet. Ex. 13). Dr. Dinh ordered continued land-based and aquatic therapy for the next four (4) to six (6) weeks. He also recommended a gastric bypass consultation. Effective July 19, 2010, Dr. Dinh released Petitioner to "limited employment activities," light duty only, at any time. (Pet. Ex. 10).

On July 20, 2010, Petitioner was examined by Dr. Pena at OSF Occupational Health. Dr. Pena noted Petitioner's recent MRI films were reviewed by Dr. Dinh. Petitioner reported Dr. Dinh indicated there were two bulged discs, which were not touching the nerve roots. Petitioner further reported Dr. Dinh recommended rapid weight loss as the only remaining option. Dr. Dinh felt no further surgery was reasonable. Petitioner's primary complaint was central lower back pain with right foot weakness and tingling and paresthesia in his right great toe, heel, and posterior calf. Dr. Pena's physical exam was poorly focalized. He noted the exam was "all of the place" with no real dermatomal distribution. Dr. Pena felt Petitioner's obesity had contributed significantly to his current problem. Dr. Pena opined Petitioner's deconditioned state had contributed to the recurrent injuries throughout his career. He agreed Petitioner's obesity needed to be addressed. Petitioner was released to modified duty, sedentary work only. (Pet Ex. 7).

Petitioner resumed physical therapy on July 22, 2010. He attended therapy two (2) to three (3) times a week through December 10, 2010. (Pet. Ex. 18).

On September 22, 2010, attended a consultation with Dr. Ghafoor Baha at Central Illinois Pain Center. Petitioner complained of constant lower back pain, upper posterior buttocks pain, and numbness and tingling in his right foot. He stated he was two hundred and ten (210) pounds when he joined the police force and was three hundred and seventy-three (373) pounds at the exam. He reported his symptoms developed after a training accident on January 25, 2010. Dr. Baha recommended a right L4-L5 transforaminal lumbar epidural steroid injection. (Pet Ex. 15).

Petitioner received the L4-L5 transforaminal lumbar epidural steroid injection on October 7, 2010. Dr. John Marshall indicated Petitioner tolerated the procedure well. (Pet Ex. 15).

On October 20, 2010, Petitioner followed-up with Dr. Marshall and reported a forty (40%) to fifty percent (50%) reduction in pain. Dr. Marshall performed a second lumbar epidural steroid injection at L4-L5. Petitioner was discharged in good condition. (Pet Ex. 15).

On November 12, 2010, Petitioner was re-examined by Dr. Pena. He reported a decrease in his lower back pain and better flexibility after two (2) steroid injections. The injections were so successful a third injection was not needed. Based on his improvement, a functional capacity evaluation had been recommended. Petitioner asked Dr. Pena to complete a certification of disability form from the Police Pension Fund. Dr. Pena noted several inconsistencies with Petitioner's examination, including, but not limited to, the following: (1) the lack of strength indicated would be inconsistent with any ambulation; (2) a sharp, unexplained increase in symptoms at the exam, compared to his physical therapy notes; (3) he told Dr. Pena a third steroid injection had been canceled, but told other staff a third injection would be needed in two (2) weeks; and (4) inconsistencies in his balance and strength testing. Dr. Pena recommended an EMG/NGV. He continued Petitioner on modified duty. (Pet Ex. 11).

An EMG study was performed on November 24, 2010, by Dr. Frank Russo. The findings were consistent with chronic right L5-S1 radiculopathy with some mild involvement at L3-L4. Dr. Russo noted decreased responses were particularly significant at L5-S1. (Pet Ex. 18).

Petitioner underwent a functional capacity evaluation on December 20 and 21, 2010. His primary complaints were lower back pain, difficulty with balance, foot numbness, leg weakness, and difficulty with walking long distances. He demonstrated limitations with range of motion, right leg strength, and balance. Petitioner failed to demonstrate the physical abilities necessary to perform full-duty police work. (Pet. Ex. 21).

On February 3, 2016, Petitioner reported to OSF Glen Park for a physical therapy evaluation. Petitioner reported chronic back problems with an initial onset on October 1, 2009. He believed his problems were initially caused by a rear-end accident in 2009. He also reported a motor vehicle accident in 2010. He reported constant back pain and no feeling in his right leg and right foot. The therapist noted compounding factors of obesity, diabetes, and high blood pressure. On exam, Petitioner had diminished range of motion and pain with flexion and lateral bending. The clinical impression at that time was central sensitization and mechanical back pain. Physical therapy once to twice a week for four (4) to six (6) weeks was recommended. (Pet. Ex. 19).

Petitioner received physical therapy at OSF Glen Park from February 3, 2016 through April 25, 2016. Petitioner responded well to treatment with no increase in symptoms. His quality of life improved with therapy and his tolerance with activities of daily living also improved. Mark A. Buettner, PT felt Petitioner had progressed nicely toward his established goals and had an excellent prognosis secondary to compliance with treatment, a positive response to treatment, and motivation. (Pet. Ex. 19).

IV. Disability Pension Proceedings

A. Pension Board Hearings

Petitioner applied for a line-of-duty disability pension through the Police Pension Fund of Peoria in 2010. (Resp. Ex. 8). Petitioner's claim for line-of-duty disability pension benefits was based on his lower back condition and the two (2) accidents at issue in this matter. The Board of Trustees of the Police Pension Fund heard testimony and received documentary evidence at evidentiary hearings on January 20, 2011, and May 2, 2011. (Resp. Ex. 9). Petitioner was represented by counsel during these proceedings and fully participated by presenting testimony, cross-examining witnesses, and presenting documentary evidence. (Resp. Ex. 9-10).

Petitioner testified under oath on January 20, 2011, and May 2, 2011. (Resp. Ex. 9). He provided testimony on the September 27, 2009, motor vehicle accident, the January 25, 2010, police training, his medical treatment, symptoms at the time of the hearings, and his history of back issues and treatment. (Resp. Ex. 9). Petitioner's testimony was largely consistent with his testimony at arbitration.

With regard to the September 27, 2009, accident, Petitioner testified he experienced head, neck, and lower back pain after the accident, which gradually improved with physical therapy until his return to full duty in December of 2009. (Resp. Ex. 9, p. 11-15). He reported having some lower back pain between his release to full duty and the core training on January 25, 2010. (Resp. Ex. 9, p. 14-15). He affirmed he continued to work full duty during this time. (Resp. Ex. 9, p. 15).

With regard to core training on January 25, 2010, Petitioner testified he had very minor soreness in his back that morning prior to training. Resp. Ex. 9, p. 15-16). This pain was reported to Officer Richard Glover. Resp. Ex. 9, p. 36). His pain progressed during training, but he was able to complete the morning portion of training before leaving to attend a scheduled court appearance. (Resp. Ex. 9, p. 15-16, 37). Petitioner testified he did not report the increased back pain to any supervising officer that day. (Resp. Ex. 9, p. 36-37). The pain continued to worsen after he left training, and, by the time he got home from court, he was experiencing muscle spasms. At home that evening, he laid on the floor on his stomach to do an exercise to relieve his pain. (Resp. Ex. 9, p. 38-39). Petitioner confirmed he never fell during the training. He did not recall reporting a fall during training at subsequent medical exams. Resp. Ex. 9, p. 17).

After providing testimony concerning his subsequent medical treatment, Petitioner testified he was unable to perform his duties as a police officer due to his loss of balance, loss of strength in his right leg, and continued lower back pain. (Resp. Ex. 9, p. 18-27). Petitioner also testified he had experienced back pain and issues prior to the vehicle accident and training, specifically in 1995, 1997, 1999, 2003, 2004, 2007, and October of 2009. He also acknowledged receiving medical treatment for his lower back during these time periods. (Resp. Ex. 9, p. 28-34; 2-28).

The Board also heard testimony from Officer Richard Glover, Officer Mike Flatko, and Officer Javier Grow. (Resp. Ex. 9, p. 44-61; 61-71; 72-81).

Officer Glover testified Petitioner did not report any injury or problem on January 25, 2010, while performing the training activities. (Resp. Ex. 9, p. 46-47). He further testified he did not observe Petitioner having any difficulty during the training. (Resp. Ex. 9, p. 48-49). Officer Glover noted Petitioner reported having some back pain the morning of training, prior to any activities being performed. Officer Glover stated he documented this prior back pain on Petitioner's evaluation form. (Resp. Ex. 9, p. 45-46). When asked whether he was surprised when he was informed of Petitioner's alleged injury during training, Officer Glover testified, "Yes, I was." (Resp. Ex. 9, p. 50).

Officer Glover also discussed the activities performed during the training and clarified the there is no physical contest during the training. The techniques were not to be performed at "full bore." The idea is to learn the techniques and not to have a physical confrontation. (Resp. Ex. 9, p. 47-56). Officer Glover testified each technique was performed approximately three (3) to five (5) times. (Resp. Ex. 9, p. 49-52). He estimated an officer is asked to perform approximately twenty (20) to thirty (30) movements, in total, requiring low back activity. (Resp. Ex. 9, p. 52-53).

Officer Flatko testified he was a defensive tactics instructor during core training on January 25, 2010. (Resp. Ex. 9, p. 62). Officer Flatko testified he observed Petitioner during the morning session of training. (Resp. Ex. 9, p. 63). He did not observe Petitioner having any difficulty performing the training exercises. He further testified Petitioner did not report any injury to him on the date of the training. (Resp. Ex. 9, p. 63-65). Officer Flatko also testified he was surprised to hear Petitioner claimed he injured his back during the core training.

Respondent offered documents from the core training into evidence at arbitration as Respondent's Exhibit 3.

Officer Grow testified he worked with Petitioner in the traffic unit in January of 2010. (Resp. Ex. 9, p. 72). On January 24, 2010, the day before the core training, Officer Grow spoke with Petitioner at the beginning of the work day. At that time, Petitioner told Officer Grow he slipped on ice a couple days prior and hurt his back. (Resp. Ex. 9, p. 72-73). Officer Grow indicated Petitioner stated he did not fall when he slipped. According to

Officer Grow, Petitioner told him he would be calling-in sick the following day, January 25, 2010, if his back wasn't feeling better. (Resp. Ex. 9, p. 73-75). Officer Grow testified he completed a special report concerning his conversation with Petitioner. (Resp. Ex. 9, p. 72-73). Officer Grow's report was offered into evidence at arbitration by Respondent as Respondent's Exhibit 6.

B. Medical Reports

In addition to medical records, the Pension Board reviewed and considered the opinions of multiple physicians specifically concerning Petitioner's alleged accidents and ability to perform his full duties as a police officer. Specifically, the opinions and disability certification statements of Dr. Scott, Dr. Dinh, Dr. Miller, Dr. Richard Kube, and Dr. Singh were considered by the Board.

Dr. William Scott authored a narrative report on February 4, 2010. Dr. Scott was asked by Respondent to provide an opinion on the cause for Petitioner's condition and surgical procedure. Dr. Scott opined Petitioner's underlying medical condition and 2009 motor vehicle accident put Petitioner at risk for reoccurrence of symptoms. He also opined Petitioner's weight and obesity placed him at risk. Dr. Scott concluded Petitioner's lower back condition was related to previous medical conditions, aggravation from the motor vehicle accident, and reaggravation from tactical training. (Pet. Ex. 6; Resp. Ex. 10).

Dr. Dzung Dinh completed a certification verifying Petitioner was unable to return to full duty as a police officer due to his low back condition. Dr. Dinh's certification did not specifically address causation, listing "post op," as the cause of Petitioner's disability. (Pet. Ex. 10; Resp. Ex. 10).

Dr. Barry Miller, Petitioner's primary care physician, completed a certification verifying Petitioner was limited to light duty for a low back condition. Dr. Miller felt the condition was caused by the September 27, 2009, motor vehicle accident and the January 25, 2010, tactical training. (Resp. Ex. 10).

Dr. Richard Kube performed an independent medical examination at Petitioner's request. Dr. Kube examined Petitioner on December 3, 2010. (Pet. Ex. 22). Dr. Kube's evidence deposition was then taken on February 18, 2016. (Pet. Ex. 23). Dr. Kube opined Petitioner was unable to return to work as a police officer due to his disc herniation, resulting condition, balance issues, and lower extremity weakness. (Pet. Ex. 22-23). Dr. Kube felt this condition was primarily related to the January 25, 2010, training exercise. (Pet. Ex. 22-23). According to Dr. Kube, Petitioner's bending, twisting, and "fall to the side" during training aggravated his condition, causing the need for surgery. (Pet. Ex. 22-23).

Dr. Kern Singh performed a records review at the request of the Pension Board on or about March 7, 2011. (Resp. Ex. 12). The evidence deposition of Dr. Kern Singh was subsequently taken on June 16, 2016. (Resp. Ex. 13). His curriculum vitae was offered into evidence at arbitration. (Resp. Ex. 14). Dr. Singh opined Petitioner's lower back conditions prevented him from returning to work as a police officer. (Resp. Ex. 12-13). However, based on his review of medical records, the MRI films from 1997, 2004, 2007, 2009, and 2010, and the Pension Board testimony, Dr. Singh opined Petitioner's condition was not caused, aggravated, accelerated, or further worsened by the 2009 motor vehicle accident or the 2010 training activities. (Resp. Ex. 12-13). He felt Petitioner's condition was pre-existing and degenerative. He was also of the opinion Petitioner's body habitus contributed significantly to his condition. Dr. Singh noted the findings on the 1997 MRI suggested a pre-existing genetic and body habitus component. He further noted there was no structural change shown on the 2009 and 2010 MRIs, compared to the 1997, 2004, and 2007 MRIs. (Resp. Ex. 12-13).

C. Pension Board Decision

After reviewing the evidence and deliberating in executive session on May 2, 2011, the Pension Board unanimously voted to deny Petitioner's claim for line-of-duty disability pension benefits. A written Decision was entered by the Pension Board on or about May 5, 2011. The Board held Petitioner failed to prove, by the greater weight of the evidence, his lower back condition was "caused, aggravated, or accelerated by either the rear end motor vehicle accident on September 27, 2009, or the training activities on January 25, 2010." (Resp. Ex. 10).

With regard to the two (2) alleged accidents, the Pension Board found the motor vehicle accident was a very low-speed collision, and the training exercise involved minimal physical exertion. The Pension Board concluded the physical stress applied to Petitioner's body during the low-speed vehicle collision and tactical training was very minor and not likely to cause any injury to the low back. (Resp. Ex. 10).

Medical records reviewed by the Board established Petitioner had longstanding lower back issues, which were identified and documented as early as 1995. The Board noted, in 1995, Petitioner saw Dr. Rians who diagnosed Petitioner with inguinal and left buttock pain, consistent with a discogenic cause involving the L3-L4 dermatome. The Board emphasized L3-L4 is the same level surgically treated by Dr. Dinh in 2010. (Resp. Ex. 10).

In its Decision, the Board also noted Petitioner sought treatment for his lower back numerous times, beginning in 1995. In many instances, there was either no precipitating event or a very minor incident, which supported the conclusion Petitioner had a significant problem with the lumbar spine beginning in 1995. The Board held this condition naturally progressed due to his congenital condition and body habitus until surgery became necessary in 2010. (Resp. Ex. 10).

With regard to the opinions expressed by Dr. Scott, Dr. Dinh, Dr. Miller, Dr. Richard Kube, and Dr. Singh, the Pension Board held the opinions of Dr. Singh were entitled to greater weight than the other physicians. The Pension Board emphasized Dr. Singh was the only physician to have reviewed all pertinent medical records and all of Petitioner's MRI films. The Pension Board noted there was no indication Dr. Scott had ever reviewed the medical records showing testing and treatment from 1995 to 1999, including the MRI taken in 1997. Further, the Board noted Dr. Scott had not reviewed the MRI films from 1997, 2004, 2007, 2009, or 2010. The Pension Board reached similar conclusions concerning the opinions of Dr. Miller and Dr. Kube. These physicians based their causation opinions on the histories provided by Petitioner and a portion of Petitioner's medical records, rather than the complete evidence reviewed by Dr. Singh. (Resp. Ex. 10).

Additionally, the Pension Board questioned Petitioner's credibility. The Pension Board noted Dr. Dinh's January 29, 2010, exam note indicated Petitioner developed severe lower back pain and spasm while lying on his abdomen on the floor at home. In a Non-Crime Report completed a few days after the training, Petitioner stated, "Upon going home that night my back became very sore and I started to have muscle spasms." The report did not indicate he had unusual back pain during the training. Contrary to Petitioner's subsequent explanations, the Pension Board found the most reasonable inference was Petitioner's unusual or severe back pain started when he was on the floor at home. The Pension Board also noted it found Petitioner's testimony concerning symptoms during the tactical training was not credible. This conclusion was based on Petitioner's manner of testifying, the fact he did not report any injury during the training, the fact he continued training until he went to court, his own written report, and the history he provided to Dr. Dinh. The Board finally emphasized Petitioner was not candid about his prior back issues when he completed the patient information form for his police candidate physical in 2001. (Resp. Ex. 10).

V. Petitioner's Common Law Case - Illinois Tenth Judicial Circuit Case Number 11 L 246

At arbitration, Petitioner submitted documentary evidence establishing he filed a claim against the driver of the September 27, 2009, vehicle accident, Mauro Herrod, in the Circuit Court of the Tenth Judicial Circuit of Illinois, Peoria County. (Pet. Ex. 4, 27-31). Respondent intervened in the matter to assert its lien interest under Section 5(b) of the Illinois Workers' Compensation Act. Although Petitioner settled his case with Mr. Herrod for $75,000.00, Petitioner and Respondent engaged in litigation concerning Respondent's entitlement to lien recovery through the Third District Appellate Court. (Pet. Ex. 4, 27-31).

CONCLUSIONS OF LAW

In support of the Arbitrator's Decision relating to (A). Was Petitioner's claim filed within the three-year statute of limitations period?, the Arbitrator finds the following:

At arbitration, Respondent asserted Petitioner's claim in Case Number 17 WC 033893 was not filed within the applicable statute of limitations period. It is undisputed Petitioner filed an Application for Adjustment of Claim for the September 27, 2009, automobile accident on or about November 9, 2017. Pursuant to Section 6(d) of the Illinois Workers' Compensation Act, an application for compensation must be filed with the Commission within three (3) years after the date of the accident, where no compensation has been paid, or within two (2) years after the date of the last payment of compensation, where any has been paid, whichever is later. 820 ILCS 305/6(d).

At the outset, the Arbitrator notes Petitioner's Application is barred on its face as it was filed more than eight years after the date of accident. Accordingly, it is Petitioner's burden to establish, by a preponderance of the evidence, his claim was timely filed within two (2) years after the date of the last payment of compensation. Petitioner has failed to meet this burden. The evidence establishes Respondent last paid benefits for the September 27, 2009, injury in December of 2009. Petitioner reached maximum medical improvement for this injury in December of 2009, and, shortly thereafter, Respondent paid the last benefit attributable to said injury. This conclusion is supported by the complete evidentiary record and also expressly noted within the Decision of the Third District Appellate Court. (Pet. Ex. 4 p.10 ¶22). The Third District held Respondent's payments for the vehicle accident ended when Petitioner was medically cleared to return to full duty in December of 2009. The Arbitrator's independent review of the evidence reveals that a payment was made on January 4, 2017, to Express Scripts, Inc. However, this appears to be associated with the January 25, 2010, claim. (Res. Ex. 29) No evidence suggests that this payment was attributable to Petitioner's September 27, 2009, accident. The outstanding medical bills presented in Petitioner's Exhibit 34 appear to represent bills which are associated with the January 25, 2010 claim as well. Since there is no proof that any medical bills were paid attributable to the September 27, 2009 accident within the two years preceding the filing of Case Number 17 WC 033893 on November 9, 2017, the claim is barred by Section 6(d) of the Act.

In support of the Arbitrator's Decision relating to (C). Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?, the Arbitrator finds the following:

At arbitration, Respondent disputed whether Petitioner sustained an accident arising out of and in the course of his employment with Petitioner on September 27, 2009, and January 25, 2010. Under the Illinois Workers' Compensation Act, Petitioner has the burden of establishing he suffered an accident arising out of and in the course of employment by a preponderance of the evidence. *Great American Indemnity Co. v. Industrial Comm.*, 367 Ill. 241 (1937). The words "arising out of" refer to the origin or cause of the accident and are descriptive of its character, while the words "in the course of" refer to the time, place and circumstances under which the accident occurs. *Vincennes Bridge Co. v. Industrial Comm.*, 351 Ill. 444 (1933). Both elements must

be present at the time of the injury in order to justify compensation. *Borgeson v. Industrial Comm.*, 368 Ill. 188 (1938).

Petitioner testified he was solely seeking compensation under the Act for the alleged accidents occurring on September 27, 2009, and January 25, 2010. (Arb. Tr. p. 44)

The Arbitrator finds Petitioner established an accident occurred on September 27, 2009, by a preponderance of the evidence. The evidence uniformly establishes Petitioner was involved in a reported and documented low-speed motor vehicle accident on that date while driving his squad car for Respondent. Petitioner experienced immediate head, neck, and lower back pain and sought medical treatment after the accident. Both parties offered documents, photographs, and testimony establishing Petitioner sustained an accident on September 27, 2009.

With regard to the alleged January 25, 2010, accident, the Arbitrator finds Petitioner failed to meet his burden of establishing an accident occurred, by a preponderance of the evidence. This conclusion is supported by the medical records in evidence, the testimony of Officer Glover, Officer Flatko, and Officer Grow, and Petitioner's own testimony.

On January 24, 2010, the day prior to the alleged accident, Petitioner told Officer Grow his back was hurting from slipping on ice a few days prior, and he planned to call in sick the next day for core training if he didn't feel better. (Resp. Ex. 6, 9). At the beginning of the morning training session on January 25, 2010, the participants were asked if there were any medical conditions which would affect their ability to perform the activities. It is undisputed Petitioner reported continued lower back pain before training began. (Arb. Tr. p. 54; Resp. Ex. 3, 9). Based on the testimony of Petitioner, Officer Glover, and Officer Flatko, it is further undisputed Petitioner completed the morning session of training and did not report any incident or increase in pain during training or immediately thereafter. Both Officer Glover and Officer Flatko testified they observed Petitioner during training and were surprised to learn he alleged an injury occurred during the training. (Resp. Ex. 9).

At arbitration, Petitioner testified he recalled reporting in subsequent treatment visits that he experienced pain and a back spasm while he was lying on the floor at home on his abdomen in the evening of January 25, 2010. (Arb. Tr. p 56-57). This history is consistent with Dr. Dinh's January 29, 2010 exam note, in which it was noted Petitioner developed severe lower back pain and spasm while lying on his abdomen on the floor at home. This history is also consistent with the Non-Crime Report completed a few days after the training. In the Report, Petitioner stated, "Upon going home that night my back became very sore and I started to have muscle spasms." The report did not indicate he had unusual back pain during the training. (Resp. Ex. 2, 10; Pet. Ex. 10). On re-direct examination during arbitration, Petitioner testified he laid down on the floor that night because his back was hurting. Then, while lying on the floor, he started having pain down his leg with numbness and tingling. (Arb. Tr. p. 63). Despite Petitioner's attempts to explain or amend his initial injury histories, the Arbitrator finds the preponderance of the evidence establishes Petitioner did not sustain an accident during the January 25, 2010 training.

In reaching this conclusion, the Arbitrator also considers well-documented issues with Petitioner's credibility. The evidence establishes Petitioner selectively reported information and/or omitted relevant information throughout his treatment and during Respondent's pre-employment process. On his OSF Medical Examination Form, Petitioner indicated he had trouble with his back in "1995," which was "thought to be a bulging disk [*sic*]was found to be a kidney stone." He reported the outcome of the injury was "resolved." Petitioner further checked the box for "no" when asked if he had a "back (spine) disease." (Resp. Ex. 27).

The evidence establishes Petitioner had been having lower back issues since 1995 and had received treatment for these issues and multiple exacerbations of his condition during routine activities, such as running, lifting objects, sitting for long periods, and catching a fellow student. Moreover, at that time, Petitioner was aware his November 22, 1997, MRI showed very significant congenital spinal stenosis at L3 through S1, a large central disk herniation at L3-L4, a left sided disk herniation at L4-L5, and a large right sided disk herniation at L5-S1. On December 1, 1997, Dr. Maxey told Petitioner he had very significant spine problems with multi-level disk herniations and congenital stenosis. (Resp. Ex. 21).

Additionally, at his first examination with Dr. Miller on August 23, 2004, Petitioner failed to disclose his pre-existing back problems and prior treatment. Dr. Miller's treatment note indicates Petitioner specifically denied any traumatic injuries in the past and any back problems prior to his alleged 2004 work-accident. (Resp. Ex. 26).

The evidence further establishes Petitioner failed to disclose his prior history of back problems and treatment to his selected independent medical examiner, Dr. Kube. (Pet. Ex. 22). At his deposition, Dr. Kube acknowledged his "causation opinion would be based upon the history of events." (Pet. Ex. 23 p. 53). Dr. Kube testified he was not provided any medical records prior to April of 2007. (Pet. Ex. 23 p. 53). His report supports this conclusion, and the conclusion Petitioner did not verbally disclose any treatment prior to April of 2007. (Pet. Ex. 22).

As evidenced by the foregoing, the Arbitrator finds Petitioner's testimony regarding the alleged January 25, 2010, accident is less credible than the testimony of Officer Glover, Officer Flatko, and Officer Grow. While the core training session Petitioner attended on January 25, 2010, was a work-related activity, the evidence establishes he did not suffer an accident during the training. Accordingly, the Arbitrator finds Petitioner failed to meet his burden of establishing an accident arising out of and in the course of his employment on January 25, 2010.

In support of the Arbitrator's Decision relating to (F) Is Petitioner's current condition of ill-being causally related to the injury?, the Arbitrator finds the following:

The causal relationship between Petitioner's current condition of ill-being and the alleged September 27, 2009, and January 25, 2010, accidents was also placed at issue by the parties. Respondent argues the doctrine of collateral estoppel bars Petitioner from arguing for a causal relationship as a result of the Decision entered by the Police Pension Fund of Peoria on May 5, 2011. Petitioner counters by alleging Respondent cannot assert collateral estoppel due to the law of the case doctrine. Accordingly, two threshold questions exist regarding causation in these proceedings: (1) whether the law of the case doctrine prevents Respondent from asserting collateral estoppel; and (2) if law of the case does not apply, whether Petitioner is estopped from arguing causation before the Commission.

The Arbitrator addresses the application of law of the case and collateral estoppel to both of Petitioner's claims, irrespective of the above finding Petitioner did not sustain an accident on January 25, 2010.

As fully set forth below, the Arbitrator finds the law of the case doctrine is not applicable to the present matter.

As a result of the September 27, 2009, accident, Petitioner filed a lawsuit against the other driver, Mr. Herrod. Respondent intervened. Petitioner and Mr. Herrod settled their action for $75,000.00. Respondent asserted a workers' compensation lien of $125,899.50 on the settlement. The lien was adjudicated before the Circuit Court of the Tenth Judicial Circuit. *Inter alia*, Respondent argued the doctrine of collateral estoppel barred

Petitioner from arguing his injuries were related to the training exercise at work, since that issue was already litigated before the Pension Board, which found his injuries were not related to the training exercise. The trial court denied the application of collateral estoppel and determined Respondent was entitled to 10% of the lien amount. (Pet. Ex. 4, 29, 31).

Respondent then filed a Motion for Reconsideration. On reconsideration, the circuit court determined Respondent was entitled to the full amount of the $75,000.00 settlement, minus Petitioner's court costs and 25% of the settlement, to be paid to his attorney pursuant to the Act. Petitioner then appealed this determination to the Third District Appellate Court. (Pet. Ex. 4, 29, 31).

The Appellate Court reversed and remanded the matter, finding the trial court erred in determining Respondent was entitled to the entire settlement amount without establishing a nexus between the payments and the settlement injury. The court further held Respondent, on remand, should be allowed to show what it paid for the car accident, but those payments ended when Petitioner was medically cleared to return to full duty in December of 2009. While Respondent again argued for the application of collateral estoppel as a basis to affirm the trial court's ruling, the appellate court found the issue of collateral estoppel was not properly before them, as Respondent did not appeal or cross-appeal this issue. (Pet. Ex. 4). Such a cross-appeal would have been improper because Respondent received all the relief it sought from the trial court, with the court finding Respondent was entitled to the entire lien amount in controversy.

It is a long-standing tenant in Illinois that a cross-appeal is improper when the party received all the relief it sought below. *Certain Underwriters at Lloyd's London v. Metropolitan Builders, Inc.*, 2019 IL App (1st) 190517, 4. "It is fundamental that the forum of courts of appeal should not be afforded to successful parties who may not agree with the reasons, conclusion or findings below." *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 386 (1983) (quoting *Illinois Bell Telephone Co. v. Illinois Commerce Commission*, 414 Ill. 275 (1953)). Since a cross-appeal of the issue of collateral estoppel was improper, and thus not filed, the issue of collateral estoppel was never reviewed by the appellate court.

Petitioner now argues Respondent cannot make any argument regarding collateral estoppel in the present matter because of the trial court's refusal to apply collateral estoppel to the lien argument is now the law of the case.

Under the law-of-the-case doctrine, generally, a rule established as controlling in a particular case will continue to be the law of the case, as long as the facts remain the same. *People v. Patterson*, 154 Ill.2d 414, 468 (1992) (citing 14 Ill. L. & Prac. *Law of the Case* § 74, at 233 (1968)). A holding court is bound by views of law in its previous opinion in a case, unless the facts presented require a different interpretation. *Bradley v. Howard Hembrough Volkswagen, Inc.*, 89 Ill.App.3d 121, 124. The doctrine, however, merely expresses the practice of courts generally to refuse to reopen what has been decided; it is not a limit on their power. *Patterson* at 468-469 (citing 14 Ill. L. & Prac. Law of the Case § 74, at 234 (1968)). A finding of a final judgment is required to sustain application of the doctrine. *Patterson* at 469.

The trial court's refusal to apply collateral estoppel to the lien argument raised in Petitioner's personal injury action against Mr. Herrod does not constitute the law of the case in this matter. Petitioner's personal injury action was an entirely separate case from the present workers' compensation case. "[T]he law-of-the-case doctrine applies to issues already determined in the *same* case." *People ex rel. Madigan v. Illinois Commerce Com'n*, 394 Ill.App.3d 382, 391 (2009) (holding law-of-the-case doctrine was not applicable because two separate appeals of the same order were not the same case, as one was not a continuation of another, the appeals were not consolidated, and section 10-201's reference to multiple appeals contemplates separate actions from the same order).

The doctrine does not apply to a ruling from a separate, related case. *Id*; *See People v. Tenner*, 206 Ill.2d 381, 395-396 (2002) (law-of-the-case doctrine did not apply because the case involving the defendant's second post-conviction petition was not the same case as either that involving his first post-conviction petition or that involving his federal *habeas corpus* petition). Petitioner's personal injury action against Mr. Herrod and his workers' compensation claims against Respondent are not the same case, and thus, the law-of-the-case doctrine is inapplicable.

Further, the law-of-the-case doctrine "binds a court to a view of law announced in its prior opinion in a case between the same parties. However, the doctrine is not applicable where either different parties or issues are involved." *Lake Bluff Heating and Air Conditioning Supply, Inc. v. Harris Trust and Savings Bank*, 117 Ill.App.3d 284, 290 (1983) (internal citations omitted). In the present case, the parties involved are different from those involved in Petitioner's personal injury action, as Mr. Herrod is not a party to these workers' compensation claims.

Petitioner's attempt to argue for the application of the law-of-the-case doctrine is inconsistent with his position on the legal effect, or lack thereof, of the Pension Board Decision. Assuming *arguendo* a prior ruling in a separate but related case is to be established as controlling in the immediate case, then the Pension Board's ruling which held Petitioner's injuries were not causally related to either of his two alleged work accidents should be controlling in this matter to the same extent as the trial court's ruling in regard to collateral estoppel. *See Irizarry v. Industrial Com'n*, 337 Ill.App.3d 598 (2003) (At the section 19(b) stage of the case, the arbitrator determined a causal connection existed between the industrial accident and the alleged injuries, and this ruling became the law of the case, barring the respondent from raising the causation issue again during the final proceeding) (*Irizarry* also discusses the fact that res judicata and collateral estoppel are invoked by final judgments in separate, prior actions, while Irizarry's claim had proceeded through the various stages, but still comprised only a single action and thus, the appropriate bar stemmed from the law of the case doctrine).

Petitioner's personal injury claim is clearly not the same case as the immediate workers' compensation matter, but even assuming *arguendo* the workers' compensation matter is a subsequent stage in the same case, a court is not bound by views of law in its previous opinion in a case if the facts presented require a different interpretation. *Bradley v. Howard Hembrough Volkswagen, Inc.*, 89 Ill.App.3d 121, 124. In the personal injury action, Respondent argued it should be entitled to its full lien amount because the doctrine of collateral estoppel barred Petitioner from arguing his injuries were related to the training exercise at work, since the Pension Board found his injuries were not related to the training exercise. Respondent now argues Petitioner should be barred from arguing his car accident and/or the training exercise caused his injuries because collateral estoppel bars him from relitigating these issues since the Pension Board found his injuries were not related to either of these two alleged work accidents. This is a different argument requiring a different interpretation of the facts.

As the Arbitrator finds the law of the case doctrine does not prevent Respondent from asserting collateral estoppel here, the relevant inquiry is whether Petitioner is estopped from arguing causation before the Commission

Collateral estoppel, also known as issue preclusion, is an equitable doctrine which "promotes fairness and judicial economy by preventing the relitigation of issues that have already been resolved in earlier actions." *Du Page Forklift Serv., Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 77 (2001).

It is well settled that collateral estoppel applies to the decisions of administrative agencies, including pension boards. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 121507WC; *Schratzmeier v. Mahoney*, 246 Ill. App. 3d 871, 875 (1st Dist. 1993).

The Illinois Supreme Court has held the doctrine of collateral estoppel may be applied where "(1) the issue decided in the prior adjudication is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication." *In re Owens*, 125 Ill. 2d 390, 400 (1988).

However, in *Owens*, the Illinois Supreme Court drew a distinction between offensive and defensive use of collateral estoppel. *Id.* Consistent with prior rulings of the U.S. Supreme Court, the *Owens* Court noted offensive use of collateral estoppel does not always foster judicial economy and fairness the way defensive use of collateral estoppel typically does. *Id.* At 398. The Court explained defensive use of collateral estoppel precludes a plaintiff from relitigating issues by switching adversaries or venues, while offensive use of collateral estoppel potentially incentivizes a plaintiff to use multiple avenues and a "wait and see" approach to either rely on a judgment against a defendant or avoid being bound by that judgment if the defendant prevails. *Id.* In sum, the Illinois courts generally favor defensive use of collateral estoppel, while cautiously applying offensive estoppel.

Turning toward the requirements of collateral estoppel, the Arbitrator finds Respondent has satisfied all three (3) requirements, and Petitioner is estopped from relitigating the causation issue determined by the Pension Board. It is undisputed the Pension Board's Decision is a final judgment denying Petitioner a line-of-duty disability pension. It is further undisputed Petitioner, the party to whom estoppel is asserted, was a party in the Pension Board proceedings and fully participated in those proceedings. The Arbitrator also finds the Pension Board's holding that Petitioner's lower back condition was not "caused, aggravated, or accelerated by either the rear end motor vehicle accident on September 27, 2009, or the training activities on January 25, 2010" is identical to the issue of causation here. (Resp. Ex. 10).

With regard to identity of the causation issue, Petitioner's workers' compensation claims are based upon his assertion that the alleged motor vehicle accident and/or the alleged training incident caused his condition. However, this issue was litigated before and necessarily decided by the Pension Board. The Board soundly ruled against Petitioner on this issue and denied his claim stating, "[b]ased on all of the exhibits and testimony, Hunt failed to prove by the greater weight of the evidence that there is a causal relationship between either the MVA or the tactical training activity and his disabling low back condition. For this reason, his claim for a duty related disability benefit is denied". (Resp. Ex. 10).

The Arbitrator finds the case of *McCulla v. Industrial Commission* instructive in this case. The court in *McCulla* stated:

> "In the instant case, the claimant petitioned the Firemen's Pension Board of Elk Grove Village for a pension. Following a hearing, the board awarded a 'not in duty' pension to the claimant. A 'not in duty' pension is awarded to those fire fighters who become disabled 'as a result of any cause other than an act of duty.' [citation omitted] The claimant did not appeal from this determination.
>
> In the claimant's subsequent workers' compensation action, the issue of causation was raised before the Commission. We find no difference between the issue adjudicated before the pension board and the issue of causation subsequently before the Commission. The claimant had a full opportunity to adjudicate the issue of the work-related nature of his disability before the pension board. The pension board found his disability did not arise out of his duties as a fire fighter. He did not appeal this determination. Therefore, he is collaterally estopped from relitigating that issue

> before the Commission." (*McCulla v. Industrial Commission*, 232 Ill.App.3d, at p. 521).

The case of *Schratzmeier v. Mahoney* is similarly on point. In that case, a police officer claimed before the pension board that his back injury was caused by modified seats in his squad car. *Schratzmeier*, 246 Ill. App. 3d 872, 875-876. The pension board denied the claim for a line of duty pension, and instead "…decided to grant Schratzmeier a 'not line of duty' disability payment, indicating that Schratzmeier did not prove by a preponderance of the evidence that his back injury was related to his modified squad car seat." *Id.* at 875-876.

The claimant subsequently brought a civil action against the company that modified the seats, again claiming that his back injury was caused by the modified seats. *Id.* The court found the plaintiff was precluded from making this claim in the civil action by the doctrine of collateral estoppel, and stated:

> "The Board resolved the issue of causation by rejecting Schratzmeier's claim for a line of duty pension and, instead, granting him a nonline of duty pension. Although Schratzmeier was free to appeal the Board's decision, he apparently did not do so and merely accepted the nonline of duty pension.
>
> Under the above-stated circumstances we believe that collateral estoppel must apply and that Schratzmeier is estopped from relitigating the question of whether his injuries were caused by the modified squad seats. By accepting the Board's decision and the nonline of duty pension, Schratzmeier accepted the Board's determination that his back injury was unrelated to his work, *i.e.*, the modified squad car seat." *Id*. at 875-876.

As in *Schratzmeier* and *McCulla*, the Pension Board's Decision resolved the issue of the causation of the alleged September 27, 2019 ,motor vehicle accident and the alleged January 25, 2010 training accident by denying Petitioner's claim for a line of duty pension and instead awarding a non-line of duty pension. Moreover, the Board in the present case actually made the specific finding on the issue Petitioner is attempting to relitigate, stating in clear terms that it was finding that Petitioner had not established causation. Therefore, the Petitioner is collaterally estopped from relitigating the issue of causation in this proceeding.

The finding in *McCulla* that there is no significant difference between the issue of causation as it is adjudicated before a pension board and as it is adjudicated before the Workers' Compensation Commission is well-established. *See Dempsey v. City of Harrisburg*, 3 Ill. App. 3d 696, 698 ("The issues presented in proceedings under the Workmen's Compensation Act and the Policemen's Pension Fund are much more than similar; they are sufficiently alike that it would be a pointless quibble to deny they are identical.").

The Illinois Industrial Commission has also held that a finding against causation in a pension board hearing precludes a claimant from relitigating the issue of causation before the Commission. *Gruninger v. Village of Northfield*, 02 I.I.C. 0622 (2002) ("…the issue of causation was fully adjudicated before respondent's Board of Trustees for the Police Pension Board and respondent is precluded from relitigating the issue of causation in the case at bar."); *See also Blakesley v. Village of Oak Park*, 02 I.I.C. 0522 (2002) ("The Commission finds the issue of causation presented in Petitioner's application for a line of duty pension pursuant to Section 4-110 of Article 5 of the Illinois Pension Code, 40 ILCS 5/4-110, to be indistinguishable from the issue of causation in a workers' compensation case."); *Roger Farrar v. City of Rockford Police Department*, 99 I.I.C. 1153 (1999) ("As the issue before the Commission is the same as the issue that was before the Pension Board, namely causal connection of

Petitioner's injury to his employment with Respondent, Petitioner is barred from proceeding here . . . Collateral estoppel applies.").

The case at hand is distinguishable from the case of *Demski v. Mundelein Police Pension Board*, in which collateral estoppel was found not to apply. 358 Ill. App. 3d 499. In *Demski*, a police officer filed for workers' compensation benefits after injuring her back doing sit-ups during a routine physical fitness agility examination. *Id.* at p. 500. The Illinois Industrial Commission ruled that Demski was entitled to workers' compensation benefits and found a causal connection between her injury during the agility test and her subsequent condition of ill-being. *Id*. Demski also filed an application for a line-of-duty pension and filed a petition seeking to invoke collateral estoppel, contending that the Commission's finding of causation was binding on the Pension Board proceedings. *Id.* at pp. 500-501.

The appellate court found collateral estoppel did not apply because the first of the three (3) requirements for collateral estoppel was not met, as the issue decided in the workers' compensation case was not identical to the issue decided in the pension application hearing. *Id.* at p.502. The issue before the Commission was whether Demski's accident arose out of and in the course of her employment, while the issue before the Board was whether the accident occurred during an "act of duty" as defined by section 5-113 of the Pension Code. *Id.* at pp. 502-503.

The court in *Demski* stated that *McCulla v. Industrial Commission* was not controlling because while in *McCulla*, the appellate court held that a fireman seeking workers' compensation was collaterally estopped by a prior pension board's finding that his injury was not caused while performing an act of duty, in *Demski*, the issue of whether Demski's injury was caused while performing an act of duty had never been litigated. Rather, the issue before the Commission was whether Demski's injury arose out of the course of her employment. *Id.*

In the present case, the Pension Board's decision did not rest on whether Petitioner's injury occurred while he was performing an act of duty. Rather, the Board made a specific, necessary determination as to causation, finding Petitioner's lower back condition was not "caused, aggravated, or accelerated by either the rear end motor vehicle accident on September 27, 2009, or the training activities on January 25, 2010." (Resp. Ex. 10).

Petitioner has already had a full and fair opportunity to litigate the issue of causation, and the Pension Board specifically found there was no causal relationship between these alleged accidents and Petitioner's condition. As proving a causal relationship between the alleged accidents and Petitioner's low back condition is an essential element to his workers' compensation claim, the issue is identical. Accordingly, the Arbitrator finds Petitioner is estopped from arguing causation before the Commission.

The Arbitrator further notes, irrespective of the above findings concerning statute of limitations, accident, and collateral estoppel, Petitioner independently failed to meet his burden of establishing a causal relationship between his condition of ill-being and the claimed accidents.

Petitioner bears the burden to prove, by a preponderance of evidence, his condition is causally related to the work accidents on September 27, 2009, and January 25, 2010. A complete review of the evidence establishes Petitioner failed to meet his burden.

It is well-established that recovery under the Workers' Compensation Act is denied where the claimant's health has so deteriorated that any normal daily activity is an overexertion. *Caterpillar Tractor v. Industrial Comm'n* 92 Ill. 2d 30 (1982). The evidence overwhelmingly supports a finding Petitioner's lower back injuries were the result of a non-occupational, deteriorating condition, which was exacerbated by his obesity.

The medical evidence establishes Petitioner had longstanding lower back issues, which were identified and documented as early as 1995. In 1995, Petitioner saw Dr. Rians who diagnosed Petitioner with inguinal and left buttock pain, consistent with a discogenic cause involving the L3-L4 dermatome. The L3-L4 is the same level surgically treated by Dr. Dinh in 2010. The November 22, 1997, MRI showed very significant congenital spinal stenosis at L3 through S1, a large central disk herniation at L3-L4, a left sided disk herniation at L4-L5, and a large right sided disk herniation at L5-S1. In December of 1997, Petitioner was told he had very significant spine problems with multi-level disk herniations and congenital stenosis. Petitioner sought treatment for his lower back numerous times far in advance of the claimed accidents.

The Arbitrator further notes Petitioner complained of lower back and lower extremity neuropathy on numerous occasions prior to 2009, often seeking treatment for his complaints. In many instances, there was either no precipitating event or a very minor incident. This supports a finding Petitioner's lower back condition naturally progressed due the congenital nature of the condition. The evidence further establishes Petitioner's condition was often exacerbated by his body habitus. Petitioner's reduction in symptomology and increase in lower back issues was consistently tied to his weight and the extent of his obesity. The evidence supports a finding Petitioner's lower back injuries were the result of a non-occupational, deteriorating condition, which was exacerbated by his obesity.

This conclusion is further supported by the opinion of Dr. Singh, the only physician who was granted full access to all of Petitioner's medical records and the only physician to review all of Petitioner's MRI films. Based on his review of medical records, the MRI films from 1997, 2004, 2007, 2009, and 2010, and the Pension Board testimony, Dr. Singh opined Petitioner's condition was not caused, aggravated, accelerated, or further worsened by the 2009 motor vehicle accident or the 2010 training activities. He felt Petitioner's condition was pre-existing and degenerative. He was also of the opinion Petitioner's body habitus contributed significantly to his condition. Dr. Singh noted the findings on the 1997 MRI suggested a pre-existing genetic and body habitus component. He further noted there was no structural change shown on the 2009 and 2010 MRIs, compared to the 1997, 2004, and 2007 MRIs. Dr. Dinh also acknowledged this finding in his July 16, 2010, note, stating the July 8, 2010 MRI showed a disc protrusion at L3-4 and L5-S1, which were the same as 2004.

The other physicians providing causation opinions relied upon the incomplete and/or inaccurate histories provided by Petitioner and/or a portion of Petitioner's medical records. Dr. Singh is the only physician to review all of the relevant evidence, and the Arbitrator finds his opinions are entitled to greater weight than the other physicians.

Additionally, in independently denying causation, the Arbitrator notes Petitioner's well-documented issues with credibility, and places less weight on his testimony. The evidence establishes Petitioner selectively reported information and/or omitted relevant information throughout his treatment and during Respondent's pre-employment process.

Based on the foregoing, the Arbitrator finds and concludes that Petitioner failed to establish a causal connection between his condition and the alleged work accidents on September 27, 2009 and January 25, 2010.

In support of the Arbitrator's Decision relating to (J). Where the services provided to Petitioner Reasonable and Necessary, and has Respondent paid all appropriate charges for said services? the Arbitrator finds the following:

Based on the factual findings and conclusions of law above, particularly regarding statute of limitations, accident, and causation, the Arbitrator finds and concludes that Respondent has paid all reasonable, necessary, and causally related medical expenses of Petitioner.

In support of the Arbitrator's Decision relating to (L). What is the nature and extent of the injury? the Arbitrator finds the following:

Based on the factual findings and conclusions of law above, particularly regarding statute of limitations, accident, and causation, the Arbitrator finds Petitioner is not entitled to permanent partial disability benefits under the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC002682
Case Name	Ray Donald v. Illinois High School Association & Sullivan CUSD #300
Consolidated Cases	20WC000753;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0115
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Bruce Bonds, R Mark Cosimini

DATE FILED: 3/12/2024

/s/Amylee Simonovich, 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

RAY DONALD,

Petitioner,

vs. NO: 17 WC 02682

ILLINOIS HIGH SCHOOL ASSOCIATION & SULLIVAN CUSD #300,

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 employee-employer relationship, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 2, 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.

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.

March 12, 2024
o030524
AHS/ldm
051

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

/s/*Maria E. Portela*
Maria E. Portela

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC002682
Case Name	DONALD, RAY v. ILLINOIS HIGH SCHOOL ASSOCIATION & SULLIVAN CUSD #300
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	Bruce Bonds, R. Mark Cosimini

DATE FILED: 3/2/2022

/s/Bradley Gillespie, Arbitrator

Signature

INTEREST RATE THE OF MARCH 1,2022 0.67%

STATE OF ILLINOIS)
)SS.
COUNTY OF MCLEAN)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

RAY DONALD
Employee/Petitioner

Case # **17** WC **002682**

v.

Consolidated cases:

ILLINOIS HIGH SCHOOL ASSOCIATION AND SULLIVAN COMMUNITY UNIT SCHOOL DIST. 300
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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Bloomington**, on **12/21/2021**. 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. [x] Was there an employee-employer relationship?
C. [x] 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. [x] 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. [x] 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 [ ] Maintenance [ ] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other ______

FINDINGS

On **January 5, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

On this date, the Petitioner was ***58*** years of age and ***married*** with ***one*** dependent child.

ORDER

Petitioner failed to prove an employee-employer relationship between himself and Respondent, Illinois High School Association.

The Arbitrator having so determined, the need to address all other issues is moot.

All claims for compensation 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.

Bradley D. Gillespie
Signature of Arbitrator

MARCH 2, 2022

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RAY DONALD,	)
Petitioner,	)
	)
v.	)**Case No.: 17WC002682**
	)**Consolidated Case No.: 20WC000753**
ILLINOIS HIGH SCHOOL ASSOCIATION	)
and SULLIVAN COMMUNITY UNIT	)
SCHOOL DISTRICT 300,	)
Respondent.	)

DECISION OF THE ARBITRATOR

These matters proceeded to hearing on December 21, 2021, in Bloomington, Illinois (Arb. 1). The following issues were in dispute:

- Employer-Employee Relationship
- Accident
- Notice
- Causal Connection
- Earnings
- Temporary Total Disability
- Nature and Extent of Injuries

FINDINGS OF FACT

Petitioner alleges that he sustained accidental injuries on January 5, 2017, when he fell in a locker room at Sullivan High School after officiating a high school girls' basketball game. Petitioner filed an Application for Adjustment of Claim on January 25, 2017, which was assigned Case No. 17WC002682 and listed the Illinois High School Association as the Respondent. Petitioner alleged that on January 5, 2017, he was an "employee" of the Respondent, Illinois High School Association ("IHSA"). On January 6, 2020, the Commission file-stamped an Application from Petitioner naming both the IHSA and Sullivan Community Unit School District #300 ("Sullivan CUSD #300" or "the School District") as Respondents. The Application does not contain a case number. (RX #2) Petitioner's Exhibit 1 consists of an Amended Application for Adjustment of Claim bearing case number 17WC002682. The Application was filed with the Commission January 9, 2020, and names the IHSA and Sullivan CUSD #300 as Respondents. On January 9, 2020, Petitioner also filed an Application for Adjustment of Claim which was assigned case number 20WC000753. The Application again alleges an accident date of January 5, 2017, and names the IHSA and Sullivan CUSD #300 as Respondents. (PX #2)

Petitioner testified that he is a referee licensed by the IHSA. (Tr. p. 14, *see also* PX #5) He stated that he had been licensed by the IHSA since 2001. (Tr. p. 15) Petitioner testified that he officiated a high school girls' basketball game at Sullivan CUSD #300 on January 5, 2017. (Tr. p.

16) Petitioner represented that he was not performing under a written contract as he was called upon to replace a crew who was unable to be present for the contest. *Id.* While performing his duties as a referee, Petitioner was required to wear a uniform consisting of black pants, black shoes, and a striped shirt with an IHSA patch. *Id.* Petitioner indicated that he was required to wear the IHSA patch on his shirt. (Tr. p. 17)

To become a referee licensed by the IHSA, Petitioner had to file an application, view a rules presentation, pass an examination on said rules presentation, attend a clinic and pass a criminal background check. (Tr. pp. 18-19) To maintain his certification, Petitioner was required to attend a clinic once every three years, renew his license annually, view an online rules presentation each year and pass an examination scoring 80% or better. *Id.*

Petitioner testified that he was paid for his services on January 5, 2017, by check. (Tr. p. 17) He stated that the check was issued by Sullivan CUSD #300. *Id.* Petitioner confirmed that he occasionally was paid by the IHSA during the post-season and performed post-season work for the IHSA in 2016. *Id.*

Petitioner testified that, after officiating the game on January 5, 2017, he went to the locker room and proceeded to the shower. (Tr. pp. 20-21) Petitioner testified that the shower area was dark and while attempting to turn the shower on, he slipped landing on his right wrist. (Tr. p. 21) He stated that his right arm hurt immediately after the fall. (Tr. p. 22) He dressed and drove himself home. *Id.* Petitioner testified the following day his arm was sore and swollen. *Id*. He also complained of pain in his right knee. (Tr. pp. 22-23)

On January 7, 2017, two days after this incident, Petitioner presented to OSF Prompt Care in Bloomington, Illinois. At OSF he gave a history that he fell while walking, landing on his right arm on concrete. (PX #3) There is no history relating to a fall before, during or after showering. On examination he had tenderness and pain in his right shoulder, but normal range of motion, no deformity, no spasm, and normal strength. *Id.* He had decreased range of motion, swelling and tenderness in his right elbow. *Id.* The medical records show that he had right knee tenderness but he had normal range of motion, no swelling, no effusion, no deformity, no erythema, no LCL laxity, no bony tenderness, normal meniscus and no MCL laxity. *Id.* X-rays disclosed a closed, non-displaced fracture of the head of the right radius. (PX #3) He was referred to orthopedic surgery and given Tramadol. *Id.*

Petitioner was evaluated by Dr. Lucas Armstrong at McLean County Orthopedics on January 10, 2017. (PX #4) Petitioner's medical records indicate he identified Blue Cross/Blue Shield of Illinois as his health insurer. (PX #4) Petitioner reported he was basketball referee and he had fallen onto his outstretched right hand while showering after a game. *Id.* He complained of pain in his right wrist and some mild pain around the elbow with some bruising. *Id.* He was diagnosed with "a right non-displaced radial head fracture within non-operative limits. Date of injury 1/5/17." *Id.* The records reveal that there was no need for bracing or immobilization. (PX #4) Petitioner was instructed on right elbow range of motion exercises and allowed activities as tolerated. *Id.* He was told to return in four weeks, but was advised that if he was doing well, he may cancel that appointment. *Id.* Petitioner did not return and has not sought any treatment relating to this accidence since January 10, 2017, five days after the injury occurred.

At the time of this accident, Petitioner was refereeing a high school girls' basketball game. Petitioner was licensed to officiate boys' and girls' junior high and high school basketball games through the IHSA. (PX #5) Petitioner's Exhibit 5 is a copy of an IHSA application for a license to be an official prepared by Petitioner. *Id.* The application was signed by Petitioner on January 11, 2001. (Tr. p. 35) Just above the Petitioner's signature at the bottom of the second page, the application states as follows:

> "I understand that I am applying for an IHSA Officiating License, and that obtaining that license entitles me to officiate contests between IHSA member schools for renumeration as an independent contractor and not as an employee of the IHSA. I understand and acknowledge that I have no entitlements with or from the IHSA which may be available to an employee of the IHSA." (PX #5)

The evidence reflects that Petitioner performed officiating services pursuant to a contract for athletic officials submitted into evidence by the Petitioner as Petitioner's Exhibit No. 6. The terms for athletic officials include the following:

> "Services provided by the official are as an independent contractor and not an employee of the Illinois High School Association or the School or Organization.
>
> The official assumes all liability for injury to himself/herself and waives any claim for any injury, loss or damage against the IHSA which may by sustained by the official during any game, contest or activity.
>
> It is understood that the services of the official are provided as an independent contract and that no medical insurance, workers compensation, unemployment insurance or other benefit is accorded to the official by this contract." (PX #6)

Petitioner testified that he did not consider himself an employee of the IHSA. (Tr. p. 37) Petitioner was not compensated by the IHSA for officiating the game on January 5, 2017. *Id.* He did not receive a W-2 or 1099 from the IHSA. *Id.* He had to wear a uniform, but this was not provided for him by the IHSA. *Id.* Petitioner testified he had to buy his own uniform and any other equipment which he might use, including shoes, whistle and hat. (Tr. p. 37) Petitioner testified that he was hired on a game-by-game basis by individual schools. (Tr. p. 38) Petitioner stated that the IHSA did not refer him to any specific games. *Id.* Petitioner indicated that the only games which the IHSA assigns are post-season games, and this was not post-season. *Id.* Petitioner testified that he had business cards prepared with his name, address and contact information on them, with respect to his availability for officiating, but that his business cards did not indicate in any way that he was an employee of the IHSA. (Tr. pp. 38-39)

Petitioner testified that he officiated for entities other than those sanctioned by the IHSA, including the IESA (Illinois Elementary School Association), which is a completely different entity from the IHSA. (Tr. pp. 40-41) Petitioner also testified that he worked junior high, high school and college basketball, baseball and softball games for entities not affiliated with the IHSA. (Tr. p. 41)

Craig Anderson ("Anderson"), Executive Director of the IHSA, was called to testify on behalf of the Respondent, IHSA. (Tr. p. 63) Mr. Anderson had worked in that position since January of 2017, and in that capacity has a general oversite role over the Association. Mr. Anderson testified that the IHSA serves as a licensing entity for member schools. (Tr. p. 64) Training is provided by sports-specific clinicians who are experts in their particular officiating field and officials are asked to participate in a clinic at least once every three years. *Id.* Mr. Anderson testified that licensing gives the officials the opportunity to contract with member schools to officiate interscholastic activities between member schools. (Tr. p. 65) The IHSA does not assign officials to specific games, does not pay officials, does not reimburse expenses, nor do they maintain an employment file on officials. *Id.* Mr. Anderson testified that they did not provide the Petitioner with a W-2 or 1099 tax form. (Tr. p. 66) The IHSA does not provide uniforms, equipment, or other items to officials. *Id.* The IHSA does not formally evaluate officials as an Association. *Id.* Mr. Anderson stated that the IHSA does not have the right to fire an official for poor performance. (Tr. p. 67) Mr. Anderson confirmed that Petitioner had the right to officiate games other than those which occur under the auspices of the IHSA, and officials are encouraged to do so.

Ted Walk testified on behalf of the Sullivan Community Unit District 300. (Tr. p. 79) Mr. Walk is the Superintendent of Sullivan Schools. *Id.* He has been so employed since July 1, 2017. *Id.* Mr. Walk testified that he is familiar with the process of contracting between the school and officials. (Tr. p. 79) Mr. Walk testified that the same basic form is used for various sporting events including baseball, basketball, and volleyball. (Tr. p. 80) Mr. Walk identified the Contract for Athletic Officials marked as Respondent Sullivan CUSD RX #1 as the form which the district used to contract with officials. (RX #1, *see also* PX #6) Mr. Walk said that officials are sometimes selected with the help of the conference and other times the athletic director will schedule a contest with the head official and they will bring a crew with them to the event. (Tr. p. 84) Mr. Walk testified that the School District will send a contract with several events that the crew has agreed to officiate to the head official and that he/she would sign and return the contract. (Tr. p. 85) When a crew of officials is unable to make it to a scheduled event, that crew may attempt to contact a replacement crew or the athletic director may try to find a replacement. *Id.* A separate contract may be made dependent upon amount of notice the School District receives. *Id.* Mr. Walk testified that when a replacement crew comes in, that they will operate subject to the same terms of contract as the original signers. (Tr. pp. 91-92)

Mr. Walk testified that he is involved with the workers' compensation cases when a filing is made against the School District. (Tr. p. 82) Mr. Walk testified that he first became aware of Petitioner's claim when the School District received a letter from Petitioner's attorney along with a copy of the Amended Application for Adjustment of Claim. (RX #4) The correspondence from Petitioner's attorney is dated December 30, 2019. *Id.*

Mr. Walk testified that he has attended hundreds of athletic contests. (Tr. p. 86) He testified that the School District, individual schools, and coaches have no input in the manner the officials conduct their duties. *Id.* Mr. Walk testified that the officials have the sole control over how they officiate a game. (Tr. p. 87) He stated that officials are contracted for the event and their duties conclude at the final buzzer. *Id.* Mr. Walk said that an escort may be provided for the officials following a game to make sure they do not encounter spectators. *Id.* He testified that the School District does not provide training for officials, does not provide transportation, does not provide uniforms or other equipment. (Tr. pp. 87-88) Mr. Walk testified the business of the school district is education and athletics are secondary to education. (Tr. p. 88) Mr. Walk testified that the School District does not have any recourse against an official when they do a poor job other than to potentially file a complaint. (Tr. p. 90) Mr. Walk testified that to his knowledge, Petitioner was not an employee of the School District. (Tr. p. 92)

Respondent, Sullivan CUSD #300, called Ryan Aikman as a witness. (Tr. p. 95) Mr. Aikman is the athletic director and assistant principal of Sullivan High School and Sullivan Middle School. *Id.* At the time of arbitration, he had been the athletic director for seven years. *Id.* Mr. Aikman testified that he was involved with retaining officials for various sports. (Tr. p. 96) He stated that once the schedule gets set, he sends out an e-mail to a list of officials advertising the dates for consideration. *Id.* Mr. Aikman said that when officiating crews respond back to him, he assigns dates and sends a contract for them to sign and return. *Id.* He explained that when a conflict arises after the crew has already committed to a date, either the official will get a replacement on their own or they will leave it in the hands of the athletic director to obtain a replacement. (Tr. pp. 96-97) Mr. Aikman testified that he is familiar with the contract for athletic officials that the School District uses and that it has changed very little over the time he has been there. (Tr. p. 97) He stated that the contract can now be sent electronically, and the format is somewhat different but the information on the form is the same. (Tr. pp. 97-98)

Mr. Aikman identified Respondent Sullivan CUSD # 300 Exhibit 1 as the contract for athletic officials which included the January 5, 2017, date. (Tr. p. 98) He recounted that he confirms approximately two weeks prior to the game to make sure they have officials. *Id.* Mr. Aikman indicated that when he checked with the originally scheduled crew, he was informed that the original crew would not be available as they had agreed to another game and that another individual would be communicating who the crew replacing them would be. (Tr. pp. 98-99) Another contract was not drawn up because the game was a matter of days away and he knew the crew chief. (Tr. p. 99) Even though a new contract wasn't completed, Mr. Aikman assumed that the contract terms would be the same. (Tr. p. 100) The terms for the January 5, 2017, game was $270.00 for the three-person crew and three checks were issued that night for $90.00 to the crew members. *Id.*

Mr. Aikman said that he learned of Petitioner falling in the locker room the next day. (Tr. p. 101) He recalled having the conversation with Petitioner and advised that he would have his maintenance crew take a look at the area. *Id.* Mr. Aikman said that his maintenance director did not find anything to be wrong in terms of a slippery substance. *Id.* He said that Petitioner did not claim to be an employee or mention anything about filing a workers' compensation claim. (Tr. p. 102) Mr. Aikman believed that the first communication of that information came in December 2019. *Id.* He stated that the athletic director does not have any input into how the officials handle the game and that the game is under the exclusive control of the officials. *Id.*

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to (B), whether there was an employee-employer relationship, the Arbitrator states as follows:

Compensation under the Illinois Workers' Compensation Act is available only to those who are "employees" as that term is defined in the Act. Section 1(b)(2) of the Act defines an employee as "Every person in the service of another under any contract of hire, express or implied, oral or written. " A person working as an independent contractor, as opposed to an employee, is not entitled to benefits under the Workers' Compensation Act.

The Illinois Supreme Court set forth factors to consider when determining whether an injured worker is an employee or an independent contractor. *Roberson v. Industrial Commission,* 225 Ill.2d. 159 (2007). In *Roberson,* the Illinois Supreme Court identified the factors which help determine an employment status, and they are as follows:

- Whether the employer may control the manner in which the person performs the work
- Whether the employer dictates the person's schedule
- Whether the employer pays the person hourly
- Whether the employer withholds income and Social Security taxes from the person's compensation
- Whether the employer may discharge the person at will
- Whether the employer supplies the person with materials and equipment
- Whether the employer's general business encompasses the person's work

The Supreme Court commented no single factor is determinative, but the right to control the manner of the work is the most important consideration. *Roberson v. Industrial Commission,* 225 Ill.2d. 159 (2007).

Here, the evidence indicates that the IHSA does not control the way Petitioner performed his duties as a basketball referee. Petitioner along with Respondent Sullivan CUSD #300's witnesses, Mr. Walk and Mr. Aikman acknowledged that officials maintain the sole and exclusive right to control the way a game is officiated.

Respondent IHSA did not assign the Petitioner to specific jobs, did not pay Petitioner, did not provide a W-2 or 1099 at year's end for tax purposes, and did not provide a uniform or any other equipment to the Petitioner. Petitioner did not receive any benefits, health insurance or reimbursement of expenses. Petitioner acknowledged that no individual or entity had any input into how the officiating crew calls the games. Petitioner testified that he considered himself to be a skilled professional. His work was not exclusively for games sanctioned by the IHSA; rather, Petitioner testified that he officiated boys' and girls' basketball and softball for a number of other unrelated entities, including the Illinois Elementary School Association and some colleges. Craig Anderson testified that the IHSA encourages licensed officials to officiate for other entities.

The only documents in evidence that address the relationship between the Petitioner and the Respondent are the "Application for License in Officials Department" (PX #5) and the Contract for Athletic Officials (PX #6), both of which indicate on their face that Petitioner acknowledges he is an independent contractor and not an employee of the IHSA. (RX #1, PX #5, PX #6) Petitioner himself acknowledged on cross-examination that he did not consider himself to be an employee of the IHSA.

Although not binding precedent, the Arbitrator finds the reasoning in the case of *Yonan v. United States Soccer Fed'n, Inc.*, 833 F. Supp. 2d 822, illustrative. Yonan was a soccer referee assigned to work major league soccer games. He sued the U.S. Soccer Federation alleging age discrimination. The Soccer Federation moved for summary judgment asserting Yonan was an independent contractor and not an employee. In *Yonan*, the United States District Court for the Northern Illinois, Eastern Division, reviewed the tests for determining if one is an employee versus an independent contractor. The tests used and applied are similar if not identical to those used in making a similar determination in workers' compensation based on principles of agency.

In the instant case, as in *Yonan*, the Respondent did not exercise that degree of control and supervision over a referee which supports an employee-employer relationship. Petitioner's occupation, by Petitioner's acknowledgement, required skill and expertise, which would likewise mitigate against finding an employer-employee relationship. The fact that Respondent did not underwrite any of the costs of the operation is further support of the absence of any such relationship. Finally, it is not disputed that the Petitioner was not compensated in any way by the Respondent for his activities.

Based on the foregoing, the Arbitrator finds the Petitioner failed to prove an employee-employer relationship between himself and the Illinois High School Association.

Having found Petitioner was not an employee of the Illinois High School Association as that term is defined by the Act, the Arbitrator finds the remaining issues pertaining to Respondent IHSA moot.

The evidence is likewise clear that the Sullivan CUSD #300 did not control the manner in which Petitioner performed his duties as a basketball referee. Not only did the School District's witnesses testify that officials maintain the sole and exclusive right to control the manner in which they officiate a game, but Petitioner acknowledged that fact as well. The School District paid Petitioner for officiating a game rather than by the hour, and the School District did not withhold income or Social Security taxes from Petitioner's compensation. The School District had no ability to discharge Petitioner during the course of the game he was officiating. Additionally, the School District did not supply Petitioner with a uniform or any other materials or equipment. With respect to Petitioner's schedule, the School District advises all referees when games will be conducted. Officials choose which games they want to work. Mr. Walk testified that the business of the school district is education and athletics are secondary to education.

The factors set forth in the *Roberson* case clearly establish Petitioner's duties as an official for a high school basketball game were those of an independent contractor and not an employee.

Additionally, Petitioner testified that he did not believe himself to be an employee. Finally, Petitioner's counsel sent a letter to the school district almost six months after the January 5, 2017 incident advising of an the intention to file a personal injury lawsuit. (RX #3) Pursuant to the Exclusivity Provision of the Workers' Compensation Act (820 ILCS 305/5(a)), Petitioner's attorney acknowledged Petitioner was not an employee of the school district.

Based on the foregoing, the Arbitrator finds Petitioner failed to prove an employee-employer relationship between himself and Sullivan Community Unit School District #300. Since Petitioner has failed to establish he was an employee of the School District, all other issues are hereby moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000753
Case Name	Ray Donald v. Illinois High School Association & Sullivan CUSD #300
Consolidated Cases	17WC002682;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0116
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	R Mark Cosimini, Bruce Bonds

DATE FILED: 3/12/2024

/s/Amylee Simonovich, 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 MCLEAN	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RAY DONALD,

Petitioner,

vs. NO: 20 WC 00753

ILLINOIS HIGH SCHOOL ASSOCIATION & SULLIVAN CUSD #300,

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 employee-employer relationship, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 2, 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.

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.

March 12, 2024
o030524
AHS/ldm
051

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

/s/*Maria E. Portela*
Maria E. Portela

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000753
Case Name	DONALD, RAY v. ILLINOIS HIGH SCHOOL ASSOCIATION & SULLIVAN CUSD #300
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	Bruce Bonds, R. Mark Cosimini

DATE FILED: 3/2/2022

/s/Bradley Gillespie, Arbitrator
Signature

INTEREST RATE FOR THE WEEK OF MARCH 1, 2022 0.67%

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Ray Donald
Employee/Petitioner

Case # **20 WC 000753**

v.

Illinois High School Association & Sullivan C.U.S.D. #300
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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Bloomington**, on **December 21, 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. [x] Was there an employee-employer relationship?
C. [x] 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. [x] 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. [x] 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 [ ] 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. [ ] Other ______

FINDINGS

On **January 5, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

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

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

ORDER

Petitioner failed to prove an employee-employer relationship between himself and Sullivan C.U.S.D. #300.

All other issues are moot and all claims for compensation 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.

Bradley D. Gillespie   MARCH 2, 2022

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RAY DONALD,	)
Petitioner,	)
	)
v.	)**Case No.: 17WC002682**
	)**Consolidated Case No.: 20WC000753**
ILLINOIS HIGH SCHOOL ASSOCIATION	)
and SULLIVAN COMMUNITY UNIT	)
SCHOOL DISTRICT 300,	)
Respondent.	)

DECISION OF THE ARBITRATOR

These matters proceeded to hearing on December 21, 2021, in Bloomington, Illinois (Arb. 1). The following issues were in dispute:

- Employer-Employee Relationship
- Accident
- Notice
- Causal Connection
- Earnings
- Temporary Total Disability
- Nature and Extent of Injuries

FINDINGS OF FACT

Petitioner alleges that he sustained accidental injuries on January 5, 2017, when he fell in a locker room at Sullivan High School after officiating a high school girls' basketball game. Petitioner filed an Application for Adjustment of Claim on January 25, 2017, which was assigned Case No. 17WC002682 and listed the Illinois High School Association as the Respondent. Petitioner alleged that on January 5, 2017, he was an "employee" of the Respondent, Illinois High School Association ("IHSA"). On January 6, 2020, the Commission file-stamped an Application from Petitioner naming both the IHSA and Sullivan Community Unit School District #300 ("Sullivan CUSD #300" or "the School District") as Respondents. The Application does not contain a case number. (RX #2) Petitioner's Exhibit 1 consists of an Amended Application for Adjustment of Claim bearing case number 17WC002682. The Application was filed with the Commission January 9, 2020, and names the IHSA and Sullivan CUSD #300 as Respondents. On January 9, 2020, Petitioner also filed an Application for Adjustment of Claim which was assigned case number 20WC000753. The Application again alleges an accident date of January 5, 2017, and names the IHSA and Sullivan CUSD #300 as Respondents. (PX #2)

Petitioner testified that he is a referee licensed by the IHSA. (Tr. p. 14, *see also* PX #5) He stated that he had been licensed by the IHSA since 2001. (Tr. p. 15) Petitioner testified that he officiated a high school girls' basketball game at Sullivan CUSD #300 on January 5, 2017. (Tr. p.

16) Petitioner represented that he was not performing under a written contract as he was called upon to replace a crew who was unable to be present for the contest. *Id.* While performing his duties as a referee, Petitioner was required to wear a uniform consisting of black pants, black shoes, and a striped shirt with an IHSA patch. *Id.* Petitioner indicated that he was required to wear the IHSA patch on his shirt. (Tr. p. 17)

To become a referee licensed by the IHSA, Petitioner had to file an application, view a rules presentation, pass an examination on said rules presentation, attend a clinic and pass a criminal background check. (Tr. pp. 18-19) To maintain his certification, Petitioner was required to attend a clinic once every three years, renew his license annually, view an online rules presentation each year and pass an examination scoring 80% or better. *Id.*

Petitioner testified that he was paid for his services on January 5, 2017, by check. (Tr. p. 17) He stated that the check was issued by Sullivan CUSD #300. *Id.* Petitioner confirmed that he occasionally was paid by the IHSA during the post-season and performed post-season work for the IHSA in 2016. *Id.*

Petitioner testified that, after officiating the game on January 5, 2017, he went to the locker room and proceeded to the shower. (Tr. pp. 20-21) Petitioner testified that the shower area was dark and while attempting to turn the shower on, he slipped landing on his right wrist. (Tr. p. 21) He stated that his right arm hurt immediately after the fall. (Tr. p. 22) He dressed and drove himself home. *Id.* Petitioner testified the following day his arm was sore and swollen. *Id*. He also complained of pain in his right knee. (Tr. pp. 22-23)

On January 7, 2017, two days after this incident, Petitioner presented to OSF Prompt Care in Bloomington, Illinois. At OSF he gave a history that he fell while walking, landing on his right arm on concrete. (PX #3) There is no history relating to a fall before, during or after showering. On examination he had tenderness and pain in his right shoulder, but normal range of motion, no deformity, no spasm, and normal strength. *Id.* He had decreased range of motion, swelling and tenderness in his right elbow. *Id.* The medical records show that he had right knee tenderness but he had normal range of motion, no swelling, no effusion, no deformity, no erythema, no LCL laxity, no bony tenderness, normal meniscus and no MCL laxity. *Id.* X-rays disclosed a closed, non-displaced fracture of the head of the right radius. (PX #3) He was referred to orthopedic surgery and given Tramadol. *Id.*

Petitioner was evaluated by Dr. Lucas Armstrong at McLean County Orthopedics on January 10, 2017. (PX #4) Petitioner's medical records indicate he identified Blue Cross/Blue Shield of Illinois as his health insurer. (PX #4) Petitioner reported he was basketball referee and he had fallen onto his outstretched right hand while showering after a game. *Id.* He complained of pain in his right wrist and some mild pain around the elbow with some bruising. *Id.* He was diagnosed with "a right non-displaced radial head fracture within non-operative limits. Date of injury 1/5/17." *Id.* The records reveal that there was no need for bracing or immobilization. (PX #4) Petitioner was instructed on right elbow range of motion exercises and allowed activities as tolerated. *Id.* He was told to return in four weeks, but was advised that if he was doing well, he may cancel that appointment. *Id.* Petitioner did not return and has not sought any treatment relating to this accidence since January 10, 2017, five days after the injury occurred.

At the time of this accident, Petitioner was refereeing a high school girls' basketball game. Petitioner was licensed to officiate boys' and girls' junior high and high school basketball games through the IHSA. (PX #5) Petitioner's Exhibit 5 is a copy of an IHSA application for a license to be an official prepared by Petitioner. *Id.* The application was signed by Petitioner on January 11, 2001. (Tr. p. 35) Just above the Petitioner's signature at the bottom of the second page, the application states as follows:

> "I understand that I am applying for an IHSA Officiating License, and that obtaining that license entitles me to officiate contests between IHSA member schools for renumeration as an independent contractor and not as an employee of the IHSA. I understand and acknowledge that I have no entitlements with or from the IHSA which may be available to an employee of the IHSA." (PX #5)

The evidence reflects that Petitioner performed officiating services pursuant to a contract for athletic officials submitted into evidence by the Petitioner as Petitioner's Exhibit No. 6. The terms for athletic officials include the following:

> "Services provided by the official are as an independent contractor and not an employee of the Illinois High School Association or the School or Organization.
>
> The official assumes all liability for injury to himself/herself and waives any claim for any injury, loss or damage against the IHSA which may by sustained by the official during any game, contest or activity.
>
> It is understood that the services of the official are provided as an independent contract and that no medical insurance, workers compensation, unemployment insurance or other benefit is accorded to the official by this contract." (PX #6)

Petitioner testified that he did not consider himself an employee of the IHSA. (Tr. p. 37) Petitioner was not compensated by the IHSA for officiating the game on January 5, 2017. *Id.* He did not receive a W-2 or 1099 from the IHSA. *Id.* He had to wear a uniform, but this was not provided for him by the IHSA. *Id.* Petitioner testified he had to buy his own uniform and any other equipment which he might use, including shoes, whistle and hat. (Tr. p. 37) Petitioner testified that he was hired on a game-by-game basis by individual schools. (Tr. p. 38) Petitioner stated that the IHSA did not refer him to any specific games. *Id.* Petitioner indicated that the only games which the IHSA assigns are post-season games, and this was not post-season. *Id.* Petitioner testified that he had business cards prepared with his name, address and contact information on them, with respect to his availability for officiating, but that his business cards did not indicate in any way that he was an employee of the IHSA. (Tr. pp. 38-39)

Petitioner testified that he officiated for entities other than those sanctioned by the IHSA, including the IESA (Illinois Elementary School Association), which is a completely different entity from the IHSA. (Tr. pp. 40-41) Petitioner also testified that he worked junior high, high school and college basketball, baseball and softball games for entities not affiliated with the IHSA. (Tr. p. 41)

Craig Anderson ("Anderson"), Executive Director of the IHSA, was called to testify on behalf of the Respondent, IHSA. (Tr. p. 63) Mr. Anderson had worked in that position since January of 2017, and in that capacity has a general oversite role over the Association. Mr. Anderson testified that the IHSA serves as a licensing entity for member schools. (Tr. p. 64) Training is provided by sports-specific clinicians who are experts in their particular officiating field and officials are asked to participate in a clinic at least once every three years. *Id.* Mr. Anderson testified that licensing gives the officials the opportunity to contract with member schools to officiate interscholastic activities between member schools. (Tr. p. 65) The IHSA does not assign officials to specific games, does not pay officials, does not reimburse expenses, nor do they maintain an employment file on officials. *Id.* Mr. Anderson testified that they did not provide the Petitioner with a W-2 or 1099 tax form. (Tr. p. 66) The IHSA does not provide uniforms, equipment, or other items to officials. *Id.* The IHSA does not formally evaluate officials as an Association. *Id.* Mr. Anderson stated that the IHSA does not have the right to fire an official for poor performance. (Tr. p. 67) Mr. Anderson confirmed that Petitioner had the right to officiate games other than those which occur under the auspices of the IHSA, and officials are encouraged to do so.

Ted Walk testified on behalf of the Sullivan Community Unit District 300. (Tr. p. 79) Mr. Walk is the Superintendent of Sullivan Schools. *Id.* He has been so employed since July 1, 2017. *Id.* Mr. Walk testified that he is familiar with the process of contracting between the school and officials. (Tr. p. 79) Mr. Walk testified that the same basic form is used for various sporting events including baseball, basketball, and volleyball. (Tr. p. 80) Mr. Walk identified the Contract for Athletic Officials marked as Respondent Sullivan CUSD RX #1 as the form which the district used to contract with officials. (RX #1, *see also* PX #6) Mr. Walk said that officials are sometimes selected with the help of the conference and other times the athletic director will schedule a contest with the head official and they will bring a crew with them to the event. (Tr. p. 84) Mr. Walk testified that the School District will send a contract with several events that the crew has agreed to officiate to the head official and that he/she would sign and return the contract. (Tr. p. 85) When a crew of officials is unable to make it to a scheduled event, that crew may attempt to contact a replacement crew or the athletic director may try to find a replacement. *Id.* A separate contract may be made dependent upon amount of notice the School District receives. *Id.* Mr. Walk testified that when a replacement crew comes in, that they will operate subject to the same terms of contract as the original signers. (Tr. pp. 91-92)

Mr. Walk testified that he is involved with the workers' compensation cases when a filing is made against the School District. (Tr. p. 82) Mr. Walk testified that he first became aware of Petitioner's claim when the School District received a letter from Petitioner's attorney along with a copy of the Amended Application for Adjustment of Claim. (RX #4) The correspondence from Petitioner's attorney is dated December 30, 2019. *Id.*

Mr. Walk testified that he has attended hundreds of athletic contests. (Tr. p. 86) He testified that the School District, individual schools, and coaches have no input in the manner the officials conduct their duties. *Id.* Mr. Walk testified that the officials have the sole control over how they officiate a game. (Tr. p. 87) He stated that officials are contracted for the event and their duties conclude at the final buzzer. *Id.* Mr. Walk said that an escort may be provided for the officials following a game to make sure they do not encounter spectators. *Id.* He testified that the School District does not provide training for officials, does not provide transportation, does not provide uniforms or other equipment. (Tr. pp. 87-88) Mr. Walk testified the business of the school district is education and athletics are secondary to education. (Tr. p. 88) Mr. Walk testified that the School District does not have any recourse against an official when they do a poor job other than to potentially file a complaint. (Tr. p. 90) Mr. Walk testified that to his knowledge, Petitioner was not an employee of the School District. (Tr. p. 92)

Respondent, Sullivan CUSD #300, called Ryan Aikman as a witness. (Tr. p. 95) Mr. Aikman is the athletic director and assistant principal of Sullivan High School and Sullivan Middle School. *Id.* At the time of arbitration, he had been the athletic director for seven years. *Id.* Mr. Aikman testified that he was involved with retaining officials for various sports. (Tr. p. 96) He stated that once the schedule gets set, he sends out an e-mail to a list of officials advertising the dates for consideration. *Id.* Mr. Aikman said that when officiating crews respond back to him, he assigns dates and sends a contract for them to sign and return. *Id.* He explained that when a conflict arises after the crew has already committed to a date, either the official will get a replacement on their own or they will leave it in the hands of the athletic director to obtain a replacement. (Tr. pp. 96-97) Mr. Aikman testified that he is familiar with the contract for athletic officials that the School District uses and that it has changed very little over the time he has been there. (Tr. p. 97) He stated that the contract can now be sent electronically, and the format is somewhat different but the information on the form is the same. (Tr. pp. 97-98)

Mr. Aikman identified Respondent Sullivan CUSD # 300 Exhibit 1 as the contract for athletic officials which included the January 5, 2017, date. (Tr. p. 98) He recounted that he confirms approximately two weeks prior to the game to make sure they have officials. *Id.* Mr. Aikman indicated that when he checked with the originally scheduled crew, he was informed that the original crew would not be available as they had agreed to another game and that another individual would be communicating who the crew replacing them would be. (Tr. pp. 98-99) Another contract was not drawn up because the game was a matter of days away and he knew the crew chief. (Tr. p. 99) Even though a new contract wasn't completed, Mr. Aikman assumed that the contract terms would be the same. (Tr. p. 100) The terms for the January 5, 2017, game was $270.00 for the three-person crew and three checks were issued that night for $90.00 to the crew members. *Id.*

Mr. Aikman said that he learned of Petitioner falling in the locker room the next day. (Tr. p. 101) He recalled having the conversation with Petitioner and advised that he would have his maintenance crew take a look at the area. *Id.* Mr. Aikman said that his maintenance director did not find anything to be wrong in terms of a slippery substance. *Id.* He said that Petitioner did not claim to be an employee or mention anything about filing a workers' compensation claim. (Tr. p. 102) Mr. Aikman believed that the first communication of that information came in December 2019. *Id.* He stated that the athletic director does not have any input into how the officials handle the game and that the game is under the exclusive control of the officials. *Id.*

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to (B), whether there was an employee-employer relationship, the Arbitrator states as follows:

Compensation under the Illinois Workers' Compensation Act is available only to those who are "employees" as that term is defined in the Act. Section 1(b)(2) of the Act defines an employee as "Every person in the service of another under any contract of hire, express or implied, oral or written. " A person working as an independent contractor, as opposed to an employee, is not entitled to benefits under the Workers' Compensation Act.

The Illinois Supreme Court set forth factors to consider when determining whether an injured worker is an employee or an independent contractor. *Roberson v. Industrial Commission,* 225 Ill.2d. 159 (2007). In *Roberson,* the Illinois Supreme Court identified the factors which help determine an employment status, and they are as follows:

- Whether the employer may control the manner in which the person performs the work
- Whether the employer dictates the person's schedule
- Whether the employer pays the person hourly
- Whether the employer withholds income and Social Security taxes from the person's compensation
- Whether the employer may discharge the person at will
- Whether the employer supplies the person with materials and equipment
- Whether the employer's general business encompasses the person's work

The Supreme Court commented no single factor is determinative, but the right to control the manner of the work is the most important consideration. *Roberson v. Industrial Commission,* 225 Ill.2d. 159 (2007).

Here, the evidence indicates that the IHSA does not control the way Petitioner performed his duties as a basketball referee. Petitioner along with Respondent Sullivan CUSD #300's witnesses, Mr. Walk and Mr. Aikman acknowledged that officials maintain the sole and exclusive right to control the way a game is officiated.

Respondent IHSA did not assign the Petitioner to specific jobs, did not pay Petitioner, did not provide a W-2 or 1099 at year's end for tax purposes, and did not provide a uniform or any other equipment to the Petitioner. Petitioner did not receive any benefits, health insurance or reimbursement of expenses. Petitioner acknowledged that no individual or entity had any input into how the officiating crew calls the games. Petitioner testified that he considered himself to be a skilled professional. His work was not exclusively for games sanctioned by the IHSA; rather, Petitioner testified that he officiated boys' and girls' basketball and softball for a number of other unrelated entities, including the Illinois Elementary School Association and some colleges. Craig Anderson testified that the IHSA encourages licensed officials to officiate for other entities.

The only documents in evidence that address the relationship between the Petitioner and the Respondent are the "Application for License in Officials Department" (PX #5) and the Contract for Athletic Officials (PX #6), both of which indicate on their face that Petitioner acknowledges he is an independent contractor and not an employee of the IHSA. (RX #1, PX #5, PX #6) Petitioner himself acknowledged on cross-examination that he did not consider himself to be an employee of the IHSA.

Although not binding precedent, the Arbitrator finds the reasoning in the case of *Yonan v. United States Soccer Fed'n, Inc.*, 833 F. Supp. 2d 822, illustrative. Yonan was a soccer referee assigned to work major league soccer games. He sued the U.S. Soccer Federation alleging age discrimination. The Soccer Federation moved for summary judgment asserting Yonan was an independent contractor and not an employee. In *Yonan*, the United States District Court for the Northern Illinois, Eastern Division, reviewed the tests for determining if one is an employee versus an independent contractor. The tests used and applied are similar if not identical to those used in making a similar determination in workers' compensation based on principles of agency.

In the instant case, as in *Yonan*, the Respondent did not exercise that degree of control and supervision over a referee which supports an employee-employer relationship. Petitioner's occupation, by Petitioner's acknowledgement, required skill and expertise, which would likewise mitigate against finding an employer-employee relationship. The fact that Respondent did not underwrite any of the costs of the operation is further support of the absence of any such relationship. Finally, it is not disputed that the Petitioner was not compensated in any way by the Respondent for his activities.

Based on the foregoing, the Arbitrator finds the Petitioner failed to prove an employee-employer relationship between himself and the Illinois High School Association.

Having found Petitioner was not an employee of the Illinois High School Association as that term is defined by the Act, the Arbitrator finds the remaining issues pertaining to Respondent IHSA moot.

The evidence is likewise clear that the Sullivan CUSD #300 did not control the manner in which Petitioner performed his duties as a basketball referee. Not only did the School District's witnesses testify that officials maintain the sole and exclusive right to control the manner in which they officiate a game, but Petitioner acknowledged that fact as well. The School District paid Petitioner for officiating a game rather than by the hour, and the School District did not withhold income or Social Security taxes from Petitioner's compensation. The School District had no ability to discharge Petitioner during the course of the game he was officiating. Additionally, the School District did not supply Petitioner with a uniform or any other materials or equipment. With respect to Petitioner's schedule, the School District advises all referees when games will be conducted. Officials choose which games they want to work. Mr. Walk testified that the business of the school district is education and athletics are secondary to education.

The factors set forth in the *Roberson* case clearly establish Petitioner's duties as an official for a high school basketball game were those of an independent contractor and not an employee.

Additionally, Petitioner testified that he did not believe himself to be an employee. Finally, Petitioner's counsel sent a letter to the school district almost six months after the January 5, 2017 incident advising of an the intention to file a personal injury lawsuit. (RX #3) Pursuant to the Exclusivity Provision of the Workers' Compensation Act (820 ILCS 305/5(a)), Petitioner's attorney acknowledged Petitioner was not an employee of the school district.

Based on the foregoing, the Arbitrator finds Petitioner failed to prove an employee-employer relationship between himself and Sullivan Community Unit School District #300. Since Petitioner has failed to establish he was an employee of the School District, all other issues are hereby moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC003248
Case Name	Jeffrey Redman v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0117
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Matthew Smart
Respondent Attorney	Andrew Zasuwa

DATE FILED: 3/12/2024

/s/Amylee Simonovich, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeffrey Redman,

Petitioner,

vs. NO: 19 WC 003248

Chicago Transit Authority,

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 Arbitrator's analysis and award of medical expenses but supplements the analysis with regard to the award of topical medications cited in PX 5. The Commission modifies Section (J), page 6, of the Arbitrator's Decision to include the following additional language preceding the last sentence of the first paragraph:

> The Utilization Review which denied certification of the topical medications relied upon a finding of no adverse reaction to oral medications as the basis for the non-certification. RX 2, p. 2, 3 and 14. However, at the time of Dr. Rhode's initial prescription of topical medications on November 1, 2019, Dr. Rhode noted a failure of oral medications to help his pain, stating, "Patient at this time continues to have ongoing severe pain with superficial trigger points. *They have not responded to analgesics or NSAIDs alone*." (Emphasis added.) PX 3, p. 194. Based upon this documented adverse reaction to oral medication, the basis of the non-certification by the Utilization Review lacks credibility.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on March 21, 2023, is modified as stated herein, and otherwise 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.

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.

March 12, 2024
O: 1/30/24
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	19WC003248
Case Name	Jeffrey Redman v. CTA
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Matthew Smart
Respondent Attorney	Andrew Zasuwa

DATE FILED: 3/22/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 21, 2023 4.62%

/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

Jeffrey Redman
Employee/Petitioner
v.
CTA
Employer/Respondent

Case # **19** WC **003248**

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 **September 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 **January 31, 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 $**71,695.52**; the average weekly wage was $**1,378.75**.

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 $**52,917.93** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**52,917.93**.

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 Px1, Px2, Px3, Px4, and Px5, 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.

Respondent shall pay Petitioner permanent partial disability benefits of **$813.87/week** for **127 weeks** because the injuries sustained caused **30% loss of use of the left leg**, as provided in Section 8(e) of the Act, and **12.5% 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.

Signature of Arbitrator

MARCH 22, 2023

PROCEDURAL HISTORY

This matter proceeded to hearing on September 30, 2022 in Chicago, Illinois before Arbitrator Ana Vazquez. This matter involves injuries to Petitioner's left leg and right shoulder. The Parties stipulated that Petitioner sustained an accidental injury to the left leg that arose out of and in the course of Petitioner's employment with Respondent. Respondent, however, disputes that Petitioner sustained an accidental injury to the right shoulder that arose out of and in the course of Petitioner's employment with Respondent. Arbitrator's Exhibit ("Ax") 1; Transcript of Proceedings on Arbitration ("Tr.") at 6. The other issues in dispute are (1) causal connection, (2) unpaid medical bills, and (3) the nature and extent of Petitioner's claimed injuries. Ax1. All other issues have been stipulated. Ax1. The Parties have stipulated that Respondent is entitled to a credit in the amount of $52,917.93 for TTD benefits paid to Petitioner by Respondent. Ax1.

FINDINGS OF FACT

Petitioner testified that on January 31, 2019, he was employed by Respondent as a diesel mechanic. Tr. at 12. Petitioner testified that at the time of arbitration, he had been employed by Respondent for 30 years. Tr. at 13. Petitioner's job duties as a diesel mechanic include "[p]retty much the front of the bus to the back of the bus. Wiring to repairing the engine to replacing the trans; we do it all in the garage." Tr. at 13. Petitioner classified his job duties as "heavy a lot of the times," and he agreed that there could be duties that were lighter. Tr. at 13.

Accident

Petitioner testified that on January 31, 2019, he was getting ready to look at a bus that did not have heat. Tr. at 14. It was the coldest day of the year. Tr. at 14. Petitioner started with cleaning the filters so that the heat would turn on in the bus. Tr. at 14. Petitioner testified that when he went to inspect the bus, he found the filters dirty and went to clean them. Tr. at 14. Petitioner walked around the corner of the bus and onto black ice. Tr. at 14-15. Petitioner was not aware that there was black ice on the ground. Tr. at 14-15. Petitioner fell and did the splits several times before he landed. Tr. at 15. Petitioner did not recall how he landed, and he testified that he "knew I was on my side eventually." Tr. at 15. Petitioner did not recall if he struck his head. Tr. at 15. Petitioner testified that he noticed that he could not move his left leg after he fell. Tr. at 15. A couple of Petitioner's co-workers came to Petitioner's aid and a supervisor was called. Tr. at 15. Petitioner filled out an incident report and an ambulance was called for him. Tr. at 15-16. Petitioner was taken to Holy Cross Hospital by ambulance. Tr. at 16.

On cross examination, Petitioner was shown Respondent's Exhibit ("Rx") 1, which he identified as the incident report that he filled out. Tr. at 30.

Medical records summary

On January 31, 2019, the City of Chicago Fire Department responded to 1815 W. 74th Street, Chicago, Illinois for a fall due to ice or snow. Petitioner's Exhibit ("Px") 1. Petitioner complained of left hamstring pain from the fall. Px1. Petitioner was transported via EMS to Holy Cross Hospital's Emergency Department ("Holy Cross Hospital"). Px1. A consistent accident history is noted in the Holy Cross Hospital record of January 31, 2019. Px2. Petitioner reported pain extending from his low back, down the back of his left lower extremity, to the back of his knee. Px2. Petitioner reported no pain with

movement of the leg, but had difficulty standing due to the pain. Px2. Petitioner reported pain when he flexed at the pelvis. Px2. X-rays of Petitioner's lumbosacral spine were obtained and revealed (1) no radiographic evidence of an osseous abnormality within the lumbar spine and (2) mild multilevel degenerative changes within the lumbar spine. Px2. X-rays of Petitioner's pelvis were obtained and revealed no displaced fracture within the pelvis. Px2. Petitioner's diagnosis was muscle strain of the abductor and pos anterior thigh muscle complexes with possible mild radicular pain. Px2. Petitioner was discharged and instructed to follow up with his primary care doctor for reevaluation and further imaging. Px2.

Petitioner presented at Orland Park Orthopedics on February 1, 2019 and was seen by Dr. Blair Rhode. Px3. A consistent accident history is noted. Px3. Petitioner reported that he experienced sudden onset of posterior thigh pain with radiation to the knee and back pain after the work-related injury. Px3. Dr. Rhode noted that Petitioner was essentially unable to walk on his left lower extremity and that Petitioner presented with a walker. Px3. Dr. Rhode noted that Petitioner was also experiencing bandlike low back pain. Px3. Dr. Rhode's assessment was knee pain, hip pain, hamstring contusion, medial meniscus tear, and low back pain. Px3. Dr. Rhode noted that Petitioner sustained a work-related left lower extremity injury secondary to a slip and fall while at work on January 31, 2019. Px3. Dr. Rhode also noted that he suspected that Petitioner sustained a proximal hamstring rupture, as Petitioner was tender at the proximal insertion point of the hamstring tendon. Px3. Dr. Rhode also noted that Petitioner demonstrated severe tenderness along the medial joint line. Px3. MRIs of the proximal hamstring and left knee were ordered. Px3.

Petitioner underwent MRIs of the left thigh/femur and left knee on February 5, 2019. Px3. The MRI of the left thigh/femur revealed (1) a complete tear of the left hamstring from the proximal insertion with 8 cm inferior retraction and marked contusion of the hamstring muscles with surrounding fluid and mild atrophy of the hamstring muscles and (2) degenerative disc disease with spondylitic changes at L5-S1. Px3. The MRI of the left knee revealed (1) acute low-grade sprain of the tibial collateral ligament without tear or retraction, (2) horizontal linear tear to the superior inner zone surface anterior lateral meniscal body accompanying intrameniscal and para meniscal cysts, (3) chondromalacia patellofemoral articulation with trochlear subchondral fluid, and (4) chondromalacia weight bearing medial femoral condyle. Px3. Petitioner returned to Dr. Rhode on February 8, 2019, at which time Dr. Rhode recommended a surgical repair of the hamstring tear. Px3. Petitioner was kept off work. Px3. On February 19, 2019, Petitioner underwent a left hip proximal hamstring open repair at South Chicago Surgical Solutions. Px3. Petitioner's postoperative diagnosis was left hip proximal hamstring rupture. Px3. Petitioner presented for postoperative care with Dr. Rhode on February 27, 2019 and March 27, 2019. Px3. Petitioner was continued on crutch weightbearing and was kept off work. Px3.

At arbitration, Petitioner described his home as having two levels; the upstairs level is where the bedrooms are, the lower level is where the kitchen is, and the downstairs level is where the television room is. Tr. at 19. Petitioner testified that there are six stairs on each floor. Petitioner testified that it was difficult for him to get around the house after the leg surgery. Tr. at 20. Petitioner slept with his crutches nearby. Tr. at 20. Petitioner testified that in April, when going down the staircase, he lost his balance. Tr. at 20, 21. He tried to keep himself upright with his right shoulder, and as his body pulled away from the railing, he pulled himself in and he felt a sharp pain in his shoulder. Tr. at 20, 22. Petitioner tried to pull himself up with his right arm. Tr. at 22. Petitioner was going down the staircase backwards because it was the only way that he could hold the railing. Tr. at 21. Petitioner testified that the railing was on the right side of his body while going down the stairs backwards. Tr. at 21. Petitioner testified that he could not put pressure on his left leg, and when he put pressure on his left leg, he lost his balance. Tr. at 22.

Petitioner then put an ice pack on his left knee and an ice pack on his right shoulder. Tr. at 22-23. Petitioner was on pain medications. Tr. at 23. Petitioner mentioned this incident to Dr. Rhode at his next appointment. Tr. at 22, 23. On cross examination, Petitioner testified that he cannot stand 100 percent on his left leg, so he used the railing, and that he uses the railing "every single day." Tr. at 32. He did not use the railing before the accident. Tr. at 33. Petitioner next saw Dr. Rhode on April 26, 2019, at which time Petitioner reported that he experienced a pulling sensation in his right shoulder while attempting to pull up a stair railing. Px3. Dr. Rhode noted that Petitioner performed this activity due to his hamstring reconstruction. Px3. On exam of Petitioner's right shoulder, a positive impingement sign with external rotation was noted. Px3. Petitioner also continued to experience pain in the left hamstring muscle. Px3. Dr. Rhode's assessment was knee pain, hip pain, hamstring contusion, medial meniscus tear, low back pain, ankle pain, shoulder pain, sprain of the right rotator cuff capsule, and superior glenoid labrum lesion of the right shoulder. Px3. Dr. Rhode noted that Petitioner sustained a right rotator cuff injury while pulling himself up a railing. Px3.

Petitioner next saw Dr. Rhode on May 25, 2019. Px3. Dr. Rhode noted that Petitioner denied feeling a pop. Px3. An MRI of the right shoulder was ordered, and physical therapy was prescribed. Px3. Dr. Rhode's assessment was unchanged. Px3. Petitioner was kept off work. Px3. Petitioner underwent an MRI of the left thigh/femur on June 25, 2019, which demonstrated (1) worsening with new narrowing left ischiofemoral space measuring 1.1 cm transverse diameter compressing the left quadratus femoris muscle which could cause ischiofemoral impingement syndrome, (2) thinning of the proximal 1.8 cm of the tendon insertion onto the ischial tuberosity, postoperative change with thickening remainder of the left hamstring tendon, noted as possibly secondary to recurrent large partial tear, (3) worsening with atrophy and partial fatty replacement of the biceps femoris semimembranosus and semitendinosus muscles, (4) worsening with 25% fatty replacement of the left gluteus maximus muscle, and (5) unchanged 25% fatty replacement tensor fascia lata muscle. Px3. On July 10, 2019, Dr. Rhode noted that the MRI of the left thigh/femur revealed post-surgical changes to the origin of the hamstring without evidence of full rupture. Px3. Petitioner's assessment was unchanged and Petitioner was kept off work. Px3. On July 26, 2019, Petitioner presented for follow up and Dr. Blair administered a subacromial injection of 40 mg Kenalog and 9 cc of Lidocaine to Petitioner's right shoulder. Px3. Petitioner's assessment was unchanged, and he was kept off work. Px3.

Petitioner again saw Dr. Rhode on August 16, 2019. Px3. Petitioner reported continued right shoulder pain. Px3. Dr. Rhode noted that Petitioner reiterated that he injured his right shoulder when he lost his balance several times while going down the stairs, early postoperatively. Px3. Dr. Rhode noted that the MRI of the right shoulder demonstrated a high-grade insertional supraspinatus injury. Px3. Dr. Rhode's assessment was knee pain, hip pain, hamstring contusion, medial meniscus tear, low back pain, ankle pain, shoulder pain, and rotator cuff tear. Px3. Dr. Rhode noted that Petitioner continued with severe right shoulder pain and that Petitioner had failed conservative management. Px3. Dr. Rhode also noted that Petitioner wished to proceed with a rotator cuff repair. Px3. Petitioner was kept off work. Px3. On August 27, 2019, Petitioner underwent a right shoulder video-assisted subacromial decompression/debridement, stem cell application, and arthroscopic rotator cuff repair. Px3. Petitioner's postoperative diagnoses were right shoulder impingement/synovitis and 1.5 cm x. 2 cm crescent rotator cuff tear. Px3.

Petitioner followed up with Dr. Rhode on September 6, 2019, at which time Dr. Rhode noted that Petitioner was stable following the rotator cuff repair, that Petitioner continued to undergo treatment for his proximal hamstring repair, and that Petitioner continued to be dysfunctional due to hip extensor strength loss. Px3. Dr. Rhode also noted that Petitioner was unable to perform the essential duties of his

job due to lower extremity weakness and instability. Px3. Physical therapy for Petitioner's right shoulder and left hamstring repair was ordered. Px3. Petitioner returned to Dr. Rhode for follow up on October 4, 2019, November 1, 2019, December 6, 2019, January 10, 2020, January 20, 2020, February 7, 2020, and February 28, 2020. Px3. On October 4, 2019, Dr. Rhode noted that Petitioner had fallen into a wall the week prior due to instability of the left lower extremity. Px3. On November 1, 2019, Dr. Rhode noted that Petitioner continued to have ongoing severe pain with superficial trigger points and they had not responded to oral analgesics or NSAIDs alone. Px3. Dr. Rhode prescribed topical lidocaine 5% and diclofenac sodium 1.5% to reduce pain and inflammation for a trial period, and clinical benefit of same would be assessed at the next visit. Px3. On January 20, 2020, Dr. Rhode noted that Petitioner continued with posterior hamstring pain and was performing 60-pound leg press in therapy. Px3. Dr. Rhode released Petitioner to light duty work. Px3. On February 28, 2020, Dr. Rhode noted that Petitioner continued with posterior pain, but was stable. Px3. Dr. Rhode released Petitioner to full duty work, and noted that Petitioner would follow up in four weeks to consider maximum medical improvement ("MMI"). Px3. Petitioner returned to Dr. Rhode on June 22, 2020 and reported having good days and bad days. Px3. Dr. Rhode noted that Petitioner was working full duty with difficulty. Px3. Petitioner rated his pain a four out of 10. Px3. Dr. Rhode noted that Petitioner was stable, was at MMI, was working full duty, and that Petitioner continued with difficulty. Px3.

Petitioner participated in approximately 54 sessions of physical therapy for his left lower extremity and approximately 46 sessions of physical therapy for his right shoulder. Px3.

Current condition

Petitioner testified that at the time of arbitration, he was working full duty and full time as a diesel mechanic for Respondent. Tr. at 31. Petitioner testified that at the time of arbitration, he was not 100 percent capable of performing his job tasks. Tr. at 27. He testified that some days, he stays away from the pits at work. Tr. at 27. Petitioner is careful to walk on flat ground because he still "wobbles" and he does not have balance. Tr. at 27. Petitioner agreed that at the time of arbitration, he still had balance issues. Tr. at 27. Petitioner testified that he cannot stand on his feet for an eight-hour work shift, and that he finds a chair to sit in when he cannot stand. Tr. at 28. Petitioner testified that regarding his right shoulder and his ability to work, he has learned to change habits, including pulling hard with his left arm instead of his right arm and learning how to take things apart with his left hand instead of with his right hand. Tr. at 29. Petitioner is left hand dominant. Tr. at 28.

Petitioner has not had any further treatment for his hamstring or shoulder since June 2020. Tr. at 26-27, 28.

Respondent's Utilization Review

Respondent submitted into evidence a Utilization Review ("UR"), dated February 12, 2021, by Dr. Swastik Sinha, non-certifying the Lidocaine 5% ointment and 1.5% diclofenac sodium dispensed by Dr. Rhode on November 1, 2019. Rx2. Dr. Sinha's rationale for non-certification of the Lidocaine 5% ointment was that "[Petitioner] has continued severe pain with superficial trigger points. However, there is no clear indication for use since the evidence-based guideline notes that cream formulation of lidocaine is generally indicated as local anesthetics and anti-pruritics." Rx2 at 2. Dr. Sinha also noted that "[Petitioner] is taking oral medications without documentation of adverse reaction. Without intolerance of oral medications or clear indication for topical use for such complaints, the medical necessity is not supported." Rx2 at 2. Dr. Sinha's rationale for non-certification of the Diclofenac

Sodium 1.5% was that "[Petitioner] continues to have ongoing severe pain with superficial trigger points. However, there is no documentation indicating that [Petitioner] has intolerance or contraindications for oral NSAIDs that would support the use of the requested medication. In fact, [Petitioner] is prescribed Mobic, which is an oral anti-inflammatory. Without failure or contraindication to oral NSAIDs, the medical necessity of the requested medication is not established." Rx2 at 3.

An appeal of the February 12, 2021 UR was requested, and the Lidocaine 5% ointment and Diclofenac Sodium 1.5% was non-certified by UR on March 3, 2021 by Dr. Khalid M. Yousuf. Rx2 at 12. Dr. Yousuf noted that "[Petitioner] complains of pain in the knee. The provider recommends lidocaine ointment. However, the guideline does not support the use of lidocaine formulations that do not involve a dermal-patch system. Moreover, there is no documentation of neuropathic pain. Lastly, there is no documentation of intolerance to oral medications. Thus, the medical necessity of Lidocaine 5% ointment…is not established." Rx2 at 14. Regarding the Diclofenac Sodium 1.5%, Dr. Yousuf noted "[Petitioner] reports knee pain. The provider recommends topical diclofenac. It is noted that [Petitioner] has not responded to oral analgesic or NSAIDs alone. However, there is no documentation of osteoarthritis. There is no documentation of failed trials of first-line diclofenac gel 1%. In addition, the concomitant use of oral and topical NSAIDs is not recommended given that [Petitioner] is also prescribed Mobic. As such the medical necessity of Diclofenac 1.5%...is not established." Rx2 at 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). 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. 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 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.

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:

The Arbitrator initially notes that the Parties stipulated that Petitioner sustained an accidental injury to the left leg that arose out of and in the course of Petitioner's employment with Respondent. At issue is whether Petitioner sustained an accidental injury to the right shoulder that arose out of and in the

course of Petitioner's employment with Respondent. Ax1; Tr. at 6. Having considered all of the evidence, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he sustained an accidental injury to his right shoulder that arose out of and in the course of his employment with Respondent on January 31, 2019. Petitioner credibly testified (1) that his home has an upstairs level, a lower level, and a downstairs level and that there are six stairs on each floor, (2) that it was difficult to get around his house following the February 19, 2019 left open hamstring repair, (3) that while recovering from the hamstring repair, he would descend the stairs in his home backwards so that he could grasp the railing, (4) that sometime in April 2019, prior to his April 26, 2019 visit with Dr. Rhode, Petitioner lost his balance when he put pressure on his left leg while descending the stairs in his home, (5) that he tried to keep himself upright by pulling himself up on the railing with his right arm, at which time he felt a sharp pain in his right shoulder, and (4) that he mentioned this incident to Dr. Rhode at his next appointment. Tr. 20-22. Petitioner's testimony is supported by Dr. Rhode's office visit of April 26, 2019, wherein Dr. Rhode noted that Petitioner reported that he experienced a pulling sensation in his right shoulder attempting to pull up a stairs railing and that Petitioner performed this activity due to his hamstring reconstruction. Dr. Rhode further noted that Petitioner sustained a right rotator cuff injury while pulling himself up a railing. Px3. No contrary testimony was offered by Respondent.

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

Having considered all of the evidence, the Arbitrator finds that Petitioner's current condition of ill-being as to his left hamstring and right shoulder is causally related to the January 31, 2019 injury. The Arbitrator relies on the following in support of her findings: (1) the medical records of Holy Cross Hospital, (2) the medical records of Dr. Blair Rhode and Orland Park Orthopedics, and (3) the fact that none of the records in evidence reflect any left hamstring issues or treatment prior to January 31, 2019 or any right shoulder issues or treatment prior to April 26, 2019. The Arbitrator notes that the evidence demonstrates that Petitioner was in condition of good health immediately prior to the work accident. Further, the medical evidence offered was unrebutted.

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 follow:

Consistent with the Arbitrator's prior finding as to causal connection, the Arbitrator finds that the medical services that were provided to Petitioner were reasonable and necessary, and that Respondent has not paid all appropriate charges. At arbitration, Petitioner presented the following unpaid medical bills: (1) Holy Cross Hospital Physician's Group, Px2, (2) Orland Park Orthopedics, Px3, (3) South Chicago Surgical Solutions, Px3, (4) Bob Rady Anesthesia Services, Px4, and (5) Persistent Med, Px5. Accordingly, the Arbitrator further finds that all bills, as provided in Px1 through Px5, are awarded and that Respondent is liable for payment of these bills, 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 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 at Respondent as a diesel mechanic. Following the work injury, Petitioner returned to work full duty as a diesel mechanic at Respondent. The Arbitrator assigns these factors some weight.

With regard to criterion (iv), the Arbitrator notes that Petitioner has not demonstrated that his future earning capacity has been affected by the accident and 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 January 31, 2019 accident, Petitioner sustained a left hip proximal hamstring rupture. Petitioner 's treatment for this condition consisted of a left hip proximal hamstring open repair performed on February 19, 2019 and physical therapy. While recovering from the hamstring repair, Petitioner suffered right shoulder impingement/synovitis and a 1.5 cm x. 2 cm crescent rotator cuff tear. Treatment for Petitioner's right shoulder condition consisted of one subacromial injection of 40 mg Kenalog and 9 cc of Lidocaine to Petitioner's right shoulder administered on July 26, 2019, a right shoulder video-assisted subacromial decompression/debridement, stem cell application, and arthroscopic rotator cuff repair performed on August 27, 2019, and physical therapy. The Arbitrator notes that Dr. Rhode released Petitioner to full duty work on February 28, 2020, and while Petitioner was instructed to follow up in four weeks for consideration of MMI, Petitioner returned to Dr. Rhode on June 22, 2020. On June 22, 2020, Dr. Rhode noted that Petitioner reported having good days and bad days and that Petitioner was working full duty with difficulty. At that time, Dr. Rhode noted that Petitioner rated his pain a four out of 10. Dr. Rhode further noted that Petitioner was stable, was at MMI, was working full duty, and that Petitioner continued with difficulty. Petitioner testified that he has not had any further treatment for his hamstring or shoulder since June 2020. The Arbitrator further notes that at arbitration, Petitioner testified that he was not 100 percent capable of performing his job tasks, that on some days he stays away from the pits at work and that he cannot stand on his feet for an eight-hour work shift. Petitioner also testified that he continues to experience balance issues and that he still "wobbles." Regarding his right shoulder, Petitioner testified that he has changed habits and now performs certain tasks with his left arm or left hand instead of with his right arm or right hand, including pulling and taking things apart. The Arbitrator notes that Petitioner testified that he is left hand dominant. The Arbitrator assigns more 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 30% loss of use of the left leg, pursuant to Section 8(e) of the Act, and 12.5% loss of the person as a whole, pursuant to Section 8(d)2 of the Act.

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC000510
Case Name	Steve Mohica v. Shamrock Cartage
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0118
Number of Pages of Decision	18
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	David Martay, Eric Glasson
Respondent Attorney	Michael Baggot

DATE FILED: 3/12/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS	)		
	) SS.	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
COUNTY OF WILL	)	☒ 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

STEVE MOHICA,

Petitioner,

vs. NO: 21 WC 00510

SHAMROCK CARTAGE,

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 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 affirms and adopts the Decision of the Arbitrator, however makes the following changes:

The Commission corrects the scrivener's error in third paragraph of the Order section of the Decision, and replaces "$326.19" with "$326.76".

In the first sentence of the first paragraph on page 6 of the Arbitrator's Decision, the Commission strikes the word "no" before prior, and replaces with the word "any".

In the ninth sentence in the second paragraph of page 12 of the Arbitrator's Decision, the Commission strikes the phrase "the fact that".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $326.76 per week for a period of 102-2/7 weeks, commencing January 3, 2021 through December 20, 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 shall pay reasonable and necessary medical expenses, pursuant to the medical fee schedule, of $900.00 to Micro Neuro Spine (Dr. Erickson) (Px2); $3,792.70 to Hinsdale Hospital (Px3); $8,002.00 to Advanced Physical Medicine (Px4); $5,586.00 to Dr. Rabi (Px5); and, $3,105.74 to EQMD (prescriptions) (Px6) as provided in §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize the surgery recommended by Dr. Erickson, which currently is an L4/5 left hemilaminectomy, as well as lumbar flexion/extension x-rays, as recommended by both Dr. Erickson and Dr. Butler, in order for Dr. Erickson to determine if lumbar fusion is a more appropriate surgery.

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 $54,910.00. 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.

March 12, 2024

MEP/dmm

O: 13024

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	21WC000510
Case Name	Steve Mohica v. Shamrock Cartage
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Eric Glasson, David Martay
Respondent Attorney	MICHAEL BAGGOT

DATE FILED: 3/1/2023

/s/ Paul Cellini, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 28, 2023 4.94%

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

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

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

STEPHEN MOHICA
Employee/Petitioner
v.
SHAMROCK CARTAGE
Employer/Respondent

Case # **21** WC **00510**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Joliet**, on **December 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. [x] 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] Is Petitioner entitled to any prospective medical care?

L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] 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 29, 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 $**13,723.95**; the average weekly wage was $**490.14**.

On the date of accident, Petitioner was **54** 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 non-occupational disability benefits.

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

ORDER

The Arbitrator finds that the Petitioner sustained accidental injury to the lumbar spine which arose out of and in the course of his employment with the Respondent on December 29, 2020.

The Arbitrator finds that Petitioner's current lumbar condition of ill-being is causally related to the December 29, 2020 accident.

Respondent shall pay Petitioner temporary total disability benefits of $326.19 per week for 102-2/7 weeks, commencing January 3, 2021 through December 20, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $900.00 to Micro Neuro Spine (Dr. Erickson)(Px2): $3,792.70 to Hinsdale Hospital (Px3): $8,002.00 to Advanced Physical Medicine (Px4): $5,586.00 to Dr. Rabi (Px5): and, $3,105.74 to EQMD (prescriptions)(Px6), as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize the surgery recommended by Dr. Erickson, which currently is an L4/5 left hemilaminectomy, as well as lumbar flexion/extension x-rays, as recommended by both Dr. Erickson and Dr. Butler, in order for Dr. Erickson to determine if lumbar fusion is a more appropriate surgery.

Respondent shall be given a credit towards any awarded medical expenses which have been paid by Respondent prior to the hearing, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Signature of Arbitrator

March 1, 2023

STATEMENT OF FACTS

Petitioner worked for Respondent as a "spotter", which involved using a spotter truck to move tractor trailers around a yard, in and out of loading dock doors, for either loading or unloading of the trailers. He described the spotter truck as smaller than a semi-tractor, basically a "metal box" with one seat, which was like a bucket seat with a seat back. Witness Joe Glidic, Respondent's night manager and Petitioner's supervisor, testified that the spotter truck is about half the size of a semi-tractor, and about the width of a car. Petitioner's normal work hours were 5 p.m. to 5 a.m. He testified he had worked for Respondent for approximately five years as a spotter, but with a gap of about 6 months when he had been laid off.

On 12/29/20, he was working at a Minooka facility trying to hook the spotter truck to a trailer. Because the trailer legs/fifth wheel was low he had to back into it with more force to get under the spotter truck hitch under it. When he hit the trailer, he testified it slammed him against the back wall of the spotter truck and caused a "shock" feeling of back pain down into both legs. He testified that the Respondent's equipment was not in good condition and did not have sufficient padding, and directly behind the seat back was the truck wall. He could not say exactly how fast he was going when the incident occurred but believed it was between 5 and 10 miles per hour, noting the speed gauge did not work. Petitioner denied any significant prior back problems, treatment, lumbar MRI, or legal injury claims before 12/29/20, and that he had no prior lost time from work due to any back injury. He denied any symptoms such as back spasms, numbness into his feet, or difficulty walking prior to 12/29/20.

Petitioner initially testified that he didn't immediately report the accident and hoped he would improve, and he continued working the rest of his night shift. However, when was re-called to testify following the testimony of Mr. Glidic, he testified that he called Glidic on 12/29/20 to report the incident, which Mr. Glidic denied. Petitioner also testified that he sent a text to Mr. Glidic the morning after the alleged incident, advising what had occurred and that couldn't come into work because of back pain and numbness in his legs. He testified that Mr. Glidic responded that he heard Petitioner had been jumping into semi tractors of truck drivers who were there to drop off and/or pick up loads. Petitioner denied ever being in a live driver's truck, noting he only drove the spotter truck he was assigned to use, as spotters are not allowed to do this.

According to further documentation submitted into evidence by Respondent, a Form 45 was completed by its HR Director, Debra Doody, indicating Petitioner on 2/1/21 reported a 12/29/20 accident via an Application for

Adjustment of Claim (Arbx2). As to how the accident occurred, it states: "Alleges attempting to connect trailer to truck, supervisor reported no work injury." Injures alleged were back, both legs, buttocks and right foot. As to what caused the injury, the form states: "Supervisor stated back sore from sleeping wrong or helping son move some furniture." It was noted that Petitioner went to the Amita Hinsdale Hospital ER. (Rx3).

Petitioner initially sought treatment at Hinsdale Hospital on 1/3/21. As to why he waited so long to seek treatment, he testified "I don't like doctors" and was hoping the symptoms would resolve on their own. When they didn't, he testified his fiancée and his daughter made him go, and that he advised Hinsdale Hospital how he got hurt.

The 1/3/21 records of the Hinsdale Hospital ER indicate Petitioner presented with mid to low back pain since Tuesday that he related to his alleged work injury. The Arbitrator takes judicial notice that 12/29/20 was the Tuesday prior to 1/3/21. He reported an 8 out of 10 (8/10) pain level and inability to walk at a baseline level since the accident with weakness in the legs and numbness in half of his right foot and in his right great toe. The left leg, however, was noted to be worse than the right. He had a history of morbid obesity: "Patient is morbidly obese but does not see doctors, offers up no complaints, has a benign physical exam with exception of weakness in bilateral lower legs, and subjective numbness tingling in right great toe." A lumbar MRI was read to be negative for acute findings but showed significant multi-level disc bulging that appeared to be chronic in nature. The use of anti-inflammatories and narcotics was discussed, noting Petitioner was advised to ambulate as often as possible to avoid spasm and other pain contributors. Petitioner advised understanding but reported he felt unable to walk safely due to feeling of unsteadiness and weakness. While he had been advised to be admitted for at least two days for therapy, the report of Dr. Raftree states he was ultimately discharged with a note indicating he requested pain control beyond what could be safely provided to him and refused to be admitted to the hospital. Petitioner did testify that he declined hospital admission. He was prescribed Flexeril, a Medrol dosepak, and was advised to take Tylenol/Ibuprofen round the clock for 10 days. He also was advised to see his primary provider to request physical therapy. (Px3). The lumbar MRI report notes: 1) no evidence of acute compression fracture or epidural hematoma, 2) disc degeneration, especially in the lower lumbar spine, superimposed on a congenitally slender spinal canal, and 3) varying degrees (mild to moderate) of canal and/or foraminal stenosis from L2 to L5. (Px3). The billing from this facility indicates a $3,492.79 balance (also noting an adjustment of $3,792.70). (Px3).

On 1/29/21, Petitioner saw Dr. Goldvekht at Advanced Physical Medicine (APM), reporting a work injury where he was backing up and struck his back over the back of the seat. He complained of low back pain radiating down both legs. The doctor diagnosed lumbar disc with bilateral lower extremity radiculitis/whiplash injury/facet syndrome. Medications and physical therapy were prescribed, and a lower extremity EMG was ordered. Petitioner also was prescribed a lumbar belt, electrotherapy garment, TENS unit and home exercise kit, and he was taken off work. The 2/17/21 EMG impression was of findings consistent with a mild to moderate bilateral L5/S1 radiculopathy, with suspected mild peripheral sensory-motor polyneuropathy. The history noted complaints of pain and paresthesias in the legs, right greater than left. On 2/24/21, Dr. Goldvekht continued medications, physical therapy, and off work status, referring Petitioner to interventional pain management. (Px4).

On 3/17/21, Petitioner returned to APM, again reporting low back pain after a 12/29/20 motor vehicle accident ("He states that he worked as a spotter. He injured his low back and bang in his back.") He denied any history of back pain and was using a cane. Petitioner "states he has not done any treatment for his back. He states he is going back to work since this injury." The lumbar MRI findings were noted, and examination noted positive facet loading. Reference to physical exam referenced both positive and negative straight leg raise testing. Diagnoses were lumbar disc displacement and radiculopathy and physical therapy and bilateral L5 epidural

injections were prescribed. Dr. Sasha was to continue to prescribe Petitioner's medication. (Px4). The Arbitrator did not locate any records referencing visits to a Dr. Sasha in the evidentiary record.

Petitioner underwent therapy on 3/23/21 and 3/25/21. The prescribed epidurals were performed by Dr. Rabi on 4/27/21. At a 5/19/21 follow-up, Petitioner reported 50% improvement with the epidural for a week. Straight leg raise was positive with no indication if bilateral or one-sided, and Petitioner was not using a cane. Dr. Rabi advised Petitioner to continue therapy and to see an orthopedic surgeon, prescribing Norco pending same. (Px4; Px5). Dr. Rabi billed $2,436 for the epidurals. Additional billing for the same date was charged by the APM Surgical Group ($3,150) which appear to involve anesthesia and non-itemized "Operating Room Services." (Px4; Px5).

Billing from Advanced Physical Medicine (Dr. Goldvekht) totaled $4,563.00. The vast majority was for the EMG testing, with additional charges of $313 (1/29/21 visit), $165 (2/24/21 visit), $205 (3/23/21 Physical Therapy), $313 (3/17/21 visit) and $172 (3/19/21 charge) which do not appear to be included in the $4,563 billing. (Px4; Px5). A separate exhibit notes additional charges of Dr. Goldvekht for $586.18 (4/20/21) and $2,519.56 (2/3/21) which appear to be for medications (Tero x2, Cele, Fexm, Pant). (Px6).

On 5/28/21, Petitioner initially treated with surgeon Dr. Erickson via a telehealth visit. Dr. Erickson testified he thus did not perform a hands-on examination but did the best he could over the phone. Petitioner reported a work accident that resulted in a shocking sensation down his back towards his legs, noting he had no significant back pain in the past. Petitioner also reported about a week of relief with epidural injection, only temporary relief with therapy, and that while his back pain was worse than his leg pain, the symptoms did appear to be radicular. Dr. Erickson noted the MRI showed multifactorial stenosis including a broad herniated disc at L4/5, and that the EMG was positive bilaterally at L5 and S1. He diagnosed lumbar radiculopathy likely related to the L4/5 segment, along with a component of mechanical back pain, and opined that surgery would be reasonable. The surgical options included a left L4/5 hemilaminectomy, and, given the possibility of ongoing mechanical pain since the laminectomy was directed at the radicular symptoms, a possible lumbar fusion. (Px2).

On 6/21/21, Petitioner was examined by orthopedic surgeon Dr. Butler at the Respondent's request pursuant to Section 12 of the Act. Petitioner reported that on 12/29/20 he was backing up to a trailer with the spotting truck and hit the truck as he backed up to the trailer, feeling a shock to both lower extremities at impact. A more detailed history was also recited: "He was attempting to hook up a trailer with his spotting tractor. He states that because of the snow on the ground, there was some difficulty in lining the trailer up to the spotting rig. He backed up with some force into the pin on the trailer and ultimately hooked it up. When he impacted the trailer, he noted a shock emanated throughout his lower back and into both lower extremities." He reported constant low back pain and leg symptoms, right greater than left, and he hadn't returned to work since the 1/3/21 ER visit. He denied any prior back injuries. He reported numbness in the legs to the toes on the right and difficulty walking over 100 feet. Petitioner indicated Dr. Erickson's recommended surgery was on the left, which Dr. Butler noted was the less symptomatic side. In reviewing the lumbar MRI, Dr. Butler noted normal disc heights with only mild degeneration but severe spinal stenosis at L4/5 due to massive facet enlargement and moderate stenosis at L2 to L4. Dr. Butler opined that Petitioner's current medical condition was the result of congenital spinal stenosis, and advanced degenerative facet disease related to his morbid obesity, and that this condition was unrelated to the alleged work injury. He believed Petitioner should consider laminectomies from L2 to L4, and if flexion/extension x-rays showed any instability, then multilevel fusion should also be considered. However, he opined that any such surgery would be unrelated to the alleged work injury, stating: "The patient has such severe stenosis that even the act of tying his shoes or getting in and out of his vehicle could have aggravated this underlying degenerative condition." Dr. Butler further opined that Petitioner was not able to continue working full duty as a spotter but that any need for restrictions would be related to his underlying degenerative condition and a severe neurogenic claudication that was present: "This relates to his underlying

degenerative condition and not a work injury." Petitioner's treatment to date had been reasonable and necessary for his degenerative and obesity-related facet degeneration. (Rx1).

On 7/16/21, Dr. Erickson reviewed the report of Dr. Butler, noting that while Butler opined Petitioner's problem was congenital L2 to L5 stenosis, which he agreed with, there was no evidence that Petitioner had no prior history of significant back pain or treatment before 12/29/20, and had not missed any work in the past due to back pain. He also noted that due to diminished activity since the work incident, Petitioner's weight had increased from approximately 250 pounds to 360 pounds. Dr. Erickson stated: "The history must be taken into account however. His pain arose on the day of the injury. The pre-existing stenosis perhaps made him more susceptible to a significant injury, but should not be used to obscure the circumstances of the event." Dr. Erickson did not believe Petitioner would significantly improve without surgery and did want to review flexion/extension x-rays in advance of surgery to determine if fusion should be included. (Px2).

The billing from Micro Neuro Spine (Dr. Erickson) totaled $900 for the two visits. (Px2).

Neurosurgeon Dr. Erickson testified via deposition on 12/7/21. He typically performs 150-300 back surgeries per year. He was not certain how Petitioner ended up seeing him but speculated it could have been via APM. He testified Petitioner said he was working in a truck when he had sudden low back pain that was like moving towards his legs. He then testified he had a handwritten note indicating Petitioner was working in the back of a truck loading a trailer when he felt back pain, and this worsened over the next two days. Noting Petitioner had already undergone lumbar MRI, took medications, had physical therapy, at least one injection and an EMG at the time of his initial consultation (which the doctor acknowledged was a telehealth visit and there was no hands-on exam), Dr. Erickson testified: "I thought he had lumbar stenosis worse at L4/5. There was a broad disc herniation there. I wrote that the stenosis was multifactorial. To me, that language that means he has some thickening of the ligaments, probably some thickening of the joints themselves in addition to the disc herniation." While his back pain was worse, especially on the right, and he did have radicular-type complaints with abnormal sensations, especially on the left. Dr. Erickson opined that Petitioner had lumbar radiculopathy associated with stenosis, disc herniation, and change in the lumbar spine worse at the L4/5 level which he believed necessitated surgery, as he was still in significant pain six months post-accident. They discussed minimally invasive decompression at L4/5, which would likely help much of his leg and some of his back pain, as well as lumbar fusion as options. He wasn't sure if Petitioner had pain originating from the disc or joints. He noted Petitioner was a large man (6'1", 330 lbs.), and that sometimes a fusion is indicated if too much joint material needs to be removed in order to completely decompress the nerves, which is more common in large people. Dr. Erickson disputed that "someone like" Petitioner should first have a series of three epidurals prior to contemplating surgery. (Px1).

Dr. Erickson reviewed the report of Section 12 examiner Dr. Butler. As to Butler's opinion that Petitioner's lumbar condition was preexisting and unrelated to the alleged work accident, he testified: "I agreed this gentleman had lumbar stenosis of multifactorial origin. But I had difficulty with the dogmatic statement that injury had nothing to do with the presentation based upon the totality of the history we have, that is, a lack of significant disability with his back at any point in the year or two preceding the incident. He was functioning fairly well according to my understanding, that is, he was actually in the back of a truck loading material, and as I saw him, he was quite miserable. I thought he was certainly different, according to his description, his report of his normal work activity before the incident. So I think it's really difficult for an outside person, any doctor, myself or Dr. Butler to say that we know exactly what happened and that 100% of the problem was due to early development and obesity. Something happened. But I would agree with Dr. Butler that there is stenosis and that his back entering the incident most likely was not normal, that he probably did have some manner of joint hypertrophy or enlargement. He probably did have some ligament thickening, and he could even have had some bulging or herniated discs entering the time of the incident. I would just say that the history argues against Dr.

Butler's opinion." Again, Petitioner did not give any history of significant back problems prior to the work incident. Asked if the alleged accident was sufficient to aggravate or make symptomatic a preexisting congenital L2 to L5 spinal stenosis, Dr. Erickson testified: "I don't know a lot about the circumstances of the accident, but I would say that lifting and twisting and bending and normal loading activity is a very common cause of spinal conditions and – and abrupt change in the degree of lumbar stenosis." He agreed with Dr. Butler that the MRI findings were consistent with a chronic problem with no acute findings, but testified it isn't uncommon to have such findings where someone with some degeneration with an acute onset of pain that doesn't go away. The MRI findings don't rule out a new injury. He testified: "All I can tell from the different histories here is that something sudden changed while he was engaged in loading activity. I would make note of the fact that he hasn't provided an overly dramatic history to myself or Dr. Butler. The incident itself doesn't prove anything. But it's the kind of history we often hear from patients like him that begin to have severe back pain." (Px1).

Asked about Dr. Butler stating that multilevel fusion was indicated for Petitioner, Dr. Erickson testified that fusion could be indicated based on visualized significant instability, but otherwise that minimally invasive decompression at the one level he pinpointed as the likely pain generator, L4/5, reasonable to attempt first in hopes that fusion would not be needed in the future, and Petitioner wanted to try the smallest possibly effective procedure directed at the worst level, L4/5. Dr. Erickson was asked about Dr. Butler opining that Petitioner had such severe stenosis that even tying his shoes or getting in and out o his vehicle could have aggravated that underlying condition. He testified that while he agreed that even something that appeared to be a trivial incident could aggravate your back: "It's not always a big dramatic event that causes the last fiber to snap which leads to a disc herniation or a change in the way the joint stabilizes the spine . . ." He noted that he sees people with radiographically severe stenosis that function quite well and that such people are not guaranteed to have a back problem. Dr. Erickson testified during direct that he thought there was a causal relationship between Petitioner's need for back surgery and the work injury as Petitioner relayed it to him. As to Petitioner's ability to work, Dr. Erickson testified his significant pain probably wouldn't allow him to work a full day, but that "I can't answer that question in a very helpful way" and that he would encourage him to be as active as possible and that he could work as much as he could tolerate: "So if a person who is suffering with their back says I want to try to work, we always allow it, almost always allow it." (Px1).

On cross examination, Dr. Erickson agreed his understanding of what happened at work was that Petitioner was in the activity of loading a trailer or in the back of a truck when the pain started. Petitioner's lumbar MRI abnormalities were multi-factorial with some of the likely preexisting degenerative changes and some congenital stenosis. He could not say if the disc herniations were preexisting or not: "we see disc herniations and we can't age them based on this MRI. We can't say that they're all old and we can't say that they're all new or that one of them is new." Dr. Erickson further agreed that his opinion on causation was largely predicated upon the history he was provided by Petitioner. However, Dr. Erickson continued to disagree with Dr. Butler that Petitioner had multilevel degeneration of the discs, rather, it was Dr. Erickson's opinion that the L4/5 level was causing the most problems and pain for Petitioner. (Px1).

Dr. Butler testified at a 4/12/22 deposition and testified consistent with his report. Asked what was significant in the medical records he reviewed, he testified that the EMG was performed early on in this case, as it usually would be at least 3 months minimum from an accident date, and it reflected an unrelated peripheral neuropathy. He noted that Petitioner reported most of his symptoms were in the right leg versus the left, but Dr. Erickson was proposing a left-sided surgery. Petitioner had low blood pressure, which was inconsistent with his report of 8 out of 10 pain. His neurologic exam was normal, though he did have moderate tenderness. He was able to bend 60 degrees and had no spinal extension, which Dr. Butler testified "just shows he has some mechanical limitations, a lot relating to his abdominal circumference." He reviewed the lumbar MRI films and opined Petitioner had severe spinal stenosis at L4/5 as a result of massive facet enlargement, which is a long standing

degenerative process related to his body habitus, along with moderate stenosis at the L2/3 and L3/4 levels. The stenosis was "to some degree" congenital: "His pedicle heights were very short, and that's obviously something you're born with." Dr. Butler diagnosed spinal stenosis with neurogenic claudication, and he believed the pathology and symptoms described to him were related to an underlying degenerative condition and not a work incident. Separate from causation, Dr. Butler opined that L2 to L4 laminectomies would be appropriate if there was no spinal instability, which again would not be related to any work accident. He did not think Petitioner was able to work full duty as a spotter at the time he saw him and would need some type of restriction as far as his ambulatory tolerances. This would be temporary pending treatment for his degenerative condition. Dr. Goldvekht's 1/29/21 finding of negative straight leg raise is not surprising: "Patients with spinal stenosis, having years of nerve compression, typically don't have a positive finding for straight leg raise. It would be somewhat unusual if they actually had something to that effect. That's normally a result of more extreme issues, such as disc herniation, tethering or producing acute compression of a nerve root." Petitioner's heavy weight would make any surgical recovery more challenging, but its hard to lose weight because of limited ambulatory function, so nutritional modification is needed to make any significant progress. (Rx1).

On cross examination, Dr. Butler confirmed that Petitioner reported no prior problems in his back, radiating pain down his legs or numbness into his right foot before the work accident, and Dr. Butler was not aware of any pre-accident lumbar MRIs. In his opinion, Petitioner likely had an MRI at the ER, which is unusual, based on concern regarding his symptoms, and they likely wanted to admit him when they saw the degree of spinal stenosis he had: "his MRI is very impressive, let's just put it that way. . ." Dr. Butler opined that the MRI findings predated the accident, but acknowledged that the symptomatic pain complaints began immediately after the work accident. He agreed the EMG showed a moderate bilateral radiculopathy at L5/S1. Dr. Butler agreed the EMG findings correlated with Petitioner's subjective complaints but testified: "To have that finding, it would have predated the collision because, again, by 2/17/21, if there was an issue from the incident on 12/29/20, it was too early to manifest an EMG change." He agreed that APM on 3/17/21 noted positive straight leg raise bilaterally, but "they probably don't know how to do a straight leg raise." Dr. Butler opined that Petitioner did not have a condition at that time that would have led to a positive straight leg raise test. Dr. Butler reiterated that regardless of his opinion on causation, Petitioner was a candidate for a multilevel laminectomy or, if there is instability, a multilevel lumbar fusion. (Rx1).

As to Dr. Erickson recommending a minimally invasive L4/5 decompression, Dr. Butler testified "I don't believe he needed a minimally invasive anything. I mean, guys with this body mass are, in my experience, poor candidates for minimally invasive anything." He opined it was safer and more reliable to do a thorough job with an open procedure. At a weight over 300 pounds, his risk for surgical complications is substantial, and weight loss via nutrition would change his prognosis tremendously. Dr. Butler went on to testify that Petitioner's stenosis "was some of the worst you'll ever see, and in those situations, an aggravating factor can be anything. And so its hard for me to attribute his need for treatment to this incident when he's - - you know, basically has a grenade in his pocket at all times." Petitioner's counsel noted that in this case there was a specific history of the work accident being the aggravating act, and Dr. Butler testified: "That's what was reported. Again, I don't know if that's really what happened or not. That's what was reported." Dr. Butler did not see a herniated disc in Petitioner's MRI films, testifying the spinal canal was so tight "there's no space to herniate a disc there", and Petitioner would have had a claudication syndrome if there were such a disc. He testified: "He may have a degenerative bulge or prominence of the disc, but that's not a clinical herniation, in my mind." Dr. Butler did agree with Dr. Erickson that Petitioner was unable to return to full duty work in light of his condition irrespective of his opinion on causation. On redirect, Dr. Butler testified that moving furniture or sleeping the wrong way could have aggravated Petitioner's underlying condition. (Rx1).

Petitioner testified he has had no formal medical care since 7/16/21 as he has no insurance coverage. He testified that he is still in constant daily pain and is waiting for surgical approval, noting he is really no better or

worse since the accident. His legs will "go to sleep" if he sits or stands for too long. He believes he could walk about a half block before his symptoms worsen. He can drive but gets increased pain if it is prolonged or if he is on bumpy roads. The only medications he takes are over-the-counter such as Tylenol or ibuprofen. He hasn't worked or received any income or disability benefits since going off work following this alleged injury. He acknowledged that he is able to lift 20 pounds, such as one of his grandchildren, but cannot do so without pain. He does not feel he could currently work as a spotter, as there is an impact when hooking up the spotter truck to trailers. It can be smooth if the trailer is leveled at the right height, but other times there is more significant impact because you have to slam the "kingpin" (hitch) into the trailer's fifth wheel. He testified that his medical bills remain unpaid from multiple providers, including APM, EQMD (prescriptions), Dr. Rabi, and Dr. Erickson.

Respondent submitted into evidence an Employee Incident/damage report that is dated 12/21/20. Signed by Joe Glidic, it states: "Steve was complaining about wanting next day off said his back hurt and wanted the day off to rest He stated that he didn't know if he slept wrong on it or if it was from helping his son move some furniture. There are a number of check boxes listed as to the type of warning this was and what type of "offense" was involved, but none were actually checked off. (Rx2).

As to this statement of Mr. Glidic (Rx2), Petitioner denied moving furniture in December 2020 and testified that he never told Glidic that his back hurt because he had slept wrong or from helping his son move. He denied indicating that he needed a day off work around Christmas 2020. He volunteered to work and worked on 12/24/20, which was normally a day off and thus involved overtime pay, and he wanted to make more money. Respondent did offer an opportunity to work on Christmas day, normally also an off-work holiday, but he did not volunteer to work and did not work on Christmas. After Christmas he agreed he did not work on 12/27/20 or 12/28/20, which were the weekend and he was not scheduled to work, so his first day back at work after Christmas was 12/29/20. He denied ever telling anyone that he hurt himself sleeping wrong or lifting furniture.

On cross-examination, Petitioner denied any prior criminal felony convictions, but agreed he had failed to appear for a hearing and had a bench warrant issued against him. While he agreed he had been laid off by Respondent for about 6 months during his five years employed there, he denied that he otherwise only worked "on and off" in that five year period. As to the spotter truck seat, Petitioner testified that there was no cushioning or springs, again alleging that Respondent had substandard equipment. It was a firm seat that didn't move with a wall right behind it. He agreed the spotter truck is more agile than a semi-tractor. On 12/29/20, he testified that the trailer he was backing into that was lower than normal was a UPS trailer and was full, not empty. Again, he could not say exactly how fast he was going at impact as the gauges did not work but agreed it was possibly between 5 and 10 miles per hour. He agreed that couplings with the spotter truck and trailer sometimes goes smoothly, but in this case the trailer was too low. He agreed he did not notify anyone of this, as it "happens all day long" and there is no one to notify. He hasn't seen any doctors since the Dr. Erickson visit in July 2021. He testified that Dr. Erickson at that time did not say he could work and did not indicate he could work on a light duty basis.

Petitioner testified that he texted night manager Joe Glidic sometime between 10:27 and 11:35 p.m. (on direct it was indicated the text was at approximately 11:25 p.m. on 1/3/21, but when Mr. Glidic testified it was indicated to be at 10:35 p.m.) at a 815-715-1942 number, and that he still had the text on his phone, which both attorneys viewed on the phone and which was read into the record as stating: "Hey, Joe, this is Steve. Did you let Junior know what happened to my back at work the other night because he sent me a schedule. I've been in bed since Wednesday, hoping it would get better but it hasn't. I'm in the hospital waiting to find out the problem. Don't think I will be able to work because I am still unable to walk without severe pain and my lower back, in my lower back and legs." Petitioner testified that the "Junior" mentioned was "the owner's son. The office manager or whatever you want to call him." Asked further about the text on redirect, Petitioner testified that in response

to Glidic's test accusing him of driving one of the truck drivers' tractors, Petitioner texted back: "What are you talking about, never jumped in any driver's truck, was in my spotter truck", testifying again that he was denying doing this. Petitioner testified that he also texted Glidic on 1/4/21: "Doctor said can't return to work until I see a surgeon." Petitioner testified that he had texted with Mr. Glidic prior to the alleged work accident, again noting Glidic was the night manager.

As to his denial of any prior workers compensation claims related to his back, Petitioner was asked if he settled a case with USF in 2003 for his neck and back for 2.5% of the person as a whole, and he testified he did not recall an accident or a settlement in this regard. He was also asked about a claim involving his back and legs while working for Battaglia in 1992 and Petitioner testified he did not recall settling for 10% person as a whole. The Arbitrator notes that no evidence was submitted into evidence regarding these alleged prior claims. Petitioner did agree he had a 7/2/15 claim involving his knee while working for a different company, Jerich.

Joe Glidic testified that he has been a manager on and off for Respondent for years, and that he was a manager in December 2020. He described the spotter's job that involves using a spotter truck to hook up to trailers at a customer's yard and then back them into dock doors for loading or unloading. He testified that the spotter truck is about half the size of a semi-tractor, is about as wide as a car, and has one adjustable "air-ride" seat, which absorbs shock.

Mr. Glidic was asked about conversations he had with Petitioner about back complaints prior to 12/29/20. He testified that on 12/21/20, Petitioner called him and reported his back was hurting, so Glidic came on-site to ask what happened, stating that the Petitioner said he didn't know if he slept wrong or it was from helping his son move a couch. As a result, he prepared a report (Rx2), which he testified the Petitioner did not sign because he wasn't at work the following day. Mr. Glidic testified he prepared the report just to be safe, as he has noted issues in the past where employees have tried to claim work injuries when they weren't hurt at work, and this is the procedure if someone says they were hurt outside of work. Mr. Glidic testified that the Petitioner did not report a work injury on 12/29/20. For a work injury, the normal procedure would be to contact a manager, such as himself, or the safety manager, after which Petitioner would have been sent immediately for a drug screen.

As to the 1/3/21 text message the Petitioner testified about, Mr. Glidic reviewed it on Petitioner's phone at the hearing and testified he did not recall receiving the text. He testified he did not recall responding at 11:21 a.m. "copy", and then at sending the following response to Petitioner at 11:23 p.m.: "see what happens, we jump in drivers' trucks instead of staying in yours" followed by a laughing emoji. Asked if he did not send the text or just did not recall doing so, he testified he did not recall. As to Petitioner then responding at 11:25 p.m.: "What are you talking about, never jumped in any driver's truck, was in my spotter truck." The 11:25 p.m. response allegedly sent by Petitioner was: "Jason said you'd be working the yard when drivers come in", with an alleged 11:26 p.m. reply from Petitioner stating "yeah, right", followed by an 11:28 text from Petitioner: "call me." On 1/4/21, Petitioner allegedly sent a text at 12:27 a.m., which again was viewed on Petitioner's phone by both parties, stating "doctor said can't return to work until I see a surgeon." When asked if he was the person replying to Petitioner's texts, Mr. Glidic testified: "No, I don't believe that was me. We do have other managers."

On cross-examination, Mr. Glidic testified that 815-715-1942 is not just his phone number, but rather is the number for a shared company phone that all managers have access to. As there were 4 such managers working the night shift for Respondent at that time, he could not say who was working with him on the night of 12/29/20, just that there were always two managers working on that shift. He agreed that, based on the phone number Petitioner's texts were sent to, it would have been a manager responding to them. He believed the other three managers for respondent in December 2020 were Chris Williams, Paul Spagnola, and Mike Hall. He could not recall if the Petitioner was at work or not on 12/29/20.

As to the statement he prepared regarding a 12/21/20 conversation with Petitioner (Rx2), Mr. Glidic agreed he didn't state "couch" in the report, only indicating furniture. He testified Petitioner reported what he indicated in the report on 12/21/20, he then went into the facility to write up the report, and the Petitioner had already gone home, so it was never presented to him for signature despite it having a space for his signature. He did not recall if Petitioner worked on 12/24/20 or not, but agreed it was never presented to petitioner for his signature. It went to the safety manager at that time, Debbie, and Mr. Glidic could not say if it was ever presented to Petitioner for signature after that. Mr Glidic was asked how many times he had prepared reports in the past after an employee reported a non-work related injury, and he testified he had never done so before, noting "I don't get employees telling me they get hurt at home and come to work and tell me about it." After the Petitioner reported his work accident to Respondent, he was never contacted by the safety manager or asked for a statement regarding the reported work injury or about the 12/21/20 report (Rx2) he completed. Ultimately, Mr. Glidic testified he could not recall if he himself was working on 12/29/20 or 1/3/21.

Petitioner was then called back to the stand to testify and acknowledged that, other than the text messages to Mr. Glidic, he didn't report his alleged work injury to anyone else at Respondent, noting Glidic is the person he is supposed to whom he was to report a work injury. He agreed that he did not prepare any accident report, as all he knew is he was to report it to Glidic who was then to report it to the safety manager, and he was never asked to complete such report. He testified that he did also call Mr. Glidic on 12/29/20 and told him what happened with the spotter truck that day: "I asked him if I could leave and told me no, said I have to finish up." He has never been to a safety meeting with Respondent, noting to his knowledge working there for 5 years they do not have safety meetings. He denied receiving any safety information. Petitioner was aware Respondent requires a drug test after an accident and agreed he was never sent for one in this case. Mr. Glidic was then recalled, and he denied Petitioner ever calling him on 12/29/20 about a work injury.

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds, in a relatively close decision, that the greater weight of the evidence supports the finding that Petitioner fulfilled his burden of proving he sustained an accidental lumbar injury on 12/29/20 which arose out of and in the course of his employment with Respondent.

The Respondent's disputes regarding this issue appear to be twofold: one, there is a question if the accident actually occurred as Petitioner testified to or if he had a preexisting back problem, and secondly whether he provided timely notice. It is acknowledged in the stipulation sheet (Arbx1) that the Petitioner provided notice within the 45 days outlined in Section 6(c) of the Act, but Respondent alleged that Petitioner never reported the incident to Respondent's management personnel, but rather that the first notice of the injury came in the form of the Application for Adjustment of Claim (Arbx2) on 2/1/21.

Petitioner testified that he suffered an injury to his low back while trying to back a spotter truck into a trailer with legs that were too low in order to move the trailer to another location. He indicated that because the legs were low, he had to back the truck in with a more significant impact and that this resulted in his back being struck against the back of the truck seat. He felt a shock-type feeling in his back and into his legs. The Petitioner then did not seek treatment until 1/3/21. He testified that he hoped he would get better but when he didn't, he went to the ER. The Arbitrator notes that Petitioner gave a significantly consistent history of injury to all of his treating doctors as well as to the Respondent's examining doctor, Dr. Butler, regarding how he injured 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. (See Px1).

One thing that gave the Arbitrator pause in this case is that the initial direct testimony and cross-examination regarding notice focused on 1/3/21 texts between Petitioner and, allegedly, Mr. Glidic. The texts are noted in the fact section of this decision and were taken verbatim from the Petitioner's phone. However, Petitioner then in a rebuttal situation testified that he called Joe Glidic to report the injury on 12/29/20. It is unclear why this wouldn't have come out on direct exam since it involves a report of an accident on the actual accident date instead of 5 days later. However, the Arbitrator believes that the testimony of Mr. Glidic regarding the 1/3/21 text messages was less than forthcoming. It is not believable to the Arbitrator that he never saw the texts or had no recollection of them. While the occurrence was almost two years prior to the testimony, he had no problem testifying regarding Rx2. Particularly given that report, it does not seem believable that he wouldn't have any recall of the text exchange noted on the phone. The Arbitrator acknowledges that he is not tremendously tech savvy, and therefore cannot confirm the authenticity of the texts, the parties did agree that, per what was on Petitioner's phone, the texts went to a specific phone number. Mr. Glidic confirmed that the phone number matched a "manager's phone" that he testified was shared by four different managers at that time. Despite Mr. Glidic testifying that he did not even recall if he was present at Respondent's facility as a manager on 12/29/20, no other managers testified in this matter. Petitioner testified specifically that the person he was communicating with was Joe Glidic. The Arbitrator finds that the Petitioner was more credible than Mr. Glidic as to the text messages, and those messages clearly report an injury, and the response from whichever manager responded supports that there was knowledge that the spotter truck was involved, as there was an accusation in a somewhat joking manner, in the Arbitrator's impression, that he had been driving regular truck tractors of the truck drivers who used the facility. The fact that Petitioner's text specifically noted that he was in the hospital, one would think, would have led to some type of information of report being provided to the safety manager. Instead, it seems that the managers left her in the dark as to what occurred with Petitioner between 12/29/20 and 2/1/21.

One of Respondent's arguments is, as per the report in Rx2, that the Petitioner told Joe Glidic on 12/21/20, eight days prior to the 12/29/20 accident date, that he had back pain as the result of either waking up wrong or moving furniture with his son. In testimony, he advised that Petitioner said he was moving a couch. The Arbitrator does not find this evidence compelling or entitled to any significant weight. Mr. Glidic acknowledged that the incident report was never provided to Petitioner to sign, despite the form having a space where the Petitioner was supposed to sign. He indicated that Petitioner was not present when the report was completed and given to the safety manager. It doesn't make sense to the Arbitrator that the document was not given to Petitioner to sign given the content of the report, either by Mr. Glidic or the safety manager. It's obvious that the Petitioner did work between 12/21/20 and 12/29/20. Why would a report with this type of information not be provided to the Petitioner to confirm the information contained therein? The fact that Mr. Glidic testified that in the time he has been a manager for Respondent he had never before prepared such a report indicating an employee had reported a non-work injury. It is significant to the Arbitrator that the safety manager, Debbie, was not called to testify to support when this document was received, how common it was for such a report to be prepared in her experience, and why she didn't get the Petitioner's signature on the document. The Arbitrator also notes that there is no mention in any of the medical records that Petitioner injured his back while moving furniture or sleeping in the wrong position.

Ultimately, there are questions regarding the Petitioner's reporting of the 12/29/20 incident, given no accident report was prepared and Respondent's argument that the first notice of accident received was the Application for Adjustment. However, the text messages that were testified to, the Arbitrator's perceived lack of credibility on the part of Mr. Glidic, and the consistency of the Petitioner's reports of what happened in his medical histories starting on 1/3/21 lead the Arbitrator to find that the greater weight of the evidence is in favor of the Petitioner. As such, the Arbitrator finds Petitioner has proven by a preponderance of the evidence that he

suffered a compensable injury at work on 12/29/20. Based on his testimony, he was clearly in the course of his employment with Respondent as he was attempting to move a tractor trailer with a spotter truck. The act of doing this, which resulted in a significant jolt to the truck and a shocking feeling in the Petitioner's back and legs, clearly involves an increased risk of injury while performing a task that was part of his regular job with Respondent. The Arbitrator finds that the lumbar injury arose out of and in the course of his employment by Respondent on 12/29/20.

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

As noted above, the Arbitrator has determined that Petitioner was injured arising out of and in the course of his employment with Respondent on 12/29/20. The Arbitrator further finds that the Petitioner's lumbar injury was caused by the 12/29/20 accident.

The Petitioner testified that at the time of the impact between his spotter truck and the trailer fifth wheel he felt an electrical shock sensation down both of his legs. Thus, by a chain-of-events theory, it seems that at least temporally there is a connection between the incident and the symptom onset.

Medically speaking, the two main physicians involved in this case, surgeons Dr. Erickson and Dr. Butler, disagree as to whether the accident caused the lumbar condition of ill-being that resulted in the surgical recommendation, which both doctors agree is reasonable to perform. The dispute is based on Dr. Butler opining that the Petitioner's lumbar condition was preexisting and that any minor activity could have caused the back symptom onset, while Dr. Erickson opines that the 12/29/20 incident aggravated the preexisting condition and led to the prescription for surgery.

The Arbitrator finds the opinion of Dr. Erickson to be more persuasive in this case. He testified that there was no evidence that he saw indicating Petitioner had back problems prior to 12/29/20, and no evidence that the Petitioner had missed any work prior to 12/29/20 due to back issues. This supports his opinion that the work injury, which again is documented in the medical reports in evidence, including Dr. Butler's, at a minimum aggravated the Petitioner's preexisting lumbar condition. He also testified, as did Dr. Butler, that the MRI findings supported the subjective complaints. Dr. Butler's opinion seems to rely more on what type of force would have been required to aggravate the preexisting congenital lumbar spinal stenosis Petitioner had, as he indicated that even a very minor force could have aggravated the condition or led it to become symptomatic. In the Arbitrator's view of current Illinois law, particular after *McAllister v Illinois Workers' Comp. Comm'n*. (181 N.E.3d 656, 2020 IL 124848, 450 Ill.Dec. 304 (2020)), whether a slight force could have caused an aggravation is not relevant if a work accident actually caused the onset of symptoms. While the Arbitrator believes this case does not rule out the possibility that a condition could be so bad as it exists that an arbitrator could determine these is no causal connection to a work accident, here the Petitioner had a relatively significant jolt to his body, there was no evidence of prior symptoms, the greater weight of the evidence supports that he reported the injury on either 12/29/20 or 1/3/21, and he has had ongoing symptoms since 12/29/20. The greater weight of the evidence supports that the Petitioner's lumbar and radicular symptom onset was actually caused by the described 12/29/20 work accident as described, and thus is causally related to the 12/29/20 accident. Again, this is supported by the opinions of Dr. Erickson and the chain-of-events.

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:

Having found Petitioner sustained a work-related injury during his employment with Respondent and having found his current condition of ill being is causally related, 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, and Dr. Butler did not identify any such unreasonable or unnecessary treatment. Respondent is liable for the following medical expenses: $900.00—Micro Neuro Spine (Px2): $3,792.70—Hinsdale Hospital (Px3): $8,002.00—Advanced Physical Medicine (Px4): $5,586.00—Dr. Joseph Rabi (Px5): $3,105.74-EQMD (Px6). Respondent shall pay these bills to Petitioner per Sections 8(a) and 8.2 (the medical fee schedule) of the Act.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Taking into account the Arbitrator's findings with regard to accident and causation, the Arbitrator further finds that the Petitioner is entitled to lumbar surgery related to the 12/29/20 accident.

Both Dr. Erickson and Dr. Butler have opined that, based on the Petitioner's subjective complaints, examination findings and MRI films, lumbar surgery is a reasonable option to help to resolve Petitioner's symptoms. Both agree that laminectomy is appropriate if there is no flexion/extension x-ray and/or visual evidence of instability in Petitioner's lumbar spine, in which case they again agree that fusion would be the proper option. The evidence does not reflect that such films had been obtained prior to the hearing.

The only real dispute between the surgeons is what type of laminectomy in terms of procedure and level or levels is applicable, or how many levels, or which lumbar levels would be included in any fusion procedure. Dr. Erickson opined that a minimally invasive left-sided hemilaminectomy was appropriate at L4/5. Dr. Butler opined that such a surgery would be essentially useless given the degree of spinal stenosis across multiple lumbar levels and recommended L2 to L4 laminectomies.

The Arbitrator finds that the Respondent shall authorize the surgery recommended by Dr. Erickson. As noted, while this is currently a left sided hemilaminectomy at L4/5, both he and Dr. Butler opined that flexion/extension x-rays should first be obtained to determine if there is instability in Petitioner's lumbar spine that would change the recommendation to a lumbar fusion. If Dr. Erickson, following review of the x-ray films, determines that lumbar fusion is the better procedure, the Respondent shall authorize the recommended fusion surgery.

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:

Having found that an accident occurred on 12/29/20, which arose out of and in the course of Petitioner's employment and that his lumbar condition is causally related to the accident, the Arbitrator finds that the Petitioner is entitled to temporary total disability from the date he was initially authorized off work through the hearing date. Petitioner testified he has not worked since the date of accident. He was restricted from returning to work by Hinsdale Hospital beginning 1/3/21. Both Dr. Erickson and Dr. Butler agreed that the Petitioner was unable to return to work as a spotter, and both have recommended surgery. As such, the Petitioner has not yet reached maximum medical improvement (MMI) and is entitled to ongoing TTD benefits. The Arbitrator finds Petitioner has proven by preponderance of the evidence that he is entitled to temporary total disability benefits from 1/3/21 through the 12/20/22 hearing date.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC004852
Case Name	Mark Campos v. Round Lake Area Park District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0119
Number of Pages of Decision	14
Decision Issued By	Kathryn Doerries, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	David Menchetti
Respondent Attorney	Jason Kolecke

DATE FILED: 3/12/2024

/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 down PPD	☐	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARK CAMPOS,

Petitioner,

vs. NO: 16 WC 04852

ROUND LAKE AREA PARK DISTRICT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability and nature and extent of Petitioner's 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 the findings of causal connection and temporary total disability.

The Commission corrects a scrivener's error in Section (L), the first sentence, and strikes "2017" and replaces it with "2015."

The Commission modifies the permanent partial disability award, reducing the award to 10% loss of use of a person as a whole. In further support thereof, the Commission states the following.

In the interest of efficiency, the Commission primarily relies on the Arbitrator's recitation of facts. Petitioner was seen by Dr. Ganshirt at Northwestern Medical Group on July 15, 2017. Petitioner at that time was two years post laparoscopic inguinal hernia repair surgery as a result of the work-related accident sustained on August 4, 2015. (PX 2). It was noted that Petitioner completed a trial of steroid-induced dosepak without a change in symptoms. Petitioner reported

that his pain was sometimes on a daily basis, and sometimes weekly. Dr. Ganshirt noted Petitioner described his pain as "feeling like a pocketknife is being stuck into his groin. He feels this is limiting his ability to work." Dr. Ganshirt noted that in Petitioner's May 2, 2017, visit, he had advised Petitioner to have a consultation with their anesthesiologist for a trigger point injection. After the trigger point injection was performed, Petitioner reported limited relief for about 12-hours. In the assessment and plan notes of May 15, 2017, Dr. Ganshirt noted that "obtaining even a small amount of relief implies that his issues are related to a nerve and additional injections could prove to be completely therapeutic." Dr. Ganshirt strongly advised Petitioner to return for an additional injection. He further noted that Petitioner's other options "are to live with the pain as it currently is or consider surgical consultation for neurectomy." (PX 2)

Petitioner was seen by Dr. Yaacoub at the Illinois Pain Institute on April 30, 2019, with complaints of right abdominal pain and groin pain. (PX 3) On May 21, 2019, Petitioner returned and complained of abdominal pain as well as back pain. Dr. Yaacoub performed a superior hypogastric quadrant plexus block and found Petitioner a candidate for peripheral nerve stimulation. On June 10, 2019, Petitioner returned to the Illinois Pain Institute, seeing Dr. Rizvi, with complaints of persistent low back pain and radiation to his right lower extremity and inguinal abdominal pain. It was noted that Dr. Yaacoub had completed inguinal nerve blocks and hypogastric plexus blocks with Petitioner reporting it had not helped his pain. Dr. Rizvi performed epidural steroid injections (ESI) for the back complaints. Dr. Rizvi recommended in the future for Petitioner to have further back injections and also to "repeat the inguinal nerve" (superior hypogastric quadrant plexus block). (PX 3)

While the Commission agrees with the Arbitrator's analysis of the five factors pursuant to Section 8.1b(b) of the Act, it adds the following analysis to factor (v) and finds modification of the permanent partial disability award to be appropriate. Petitioner sustained a right inguinal hernia requiring a laparoscopic right inguinal hernia repair with mesh. As a result of the hernia and subsequent surgery, Petitioner developed neuritis which required injections including inguinal nerve blocks and hypogastric plexus blocks. Petitioner was recommended to consider a surgical consult for a neurectomy in 2017. Petitioner did not pursue surgery and has not received any medical care for the work-related condition since June 10, 2019. (PX 3).

Petitioner was released to return to work full duty on December 8, 2015, and voluntarily resigned his position on January 18, 2016. While Petitioner continues to experience residual symptoms, these symptoms are not significant enough for Petitioner to pursue surgical intervention recommended in 2017 or to seek additional medical treatment since 2019. For the foregoing reasons, the Commission finds that Petitioner sustained 10% loss of use of a person as a whole as a result of the work-related accident.

The Commission affirms all other issues.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $633.33 per week for a period of 2-5/7 weeks, commencing October 15, 2015, through November 2, 2015, as provided in §8(b) of the Act.

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

the sum of $597.00 per week for a period of 50 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 10% loss of Petitioner's person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, for all reasonable, necessary, and related medical treatment relating to the right inguinal hernia, including the services of Dr. Liesen, Dr. Ganshirt, and Dr. Yaacoub, as provided in Sections 8(a) and 8.2 of the Act. The Respondent shall receive credit for all such bills paid.

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

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 12, 2024

o-1/30/24
KAD/jsf

/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 from the opinion of the majority and would affirm the Decision of the Arbitrator as to the nature and extent of Petitioner's injury.

I disagree with the emphasis the majority places on Petitioner's decision to forgo additional treatment in its additional analysis of the evidence of Petitioner's disability corroborated by the treating records (factor (v)). Petitioner's decision to live with his symptoms, and not pursue additional surgery, does not diminish his disability. I disagree that this shows his symptoms are not significant. The choice to pursue surgery, when a first surgery already led to complications, should not lend itself to the speculation that symptoms are insignificant. Petitioner testified he did not want to go through another surgery. T. 13. However, he tried multiple post-operative interventions for four years without relief.

Petitioner testified to significant ongoing complaints, including pressure and pain in the right groin when defecating, throbbing and jabbing pain when walking more than four blocks, problems walking up stairs, and throbbing in the right groin when lifting over 8 to 10 pounds. T. 19-20. He no longer hikes or cuts his mother's lawn due to pain in his right groin. T. 20-21. This disability is corroborated by the medical records. For example, the physical therapy records confirm "endurance deficits, pain limiting function, range of motion deficits, [and] strength deficits." PX1, p. 59.

For these reasons, I would affirm the Arbitrator's award of permanent partial disability.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC004852
Case Name	Mark Campos v. Round Lake Area Park District
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Charles Watts, Arbitrator

Petitioner Attorney	David Menchetti
Respondent Attorney	Joseph Zwick

DATE FILED: 8/10/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 8, 2023 5.26%

/s/Charles Watts, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Mark Campos Case #16 WC 4852
Employee/Petitioner
v.
Round Lake Area Park District
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Charles Watts, Arbitrator of the Commission, in the city of **Chicago**, on April 17, 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. X Is Respondent due any credit?
O. ☐ Other ______

FINDINGS

On **August 4, 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 earned $**51,740.00**; the average weekly wage was $**995.00**.

On the date of accident, Petitioner was **51** 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.

To date, Respondent has paid $**1,800.46** in TTD and/or for maintenance benefits and is entitled to a credit for any and all amounts paid.

ORDER

- Respondent shall be given a credit of $1,800.46 for TTD, $**0** for TPD, and $**0** for maintenance benefits, for a total credit of $**1,800.46**.
- Respondent shall pay Petitioner temporary total disability benefits of $633.33 per week for 2 5/7 weeks, commencing 10/15/2015 through 11/2/2015, as provided in Section 8(b) of the Act.
- Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, for all reasonable, necessary and related medical treatment relating to the right inguinal hernia, including the services of Dr Liesen, Dr Ganshirt and Dr Yaacoub, as provided in Sections 8(a) and 8.2 of the Act. The respondent shall receive credit for all such bills paid.
- Respondent shall pay Petitioner permanent partial disability benefits of $597.00 per week for 75 weeks, because the injuries sustained caused the 15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Signature of Arbitrator

AUGUST 10, 2023

STATEMENT OF FACTS

On August 4, 2015, Petitioner Mark Campos (Petitioner) was working as a horticulturalist for Respondent Round Lake Area Park District (Respondent). T7. The job required Petitioner to perform snow removal, prune trees, lay brick, plant trees, install gardens and do a variety of landscape work. T7.

The parties stipulated that on August 4, 2015, Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent and reported them timely. Arb.X1, T5, 9. On that date, Petitioner was carrying a tree trunk section and noticed a pop and pain in his right groin area below his waistline. T9.

Petitioner sought immediate medical treatment at Advocate Health in Round Lake. T9. Petitioner was referred to Dr. Liesen. T10.

On October 5, 2015, Petitioner saw Dr. Liesen in Gurnee. Petitioner complained of persistent groin pain since lifting logs at work in early August. Dr. Liesen reported that CT scan confirmed right inguinal hernia. PX1, pg. 2. Dr. Liesen was able to demonstrate inguinal hernia on trans-scrotal examination of the inguinal canal and diagnosed right inguinal hernia. Dr. Liesen recommended laparoscopic right hernia repair with mesh. PX 1, pg. 3.

On October 13, 2015, Dr. Liesen performed surgery on Petitioner. T11. Procedure was laparoscopic right inguinal hernia repair with mesh. Post operative diagnosis was right inguinal hernia. PX 1, pg. 7.

On October 22, 2015, Petitioner followed up with Dr. Liesen who noted that Petitioner was still in a moderate amount of pain. PX 1, pg.17. Dr. Liesen reported that Petitioner would not be able to perform heavy lifting or vigorous activity for at least 6 weeks. PX1, pg. 18.

On October 27, 2015, Dr. Liesen noted that Petitioner could return to work light duty on November 3, 2015, meaning no lifting greater than 15 pounds until November 24, 2015. PX1, pg. 24.

Petitioner may have returned to light duty as of November 4, 2015 (PX 1, pg. 24), or, per trial testimony, he may have stayed off entirely until December 8, 2015 (T.17)

Petitioner received TTD benefits from the Respondent from October 15, 2015, through November 2, 2015. (Arb Ex 1),

On December 8, 2015, Dr. Liesen noted that Petitioner was under his professional care from October 13, 2015 to present and was totally incapacitated during this time. PX 1, pg. 9.

Though his intention was to work for Respondent through his retirement age and to become park superintendent, but effective January 18, 2016, Petitioner resigned from employment with Respondent (T 22, 26). He was not restricted from working on the date of retirement. (T 25)

Due to continuing right groin pain Petitioner followed up with Dr Dr Leisen on May 26, 2016, PX1, pg. 10, 19. Dr. Liesen noted that Petitioner was status post laparoscopic right inguinal hernia repair and injected steroid into Petitioner's right groin area. PX 1, pg. 12. No work restrictions are in evidence from this visit.

On July 26, 2016, Dr. Liesen recommended that Petitioner undergo physical therapy for diagnosis of right groin pain. PX1, 26.

On December 10, 2016, Petitioner began a course of physical therapy (PT) at Northwestern Lake Forest Hospital for evaluation and treatment of groin pain status post right inguinal hernia repair. PX1, pg. 55. Petitioner underwent approximately 7 PT visits until he was discharged from PT on January 6, 2017, with continuing soreness and sharp pains that have not improved with manual interventions or exercise. PX 1, pg. 31. Petitioner reported that he had been completely off work since January 2016. PX 1, pg. 61. Petitioner exhibited decreased firing and endurance of deep abdominals, mild deficits of local muscle length and strength, and decreased mobility. PX1, pg. 65.

On May 2, 2017, Petitioner was seen by Dr. Stephen Ganshirt complaining of pain in his groin daily. PX 2, pg. 19. Dr. Ganshirt reported that Petitioner had developed neuritis following hernia repair, which occurs in about 1-2% of hernia repair patients, and recommended injection. PX2, pg. 20.

On June 15, 2017, Dr. Ganshirt reported that Petitioner had received a trigger point injection by the anesthesiologist but that it provided only about 2 hours of relief. PX 2, pg. 23. Dr. Ganshirt thought Petitioner's issues were related to a nerve and thought additional injections could prove therapeutic. Dr. Ganshirt reported that Petitioner's options were to live with the pain or consider surgical neurectomy. PX 2, pg. 25.

On July 6, 2017, Dr. Ganshirt referred Petitioner to another surgeon, Dr Milliken, reporting that Petitioner had chronic pain concerns after laparoscopic inguinal hernia surgery and noted that Petitioner had two injections performed without any relief. PX 2, pg. 27. Petitioner was not interested in medical management and there was nothing else Dr Ganshirt was offering. PX 2 pg. 10

By spring 2019, Petitioner was back to treating due to right groin pain T 13, 14. Petitioner did not want to go through another surgery and decided to seek other forms of pain relief. T13. On April 24, 2019, he presented to Dr. Chadi Yaacoub of Illinois Pain Institute. Dr. Yaacoub assessed right lower quadrant abdominal pain, status post hernia surgery. Dr. Yaacoub prescribed medication and recommended TAP block on the right side. PX 3, pg. 22-23. On April 30, 2019, Dr. Yaacoub performed TAP block under ultrasound guidance. PX 3, pg. 19. On May 21, 2019, Dr. Yaacoub performed superior hypogastric plexus block under fluoroscopy. PX 3, pg. 15. A final injection was administered by Dr Rizvi on June 10, 2019 (PX 3 pg. 5)
Petitioner has not received any treatment since then. T31.

Petitioner is currently receiving Social Security disability benefits and has not worked at all since he finished the course of physical therapy recommended by Dr. Liesen. T19. Petitioner continues

to notice pain in his right groin area when he walks or lifts. T20. Petitioner notices pain in his right groin when bending or sitting. T21. Petitioner resigned his position when he stopped working for Respondent even though his intention was to work through retirement age and had a goal to become superintendent. T22.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision with respect to (F) C**ausal Connection**, the Arbitrator finds as follows:

The parties stipulated that Petitioner sustained accidental injuries to his right groin on August 4, 2015.

Petitioner bears the burden of proving by a preponderance of the evidence all of the elements of his claim. R & D Thiel v. Workers' Compensation Comm'n, 98 Ill. App. 3d 858, (2010). Among the elements that the Petitioner must establish is that his condition of ill-being is causally connected to his employment. Elgin Bd. of Education U-46 v. Workers' Compensation Comm'n, 409 Ill. App. 3d 943 (2011). The workplace injury need not be the sole factor, or even the primary factor of an injury, as long as it is a causative factor, Sisbro, Inc. v. Indus. Comm'n, 207 Ill. 2d 193 (2003). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in a disability may be sufficient circumstantial evidence to prove a causal connection between the accident and the employee's injury. Int'l Harvester v. Industrial Comm 'n, 93 Ill. 2d 59 (1982). If a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. Schroeder v. Ill. Workers' Comp. Comm'n, 2017 IL App (4th) 160192WC.

In the present case, causal connection is supported by both a chain of events and medical evidence. Prior to the date of stipulated accidental injuries, Petitioner was working in full-time full-duty job as a horticulturalist for respondent. Petitioner then sustained stipulated accidental injuries to his right groin. Since that time Petitioner has consistently complained of pain in his right groin and has received continuous medical treatment for his right groin until June 2019.

Additionally, Dr. Liesen, Dr. Ganshirt and Dr. Yaacoub all attributed Petitioner’s condition of ill-being in his right groin to the hernia and the surgery for the hernia. For example, Dr. Ganshirt reported that Petitioner had developed neuritis because of the hernia repair which happens in a certain percentage of people. Dr. Yaacoub attributed Petitioner’s right lower quadrant abdominal pain to being status post hernia surgery.

Respondent presented no medical evidence on the causation issue.

Therefore, the Arbitrator finds that Petitioner’s current condition of ill-being is causally connected to the stipulated accidental injuries of August 4, 2015.

In support of the Arbitrator's decision with respect to (J) **Medical**, the Arbitrator finds as follows:

Based on the Arbitrator's findings with respect to causal connection, Petitioner was entitled to reasonable and necessary medical treatment to address the conditions of ill-being in his right groin, including all treatment by Dr. Liesen, Dr. Ganshirt and Dr. Yaacoub.

This Arbitrator finds that respondent has paid all appropriate charges stemming from accident sustained on August 4, 2015. A review of petitioner's exhibits indicates there are no outstanding bills from Dr. Liesen. (Pet. Ex. 1) The medical bills contained in Petitioner's Exhibit 2, indicate all bills have been paid and there are no outstanding balances. (Pet. Ex. 2 pg. 3-8) Finally, the medical bills from Dr. Yaacub indicate a balance of $50.00. (Pet. Ex. 3 pg. 31-32) However, this Arbitrator acknowledges that petitioner treated for a work related condition, his groin, and a non-work related condition, his low back with Dr. Yaacub. Petitioner testified his low back condition was not related to his work accident. T16. Based on a review of the medical bills from Dr. Yaacub, it is impossible to determine if the remaining balance of $50.00 is related to the groin treatment or the non-work related back treatment. It is Petitioner's burden to prove each element of their claim and based on the evidence submitted, this Arbitrator finds Petitioner has not sustained that burden as to the $50.00 balance being related to the accident sustained on August 4, 2015.

In support of the Arbitrator's decision with respect to (L) **Temporary Compensation**, the Arbitrator finds as follows:

Temporary total disability benefits are governed by 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 has been 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. Arbuckle v Industrial Comm., 32 Ill. 2d 581 1965. In proving such a period of incapacity, it is not enough for the employee to show that he did not work -- he must also show that he was unable to work. Crerar Clinch Coal Co. v. Industrial Comm., 3 Ill.2d 88; Lehigh Stone Co. v. Industrial Comm., 315 Ill. 431.

The evidence favors the conclusion that the only period in which Petitioner could not work ran from October 15, 2015 to November 2, 2017. He acknowledged that after his hernia surgery on October 13, 2015 he might have been released to light duty before being definitely discharged to full duty by his treating surgeon Dr Liesen on December 8, 2015 T 17. Under cross exam he testified he specifically testified his physician allowed his to return to work effective November 3, 2015 so long as he did not lift more than 15 pounds. T 24. He further admitted he went back to light duty on November 4, 2016. Id.

At the time Petitioner resigned on January 18, 2016, he was under the full duty release of December 8, 2015, from Dr Liesen and no other physician had him on any type of restrictions (T 26). Petitioner was working only light duty because he "had complained about having the pain in

(his) right groin area so (his) boss just let (him) stay with some light duty because she saw (he) was having the problems. T26.

Petitioner saw Dr Liesen for the last time on August 29, 2017 at which time no work restrictions at all were imposed. T 26). Petitioner admitted Dr Ganshirt never prescribed work restrictions of any sort. T28. Neither did Dr Yaacoub T30. There is no evidence in the record that any physician provided petitioner with work restrictions respecting the right groin since he was released to full duty on December 8, 2015. T31.

Petitioner testified lifting more than 8 to 10 pounds triggers a throbbing in his right groin and when he walks for four blocks he is afflicted with a jabbing pain. T19-20. He doesn't show, however, why these symptoms render him unable to work. No physician has considered them in context of the demands of his job, or any job. In fact, the record is devoid of specifics relative to the physicality of Petitioner's work. There's no evidence he looked for a job let alone tried a position. The Arbitrator finds Petitioner voluntarily removed himself from employment for personal reasons. The only thing certain about his job with Respondent is that after the hernia surgery, Respondent was accommodating him.

Petitioner's entitlement to TTD beyond the period from October 13, 2015 to November 2, 2015, representing 2 and 5/7 weeks is entirely conjectural. Arbuckle supra.

In support of the Arbitrator's decision with respect to (L) **Nature & Extent**, the Arbitrator finds as follows:

Pursuant to Section 8.1b(b), five factors are to be weighed in determining the level of permanent partial disability (PPD) for accidental injuries occurring on or after September 1, 2011.

Regarding subsection (i) of Section 8.1b(b), the Arbitrator notes that neither party submitted an AMA impairment report. Therefore, the Arbitrator gives no weight to this factor.

Regarding subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes that the Petitioner was employed as a horticulturalist but beyond proving his job title, he did little to inform the record about what his job required in context of his injuries. The Arbitrator therefore gives this factor limited weight.

Regarding subsection (iii) of Section 8.1b(b), the Arbitrator notes that Petitioner was 51 years old at the time of the accidental injuries. The Arbitrator considers Petitioner to be an older individual who had to live with the disability caused by the accidental injuries, the Arbitrator gives this factor heavier weight.

Regarding subsection (iv) of Section 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner never returned to work as a horticulturalist or in any other job after January 2016. Petitioner resigned his job and is currently receiving Social Security disability benefits. Though Petitioner testified that it was his intention to continue working until retirement age, he did not sustain his burden of proving that his injuries were the reason he could not work. The

Arbitrator has no alternative but to find that they had no negative impact on Petitioner's future earning capacity gives this factor no weight.

Regarding subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the Petitioner's credible complaints are corroborated by the medical records of Dr. Liesen, Dr. Ganshirt and Dr. Yaacoub. Petitioner sustained a right inguinal hernia requiring surgery. As a result of the hernia and surgery, Petitioner developed neuritis which required multiple injections and continuous medical treatment through May 2019, almost 4 years after the stipulated accidental injuries. The Arbitrator gives this factor great weight.

The determination of PPD is not simply a calculation but an evaluation of the five factors in Section 8.1b. In making this evaluation of PPD, no single enumerated factor is the sole determinant of PPD. Therefore, after applying Section 8.1b, and considering the relevance and weight of each of the five factors, the Arbitrator concludes that as result of the accidental injuries, Petitioner has sustained 15% loss of use of his whole person under Section 8(d)2.

N. Is respondent due a credit?

This Arbitrator awards the respondent a credit in the amount of $1,800.46, as stipulated by the parties. (Arb. Ex. #1)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC030139
Case Name	Darin Kerwin v. Madison County Sheriff's Department
Consolidated Cases	
Proceeding Type	Petition for Review Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0120
Number of Pages of Decision	20
Decision Issued By	Carolyn Doherty, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Matthew Kelly

DATE FILED: 3/12/2024

/s/Carolyn Doherty, Commissioner
Signature

DISSENT: /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: causal connection, medical expenses, and prospective medical.	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DARWIN KERWIN,

Petitioner,

vs. NO: 21 WC 30139

MADISON COUNTY SHERIFF'S DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent, Madison County Sheriff's Department, herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, and prospective medical treatment, and being advised of the facts of law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

I. Causal Connection

Relying on Petitioner's testimony and the opinions of Dr. Solman, the Arbitrator concluded that Petitioner's current condition of ill-being of the left arm is causally related to the work accident on March 14, 2019. However, after a review of the record in its entirety, the Commission views the evidence differently and concludes that Petitioner's condition of ill-being of the left arm and/or elbow is causally related to the March 14, 2019 work accident through March 27, 2019, the last date of medical treatment before a 30-month treatment gap, and not thereafter.

The interpretation of medical testimony is particularly within the province of the

Commission. *A. O. Smith Corp. v. Indus. Comm'n*, 51 Ill. 2d 533, 536-37 (1972). 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, 31 Ill.Dec. 789, 394 N.E.2d 1166 (1979); *AHA Services. Inc. v. Industrial Comm'n* , 226 Ill. App. 3d 225, 168 Ill. Dec. 756, 590 N.E. 2d. 78 (1992); *Danielle Henderson-Ryan v. Edward Hospital*, 2020 Ill. Wrk. Comp. LEXIS 1070, *32.

In this case, the Commission finds the treating medical records to be the most significant evidence relating to the issue of causal connection. The medical records demonstrate that after the work accident on March 14, 2019, Petitioner treated with orthopedic physician, Dr. Brown on two occasions before a nearly 30-month gap without medical treatment. Petitioner's last date of treatment with Dr. Brown was on March 27, 2019 and at that time Petitioner reported feeling pain over the posterior aspect of the left elbow after wrestling with a suspect, noting he was not quite sure what happened during the encounter. Dr. Brown noted the x-rays which showed an olecranon spur and a nondisplaced fracture at the base of the spur and recommended observation over the next four weeks and a Heelbo pad. A follow-up appointment was scheduled for April 24, 2019 for assessment of continued symptoms, if any. Petitioner did not appear at the follow-up appointment with Dr. Brown. Thereafter, Petitioner did not seek a second opinion or any medical treatment with any other physician for his left arm and/or elbow condition for 30 months.

During the 30-month treatment gap, Petitioner worked without restrictions as a deputy on courthouse duty for 9 months and the rest of the time as a deputy on street duty. Petitioner also consistently lifted weights during that time period. There is no medical documentation in the record supporting Petitioner's alleged continuation of left arm and/or elbow symptoms from March 28, 2019 through October 4, 2021. Petitioner eventually sought treatment for the left arm on October 5, 2021 with Dr. Priebe at MultiCare Specialist. Petitioner's contention that his medical treatment was delayed because of the COVID epidemic is unpersuasive because Petitioner abandoned treatment a year before the COVID epidemic began. Further, the medical records indicate Petitioner treated for an unrelated slip and fall injury in March and April of 2021 and there were no complaints relating to left arm or elbow documented.

Finally, when assessing what weight to give the doctor's testimony in this case, the Commission notes that both Dr. Solman and Dr. Crandall evaluated Petitioner on one occasion, both evaluations took place two and half years after the date of accident, and both doctors were retained by Petitioner and Respondent, respectively. The Commission gives little weight to either Dr. Solman's or Dr. Crandall's opinions and instead relies on the treating medical records, which establish that after injuring his left arm/elbow at work on March 14, 2019, Petitioner's last date of treatment was on March 27, 2019. Thereafter, Petitioner abandoned treatment for 30 months and did not seek treatment for the left arm/elbow until October 5, 2021, after a significant period of both full duty work and recreational exercise.

Therefore, the Commission finds that Petitioner's condition of ill-being relating to the left arm and/or elbow is causally related to the March 14, 2019 work accident through March 27, 2019 and not thereafter.

II. Medical Expenses

The Arbitrator ordered that Respondent shall pay reasonable and necessary medical expenses outlined in Petitioner's Exhibit 9, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act and pay $1,180.01 directly to Petitioner for his out-of-pocket medical expenses. The Arbitrator also ordered that Respondent is entitled to a credit of $260.92 under Section 8(j) of the Act.

For the reasons discussed above, the Commission concludes that Petitioner's condition of ill-being of the left arm and/or elbow is causally related to the March 14, 2019 work accident through March 27, 2019 and not thereafter. Accordingly, the Commission vacates the award of reasonable and necessary medical services incurred after March 27, 2019. The Commission orders Respondent shall pay reasonable and necessary medical services incurred on or before March 27, 2019 as provided in Sections 8(a) and 8.2 of the Act and shall pay directly to Petitioner any out-of-pocket medical expenses incurred on or before March 27, 2019. The Commission also orders that Respondent is entitled to a credit of $260.92 under Section 8(j) of the Act.

III. Prospective Medical Treatment

Having concluded that Petitioner's condition of ill-being of the left arm and/or elbow is causally related to the March 14, 2019 work accident through March 27, 2019, the last treatment date prior to a significant gap in treatment, and not thereafter, the Commission vacates the Arbitrator's award of all prospective and/or additional medical treatment relating to the left arm and left elbow.

In all other respects, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated June 6, 2023, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's condition of ill-being of the left arm is causally related to the March 14, 2019 work accident through March 27, 2019 and not thereafter.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical expenses incurred through March 27, 2019, as provided in Sections 8(a) and 8.2 of the Act. The Respondent shall also pay Petitioner for out-of-pocket medical expenses incurred through March 27, 2019.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of all prospective and/or additional medical treatment relating to the left arm and elbow as prescribed by Dr. Solman is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a

credit of $260.92 under Section 8(j) 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 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.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall hold Petitioner harmless from any claims by providers of the services for which Respondent receives a credit under Section 8(j) of the Act.

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.

March 12, 2024
o: 03/07/24
CMD/jjm
045

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

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

DISSENT

I respectfully dissent from the Decision of the Majority. I would have affirmed and adopted the well-reasoned Decision of the Arbitrator.

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC030139
Case Name	Darin Kerwin v. Madison County Sheriff's Department
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	John Winterscheidt
Respondent Attorney	Matthew Kelly

DATE FILED: 6/6/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 6, 2023 5.25%

/s/*Linda Cantrell, Arbitrator*

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Darin Kerwin
Employee/Petitioner
v.
Madison County Sheriff's Department
Employer/Respondent

Case # **21** WC **030139**

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 **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, 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. ☒ 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, **3/14/19**, 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 $**82,252.04**; the average weekly wage was $**1,581.77**.

On the date of accident, Petitioner was **43** years of age, ***married*** with **1** dependent children.

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

Respondent shall be given a credit of $**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 $**260.92, plus any and all medical expenses paid** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 9, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act, and pay $1,180.01 directly to Petitioner for his out-of-pocket medical expenses. Pursuant to the stipulation of the parties, Respondent shall be given a credit of $260.92, and any further medical expenses paid through its group medical plan, under Section 8(j) of the Act.

Respondent shall authorize and pay for the prospective medical treatment as recommended by Dr. Solman until Petitioner reaches maximum medical improvement. Dr. Solman recommends that the spur and lateral epicondylitis be treated conservatively with injections and therapy. He testified that if Petitioner does not respond positively to conservative treatment, then surgery may be necessary. Dr. Solman recommends surgical repair of the biceps tendinopathy and partial thickness tear if Petitioner remains symptomatic. He opined that in the event Petitioner undergoes biceps surgery, he would also remove the bone spur and the olecranon and perform an epicondylectomy in one procedure.

This award shall in no instance be a bar to further hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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 6, 2023**

Arbitrator Linda J. Cantrell

ICArbDec19(b

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DARIN KERWIN,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 21-WC-030139
	)	
MADISON COUNTY SHERIFF'S DEPARTMENT,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACTS

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on April 25, 2023, pursuant to Section 19(b) of the Act. On 10/29/21, Petitioner filed an Application for Adjustment of Claim alleging injuries to his left arm, left elbow, and body as a whole as a result of trying to subdue a suspect on 3/14/19.

The parties stipulated that Respondent is entitled to a credit for any and all medical expenses paid by its group medical plan, including $260.92, under Section 8(j) of the Act. The issues in dispute are accident, causal connection, medical expenses, and prospective medical care.

TESTIMONY

Petitioner was 43 years old, married, with one dependent child at the time of the alleged accident. He has been employed by Respondent as a Deputy Sheriff for approximately 15 years and works 12-hour shifts. He is right hand dominant. Petitioner testified he has never injured or received treatment for his left arm or elbow prior to 3/14/19. He did not have any difficulties with his left arm or elbow while performing his job duties prior to the alleged work accident.

Petitioner testified that on 3/14/19 he was conducting a traffic stop when the suspect ran from his vehicle. Petitioner pursued the suspect and while attempting to take him into custody, the suspect resisted arrest. Petitioner struck his expandable baton on the ground with his right hand/arm while attempting to hold the suspect. He testified that the suspect struggled and pushed away from him while Petitioner pulled the suspect toward him. Petitioner testified that immediately after the incident his left elbow was a little sore and he finished his shift.

Petitioner testified that when he woke the following morning his left elbow was very swollen, he could barely move his arm, and he had significant pain. Petitioner reported the accident to his supervisor, Lieutenant Josh Presson, and he completed an accident report.

Petitioner presented to Midwest Occupational Medicine on 3/22/19 at the direction of Respondent. He testified that he provided a history of injury and x-rays were performed. Petitioner was ordered to continue working and was referred to Dr. David Brown. Petitioner was examined by Dr. Brown on 3/27/19 who provided him with a pad to wear on his elbow. Petitioner testified he did not keep his follow up appointment with Dr. Brown on 4/24/19 because the elbow pad decreased his pain and swelling.

Petitioner was transferred from street duty to security duty at the Madison County Courthouse from 1/20/20 through 9/9/20. His job duties consisted of running "the metal detectors", which required him to stand by the machines and did not involve any strenuous activity.

Petitioner testified that he lifts weights to maintain his physical condition and continued to do so after the work injury on 3/14/19. Petitioner testified that since the accident his left elbow hurts while performing certain exercises and he has to stop performing the activity.

Petitioner testified he returned to street duty after 9/9/20 which caused flareups and increased pain. He testified that approximately every two to three months his elbow hurt for a week or two and his symptoms would subside after limiting the use of his arm. These episodes prompted him to seek additional treatment at MultiCare Specialists where he was seen in October 2021. Petitioner underwent therapy and an MRI of his elbow. He was referred to Dr. Corey Solman who has recommended surgery. Petitioner continues to work his regular job duties pending surgery.

Petitioner testified that he feels a sharp pain, swelling, and stiffness in his elbow. He described the pain from the front of his bicep to the back of his elbow. His pain substantially increases if he bumps his elbow. He has flareups with heavy lifting. Petitioner testified he desires to undergo the recommended surgery in order to "get back to normal".

On cross-examination, Petitioner testified he has engaged in weight training activities approximately 3 to 4 times a week since his accident, except during the COVID pandemic. He testified that he has worked as a street deputy since his accident, except for his duties in the courthouse from 1/21/20 through 9/9/20. He testified that his elbow pain had never gone away but he returned to MultiCare Specialists in October 2021 because his left elbow was bothering him a lot.

MEDICAL HISTORY/INCIDENT REPORTS

On 3/14/19, an Official Incident Field Report was completed by Petitioner. (PX1) Petitioner reported he attempted to subdue a suspect that was resisting arrest and the suspect began pulling his body and arms away from him. Petitioner attempted to use his taser that did not work. He sprayed the suspect with OC spray twice which did not subdue him. Petitioner then

struck the suspect several times in his right thigh with an expandable baton which was unsuccessful. Another foot chase ensued, and the suspect was ultimately taken into custody. The report does not reference any injury to Petitioner.

On 3/18/19, Sergeant Michael Coles prepared a Memorandum to Lieutenant Josh Presson advising he spoke to Petitioner regarding the incident. Petitioner advised that the suspect resisted arrest and he struggled to control the suspect. Petitioner noticed pain in his elbow but it was minor and he did not believe he was injured. Sergeant Coles asked Petitioner at the scene of the incident if he was injured, and he stated he was not. Petitioner reported that the pain and swelling in his elbow had improved but was still present. Petitioner reported he was able to perform his job duties.

On 3/19/19, Petitioner completed an Accident/Injury Information Packet that provided a consistent history of injury. The same day Petitioner prepared a Memorandum to Sergeant Coles stating he felt pain in his elbow after the incident, but it was not extreme or debilitating. The next day he could hardly move his arm due to pain and swelling at the elbow. In the days after his elbow was still swollen and it was painful to touch. He did not report the injury the day it occurred because he believed it was not a serious injury.

Sergeant Coles completed an Incident Supplemental Report and reported that he was informed by Lieutenant Presson on 3/19/19 that Petitioner injured his elbow while attempting to apprehend a suspect. Lieutenant Presson reported that Petitioner noticed minor pain in his elbow after the incident and did not believe he was injured. Petitioner reported the following day that his elbow was swollen, and his arm was painful to move. Petitioner reported to Sergeant Cole that he believed he injured his elbow when the suspect resisted arrest and he had to use force to apprehend him. Sergeant observed Petitioner's left elbow was still swollen, and Petitioner advised he had minor pain with movement at the elbow. Sergeant Cole took photographs of Petitioner's left elbow and completed and submitted incident paperwork.

On 3/22/19, Petitioner presented to Midwest Occupational Medicine and reported a consistent history of injury. (PX3) Petitioner reported that on 3/14/19 he was arresting a suspect who was resisting. He attempted to pull the suspect forward and he had discomfort in his elbow. Petitioner reported he had to release his baton in a full extension and then hit the bottom of the baton on the ground to bring it back for retraction and he was unsure if the rapid extension and retraction caused the injury. Petitioner complained of swelling and pain in his left elbow. He was diagnosed with left elbow pain and swelling, possible bursitis, and a possible triceps strain. X-rays were negative for fracture and positive for enthesopathy at the insertion point of the left triceps and left elbow swelling. Petitioner was referred to an orthopedist.

On 3/27/19, Petitioner saw Dr. David Brown who recorded a history of Petitioner wrestling with a suspect two weeks prior and he noted pain over the posterior aspect of his left elbow. Petitioner advised he was not sure what happened during the encounter, but he noted pain afterwards. (PX5) Dr. Brown reviewed the x-rays and noted an olecranon spur on the elbow and an apparent, nondisplaced fracture at the base of the spur. He diagnosed a symptomatic olecranon spur with an apparent nondisplaced fracture. Dr. Brown prescribed a Heelbo pad,

recommended observation, and allowed Petitioner to continue working without restrictions. Petitioner did not return to Dr. Brown for follow up.

Petitioner treated at MultiCare Specialists from 3/8/21 through 4/11/21 for a rib fracture and thoracic disc protrusion that resulted from a work injury on 3/1/21. Petitioner reported he slipped and fell on mossy steps. There is no reference to Petitioner's left elbow in these records. (RX2).

Petitioner resumed treatment at MultiCare Specialists from 10/5/21 through 10/14/21. (PX6) The records indicate a history of Petitioner's work accident two years prior when he was in an altercation as a police officer and had left elbow pain. Petitioner reported that his pain subsided for a period of several months and then only intermittently bothered him thereafter. Petitioner underwent therapy and a left elbow MRI that was performed on 10/11/21. The MRI was interpreted as showing a partial thickness longitudinal tear of the biceps tendon, proximal common extensor and distal triceps insertional tendinopathy without discreet tear, and mild osteoarthritis of the left elbow. (PX7) On 10/14/21, Petitioner reported that his pain never fully went away following the incident and his symptoms were bothering him a lot. Dr. Brooks noted the MRI revealed multiple partial thickness tears throughout the elbow, including the biceps, distal triceps, and common extensor tendon. Petitioner was referred to Dr. Corey Solman for further treatment.

On 1/5/22, Petitioner was examined by Dr. Solman who recorded, "[Petitioner] injured his left elbow on March 14, 2019 when he was in an altercation with a suspect and struck his expandable baton on the ground. It did not break to close down and it caused a jarring of his left elbow. He had immediate pain at that time." Dr. Solman reviewed Petitioner's medical records following the work accident. Petitioner complained of soreness when he used his arm, and pain with lifting and any direct pressure to the posterior elbow, lateral elbow, and in the bicipital insertion area. Petitioner reported that during the time of his injury COVID was rampant and he was not as active with his arm because he was doing court duty and his arm felt somewhat better. Petitioner reported that his arm continued to worsen when he returned to street duty.

Dr. Solman diagnosed biceps tendinopathy and a partial thickness biceps tear, lateral epicondylitis, and a left elbow olecranon spur/olecranon bursitis. He stated that Petitioner clearly sustained injuries to his left elbow on 3/14/19 which was a substantial contributing factor in the development of his current pathology. He noted that Petitioner had pain in the appropriate area where Dr. Brown found a small fractured olecranon spur which healed. Dr. Solman noted Petitioner continued to have some olecranon bursal pain which was not unusual. He stated that some patients with this particular injury also have some partial thickness tearing of their triceps tendon where the spur enters the tendon fibers. He noted Petitioner had clear evidence of biceps tendinopathy and lateral epicondylitis, both on exam and MRI. He opined that if these conditions are not related to the 3/14/19 incident, they could certainly be related to his police officer duties of 14 years. He opined that Petitioner's duties over the last 14 years could be a substantial contributing factor in the development of tendinopathy of the lateral elbow and biceps tendon insertion area.

Dr. Solman noted that Petitioner whipped his baton open with his left arm and such a maneuver could cause the conditions in Petitioner's arm. He stated that it was reasonable that Petitioner's symptoms improved while performing courthouse duties and his symptoms increased when he returned to more aggressive type activities. Dr. Solman opined that all of Petitioner's treatment to date was reasonable and necessary. Dr. Solman recommended injections for the olecranon spur and surgery to repair the biceps tendon, debridement of the lateral epicondyle, and removal of the olecranon spur. He allowed Petitioner to continue working full duty pending surgery. (PX8)

On 6/1/22, Petitioner was examined by Dr. Evan Crandall pursuant to Section 12 of the Act. (RX1, Ex. 2) Petitioner advised that he had been having pain in his left elbow since 3/14/19 which got better and then returned. He advised that his hobby was lifting weights three to four times per week, and he ran two days per week. Petitioner reported he injured his elbow after a fight with a suspect, but he was not sure how he got injured. Petitioner denied falling on his arm or wrist, but stated he slammed his baton on the ground. Dr. Crandall confirmed that Petitioner had large muscular arms and had very little body fat. Dr. Crandall opined that a fight might have caused some mild lateral epicondylitis which he concluded had been aggravated by Petitioner's weightlifting activities. Dr. Crandall opined that Petitioner was at maximum medical improvement from whatever injury he sustained, that he did not require surgical intervention, he was capable of full duty work without restrictions.

Dr. Corey Solman testified by way of deposition on 1/24/23. (PX10) Dr. Solman is a board-certified orthopedic surgeon. He testified that his diagnoses of a partial thickness biceps tear, left elbow lateral epicondylitis, and post-traumatic olecranon spur with mild bursitis are all causally related to Petitioner's 3/14/19 work injury. He opined that the olecranon spur was present prior to the accident but may have been fractured as a result of the injury, thereby triggering Petitioner's pain. He recommended that the spur and lateral epicondylitis be treated conservatively with injections and therapy. He testified that if Petitioner does not respond positively to conservative treatment, then surgery may be necessary. Dr. Solman testified that Petitioner requires surgical repair of the biceps tendon tear. He opined that the treatment Petitioner received to the date of his examination had been reasonable and necessary to diagnose, cure, and relieve the effects of his work injury on 3/14/19 injury.

Dr. Solman testified there were several plausible explanations for why Petitioner did not seek additional treatment after he saw Dr. Brown on 3/27/19 and when he presented to Multicare Specialists in October 2021. Dr. Solman testified that the type of injuries Petitioner sustained can cause symptoms that wax and wane. He stated that the initial period of pain, inflammation, and swelling from the injury and then the acute reaction subsides. The patient lives with more mild symptoms and protects the injured area to prevent increased symptoms, which puts less stress on the injured area. Dr. Solman testified that the COVID pandemic started approximately one year after Petitioner's injury and patients were very fearful to seek treatment in his experience. He testified that Petitioner is young, strong, and very active which may have made him believe his symptoms would go away at some point without treatment.

On cross-examination, Dr. Solman testified that his causation opinion was predicated upon the accuracy of the history of injury provided to him by Petitioner. He testified that the x-

rays performed after Petitioner's accident confirmed a non-displaced fracture at the base of the spur which had healed. He testified that the biceps tendinopathy and partial biceps tear occurred at the time of Petitioner's accident as it was a classic mechanism by which that pathology occurs. The mechanism being bringing the arm from a straightened elbow position to a bent position as when Petitioner was pulling the suspect towards him while the suspect was resisting, causing an eccentric load on the elbow.

Dr. Solman agreed that weightlifting can cause injuries to the elbow, including all of Petitioner's diagnoses. He testified that there was no evidence Petitioner injured his left elbow weightlifting and he relied on the mechanism of injury on 3/14/19. He testified that the lateral epicondylitis diagnosis could have been related to Petitioner's job duties as a patrol officer. Dr. Solman clarified that he recommended surgery for Petitioner's biceps tendinopathy and partial thickness tear but would remove the bone spur and the olecranon and perform an epicondylectomy at the same time. He opined that if Petitioner's biceps was no longer symptomatic, he would recommend conservative treatment for his other conditions.

Dr. Evan Crandall testified by way of deposition on 2/10/23. (RX1) Dr. Crandall is a board-certified plastic surgeon who treats elbow injuries. Dr. Crandall testified that Petitioner was not sure how he injured his elbow on 3/14/19 but he has had pain since that time. Petitioner reported he was slamming his baton on the ground and not the suspect and he had swelling and pain the next morning. His symptoms improved somewhat, but kept returning, particularly pain in the cubital space on the back of the elbow and on the outer, lateral aspect of the joint. Petitioner reported he lifted weights 3 to 4 times a week.

Dr. Crandall reviewed records from Dr. Brown, Dr. Solman, and the MRI films. Based upon his examination and records review he diagnosed Petitioner with lateral epicondylitis, a longitudinal, small tear of the biceps tendon, and mild arthritis in the elbow. Dr. Crandall testified that Petitioner's main complaints were his lateral epicondyle, and he did not have tenderness over the biceps tendon or triceps. Dr. Crandall reviewed Petitioner's job duty description. He opined that Petitioner's injuries were not causally related to his work accident because Petitioner could not give specific examples of when and where or how he got hurt and Petitioner stated, "he couldn't remember". Dr. Crandall further opined that the MRI was performed two and a half years after the incident and has had stressors of weightlifting multiple times since that time. He opined that none of Petitioner's job duties caused or contributed to his elbow conditions. Dr. Crandall did not believe Petitioner was a surgical candidate but may benefit from conservative care which is not related to the alleged incident or Petitioner's job duties. He opined that Petitioner has reached MMI and does not require work restrictions.

On cross-examination, Dr. Crandall agreed that Petitioner was pleasant, cooperative, and forthright during his examination, without any symptom magnification or attempts to deceive. He admitted that he indicated in his Section 12 report dated 6/1/22 that, "The reported injury of 03/14/19 in which Deputy Kerwin indicates 'got in a fight with a suspect' could have caused lateral epicondylitis."

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, an injury must "arise out of" and "in the course of" employment. 820 ILCS 305/1(d). An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. *Orsini v. Indus. Comm'n,* 117 Ill.2d 38, 509 N.E.2d 1005 (1987). In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work or that he is exposed to the risk of injury to a greater degree than the general public. *Id*. "In the course of employment" refers to the time, place and circumstances surrounding the injury. *Lee v. Indus. Comm'n*, 167 Ill. 2d 77, 656 N.E.2d 1084 (1995); *Scheffler Greenhouses, Inc. v. Indus. Comm'n*, 66 Ill. 2d 361, 362 N.E. 2d 325 (1997). That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 203; 797 N.E. 2d 665, 671 (2003).

It is undisputed Petitioner was involved in an altercation while attempting to apprehend a suspect on 3/14/19. Multiple incident reports and memorandums were completed immediately following the incident that provide a consistent history of the events that occurred on 3/14/19. Petitioner reported that the suspect began pulling his body and arms away from him as he attempted to pull the suspect toward him to make an arrest. He held onto the suspect long enough to attempt the use of a taser gun, spray the suspect twice in the fact with OC spray, and use an expandable baton to strike the suspect, prior to Petitioner losing control of the suspect.

Petitioner provided unrebutted testimony and evidence that he had pain and swelling in his left elbow immediately after the incident. The incident reports and memorandums document pain and swelling in Petitioner's left elbow within hours of the incident. Petitioner reported he was unable to use his left arm the next morning and Respondent observed swelling in his elbow and photographs were taken of his injuries.

The Arbitrator notes some discrepancy in Petitioner's use of the expandable baton at the time of the incident. The accident reports indicate Petitioner had pain in his left elbow after pulling and attempting to keep hold of the resisting suspect. Petitioner stated he struck the suspect several times in his right thigh with an expandable baton which was unsuccessful. None of the reports mention which hand Petitioner held the baton. When he sought medical treatment on 3/22/19 at Midwest Occupational Medicine, Petitioner reported he was attempting to pull the suspect forward and he had to release his baton in a full extension and then hit the bottom of the baton on the ground to bring it back for retraction and he was unsure if the rapid extension and retraction caused the injury. This obviously suggests that he was holding the baton with his left hand in order to cause injury to his left elbow. However, when his attorney asked him at arbitration which hand he used to hold the baton, Petitioner replied his "right hand". Petitioner is right hand dominant.

The Arbitrator places little weight on this discrepancy as Petitioner consistently reported he had to struggle to keep hold of the resisting suspect, pulling the suspect toward him while he used multiple nonlethal devices, resulting in immediate symptoms in his left elbow.

Based on the totality of the evidence, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent.

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

The law holds that an accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. Sisbro, Inc. v. Indus. Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). [Emphasis added]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." Fierke v. Industrial Commission, 309 Ill. App. 3d 1037, 723 N.E.2d 846 (2000).

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. Pulliam Masonry v. Indus. Comm'n, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); Gano Electric Contracting v. Indus. Comm'n, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724 (1994); International Harvester v. Indus. Comm'n, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

Petitioner had been employed by Respondent as a Deputy Sheriff for approximately 14 years, working 12-hour shifts, with no evidence of injury, treatment, or limitations in his left arm/elbow prior to 3/14/19. On 3/22/19, Petitioner presented to Midwest Occupational Medicine and was diagnosed with left elbow pain and swelling, possible bursitis, and a possible triceps strain. On 3/27/19, Dr. Brown diagnosed a symptomatic olecranon spur with an apparent nondisplaced fracture. Dr. Brown prescribed a Heelbo pad and allowed Petitioner to continue working full duty.

Petitioner testified he did not return to Dr. Brown because the elbow pad decreased his pain and swelling. Petitioner continued to work his full street duties until he was transferred to security duty at the Madison County Courthouse on 1/20/20. He testified that he did not perform any strenuous activities with his left arm while performing security as he was simply "running the metal detectors". He worked security duty until 9/9/20 at which time he returned to street duty. Petitioner testified that after returning to street duty he had flareups and increased pain in his left elbow approximately every two to three months which he controlled by limiting the use of his left arm. He resumed treatment thirteen months after returning to street duty. Petitioner presented to Multicare Specialists on 10/5/21 and continued to relate his symptoms to the work accident. He reported a history of a work accident two years prior when he was in an altercation as a police officer and had left elbow pain. Petitioner reported that his pain subsided for a period of several months and then only intermittently bothered him thereafter. On 10/14/21, Petitioner reported that his pain never fully went away following the incident and his symptoms were bothering him a lot.

An MRI was not performed until 10/11/21 and was interpreted as showing a partial thickness longitudinal tear of the biceps tendon, proximal common extensor and distal triceps insertional tendinopathy without discreet tear, and mild osteoarthritis of the left elbow. Dr. Solman noted on 1/5/22 that Petitioner's small fractured olecranon spur had healed. He diagnosed biceps tendinopathy and a partial thickness biceps tear, lateral epicondylitis, and left elbow olecranon spur/olecranon bursitis. He opined that the olecranon spur was present prior to the accident but may have been fractured as a result of the injury, thereby triggering Petitioner's pain. He opined that the biceps tendinopathy and partial biceps tear occurred at the time of Petitioner's accident as it was a classic mechanism by which that pathology occurs. The mechanism being bringing the arm from a straightened elbow position to a bent position as when Petitioner was pulling the suspect towards him while the suspect was resisting, causing an eccentric load on the elbow. Dr. Solman opined that all of Petitioner's conditions were causally related to the work accident, and if his lateral epicondylitis was not caused by the accident, it could have been caused by his years of performing patrol officer duties. Section 12 examiner, Dr. Crandall, stated in his reported dated 6/1/22 that, "The reported injury of 03/14/19 in which Deputy Kerwin indicates 'got in a fight with a suspect' could have caused lateral epicondylitis."

The Arbitrator is more persuaded by the above opinions of Dr. Solman. Dr. Crandall diagnosed lateral epicondylitis, a longitudinal, small tear of the biceps tendon, and mild arthritis in the elbow. He opined that Petitioner's conditions were not causally related to the work accident because Petitioner could not give specific examples of when and where or how he got hurt and Petitioner stated "he couldn't remember". This explanation is contrary to the evidence as Petitioner consistently related his left elbow symptoms to the incident on 3/14/19. The Arbitrator notes that Petitioner reported he did not know exactly how he injured his elbow while apprehending the suspect on 3/14/19, but he had immediate pain and swelling following the incident which he did not have prior to 3/14/19.

Dr. Crandall further opined that Petitioner had stressors of weightlifting multiple times since the date of accident which may have caused his symptoms. Dr. Solman agreed that weightlifting can cause injuries to the elbow, including all of Petitioner's diagnoses. However, he testified that there was no evidence Petitioner injured his left elbow weightlifting and he relied on the mechanism of injury on 3/14/19 as the only plausible cause of Petitioner's conditions.

Dr. Solman credibly testified as to the plausible explanations for why Petitioner did not seek additional treatment after he saw Dr. Brown on 3/27/19 and when he presented to Multicare Specialists in October 2021. Dr. Solman testified that the type of injuries Petitioner sustained can cause symptoms that wax and wane. He stated that the initial period of acute pain, inflammation, and swelling from the injury would subside and the patient would live with more mild symptoms. Patient often protect the injured area to prevent increased symptoms. Dr. Solman testified that the COVID pandemic started approximately one year after Petitioner's injury, which the Arbitrator notes was six months after Petitioner resumed street duty, and patients were very fearful to seek treatment in his experience. He testified that Petitioner is young, strong, and very active which may have made him believe his symptoms would go away at some point without treatment.

Based upon the totality of the evidence, the Arbitrator finds that Petitioner's current conditions of ill-being, specifically the partial thickness biceps tear, left elbow lateral epicondylitis and post-traumatic olecranon spur with mild bursitis, are causally connected to his work accident of 3/14/19.

Issue (J): **Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?**
Issue (K): **Is Petitioner entitled to any prospective medical care?**

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). 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).

Dr. Solman opined that the treatment Petitioner received to the date of his examination had been reasonable and necessary to diagnose, cure, and relieve the effects of his work injury on 3/14/19 injury. Based on the Arbitrator's findings as to accident and causal connection, the Arbitrator hereby awards Petitioner medical benefits.

Therefore, Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 9, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act, and pay $1,180.01 directly to Petitioner for his out-of-pocket medical expenses. Pursuant to the stipulation of the parties, Respondent shall be given a credit of $260.92, and any further medical expenses paid through its group medical plan, under Section 8(j) of the Act.

The Arbitrator further finds that Petitioner is entitled to receive the additional care recommended by Dr. Solman. Dr. Solman recommends that the spur and lateral epicondylitis be treated conservatively with injections and therapy. He testified that if Petitioner does not respond positively to conservative treatment, then surgery may be necessary. Dr. Solman testified that Petitioner requires surgical repair of the biceps tendinopathy and partial thickness tear if he remains symptomatic, and in the event of surgery, Dr. Solman would also remove the bone spur and the olecranon and perform an epicondylectomy in the same procedure.

Therefore, Respondent shall authorize and pay for the above- described prospective medical treatment until Petitioner reaches maximum medical improvement.

This award shall in no instance be a bar to further hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

Arbitrator Linda J. Cantrell Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002482
Case Name	Donna Hummert v. Empire Comfort Systems, Inc.
Consolidated Cases	22WC007795;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0121
Number of Pages of Decision	22
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	James Keefe Jr

DATE FILED: 3/13/2024

/s/Christopher Harris, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DONNA HUMMERT,

Petitioner,

vs. NO: 21 WC 2482

EMPIRE COMFORT SYSTEMS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed under Section 19(b) of the Act by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care and temporary total disability (TTD) 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. The Commission hereby remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 8, 2023 is hereby affirmed and adopted.

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

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

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.

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 the Circuit Court.

March 13, 2024

CAH/pm
O: 3/7/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC002482
Case Name	Donna Hummert v. Empire Comfort Systems, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	James Keefe Jr.

DATE FILED: 6/8/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 6, 2023 5.25%

/s/Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Donna Hummert
Employee/Petitioner

v.

Empire Comfort Systems, Inc.
Employer/Respondent

Case # **21** WC **002482**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, on **4/25/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

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

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

G. ☐ What were Petitioner's earnings?

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

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

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

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

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

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

N. ☐ Is Respondent due any credit?

O. ☐ Other

FINDINGS

On the date of accident, **8/27/20**, 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 not*** causally related to the accident. The Arbitrator finds that Petitioner's injuries are causally connected to the work accident of 8/27/20; however, her current condition of ill-being that necessitates prospective medical treatment, that being a second hernia repair, is causally connected to the work injury that occurred on 6/2/21.

In the year preceding the injury, Petitioner earned $**37,632.25**; the average weekly wage was $**761.22**.

On the date of accident, Petitioner was **59** 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 **$Any and all TTD benefits paid from 11/16/20 through 2/1/21**, $**0** for TPD, $**0** for maintenance, and $**0** for medical benefits, for a total credit of $**Any and all TTD benefits paid from 11/16/20 through 2/1/21**.

Respondent is entitled to a credit of $**TBD and any and all paid** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 7 that relate solely to the treatment of Petitioner's injuries sustained on 8/27/20, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall be given a credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

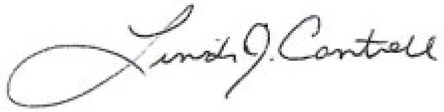
Based on the Arbitrator's finding that Petitioner's current condition of ill-being that necessitates prospective medical treatment, that being a second hernia repair, is causally connected to the work injury that occurred on 6/2/21, the disputed issue of prospective medical treatment is moot.

Respondent shall pay Petitioner temporary total disability benefits of $**507.48**/week for **11-1/7** weeks, commencing **11/16/20** through **2/1/21**, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all TTD benefits paid from 11/16/20 through 2/1/21.

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.



Arbitrator Linda J. Cantrell

JUNE 8, 2023

ICArbDec19(b)

STATE OF ILLINOIS)
) **SS**
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DONNA HUMMERT,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 21-WC-002482**
	)	
EMPIRE COMFORT SYSTEMS, INC.,	)	**Consolidated Case No. 22-WC-007795**
	)	
Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Collinsville on April 25 2023. On February 2, 2021, Petitioner filed an Application for Adjustment of Claim alleging she sustained a hernia on 9/10/20 as a result of lifting a box. (Case No. 21-WC-002482) (RX3). On October 17, 2022, Petitioner filed an Amended Application for Adjustment of Claim to amend the date of accident to 8/27/20. On March 22, 2022, Petitioner filed an Application for Adjustment of Claim alleging a second hernia while bending to put labels on boxes on June 2, 2021. (Case No. 22-WC-007795).

The parties stipulated that Respondent shall receive credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act. The parties further stipulated that Respondent shall receive a credit of $15,514.25 in temporary total disability benefits paid. The Arbitrator notes that the TTD benefits paid of $15,514.25 relates to both dates of accident. The issues in dispute in Case No. 21-WC-002482 are accident, causal connection, medical expenses, temporary total disability, and prospective medical care.

The Arbitrator has simultaneously issued a separate Decision in Case No. 22-WC-007795.

TESTIMONY

Petitioner was 59 years old, single, with no dependent children at the time of the accident. Petitioner began working for Respondent in 1992. At that time of the alleged injury on 8/27/20, Petitioner was a Quality Inspector. Her job duties involved inspecting items that were built on an assembly line in Poplar Bluff, Missouri and then sent to them for inspection. She lifted burners off pallets that weighed 20 to 50 pounds. She testified that her job required bending, stooping, and kneeling as she read verbiage on boxes. Petitioner remains employed by Respondent.

Petitioner testified that on 8/27/20 she was at the Stage Warehouse inspecting burners. She described that she was replacing a 30-pound box to a pallet. She noted that the box was three feet wide, and she had to carry it longways since the rows of units were only two feet apart. As a result, she was carrying the box awkwardly trying to put it on a pallet above her head. While lifting and turning, she felt a pop and pain in her abdomen and a bulge developed soon thereafter.

Petitioner testified there were no witnesses to her accident. She told her co-worker Jackie Rasch about the accident within 15 minutes of its occurrence. Petitioner shared an office with Ms. Rasch and advised her that she thought she felt something pop in her abdomen and she was injured.

Petitioner testified that the accident occurred on Thursday, 8/27/20, because that is the day of the week they received shipments from Poplar Bluff. Additionally, she noted she did not work the next few days because she did not work on Fridays.

Petitioner testified that she never had any similar problems prior to this accident. She testified she treated with Dr. Winkeler three months prior for an appendectomy and did not have any similar symptoms in that region. Petitioner noted that if she had similar symptoms, she would have told Dr. Winkeler.

Petitioner testified that she did not immediately notify Respondent of her injury because she did not think it was serious at the time. She ultimately notified her supervisor, Zac Rock, who had her complete accident reports. She testified that when she completed the accident report she was already treating with Dr. Winkeler for her abdominal issues and had been evaluated by her surgeon. As a result, she confirmed that the accident date she provided on the paperwork was incorrect. She stated that after reviewing her medical records and speaking with Ms. Rasch, the correct date of injury was on 8/27/20.

Petitioner was examined by her family doctor, Dr. Winkeler, on 9/8/20. She stated she told Dr. Winkeler about her symptoms that included pain in the area of the hernia and some hip pain. She reported a dully achy pain in her lower abdominal area that started when she was lifting a few weeks ago. Petitioner testified that the lifting that she described to the doctor was the accident that occurred at work. At that time, she had very exquisite tenderness along the abdominal area.

Petitioner underwent an MRI and was diagnosed with a hernia. Dr. Winkeler referred her to Dr. Thomas Luong who performed a hernia repair on 11/16/20. Petitioner testified that the surgery was approved by Respondent. She remained off work from the date of surgery until she returned to light duty work on 2/1/21. Petitioner was paid temporary total disability benefits while off work.

Petitioner was released to full duty work on 5/3/21 and returned to her previous position which required lifting, bending, and stooping. Petitioner testified that when she returned to work she did not have any problems with her surgical site and was able to complete all of her work activities.

Petitioner testified that on 6/2/21 she was working for Respondent covering verbiage on boxes that were packed with incorrect items. Petitioner described the boxes as large and heavy as they contained barbeque grills, and they were stacked two-high on pallets from the floor. Petitioner testified that she was showing a co-worker how they were fixing the issues by putting tape over the labels on the boxes. This required Petitioner to repeatedly bend over to about 6 inches from the floor to place the tape over the labels. Petitioner testified she performed this activity about ten times and while bending over to the floor, she felt something pop in the same location of her prior hernia.

Petitioner testified that correcting labels was part of her job duties as Quality Assurance. She testified that she instructed to place the labels on the boxes that day and she was following orders in completing her job duties when she was injured. Petitioner testified there was no other way to place the tape on the labels other than to bend over to reach the location on the boxes.

Petitioner testified that her accident was witnessed by co-worker Rachel Sturgill. Petitioner immediately yelled out and advised Ms. Sturgill she was injured. Within 15 minutes of the occurrence, Petitioner advised Supervisor Zac Rock of her accident and she completed paperwork.

Petitioner returned to Dr. Winkeler and provided him with a history of the work accident. Dr. Winkeler referred Petitioner to Dr. Crouch at Lincoln Surgical Associates, as Dr. Luong was no longer with the company. Dr. Crouch diagnosed a new hernia and placed Petitioner on light duty. Petitioner testified that Respondent would not accommodate her restrictions due to liability reasons, despite them previously accommodating her restrictions following the first accident. As a result, Petitioner was placed on leave of absence and remains on leave. Petitioner testified she is still employed by Respondent and therefore is not able to file for unemployment benefits.

Petitioner testified that Dr. Crouch has recommended surgery to correct the hernia. Dr. Winkeler has advised that she remain on light duty restrictions pending surgery.

Petitioner testified that she saw Dr. Cantrell at the request of Respondent. She provided the doctor with the history of both work accidents but noted that the date of accident she provided of 9/10/20 was incorrect. Petitioner was paid temporary total disability benefits until her examination by Dr. Cantrell.

Petitioner testified that she does not perform repetitive bending at home, and she did not perform any activities outside of work that caused the hernia. She testified that the hernia is now a visible mass that is 6 to 7 inches and protrudes from her abdomen. Petitioner stated the bulge is sometimes tender to the touch. She is unable to lift more than a gallon of milk or bend over without increased symptoms. Petitioner testified that the medical bills noted in Petitioner's Exhibit 7 were exclusively related to the treatment for the hernia.

On cross-examination, Petitioner testified that following surgery by Dr. Luong, she was paid lost time benefits up until she returned to work on 2/1/21. Additionally, following the accident of 6/2/21, she was paid lost time benefits.

Petitioner testified that there were two facilities in Belleville where she worked, and they were a few blocks away from each other. She testified she also worked at the plant in Poplar Bluff, Missouri.

Petitioner testified that she sustained a work-related injury to her right foot on 2/5/19 after kicking an empty pallet. She completed an Accident/Incident Investigation Report on the day of the accident. On 4/29/20, Petitioner injured her right-hand stacking shelves. The Accident/Incident Report was incorrectly dated. Petitioner testified that the report was completed the same date. She testified that he was never clear on how she was supposed to report accidents until after the fact.

Petitioner agreed she completed and signed an accident report on 10/14/20. (RX2) She testified that she reported the accident to her supervisor on 9/14/20. However, she then testified she was not sure of the date she reported her accident, but she thought it was prior to undergoing a CT scan. Petitioner testified that on the morning of 8/27/20 she attended a meeting at the companion location off Freeburg Avenue from 8:00 a.m. to 11:00 a.m. The accident occurred between 1:30 p.m. to 2:00 p.m. and she continued working until 4:30 p.m.

Petitioner identified an email she sent from her work email address on 8/27/20 at 7:18 a.m. to her supervisor Zac Rock stating she would be at 918 Freeburg Avenue today from 8:00 a.m. to 11:00 a.m. She testified she was not working at the facility that day but was attending a meeting. She testified that she sent additional emails to Zac Rock on 8/27/20 and did not report her accident in those emails.

Petitioner testified she did not work the day after her accident as she was scheduled off work on Fridays. She agreed she worked full duty the week after her accident. She presented to her primary care physician on 9/8/20 and advised him she had right leg pain and mid-abdominal pain for a few weeks, which she considered to be two weeks. She admitted she reported no known injury associated with the leg pain. Petitioner testified that she did not have immediate pain in her abdomen following the accident. She felt a pop and her abdomen became painful later.

Petitioner agreed she underwent a CT scan on 9/8/20 and she could not recall if she informed the radiologist that her injury was related to lifting at work. Petitioner disagreed that she did not discuss her work accident with Dr. Winkeler until January 2022. She believed she advised Dr. Winkeler prior to that time and prior to being referred to Dr. Luong. She admitted she did not tell Dr. Winkeler that her injury was work related when she initially saw him on 9/8/20 and she just told him she felt some pain when lifting.

Petitioner testified that in May 2020 she underwent surgery for an appendix rupture that subsequently developed an infection and caused her miss work from 5/18/20 through 6/29/20. She testified that Dr. Luong repaired the hernia using the same incision as the appendectomy. However, on re-direct, Petitioner testified she did not know the difference between an incisional hernia versus a ventral hernia. Petitioner testified that after her appendectomy she returned to work and was having no problems lifting, bending, or stooping until the work injury of 8/27/20.

Petitioner testified that since her lost time benefits stopped, she was not able to receive short term disability and has not applied for Social Security Disability. She applied for unemployment benefits but was denied since she was still employed. On re-direct, Petitioner believed that she was denied short-term disability because this was a work injury.

Petitioner testified that she reported her second injury to Zac Rock. She advised him that felt pain while bending over. Mr. Rock told her to go to her family doctor since he had knowledge of her previous hernia. Petitioner testified that she completed an Incident Report, but her Safety Director told her that he did not need it. She testified that the report is still probably sitting on her desk at work.

Petitioner testified that she did not tell Dr. Winkeler that she was puling something at work when she had a recurrent hernia. She testified that since 6/2/21 she has remained on a 10-pound restriction. She has tried to lift things such as dog food or cat food but nothing over 10 pounds.

On re-direct, Petitioner testified that after her prior work injuries she did not immediately seek medical treatment because her symptoms were not that bad, and she thought they would go away. Similarly, after the 8/27/20 injury, Petitioner did not immediately seek medical attention because her initial symptoms were not that bad, and she thought they would go away. She stated that the problems she had with the ventral hernia were not at the incision site of her appendectomy but was to the right of the incision.

Petitioner testified that on 8/27/20 she began her shift at the Freeburg Avenue location and moved to the original location in the afternoon where she sustained her injury that afternoon. Petitioner testified that when she saw Dr. Winkeler on 9/8/20 he did not ask her details of her lifting event. Petitioner testified that she did not sustain any lifting injury at home. Petitioner testified that after her first injury was investigated, Respondent paid her medical bills and lost time benefits. She received lost time benefits following her second injury until her examination by Dr. Cantrell.

Jackie Rasch testified on behalf of Petitioner. Ms. Rasch worked for Respondent from 10/10/14 through 9/18/20 as a Quality Assurance Inspector Lead. Ms. Rasch was trained by Petitioner, and they completed audits and inspections together. She did not know Petitioner outside of work.

Ms. Rasch testified that she first became aware that Petitioner sustained a work accident in August 2020 when Petitioner came into their shared office and advised her of the injury. Petitioner told her she had a little bit of pain after lifting a burner and twisting. Ms. Rasch noted that Petitioner has a high pain tolerance, but she knew when she was hurting.

Ms. Rasch testified that Petitioner’s injury occurred on a Thursday as the shipments came in on Tuesday and Thursday that included the parts that were moved as part of the job assignments. Ms. Rasch recalled the accident occurred on Thursday as Petitioner did not work the next day which would have been a Friday. Ms. Rasch testified that she called Petitioner over

the weekend to see how she was doing. Ms. Rasch believed that the accident occurred after 2:00 p.m. as that is approximately when they received the shipments of burners.

Ms. Rasch testified she was familiar with the burners and believed they weighed approximately 20 pounds. She stated that 100 to 200 burners were brought in on skids stacked two high and it was her job to inspect them with Petitioner. Ms. Rasch testified they had to squeeze between the aisles to get to the back boxes and carry them up to the inspection table. She noted that it was sometimes difficult to get boxes from between the aisles.

Ms. Rasch testified that she had worked with Petitioner for many months leading up to the accident. She stated Petitioner never expressed any type of pain or problems in her abdomen prior to the accident. She testified that Petitioner did not appear to be in any pain the morning of the accident until after she lifted the burner. Following the work accident, Petitioner advised her that she was still in pain but continued to perform her work activities to the best of her ability.

On cross-examination, Ms. Rasch testified she did not know when Petitioner advised Zac Rock of her injury. Ms. Rasch testified that after she left employment with Respondent, she texted Mr. Rock and inquired if she could return to work for Respondent but she has not done so.

Ms. Rasch testified that she believed Petitioner had a high pain tolerance because Petitioner would call her a sissy when she would get hurt. She worked alongside Petitioner for seven years. Ms. Rasch was aware Petitioner underwent an appendectomy in May 2020 that caused her to miss work. Ms. Rasch testified that she did not tell Petitioner to report her work injury to their supervisor.

Zachary Rock testified on behalf of Respondent. Mr. Rock has been employed by Respondent for four years as a Quality Manager. His job duties involved managing the quality auditors and he was Petitioner's supervisor. Mr. Rock testified that he would travel to the Stag facility a couple of times per week. He is not directly involved with the workers' compensation program, but he is familiar with the "spirit" of the reporting procedure which was to immediately report accidents to the supervisor or safety manager. Mr. Rock testified that if he received a reported injury, he would take the employee to the safety manager to fill out a report.

Mr. Rock testified he did not recall Petitioner coming to him on or about 8/27/20 to report she sustained a hernia at work. He testified that if Petitioner had reported any injury, he would have called the safety manager and requested a report be completed. Mr. Rock testified that the first time he learned Petitioner alleged a hernia injury was on 9/28/20 when Petitioner sent him and the safety manager an email asking how to fill out a workers' compensation claim. Mr. Rock disagreed that Petitioner reported her accident to him on 9/14/20 as she stated on the Incident/Accident Investigation Report. (RX2)

Mr. Rock testified he was aware that Petitioner missed work in May and June 2020 for an emergency appendectomy. He testified that after she returned to full duty work he would occasionally ask Petitioner how she was doing and she occasionally replied she had tenderness and pain in her appendectomy area.

With regard to Petitioner's alleged work injury on 6/2/21, Mr. Rock testified that he got a call after it happened and after Petitioner left. He stated Petitioner reported she was not feeling good and was leaving. He testified that Petitioner did not report a work accident to him. He believed that on 6/2/21, Petitioner was still working with light duty restrictions of no lifting over 20 pounds and was labeling boxes and doing visual inspections. He testified that Petitioner was not to perform any lifting to avoid reinjury. Mr. Rock estimated that 10% to 15% of Petitioner's job duties in June 2021 involved bending over, stooping, and moving around in various areas of the plant. He was not aware that Petitioner ever returned to unrestricted duty following her hernia surgery in November 2020. Mr. Rock testified he never saw Petitioner perform any heavy lifting at work from the time she returned to work in February 2021 through June 2021. He believed she was performing her light duty job during that period.

On cross-examination, Mr. Rock admitted that he only visited the Stag facility where Petitioner worked, and he was not at the facility on the dates Petitioner was allegedly injured. Mr. Rock testified that he is not involved in investigating work injuries and does not know if the insurance company investigated either of Petitioner's work injuries.

Mr. Rock testified that he could assume Petitioner told him she was injured when she sent him and the safety director an email on 9/28/20 requesting how to file a workers' compensation claim. Mr. Rock testified that he asked Petitioner what happened and referred her to the safety manager, Kevin. He was not aware if Petitioner spoke to Kevin. Mr. Rock testified that although he received Petitioner's email on 9/28/20, the report from the safety director was not completed until 10/14/20. Mr. Rock admitted that Petitioner provided him with notice of the work accident within 45 days of the accident.

Mr. Rock testified that prior to 8/27/20 Petitioner never complained to him of symptoms in her abdominal area where her hernia was located. Mr. Rock testified that Petitioner's job duties for quality assurance includes labeling boxes which requires bending, stooping, and doing whatever is needed to put labels on the boxes. Although Mr. Rock testified that Petitioner was limited to labeling boxes as part of her light duty job duties, she only performed those activities 10-15% of her workday. He testified that the boxes were placed on a table at hip height so Petitioner did not have to bend over.

MEDICAL HISTORY/ACCIDENT REPORTS

On 9/8/20, Petitioner presented to her primary care physician Dr. Brett Winkeler with complaints of right leg pain that had been present for a few weeks with no known injury. She stated the pain came and went and increased when rising from a chair. The pain started in her groin and radiated to her knee. Petitioner also complained of mid-abdominal pain for a few weeks that was getting worse. Petitioner mentioned pain when lifting a few weeks ago. No obvious hernia was noted but she was tender along the appendectomy scar. Dr. Winkeler ordered a CT scan. He ordered x-rays for hip pain.

Dr. Winkeler testified that later during Petitioner's treatment, she discussed that the lifting episode she reported occurred at work a few weeks prior. Petitioner advised Dr. Winkeler that she was carrying a box at work and felt a pop in her lower abdomen. The pain progressively

worsened leading up to the medical visit. Dr. Winkeler testified that the pop that Petitioner felt is consistent with a hernia. Dr. Winkeler testified that prior to Petitioner's visit on 9/8/20, she had no accidents consistent with a hernia. He reviewed the accident report and testified that the accident would have occurred prior to 9/9/20 (the date Petitioner wrote the accident occurred), as that was actually the day after he examined her. (PX1)

Dr. Winkeler testified that when he saw Petitioner on 9/8/20, she was having pain in her hip, groin, and lower abdomen. He testified that Petitioner's symptoms continued from the date of her accident where she described a pop in her abdomen until he examined her. Dr. Winkeler testified that on 9/8/20 Petitioner had exquisite tenderness along the area of the surgical scar from a previous appendectomy. He did not feel an obvious hernia but noted Petitioner had tenderness. Dr. Winkeler noted that Petitioner's symptoms were near the surgical scar but that the prior appendectomy did not cause her hernia.

On 9/18/20, Petitioner underwent a CT of her abdomen and pelvic region. She was diagnosed with a pelvic ventral hernia containing nondilated and unobstructed bowel loops. (PX5)

Petitioner followed up with Dr. Winkeler who diagnosed a large ventral hernia at the level of the umbilicus. He testified that Petitioner sustained a defect in her abdominal wall and there was some bowel into that defect. He testified that the hernia could be consistent with the lifting episode that Petitioner described occurring two weeks prior to her visit on 9/8/20. Dr. Winkeler confirmed that given the size of the hernia, it could not have existed without Petitioner having symptoms. Dr. Winkeler referred Petitioner to Dr. Vinh Luong for further treatment. He placed Petitioner on work restrictions no lifting more than 20 pounds and not to wear tight clothing.

On 10/13/20, Petitioner was examined by Dr. Luong who diagnosed a reducible incisional ventral hernia. (PX3) He recommended surgery. The same day, Petitioner completed a Workman's Compensation Injury Statement. (RX1) Petitioner reported that on 9/9/20 she lifted a 35-pound box 5½ feet to the top of a pallet and felt something pull in her abdominal area. She reported she underwent a CT scan and had a hernia.

On 10/14/20, Petitioner completed an Accident/Incident Investigation Report. (RX2) Petitioner reported she notified her supervisor Zac Rock on 9/14/20 at 10:30 a.m. that she sustained injuries on Thursday, 9/10/20, at 1:30 p.m. while working in the Stag Warehouse. Petitioner stated, "I was doing inspections on burner assemblies (these weigh anywhere from 20 to 50 lbs. each). The burner assemblies are stacked (8) high on a pallet (around 5 ½ feet height). I was returning a burner assembly to the top of the stack when I felt something pull in my abdominal area. There wasn't immediate pain but I could tell that something was wrong. I could feel a pull when I was putting the remaining burners back on the pallets." She reports that she sustained a hernia.

On 11/16/20, Dr. Luong performed an incisional and ventral hernia repair with mesh. Intraoperatively, Dr. Luong noted that the hernia sac was easily encountered and dissected free from the surrounding soft tissue. (PX6)

Petitioner followed-up with Dr. Luong for post-operative visits. She was released with a 20-pound lifting restriction effective 2/2/21. On 2/4/21, Dr. Luong completed an accommodation request and advised that Petitioner's 20-pound restriction would remain in effect for at least three months, with a tentative release date of 5/3/21. (PX3, p. 40) The Arbitrator notes there is no full duty work release contained in Dr. Luong's medical records; however, Petitioner testified she returned to work on 5/3/21.

On 6/3/21, Petitioner followed up with Dr. Winkeler complaining of abdominal pain. (PX4) Petitioner reported she was at work yesterday and felt a pulling sensation in her abdomen near the previous hernia site. Her symptoms were at the same location of her previous hernia repair. Dr. Winkeler noted Petitioner had burning pain and nausea. Dr. Winkeler diagnosed unspecified abdominal pain with concern of a recurrent hernia. He ordered a repeat CT scan that revealed a recurrent hernia at previous repair site and new defect above the repair. (PX5) The radiology report indicates Petitioner bent over and felt a pop with abdomen pain.

Dr. Winkeler reviewed the CT scan and diagnosed a recurrent hernia at the previous hernia site, as well as a new defect above the previous hernia with herniated loops and small bowel and colon. He referred Petitioner back to Dr. Luong and placed her on a 10-pound lifting restriction. Dr. Winkeler testified that when he talked with Petitioner, he related the second hernia to the work accident of 6/2/21 coupled with the weakened condition caused by the first hernia repair.

Dr. Winkeler evaluated Petitioner on follow-up visits and continued her work restrictions. He testified that her restrictions would continue pending surgery.

On 8/5/21, Petitioner was examined by Dr. Luong's partner, Dr. Crouch, and reported that on 6/2/21 she was bending over at work and experienced a pop followed by pain and a bulge. Dr. Crouch diagnosed a recurrent abdominal hernia on the left side and recommended surgery. (PX4)

On 1/4/22, Dr. Winkeler's office made a note that Petitioner's work comp attorney was questioning the 9/8/20 appointment and needed something stating the incident occurred prior to 9/8/20. (PX1, p. 245) On 2/15/22, Dr. Winkeler prepared a letter opining Petitioner's hernia occurred at the time of a lifting incident at work on 8/27/20. (PX1, p. 56)

On 3/29/22, Dr. Crouch continued to recommend surgery and restrictions of no lifting, carrying, bending, or twisting. (PX4)

Dr. Winkeler testified that on 9/8/20 Petitioner told him of the lifting event that caused the initial hernia, but it was not until January 2022 that she describes the lifting injury occurred at work. He agreed that his note dated 9/8/20 makes no reference to lifting at work. He testified that he typically tries to document if a patient reports a work injury. He agreed that the CT scan report dated 9/18/20 makes no mention of a lifting injury at work.

Dr. Winkeler testified that Petitioner's appendectomy surgery could weaken the abdominal muscles and make a person more susceptible to developing a hernia. He admitted that

activities such as coughing, sneezing, and lifting anywhere could cause a hernia. Dr. Winkeler agreed that his causation opinion is based on Petitioner's history of the lifting event occurring at work. He agreed that if Petitioner did not have actual pain associated with lifting then he could not causally connect it to any event.

Dr. Winkeler testified that as it relates to the second accident, Petitioner advised him that she was pulling at work and felt a pulling sensation in her abdomen and a burning sensation near the previous hernia site. He testified he did not have a specific note indicating what she was doing when the accident occurred, but that pulling even one pound would be enough to cause a recurrent hernia.

Dr. Russell Cantrell testified on behalf of Respondent. (RX4) Dr. Cantrell is a board-certified physical medicine and rehab doctor. Dr. Cantrell examined Petitioner on 8/18/21 pursuant to Section 12 of the Act and opined that Petitioner's injuries were not causally related to either alleged work accident. He recorded that on 9/10/20 Petitioner was carrying a 35-pound box through a narrow passageway. As she had to turn the box away to lift it in place on a pallet, she felt a pop in her abdomen without specific pain but later noticed a bulge in her abdomen. He testified that Petitioner never told him she sustained injuries on 8/27/20 and he did not see anything in the medical records that correlated with this date of injury. He testified that Petitioner was diagnosed with having a ventral hernia which he described as being a tear or a defect in the abdominal wall that allows either fat or intestine to protrude through the area of defect.

Dr. Cantrell noted that when Petitioner returned to work she had no ongoing complaints with her abdominal region leading up to the accident of 6/2/21. On that date, she was bending over to put labels on boxes when she again felt a pop with associated pain in her abdomen for which she returned to her primary physician, had a repeat CT scan, and was told that she had a recurrent hernia. She was referred to Dr. Crouch who recommended a repeat hernia surgery.

Dr. Cantrell performed a physical examination and diagnosed a recurrent abdominal wall hernia. He described the protrusion as being a slight prominence in the abdominal wall just to the right of the umbilicus. Dr. Cantrell agreed that Petitioner needed to have the hernia surgically repaired and that a 20-pound lifting restriction pending surgery was appropriate. Dr. Cantrell testified that the lifting restrictions were required as the hernia can progress in size if left without some restriction. He testified that Petitioner was at greater risk of having a recurrent herniation because of the previous hernia repair.

Dr. Cantrell opined that Petitioner's first hernia was not work-related as he did not believe that she sustained a hernia on 9/10/20. He based his opinion on Petitioner already having symptoms and abdominal pain on 9/8/20. He testified that an injury date of 8/27/20 was not consistent with the records that indicated ongoing and worsening abdominal pain in the weeks leading up to the alleged injury date of 9/10/20. As a result, he testified that considering a new date of accident of 8/27/20 did not change his causation opinion.

Dr. Cantrell testified that the hernia that was surgically repaired was near the surgical site of her previous appendectomy. He testified that the appendectomy made Petitioner more susceptible to getting a hernia. He noted that there was now a surgical cut through normal

abdominal tissues to retrieve an infected or inflamed appendix. Dr. Cantrell testified that Petitioner had other risk factors such as a prior surgery and being obese. He admitted that lifting a 35-pound box like what was described by Petitioner could cause a hernia.

Dr. Cantrell testified that Petitioner advised him that she was bending over to put labels on a box when she felt a pop followed by pain in her abdomen. He testified that that bending over, even repetitively, would not typically be a mechanism that would cause a recurrent hernia. He testified that the surgically treated abdomen can recur sometimes with something as simple as a cough or sneeze where there is an immediate increase in intra-abdominal pressure. Dr. Cantrell testified that bending over to put on socks or shoes is an everyday activity that could also have caused the hernia.

On cross-examination, Dr. Cantrell admitted he was not a surgeon and had never performed a hernia repair. He testified that while it is possible to have a hernia with no symptoms, by and large, most hernias are accompanied with symptoms. He agreed that treatment is required once a person sustains a hernia that is symptomatic. Dr. Cantrell admitted he was not aware of Petitioner's job duties.

Dr. Cantrell testified that Dr. Winkeler noted on 9/8/20 that Petitioner has a small pain when lifting a few weeks prior. Dr. Cantrell admitted that sometimes doctors may not record everything regarding the history of an accident. He acknowledged that the history of work injury from the patient of lifting a 35-pound box would be enough to bring about a hernia.

Dr. Cantrell did not causally relate Petitioner's hernia injury based upon his belief that the accident date was 9/10/20 and he was not aware of an injury on 8/27/20. He was aware that Dr. Winkeler noted a lifting injury a few weeks prior to 9/8/20, which did not indicate where the lifting incident occurred.

Dr. Cantrell testified by way of hypothetical that if on 8/27/20 Petitioner was lifting a 35-pound box and felt pain in her abdomen, the mechanism of injury would be consistent with the hernia diagnosis. He acknowledged that he had not reviewed any witness statements that reflect a work injury. Dr. Cantrell testified that he saw no other mechanism of injury such as coughing, sneezing, or lifting at home. Dr. Cantrell admitted that in reviewing the medical records from June 2020, there was no indication of any type of hernia following her appendectomy. He acknowledged that following the hernia repair, Petitioner returned to work performing the same duties she performed prior to her hernia. He acknowledged that following the second accident of 6/2/21, Petitioner told Dr. Winkeler that she was at work when she felt a pulling sensation. He acknowledged that when she met with him, Petitioner advised him that she was at work bending over putting labels on a box as part of her work activities when she felt the pulling on her abdomen.

Dr. Cantrell was not aware how many labels Petitioner had put on boxes, the location she put the labels on the boxes, or the nature of her bending activities when she experienced an onset of symptoms.

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, an injury must "arise out of" and "in the course of" employment. 820 ILCS 305/1(d). An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. ***Orsini v. Indus. Comm'n***, 117 Ill.2d 38, 509 N.E.2d 1005 (1987). In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work or that he or she is exposed to the risk of injury to a greater degree than the general public. Id. "In the course of employment" refers to the time, place and circumstances surrounding the injury. ***Lee v. Industrial Comm'n***, 167 Ill. 2d 77, 656 N.E.2d 1084 (1995); ***Scheffler Greenhouses, Inc. v. Industrial Comm'n***, 66 Ill. 2d 361, 362 N.E.2d 325 (1977). That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment. ***Sisbro, Inc. v. Industrial Comm'n***, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003).

Petitioner proved that she sustained accidental injuries on 8/27/20 that arose out of and in the course of her employment with Respondent. Although Petitioner initially reported an incorrect date of accident, she provided a consistent history of injury to Respondent and to all of her treating providers. Petitioner testified that she did not immediately seek treatment as her symptoms were not that bad and she thought they would go away.

On 9/8/20, Petitioner presented to Dr. Winkeler with complaints of mid-abdominal pain that presented a few weeks prior while lifting. Petitioner testified that she considers a few weeks to be two. She agreed she did not initially discuss with Dr. Winkeler that she was lifting at work, and she stated he did not ask. She underwent a CT scan on 9/18/20 and was diagnosed with a large ventral hernia. Petitioner was placed on light duty restrictions and was referred to Dr. Luong.

Petitioner's supervisor, Zac Rock, testified that the first time he learned Petitioner alleged a hernia injury was on 9/28/20 when she sent him and the safety manager an email asking how to fill out a workers' compensation claim. Mr. Rock testified that he directed Petitioner to the safety manager to fill out an accident report and he was not aware of their conversations, if any. Mr. Rock admitted that he only visited the Stag facility where Petitioner worked, and he was not at the facility on the alleged date of accident. He agreed that one of Petitioner's job duties in quality assurance was labeling boxes which required bending, stooping, and doing whatever was needed to put labels on boxes.

Despite Respondent's admission that it received notice of Petitioner's work injury on 9/28/20, Petitioner did not complete an accident report until over two weeks later on 10/13/20. Mr. Rock was not aware if Respondent investigated Petitioner's alleged work accident. The Arbitrator notes that no witness statements or investigation records were admitted into evidence, except the two accident reports prepared by Petitioner on 10/13/20 and 10/14/20.

On 10/13/20, Petitioner completed a Workman's Compensation Injury Statement. She reported that on 9/9/20 she lifted a 35-pound box 5½ feet to the top of a pallet and felt something pull in her abdominal area. She reported she underwent a CT scan and had a hernia. Petitioner was also examined by Dr. Luong on 10/13/20 and he recommended surgical repair of the hernia.

Dr. Winkeler testified that later during Petitioner's treatment she discussed that the lifting episode she reported occurred at work a few weeks prior. He testified that Petitioner reported she was carrying a box at work and felt a pop in her lower abdomen. Dr. Winkeler reviewed the accident report dated 10/13/20 and testified that Petitioner's accident would have occurred prior to 9/9/20 as that was the day after he examined her and she reported her accident occurred a few weeks prior, which would date the injury at the end of August 2020.

Petitioner told her co-worker Jackie Rausch about the accident immediately after it occurred, which Ms. Rausch confirmed was in August 2020. Ms. Rausch testified that she worked alongside Petitioner for seven years. She first became aware that Petitioner sustained a work accident in August 2020 when Petitioner told her she had a little bit of pain after lifting a burner and twisting. Ms. Rasch testified that Petitioner's injury occurred on a Thursday as that is the day of the week they received shipments and they did not work the next day as they were scheduled off work on Fridays and the weekend. Ms. Rasch testified that she called Petitioner over the weekend to check on her. Ms. Rasch also testified that they had to squeeze between the aisles to get to the back boxes and carry them up to the inspection table which was sometimes difficult.

On 10/14/20, Petitioner completed an Accident/Incident Investigation Report. Petitioner reported, "I was doing inspections on burner assemblies (these weigh anywhere from 20 to 50 lbs. each). The burner assemblies are stacked (8) high on a pallet (around 5 ½ feet height). I was returning a burner assembly to the top of the stack when I felt something pull in my abdominal area. There wasn't immediate pain but I could tell that something was wrong. I could feel a pull when I was putting the remaining burners back on the pallets." Petitioner stated that the injury occurred on Thursday, 9/10/20, at 1:30 p.m. while working in the Stag Warehouse. The Arbitrator notes that just the day before Petitioner reported that her injury occurred on 9/9/20, which was a Wednesday, clearly supporting her confusion as to the correct date of accident and contrary to her medical records as explained by Dr. Winkeler.

Dr. Winkeler confirmed that the mechanism of injury was a lifting episode which is consistent with the testimony of Petitioner and Ms. Rausch. There was no alternate mechanism of injury presented by Respondent. The history provided in the accident reports and medical records consistently state that Petitioner's onset of symptoms occurred while she was lifting a box at work. Although not an admission of liability, Respondent paid Petitioner's medical expenses and temporary total disability benefits related to the first hernia and the date of accident was not called into question until Dr. Cantrell's Section 12 examination on 8/18/21. Petitioner testified that it was not until she reviewed her medical records and spoke with her co-worker that she identified the correct date of injury of 8/27/20. Petitioner filed an Amended Application for Adjustment of Claim on 10/17/22 to correct the date of accident from 9/10/20 to 8/27/20.

Based on the totality of the evidence, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 8/27/20.

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

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

As the Appellate Court has pointed out, proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. ***Navistar International Transportation Corp. v. Industrial Comm'n***, 315 Ill. App. 3d 1197, 1205, 734 N.E.2d 900, 248 Ill. Dec. 609 (2000).

Dr. Winkeler and Dr. Cantrell agree that Petitioner's activity of lifting a box overhead while twisting is a mechanism of injury that could cause a hernia. However, Dr. Cantrell's opinion that Petitioner's injury was not causally related was solely based on an incorrect date of accident. Petitioner testified that she sustained injuries while lifting a 35-pound box through a narrow aisle and twisting her body to place it overhead on a pallet. Ms. Rasch testified they had to squeeze between the aisles to get to the back boxes and carry them up to the inspection table, which was difficult at times. Ms. Rausch also testified that she had a discussion with Petitioner immediately after her accident and Petitioner told her she had a little bit of pain after lifting a burner and twisting. Ms. Rasch was aware Petitioner was hurting and because they had the next three days off, she called Petitioner over the weekend to check on her.

Petitioner testified that she returned to full duty work on 6/29/20 after undergoing an emergency appendectomy. She returned to her previous position and had no difficulty lifting, bending, or stooping until the work injury of 8/27/20. There is no evidence that Petitioner performed any activity that caused a hernia other than her reported work injury.

Based on the objective and subjective evidence, the Arbitrator finds that Petitioner's injuries are causally connected to the work accident of August 27, 2020. However, the Arbitrator finds that Petitioner's current condition of ill-being, that being a second hernia that necessitates the need for surgery, is causally connected to the work injury that occurred on 6/2/21.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Based upon the above findings as to accident and causal connection, the Arbitrator finds that Petitioner is entitled to medical expenses. Respondent shall therefore pay the medical

expenses contained in Petitioner's Group Exhibit 7 that relate solely to the treatment of Petitioner's injuries sustained on 8/27/20, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall be given a credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

Issue (K): Is Petitioner entitled to any prospective medical care?

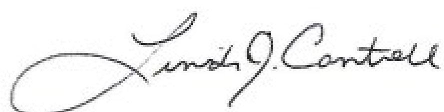
Based on the Arbitrator's finding that Petitioner's current condition of ill-being, that being a second hernia that necessitates the need for surgery, is causally connected to the work injury that occurred on 6/2/21, the disputed issue of prospective medical treatment is moot.

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

Petitioner claims entitlement to temporary total disability benefits from 9/18/20 through 2/1/21 as it relates to her date of accident of 8/27/20. Petitioner was placed off work on 11/16/20 when she underwent an incisional and ventral hernia repair with mesh by Dr. Luong. She was released to return to work effective 2/2/21 with a 20-pound lifting restriction. Respondent accommodated Petitioner's light duty work restrictions.

Therefore, the Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period 11/16/20 through 2/1/21, pursuant to Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all TTD benefits paid from 11/16/20 through 2/1/21.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for temporary or permanent disability, if any.



Arbitrator Linda J. Cantrell | Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007795
Case Name	Donna Hummert v. Empire Comfort Systems, Inc.
Consolidated Cases	22WC002482;
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0122
Number of Pages of Decision	23
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	James Keefe Jr

DATE FILED: 3/13/2024

/s/Christopher Harris, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DONNA HUMMERT,

Petitioner,

vs. NO: 22 WC 7795

EMPIRE COMFORT SYSTEMS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care and temporary total disability (TTD) 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. The Commission hereby remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 8, 2023 is hereby affirmed and adopted.

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

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

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $42,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

March 13, 2024
CAH/pm
O: 3/7/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007795
Case Name	Donna Hummert v. Empire Comfort Systems, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	James Keefe, Jr.

DATE FILED: 6/8/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 6, 2023 5.25%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Donna Hummert
Employee/Petitioner

v.

Empire Comfort Systems, Inc.
Employer/Respondent

Case # **22** WC **007795**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, on **4/25/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **6/2/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**37,632.25**; the average weekly wage was $**761.22**.

On the date of accident, Petitioner was **60** 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 **$Any and all TTD benefits paid from 6/3/21 through 4/25/23,** $**0** for TPD, $**0** for maintenance, and $**0** for medical benefits, for a total credit of $**Any and all TTD benefits paid from 6/3/21 through 4/25/23**.

Respondent is entitled to a credit of $**TBD and any and all paid** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 7 that relate solely to the treatment of Petitioner's injuries sustained on 6/2/21, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall be given a credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

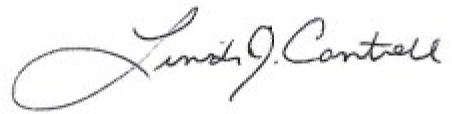
Respondent shall authorize and pay for prospective medical treatment recommended by Dr. Crouch, including, but not limited to, surgery to repair the recurrent abdominal hernia and post-operative treatment, until Petitioner reaches maximum medical improvement.

Respondent shall pay Petitioner temporary total disability benefits of $**507.48**/week for **98-6/7** weeks, commencing **6/3/21** through **4/25/23**, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all TTD benefits paid from 6/3/21 through 4/25/23.

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.



JUNE 8, 2023

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
 COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DONNA HUMMERT,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 22-WC-007795**
	)	
EMPIRE COMFORT SYSTEMS, INC.,	)	**Consolidated Case No. 21-WC-002482**
	)	
Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Collinsville on April 25 2023. On February 2, 2021, Petitioner filed an Application for Adjustment of Claim alleging she sustained a hernia on 9/10/20 as a result of lifting a box. (Case No. 21-WC-002482) (RX3). On October 17, 2022, Petitioner filed an Amended Application for Adjustment of Claim to amend the date of accident to 8/27/20. On March 22, 2022, Petitioner filed an Application for Adjustment of Claim alleging a second hernia while bending to put labels on boxes on June 2, 2021. (Case No. 22-WC-007795).

The parties stipulated that Respondent shall receive credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act. The parties further stipulated that Respondent shall receive a credit of $15,514.25 in temporary total disability benefits paid. The Arbitrator notes that the TTD benefits paid of $15,514.25 relates to both dates of accident. The issues in dispute in Case No. 22-WC-007795 are accident, causal connection, medical expenses, temporary total disability, and prospective medical care.

The Arbitrator has simultaneously issued a separate Decision in Case No. 21-WC-002482.

TESTIMONY

Petitioner was 60 years old, single, with no dependent children at the time of the accident. Petitioner began working for Respondent in 1992. At that time of the alleged injury on 8/27/20, Petitioner was a Quality Inspector. Her job duties involved inspecting items that were built on an assembly line in Poplar Bluff, Missouri and then sent to them for inspection. She lifted burners off pallets that weighed 20 to 50 pounds. She testified that her job required bending, stooping, and kneeling as she read verbiage on boxes. Petitioner remains employed by Respondent.

Petitioner testified that on 8/27/20 she was at the Stage Warehouse inspecting burners. She described that she was replacing a 30-pound box to a pallet. She noted that the box was three feet wide, and she had to carry it longways since the rows of units were only two feet apart. As a result, she was carrying the box awkwardly trying to put it on a pallet above her head. While lifting and turning, she felt a pop and pain in her abdomen and a bulge developed soon thereafter.

Petitioner testified there were no witnesses to her accident. She told her co-worker Jackie Rasch about the accident within 15 minutes of its occurrence. Petitioner shared an office with Ms. Rasch and advised her that she thought she felt something pop in her abdomen and she was injured.

Petitioner testified that the accident occurred on Thursday, 8/27/20, because that is the day of the week they received shipments from Poplar Bluff. Additionally, she noted she did not work the next few days because she did not work on Fridays.

Petitioner testified that she never had any similar problems prior to this accident. She testified she treated with Dr. Winkeler three months prior for an appendectomy and did not have any similar symptoms in that region. Petitioner noted that if she had similar symptoms, she would have told Dr. Winkeler.

Petitioner testified that she did not immediately notify Respondent of her injury because she did not think it was serious at the time. She ultimately notified her supervisor, Zac Rock, who had her complete accident reports. She testified that when she completed the accident report she was already treating with Dr. Winkeler for her abdominal issues and had been evaluated by her surgeon. As a result, she confirmed that the accident date she provided on the paperwork was incorrect. She stated that after reviewing her medical records and speaking with Ms. Rasch, the correct date of injury was on 8/27/20.

Petitioner was examined by her family doctor, Dr. Winkeler, on 9/8/20. She stated she told Dr. Winkeler about her symptoms that included pain in the area of the hernia and some hip pain. She reported a dully achy pain in her lower abdominal area that started when she was lifting a few weeks ago. Petitioner testified that the lifting that she described to the doctor was the accident that occurred at work. At that time, she had very exquisite tenderness along the abdominal area.

Petitioner underwent an MRI and was diagnosed with a hernia. Dr. Winkeler referred her to Dr. Thomas Luong who performed a hernia repair on 11/16/20. Petitioner testified that the surgery was approved by Respondent. She remained off work from the date of surgery until she returned to light duty work on 2/1/21. Petitioner was paid temporary total disability benefits while off work.

Petitioner was released to full duty work on 5/3/21 and returned to her previous position which required lifting, bending, and stooping. Petitioner testified that when she returned to work she did not have any problems with her surgical site and was able to complete all of her work activities.

Petitioner testified that on 6/2/21 she was working for Respondent covering verbiage on boxes that were packed with incorrect items. Petitioner described the boxes as large and heavy as they contained barbeque grills, and they were stacked two-high on pallets from the floor. Petitioner testified that she was showing a co-worker how they were fixing the issues by putting tape over the labels on the boxes. This required Petitioner to repeatedly bend over to about 6 inches from the floor to place the tape over the labels. Petitioner testified she performed this activity about ten times and while bending over to the floor, she felt something pop in the same location of her prior hernia.

Petitioner testified that correcting labels was part of her job duties as Quality Assurance. She testified that she instructed to place the labels on the boxes that day and she was following orders in completing her job duties when she was injured. Petitioner testified there was no other way to place the tape on the labels other than to bend over to reach the location on the boxes.

Petitioner testified that her accident was witnessed by co-worker Rachel Sturgill. Petitioner immediately yelled out and advised Ms. Sturgill she was injured. Within 15 minutes of the occurrence, Petitioner advised Supervisor Zac Rock of her accident and she completed paperwork.

Petitioner returned to Dr. Winkeler and provided him with a history of the work accident. Dr. Winkeler referred Petitioner to Dr. Crouch at Lincoln Surgical Associates, as Dr. Luong was no longer with the company. Dr. Crouch diagnosed a new hernia and placed Petitioner on light duty. Petitioner testified that Respondent would not accommodate her restrictions due to liability reasons, despite them previously accommodating her restrictions following the first accident. As a result, Petitioner was placed on leave of absence and remains on leave. Petitioner testified she is still employed by Respondent and therefore is not able to file for unemployment benefits.

Petitioner testified that Dr. Crouch has recommended surgery to correct the hernia. Dr. Winkeler has advised that she remain on light duty restrictions pending surgery.

Petitioner testified that she saw Dr. Cantrell at the request of Respondent. She provided the doctor with the history of both work accidents but noted that the date of accident she provided of 9/10/20 was incorrect. Petitioner was paid temporary total disability benefits until her examination by Dr. Cantrell.

Petitioner testified that she does not perform repetitive bending at home, and she did not perform any activities outside of work that caused the hernia. She testified that the hernia is now a visible mass that is 6 to 7 inches and protrudes from her abdomen. Petitioner stated the bulge is sometimes tender to the touch. She is unable to lift more than a gallon of milk or bend over without increased symptoms. Petitioner testified that the medical bills noted in Petitioner's Exhibit 7 were exclusively related to the treatment for the hernia.

On cross-examination, Petitioner testified that following surgery by Dr. Luong, she was paid lost time benefits up until she returned to work on 2/1/21. Additionally, following the accident of 6/2/21, she was paid lost time benefits.

Petitioner testified that there were two facilities in Belleville where she worked, and they were a few blocks away from each other. She testified she also worked at the plant in Poplar Bluff, Missouri.

Petitioner testified that she sustained a work-related injury to her right foot on 2/5/19 after kicking an empty pallet. She completed an Accident/Incident Investigation Report on the day of the accident. On 4/29/20, Petitioner injured her right-hand stacking shelves. The Accident/Incident Report was incorrectly dated. Petitioner testified that the report was completed the same date. She testified that he was never clear on how she was supposed to report accidents until after the fact.

Petitioner agreed she completed and signed an accident report on 10/14/20. (RX2) She testified that she reported the accident to her supervisor on 9/14/20. However, she then testified she was not sure of the date she reported her accident, but she thought it was prior to undergoing a CT scan. Petitioner testified that on the morning of 8/27/20 she attended a meeting at the companion location off Freeburg Avenue from 8:00 a.m. to 11:00 a.m. The accident occurred between 1:30 p.m. to 2:00 p.m. and she continued working until 4:30 p.m.

Petitioner identified an email she sent from her work email address on 8/27/20 at 7:18 a.m. to her supervisor Zac Rock stating she would be at 918 Freeburg Avenue today from 8:00 a.m. to 11:00 a.m. She testified she was not working at the facility that day but was attending a meeting. She testified that she sent additional emails to Zac Rock on 8/27/20 and did not report her accident in those emails.

Petitioner testified she did not work the day after her accident as she was scheduled off work on Fridays. She agreed she worked full duty the week after her accident. She presented to her primary care physician on 9/8/20 and advised him she had right leg pain and mid-abdominal pain for a few weeks, which she considered to be two weeks. She admitted she reported no known injury associated with the leg pain. Petitioner testified that she did not have immediate pain in her abdomen following the accident. She felt a pop and her abdomen became painful later.

Petitioner agreed she underwent a CT scan on 9/8/20 and she could not recall if she informed the radiologist that her injury was related to lifting at work. Petitioner disagreed that she did not discuss her work accident with Dr. Winkeler until January 2022. She believed she advised Dr. Winkeler prior to that time and prior to being referred to Dr. Luong. She admitted she did not tell Dr. Winkeler that her injury was work related when she initially saw him on 9/8/20 and she just told him she felt some pain when lifting.

Petitioner testified that in May 2020 she underwent surgery for an appendix rupture that subsequently developed an infection and caused her miss work from 5/18/20 through 6/29/20. She testified that Dr. Luong repaired the hernia using the same incision as the appendectomy. However, on re-direct, Petitioner testified she did not know the difference between an incisional hernia versus a ventral hernia. Petitioner testified that after her appendectomy she returned to work and was having no problems lifting, bending, or stooping until the work injury of 8/27/20.

Petitioner testified that since her lost time benefits stopped, she was not able to receive short term disability and has not applied for Social Security Disability. She applied for unemployment benefits but was denied since she was still employed. On re-direct, Petitioner believed that she was denied short-term disability because this was a work injury.

Petitioner testified that she reported her second injury to Zac Rock. She advised him that felt pain while bending over. Mr. Rock told her to go to her family doctor since he had knowledge of her previous hernia. Petitioner testified that she completed an Incident Report, but her Safety Director told her that he did not need it. She testified that the report is still probably sitting on her desk at work.

Petitioner testified that she did not tell Dr. Winkeler that she was puling something at work when she had a recurrent hernia. She testified that since 6/2/21 she has remained on a 10-pound restriction. She has tried to lift things such as dog food or cat food but nothing over 10 pounds.

On re-direct, Petitioner testified that after her prior work injuries she did not immediately seek medical treatment because her symptoms were not that bad, and she thought they would go away. Similarly, after the 8/27/20 injury, Petitioner did not immediately seek medical attention because her initial symptoms were not that bad, and she thought they would go away. She stated that the problems she had with the ventral hernia were not at the incision site of her appendectomy but was to the right of the incision.

Petitioner testified that on 8/27/20 she began her shift at the Freeburg Avenue location and moved to the original location in the afternoon where she sustained her injury that afternoon. Petitioner testified that when she saw Dr. Winkeler on 9/8/20 he did not ask her details of her lifting event. Petitioner testified that she did not sustain any lifting injury at home. Petitioner testified that after her first injury was investigated, Respondent paid her medical bills and lost time benefits. She received lost time benefits following her second injury until her examination by Dr. Cantrell.

Jackie Rasch testified on behalf of Petitioner. Ms. Rasch worked for Respondent from 10/10/14 through 9/18/20 as a Quality Assurance Inspector Lead. Ms. Rasch was trained by Petitioner, and they completed audits and inspections together. She did not know Petitioner outside of work.

Ms. Rasch testified that she first became aware that Petitioner sustained a work accident in August 2020 when Petitioner came into their shared office and advised her of the injury. Petitioner told her she had a little bit of pain after lifting a burner and twisting. Ms. Rasch noted that Petitioner has a high pain tolerance, but she knew when she was hurting.

Ms. Rasch testified that Petitioner’s injury occurred on a Thursday as the shipments came in on Tuesday and Thursday that included the parts that were moved as part of the job assignments. Ms. Rasch recalled the accident occurred on Thursday as Petitioner did not work the next day which would have been a Friday. Ms. Rasch testified that she called Petitioner over

the weekend to see how she was doing. Ms. Rasch believed that the accident occurred after 2:00 p.m. as that is approximately when they received the shipments of burners.

Ms. Rasch testified she was familiar with the burners and believed they weighed approximately 20 pounds. She stated that 100 to 200 burners were brought in on skids stacked two high and it was her job to inspect them with Petitioner. Ms. Rasch testified they had to squeeze between the aisles to get to the back boxes and carry them up to the inspection table. She noted that it was sometimes difficult to get boxes from between the aisles.

Ms. Rasch testified that she had worked with Petitioner for many months leading up to the accident. She stated Petitioner never expressed any type of pain or problems in her abdomen prior to the accident. She testified that Petitioner did not appear to be in any pain the morning of the accident until after she lifted the burner. Following the work accident, Petitioner advised her that she was still in pain but continued to perform her work activities to the best of her ability.

On cross-examination, Ms. Rasch testified she did not know when Petitioner advised Zac Rock of her injury. Ms. Rasch testified that after she left employment with Respondent, she texted Mr. Rock and inquired if she could return to work for Respondent but she has not done so.

Ms. Rasch testified that she believed Petitioner had a high pain tolerance because Petitioner would call her a sissy when she would get hurt. She worked alongside Petitioner for seven years. Ms. Rasch was aware Petitioner underwent an appendectomy in May 2020 that caused her to miss work. Ms. Rasch testified that she did not tell Petitioner to report her work injury to their supervisor.

Zachary Rock testified on behalf of Respondent. Mr. Rock has been employed by Respondent for four years as a Quality Manager. His job duties involved managing the quality auditors and he was Petitioner’s supervisor. Mr. Rock testified that he would travel to the Stag facility a couple of times per week. He is not directly involved with the workers’ compensation program, but he is familiar with the “spirit” of the reporting procedure which was to immediately report accidents to the supervisor or safety manager. Mr. Rock testified that if he received a reported injury, he would take the employee to the safety manager to fill out a report.

Mr. Rock testified he did not recall Petitioner coming to him on or about 8/27/20 to report she sustained a hernia at work. He testified that if Petitioner had reported any injury, he would have called the safety manager and requested a report be completed. Mr. Rock testified that the first time he learned Petitioner alleged a hernia injury was on 9/28/20 when Petitioner sent him and the safety manager an email asking how to fill out a workers’ compensation claim. Mr. Rock disagreed that Petitioner reported her accident to him on 9/14/20 as she stated on the Incident/Accident Investigation Report. (RX2)

Mr. Rock testified he was aware that Petitioner missed work in May and June 2020 for an emergency appendectomy. He testified that after she returned to full duty work he would occasionally ask Petitioner how she was doing and she occasionally replied she had tenderness and pain in her appendectomy area.

With regard to Petitioner's alleged work injury on 6/2/21, Mr. Rock testified that he got a call after it happened and after Petitioner left. He stated Petitioner reported she was not feeling good and was leaving. He testified that Petitioner did not report a work accident to him. He believed that on 6/2/21, Petitioner was still working with light duty restrictions of no lifting over 20 pounds and was labeling boxes and doing visual inspections. He testified that Petitioner was not to perform any lifting to avoid reinjury. Mr. Rock estimated that 10% to 15% of Petitioner's job duties in June 2021 involved bending over, stooping, and moving around in various areas of the plant. He was not aware that Petitioner ever returned to unrestricted duty following her hernia surgery in November 2020. Mr. Rock testified he never saw Petitioner perform any heavy lifting at work from the time she returned to work in February 2021 through June 2021. He believed she was performing her light duty job during that period.

On cross-examination, Mr. Rock admitted that he only visited the Stag facility where Petitioner worked, and he was not at the facility on the dates Petitioner was allegedly injured. Mr. Rock testified that he is not involved in investigating work injuries and does not know if the insurance company investigated either of Petitioner's work injuries.

Mr. Rock testified that he could assume Petitioner told him she was injured when she sent him and the safety director an email on 9/28/20 requesting how to file a workers' compensation claim. Mr. Rock testified that he asked Petitioner what happened and referred her to the safety manager, Kevin. He was not aware if Petitioner spoke to Kevin. Mr. Rock testified that although he received Petitioner's email on 9/28/20, the report from the safety director was not completed until 10/14/20. Mr. Rock admitted that Petitioner provided him with notice of the work accident within 45 days of the accident.

Mr. Rock testified that prior to 8/27/20 Petitioner never complained to him of symptoms in her abdominal area where her hernia was located. Mr. Rock testified that Petitioner's job duties for quality assurance includes labeling boxes which requires bending, stooping, and doing whatever is needed to put labels on the boxes. Although Mr. Rock testified that Petitioner was limited to labeling boxes as part of her light duty job duties, she only performed those activities 10-15% of her workday. He testified that the boxes were placed on a table at hip height so Petitioner did not have to bend over.

MEDICAL HISTORY/ACCIDENT REPORTS

On 9/8/20, Petitioner presented to her primary care physician Dr. Brett Winkeler with complaints of right leg pain that had been present for a few weeks with no known injury. She stated the pain came and went and increased when rising from a chair. The pain started in her groin and radiated to her knee. Petitioner also complained of mid-abdominal pain for a few weeks that was getting worse. Petitioner mentioned pain when lifting a few weeks ago. No obvious hernia was noted but she was tender along the appendectomy scar. Dr. Winkeler ordered a CT scan. He ordered x-rays for hip pain.

Dr. Winkeler testified that later during Petitioner's treatment, she discussed that the lifting episode she reported occurred at work a few weeks prior. Petitioner advised Dr. Winkeler that she was carrying a box at work and felt a pop in her lower abdomen. The pain progressively

worsened leading up to the medical visit. Dr. Winkeler testified that the pop that Petitioner felt is consistent with a hernia. Dr. Winkeler testified that prior to Petitioner's visit on 9/8/20, she had no accidents consistent with a hernia. He reviewed the accident report and testified that the accident would have occurred prior to 9/9/20 (the date Petitioner wrote the accident occurred), as that was actually the day after he examined her. (PX1)

Dr. Winkeler testified that when he saw Petitioner on 9/8/20, she was having pain in her hip, groin, and lower abdomen. He testified that Petitioner's symptoms continued from the date of her accident where she described a pop in her abdomen until he examined her. Dr. Winkeler testified that on 9/8/20 Petitioner had exquisite tenderness along the area of the surgical scar from a previous appendectomy. He did not feel an obvious hernia but noted Petitioner had tenderness. Dr. Winkeler noted that Petitioner's symptoms were near the surgical scar but that the prior appendectomy did not cause her hernia.

On 9/18/20, Petitioner underwent a CT of her abdomen and pelvic region. She was diagnosed with a pelvic ventral hernia containing nondilated and unobstructed bowel loops. (PX5)

Petitioner followed up with Dr. Winkeler who diagnosed a large ventral hernia at the level of the umbilicus. He testified that Petitioner sustained a defect in her abdominal wall and there was some bowel into that defect. He testified that the hernia could be consistent with the lifting episode that Petitioner described occurring two weeks prior to her visit on 9/8/20. Dr. Winkeler confirmed that given the size of the hernia, it could not have existed without Petitioner having symptoms. Dr. Winkeler referred Petitioner to Dr. Vinh Luong for further treatment. He placed Petitioner on work restrictions no lifting more than 20 pounds and not to wear tight clothing.

On 10/13/20, Petitioner was examined by Dr. Luong who diagnosed a reducible incisional ventral hernia. (PX3) He recommended surgery. The same day, Petitioner completed a Workman's Compensation Injury Statement. (RX1) Petitioner reported that on 9/9/20 she lifted a 35-pound box 5½ feet to the top of a pallet and felt something pull in her abdominal area. She reported she underwent a CT scan and had a hernia.

On 10/14/20, Petitioner completed an Accident/Incident Investigation Report. (RX2) Petitioner reported she notified her supervisor Zac Rock on 9/14/20 at 10:30 a.m. that she sustained injuries on Thursday, 9/10/20, at 1:30 p.m. while working in the Stag Warehouse. Petitioner stated, "I was doing inspections on burner assemblies (these weigh anywhere from 20 to 50 lbs. each). The burner assemblies are stacked (8) high on a pallet (around 5 ½ feet height). I was returning a burner assembly to the top of the stack when I felt something pull in my abdominal area. There wasn't immediate pain but I could tell that something was wrong. I could feel a pull when I was putting the remaining burners back on the pallets." She reports that she sustained a hernia.

On 11/16/20, Dr. Luong performed an incisional and ventral hernia repair with mesh. Intraoperatively, Dr. Luong noted that the hernia sac was easily encountered and dissected free from the surrounding soft tissue. (PX6)

Petitioner followed-up with Dr. Luong for post-operative visits. She was released with a 20-pound lifting restriction effective 2/2/21. On 2/4/21, Dr. Luong completed an accommodation request and advised that Petitioner's 20-pound restriction would remain in effect for at least three months, with a tentative release date of 5/3/21. (PX3, p. 40) The Arbitrator notes there is no full duty work release contained in Dr. Luong's medical records; however, Petitioner testified she returned to full duty work on 5/3/21.

On 6/3/21, Petitioner followed up with Dr. Winkeler complaining of abdominal pain. (PX4) Petitioner reported she was at work yesterday and felt a pulling sensation in her abdomen near the previous hernia site. Her symptoms were at the same location of her previous hernia repair. Dr. Winkeler noted Petitioner had burning pain and nausea. Dr. Winkeler diagnosed unspecified abdominal pain with concern of a recurrent hernia. He ordered a repeat CT scan.

Dr. Winkeler reviewed the CT scan performed on 7/26/21 and diagnosed a recurrent hernia at the previous hernia site, as well as a new defect above the previous hernia with herniated loops and small bowel and colon. The radiology report indicates Petitioner bent over and felt a pop with abdomen pain. Dr. Winkeler referred Petitioner back to Dr. Luong and placed her on a 10-pound lifting restriction. Dr. Winkeler testified that when he talked with Petitioner, he related the second hernia to the work accident of 6/2/21 coupled with the weakened condition caused by the first hernia repair.

Dr. Winkeler evaluated Petitioner on follow-up visits and continued her work restrictions. He testified that her restrictions would continue pending surgery.

On 8/5/21, Petitioner was examined by Dr. Luong's partner, Dr. Crouch, and reported that on 6/2/21 she was bending over at work and experienced a pop followed by pain and a bulge. Dr. Crouch diagnosed a recurrent abdominal hernia on the left side and recommended surgery. (PX4)

On 1/4/22, Dr. Winkeler's office made a note that Petitioner's work comp attorney was questioning the 9/8/20 appointment and needed something stating the incident occurred prior to 9/8/20. (PX1, p. 245) On 2/15/22, Dr. Winkeler prepared a letter opining Petitioner's hernia occurred at the time of a lifting incident at work on 8/27/20. (PX1, p. 56)

On 3/29/22, Dr. Crouch continued to recommend surgery and restrictions of no lifting, carrying, bending, or twisting. (PX4)

Dr. Winkeler testified that on 9/8/20 Petitioner told him of the lifting event that caused the initial hernia, but it was not until January 2022 that she describes the lifting injury occurred at work. He agreed that his note dated 9/8/20 makes no reference to lifting at work. He testified that he typically tries to document if a patient reports a work injury. He agreed that the CT scan report dated 9/18/20 makes no mention of a lifting injury at work.

Dr. Winkeler testified that Petitioner's appendectomy surgery could weaken the abdominal muscles and make a person more susceptible to developing a hernia. He admitted that activities such as coughing, sneezing, and lifting anywhere could cause a hernia. Dr. Winkeler

agreed that his causation opinion is based on Petitioner's history of the lifting event occurring at work. He agreed that if Petitioner did not have actual pain associated with lifting, then he could not causally connect it to any event.

Dr. Winkeler testified that as it relates to the second accident, Petitioner advised him that she was pulling at work and felt a pulling sensation in her abdomen and a burning sensation near the previous hernia site. He testified he did not have a specific note indicating what she was doing when the accident occurred, but that pulling even one pound would be enough to cause a recurrent hernia.

Dr. Russell Cantrell testified on behalf of Respondent. (RX4) Dr. Cantrell is a board-certified physical medicine and rehab doctor. Dr. Cantrell examined Petitioner on 8/18/21 pursuant to Section 12 of the Act and opined that Petitioner's injuries were not causally related to either alleged work accident. He recorded that on 9/10/20 Petitioner was carrying a 35-pound box through a narrow passageway. As she had to turn the box away to lift it in place on a pallet, she felt a pop in her abdomen without specific pain but later noticed a bulge in her abdomen. He testified that Petitioner never told him she sustained injuries on 8/27/20 and he did not see anything in the medical records that correlated with this date of injury. He testified that Petitioner was diagnosed with having a ventral hernia which he described as being a tear or a defect in the abdominal wall that allows either fat or intestine to protrude through the area of defect.

Dr. Cantrell noted that when Petitioner returned to work she had no ongoing complaints with her abdominal region leading up to the accident of 6/2/21. On that date, she was bending over to put labels on boxes when she again felt a pop with associated pain in her abdomen for which she returned to her primary physician, had a repeat CT scan, and was told that she had a recurrent hernia. She was referred to Dr. Crouch who recommended a repeat hernia surgery.

Dr. Cantrell performed a physical examination and diagnosed a recurrent abdominal wall hernia. He described the protrusion as being a slight prominence in the abdominal wall just to the right of the umbilicus. Dr. Cantrell agreed that Petitioner needed to have the hernia surgically repaired and that a 20-pound lifting restriction pending surgery was appropriate. Dr. Cantrell testified that the lifting restrictions were required as the hernia can progress in size if left without some restriction. He testified that Petitioner was at greater risk of having a recurrent herniation because of the previous hernia repair.

Dr. Cantrell opined that Petitioner's first hernia was not work-related as he did not believe that she sustained a hernia on 9/10/20. He based his opinion on Petitioner already having symptoms and abdominal pain on 9/8/20. He testified that an injury date of 8/27/20 was not consistent with the records that indicated ongoing and worsening abdominal pain in the weeks leading up to the alleged injury date of 9/10/20. As a result, he testified that considering a new date of accident of 8/27/20 did not change his causation opinion.

Dr. Cantrell testified that the hernia that was surgically repaired was near the surgical site of her previous appendectomy. He testified that the appendectomy made Petitioner more susceptible to getting a hernia. He noted that there was now a surgical cut through normal abdominal tissues to retrieve an infected or inflamed appendix. Dr. Cantrell testified that

Petitioner had other risk factors such as a prior surgery and being obese. He admitted that lifting a 35-pound box like what was described by Petitioner could cause a hernia.

Dr. Cantrell testified that Petitioner advised him that she was bending over to put labels on a box when she felt a pop followed by pain in her abdomen. He testified that that bending over, even repetitively, would not typically be a mechanism that would cause a recurrent hernia. He testified that the surgically treated abdomen can recur sometimes with something as simple as a cough or sneeze where there is an immediate increase in intra-abdominal pressure. Dr. Cantrell testified that bending over to put on socks or shoes is an everyday activity that could also have caused the hernia.

On cross-examination, Dr. Cantrell admitted he was not a surgeon and had never performed a hernia repair. He testified that while it is possible to have a hernia with no symptoms, by and large, most hernias are accompanied with symptoms. He agreed that treatment is required once a person sustains a hernia that is symptomatic. Dr. Cantrell admitted he was not aware of Petitioner's job duties.

Dr. Cantrell testified that Dr. Winkeler noted on 9/8/20 that Petitioner has a small pain when lifting a few weeks prior. Dr. Cantrell admitted that sometimes doctors may not record everything regarding the history of an accident. He acknowledged that the history of work injury from the patient of lifting a 35-pound box would be enough to bring about a hernia.

Dr. Cantrell did not causally relate Petitioner's hernia injury based upon his belief that the accident date was 9/10/20 and he was not aware of an injury on 8/27/20. He was aware that Dr. Winkeler noted a lifting injury a few weeks prior to 9/8/20, which did not indicate where the lifting incident occurred.

Dr. Cantrell testified by way of hypothetical that if on 8/27/20 Petitioner was lifting a 35-pound box and felt pain in her abdomen, the mechanism of injury would be consistent with the hernia diagnosis. He acknowledged that he had not reviewed any witness statements that reflect a work injury. Dr. Cantrell testified that he saw no other mechanism of injury such as coughing, sneezing, or lifting at home. Dr. Cantrell admitted that in reviewing the medical records from June 2020, there was no indication of any type of hernia following her appendectomy. He acknowledged that following the hernia repair, Petitioner returned to work performing the same duties she performed prior to her hernia. He acknowledged that following the second accident of 6/2/21, Petitioner told Dr. Winkeler that she was at work when she felt a pulling sensation. He acknowledged that when she met with him, Petitioner advised him that she was at work bending over putting labels on a box as part of her work activities when she felt the pulling on her abdomen.

Dr. Cantrell was not aware how many labels Petitioner had put on boxes, the location she put the labels on the boxes, or the nature of her bending activities when she experienced an onset of symptoms.

CONCLUSIONS OF LAW

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

To obtain compensation under the Act, an injury must "arise out of" and "in the course of" employment. 820 ILCS 305/1(d). An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal relationship between the employment and the accidental injury. ***Orsini v. Indus. Comm'n***, 117 Ill.2d 38, 509 N.E.2d 1005 (1987). In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work or that he or she is exposed to the risk of injury to a greater degree than the general public. Id. "In the course of employment" refers to the time, place and circumstances surrounding the injury. ***Lee v. Industrial Comm'n***, 167 Ill. 2d 77, 656 N.E.2d 1084 (1995); ***Scheffler Greenhouses, Inc. v. Industrial Comm'n***, 66 Ill. 2d 361, 362 N.E.2d 325 (1977). That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment. ***Sisbro, Inc. v. Industrial Comm'n***, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003).

Petitioner provided credible and unrebutted testimony that she sustained a work accident on 6/2/21 that arose out of and in the course of her employment with Respondent. Petitioner testified that on 6/2/21 she was bending over to place tape over a label on a box that was 6 inches from the floor. She stated the boxes were stacked two-high on pallets on the floor. Placing the labels on the boxes required Petitioner to repeatedly bend over and after performing this activity about ten times she felt something pop in the same location of her prior hernia.

Petitioner testified that her accident was witnessed by her co-worker Rachel Sturgill. Petitioner immediately yelled out and advised Ms. Sturgill she was injured. Petitioner testified that within 15 minutes of the occurrence, she advised Supervisor Zac Rock of her accident and that she felt pain while bending over. Mr. Rock testified that he got a call after it happened and after Petitioner left. He stated Petitioner reported she was not feeling good and was leaving and she did not report a work accident to him. Petitioner testified that she completed an Incident Report, but the safety director told her he did not need it. She testified that the report is still probably sitting on her desk at work.

The evidence does not support Mr. Rock's testimony that Petitioner was working with light duty restrictions in June 2021, as a result of a hernia repair that she underwent on 11/16/20. Mr. Rock testified that Petitioner's light duty job was limited to labeling boxes and performing visual inspections. He testified that the boxes were placed on a table at hip height, so Petitioner did not have to bend over and risk reinjuring the hernia site. Mr. Rock estimated that 10% to 15% of Petitioner's job duties in June 2021 involved bending over, stooping, and moving around in various areas of the plant. He was not aware that Petitioner ever returned to unrestricted duty following her hernia surgery.

It is undisputed that Petitioner underwent surgery on 11/16/20 to repair a hernia. Dr. Luong released Petitioner with a 20-pound lifting restriction on 2/1/21. There is no dispute that Respondent accommodated Petitioner's restrictions and she returned to work on 2/2/21. On

2/4/21, Dr. Luong completed an accommodation request and advised that Petitioner's 20-pound restriction would remain in effect for at least three months, with a tentative release date of 5/3/21. The Arbitrator notes there is no full duty work release contained in Dr. Luong's medical records; however, Petitioner testified she returned to full duty work on 5/3/21. The Arbitrator notes that Petitioner did not return to Dr. Luong after 2/1/21 and finds her testimony credible that she returned to full duty work on the tentative release date of 5/3/21.

Petitioner testified she did not have any difficulty performing her full job duties when she returned to full duty work on 5/3/21. On 6/3/21, that day after her second accident, Petitioner followed up with Dr. Winkeler complaining of abdominal pain. Petitioner reported she was at work yesterday and felt a pulling sensation in her abdomen near the previous hernia site. Her symptoms were at the same location of her previous hernia repair. Dr. Winkeler noted Petitioner had burning pain and nausea. Petitioner underwent a repeat CT scan and the report indicates Petitioner bent over and felt a pop with abdomen pain. Dr. Winkeler testified as to Petitioner's weakened condition caused by the first hernia repair and opined she was at increased risk of a recurrent hernia.

Under ***McAllister v. Illinois Workers' Compensation Commission***, the Supreme Court held that an injured worker's accident is work-related if the risk of injury was due to activities that were distinctly associated with employment activities. Additionally, the accident can be work-related if the activities were acts that were being performed at the instruction of her employer.

Mr. Rock testified that Petitioner's job duties for quality assurance included labeling boxes which required bending, stooping, and doing whatever is needed to put labels on the boxes. The Arbitrator finds that Petitioner was performing activities distinctly associated with her employment duties by repeatedly bending to place tape over box labels. The boxes were stacked two-high on a pallet on the floor which meant that she had to bend down to place the labels. Petitioner was performing acts at the instruction of Respondent on 6/2/21.

Based on the totality of the evidence, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 6/2/21.

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

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

When a pre-existing condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the pre-existing [condition] such that the employee's

current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." ***St. Elizabeth's Hospital v. Workers' Comp. Comm'n***, 371 Ill. App. 3d 882, 888, 864 N.E.2d 266, 272 (2007). Accidental injury need only be a causative factor in the resulting condition of illbeing. ***Sisbro, Inc. v. Indus. Comm'n***, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 673 (2003) (emphasis added). Even when a pre-existing condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. ***Sisbro, Inc. v. Indus. Comm'n***, 207 Ill. 2d 193, 797 N.E.2d 665 (2003). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. ***Land & Lakes Co. v. Indus. Comm'n***, 359 Ill. App. 3d 582, 834 N.E.2d 583 (2005). Employers are to take their employees as they find them. ***A.C. & S. v. Industrial Comm'n***, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing ***General Electric Co. v. Industrial Comm'n***, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982). The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. ***Rock Road Constr. v. Indus. Comm'n***, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also ***Illinois Valley Irrigation, Inc. v. Indus. Comm'n***, 66 Ill. 2d 234, 362 N.E.2d 339 (1977).

As the Appellate Court has pointed out, proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. ***Navistar International Transportation Corp. v. Industrial Comm'n***, 315 Ill. App. 3d 1197, 1205, 734 N.E.2d 900, 248 Ill. Dec. 609 (2000).

Petitioner testified that following her hernia repair on 11/16/20, she returned to full duty work on 5/3/21 and was having no significant problems at the surgical site or difficulty performing her job duties. She testified that on 6/2/21 she was bending over to place tape over a label on a box that was 6 inches from the floor. She stated the boxes were stacked two-high on pallets from the floor. Placing the labels on the boxes required Petitioner to repeatedly bend over and after performing this activity about ten times she felt something pop in the same location of her prior hernia.

Petitioner presented to Dr. Winkler the day after the accident and reported she was at work yesterday and felt a pulling sensation in her abdomen near the previous hernia site. Her symptoms were at the same location of her previous hernia repair. Dr. Winkeler noted Petitioner had burning pain and nausea. Petitioner underwent a repeat CT scan and the report indicates Petitioner bent over and felt a pop with abdomen pain. Dr. Winkeler testified as to Petitioner's weakened condition caused by the first hernia repair and he believed that the activity would be enough to cause a recurrent hernia. He testified that Petitioner was more susceptible to sustaining a recurrent hernia due to her previous hernia surgery because the surrounding tissue tends to be weaker. He testified that it takes less effort or less physical movement to bring about a new hernia. Dr. Cantrell testified that the bending activity could worsen or make symptomatic a hernia.

Based on the totality of evidence, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the work accident of 6/2/21.

Issue (J): **Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?**
Issue (K): **Is Petitioner entitled to any prospective medical care?**

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). 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).

Based upon the above findings as to accident and causal connection, the Arbitrator finds that Petitioner is entitled to medical expenses. Respondent shall therefore pay the medical expenses contained in Petitioner's Group Exhibit 7 that relate solely to the treatment of Petitioner's injuries sustained on 6/2/21, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall be given a credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

The Arbitrator further finds that Petitioner is entitled to receive the additional care recommended by Dr. Crouch. Dr. Crouch recommends surgical repair of Petitioner's recurrent abdominal hernia. Therefore, Respondent shall authorize and pay for the treatment recommended by Dr. Crouch, including, but not limited to, surgery to repair the recurrent abdominal hernia and post-operative treatment, until Petitioner reaches maximum medical improvement.

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

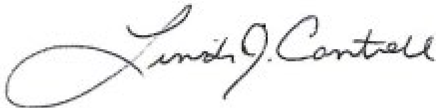
Petitioner claims entitlement to temporary total disability benefits from 6/3/21 through 4/25/23 as it relates to her date of accident of 6/2/21.

Dr. Winkeler testified that he placed Petitioner on a 10-pound lifting restriction when he saw her on 6/3/21 and referred her to Dr. Crouch for evaluation. Dr. Winkeler testified that he discussed Petitioner's hernias with her on 1/20/22 and he had no evidence that surgery had been approved. He placed her on lifting restrictions of 1 to 5 pounds frequently, and 6 to 10 pounds occasionally. He testified that restrictions were necessary to prevent worsening of Petitioner's condition and pain control. Despite causation, Dr. Cantrell testified that when he examined Petitioner on 8/18/21 he believed that a 20-pound lifting restriction was appropriate pending surgery in order to prevent the hernia from progressing in size.

Petitioner testified that Respondent did not accommodate her restrictions following the 6/2/21 accident as they did following her 8/27/20 injury, and she has been on leave of absence since.

Therefore, the Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period 6/3/21 through 4/25/23, pursuant to Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all TTD benefits paid from 6/3/21 through 4/25/23.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for temporary or permanent disability, if any.



Arbitrator Linda J. Cantrell | Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC010199
Case Name	Clyde Owen v. United Road Services
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0123
Number of Pages of Decision	14
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Michael Rolenc
Respondent Attorney	Elaine Newquist

DATE FILED: 3/13/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS	)		
	) SS.		
COUNTY OF WILL	)		

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CLYDE OWENS,

Petitioner,

vs. NO: 12 WC 10199

UNITED ROAD SERVICES,

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, temporary total disability, permanent partial disability, and nature and extent of disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission having fully reviewed the facts and law hereby modifies the Arbitrator's Decision and finds that the third surgery performed on Petitioner by Dr. Pacaccio, i.e., the right ankle fusion, subtalar TCC fusion, Achille's tendon lengthening, and implantation of bone stimulator on December 31, 2013, is causally connected to the work injury of March 8, 2012. The Commission relied upon the testimony of Dr. Pacaccio that the fusion procedure in its entirety was reasonable and necessary and causally related to Petitioner's accident.

The Commission further notes that there is no support in the medical records to suggest that any part of the December 31, 2013, procedure was due to some other, non-work-related condition involving Petitioner's right foot. Respondent presented no evidence of any intervening accident to suggest that the third procedure, in its entirety, was not causally related.

The Commission finds based upon the preponderance of evidence contained in the record, that there is a causal connection between Petitioner's March 8, 2012, work accident, and the condition of Petitioner's right foot/ankle through December 31, 2013. The Commission agrees with the Arbitrator that Petitioner's low back condition is not causally related to the March 8, 2012, accident.

Based upon the foregoing the Commission modifies the Decision of the Arbitrator and finds that Petitioner is entitled to temporary total disability benefits commencing March 9, 2012, through November 26, 2012; commencing October 2, 2013, through October 28, 2013; and from December 31, 2013, through September 23, 2014, representing 78 1/7 weeks in total.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner is entitled to reimbursement by the Respondent in the amount of $482.21 for his out-of-pocket medication expenses.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to temporary total disability benefits from March 9, 2012, through November 26, 2012, from October 2, 2013, through October 28, 2013, and from December 31, 2013, through September 23, 2014, totaling 78 1/7 weeks. That being the total period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 75.15 weeks, as provided in §8.1(b) of the Act, for the reason that the injuries sustained caused the 45% loss of use of the right foot.

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.

March 13, 2024

SJM/msb
o-2/7/2024
44

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

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

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC010199
Case Name	Clyde Owen v. United Road Services
Consolidated Cases	
Proceeding Type	
Decision Type	***CORRECTED*** Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Michael Rolenc
Respondent Attorney	Elaine Newquist

DATE FILED: 5/8/2023

/s/*Jessica Hegarty, Arbitrator*
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 2, 2023 4.90%

STATE OF ILLINOIS)
)SS.
COUNTY OF)

- ☐ 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

Clyde Owen
Employee/Petitioner

Case # **12 WC 10199**

v.

Consolidated cases: ______

United Road Services
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 **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Joliet**, 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. ☒ 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 **3/08/2012**, 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 in part*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**73,741.72**; the average weekly wage was $**1,418.11**.

On the date of accident, Petitioner was **52** 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 $**83,466.19** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**83,466.19**.

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

ORDER

Based on the preponderance of evidence contained in the record, the Arbitrator finds a causal connection between Petitioner's March 8, 2012, accident, and the condition in Petitioner's right foot/ankle through October 28, 2013, only. The Arbitrator finds Petitioner's low back condition, bilateral foot drop, and December 31, 2013, right ankle surgery are not causally related to the March 8, 2012, accident.

The Arbitrator finds that Petitioner is entitled to reimbursement by the Respondent in the amount of $482.21 for his out-of-pocket medication expenses.

Petitioner is entitled to temporary total disability from March 9, 2012, through November 26, 2012, and from October 2, 2013, through October 28, 2013, for a total of 41 1/7's weeks. Further compensation is denied.

Petitioner is entitled to $695.78 per week for 75.15 weeks, as the injury resulted in permanent partial disability to the extent of 45% loss of use of the right foot. (See the attached Addendum for the Arbitrator's analysis pursuant to Section 8.1(b) of the Act).

Respondent is entitled to a credit of $44,456.74 in overpaid TTD benefits paid after October 28, 2013.

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
ICArbDec p. 2

May 8, 2023

ADDENDUM TO THE DECISION OF THE ARBITRATOR

On March 8, 2012, Petitioner was working for Respondent as an over-the-road car hauler when he fell 10 to 11 feet from the deck of his work trailer, landing on his right heel. Petitioner was diagnosed with a right heel fracture later that day at Bolingbrook Hospital. The following day, Petitioner presented to Dr. Douglas Pacaccio, who issued off-work restrictions and ordered a right ankle/hindfoot CT scan which revealed a markedly comminuted intra-articular calcaneal fracture. (PX1, p. 2, 4-5). Dr. Pacaccio recommended surgery which he performed on March 21, 2012, consisting of open reduction, internal fixation of the right calcaneus fracture, and an Achilles tendon lengthening procedure. (Id., p.8).

Post-operatively, Petitioner wore a CAM boot and regularly followed up with Dr. Pacaccio who eventually prescribed a course of daily physical therapy which began in April 2012. The doctor also provided Petitioner with bilateral orthotics. (Id., p. 21).

On July 30, 2012, Dr. Pacaccio noted Petitioner's complaints of persistent pain in his right heel, calf, and Achilles tendon. Dr. Pacaccio instructed Petitioner to continue therapy and remain off of work. (Id., p. 23). On August 30, 2012, Petitioner reported little improvement following an injection to his right cuboid-metatarsal joint earlier that month. Petitioner complained of pain at the insertion of the peroneus brevis and at the cuboid-metatarsal joint with mild discomfort at the subtalar joint. Dr. Pacaccio administered another injection to the cuboid-metatarsal joint. (Id., p.26-29).

On November 13, 2012, Dr. Pacaccio noted Petitioner had completed 4 weeks of work hardening therapy. (Id., p. 34). Petitioner stated his pain level was a 4/10 while sitting but could increase to a 10/10. Petitioner stated his right foot pain never goes away. On exam, Dr. Pacaccio noted tenderness to the subtalar joint with eversion/inversion of the heel and positive Tinel's to the sural nerve with percussion both at the "incision line and at the posterior Achilles tendon area". (Id.). The doctor administered a third injection to Petitioner's right foot, this time, at the right sural nerve proximal to the insertion of the Achilles tendon. Pursuant to his review of a note from Petitioner's work hardening therapist and the recent Functional Capacity Exam, Dr. Pacaccio released Petitioner to full-duty work noting his ability to perform the minimal, basic job requirements for Respondent. Petitioner was instructed to follow-up in one month for reassessment. (Id., pp.34-35).

On January 15, 2013, Petitioner next presented to Dr. Pacaccio with complaints of right foot pain ranging from a 3 to a 10/10 after walking around for 2-3 hours at work. Petitioner reported the prior injection provided no lasting relief. The doctor recommended a diagnostic ultrasound which was performed in late February. (Id., p. 40, 58-59).

On April 9, 2013, Dr. Pacaccio noted Petitioner's complaints of shooting pain originating "at incision" and extending up his right leg. On exam, pain to palpation along the course of the peroneal tendons, the lateral sural nerve, and the posterior calf at the site of the Achilles tendon lengthening procedure was noted. The doctor reviewed the ultrasound noting tears at the peroneal longus and brevis tendons at the distal edge of the calcaneal plate along with sural nerve entrapment in the lateral scar and along the lateral foot. Such findings, in his opinion, were consistent with Petitioner's complaints. Surgery to remove the surgical hardware, repair the tendons, and transect the sural nerve was recommended by Dr. Pacaccio. (Id., pp. 56-57).

Petitioner testified that he moved from Illinois to Missouri and was seen at an ER in Lebanon, Missouri, shortly after his move. (TX 26).

The medical records in evidence show that Petitioner presented to an ER in Lebanon, Missouri on June 16, 2013, complaining of lower back pain that started yesterday afternoon. Petitioner reported that the pain "will shoot down

his legs". He rated the pain at a 10/10 and that he had taken Flexeril and Gabapentin for the pain without relief. The nurse also noted, "Pt reports that he was unloading a lawn mower yesterday and had to lift the gate on the trailer and thinks he may have really injured it then". (PX3,18).

On July 8, 2013, Petitioner presented to Dr. Robert Strang at the Springfield Neurological and Spine Institute in Springfield, Missouri. Dr. Stang noted Petitioner's complaints of low back and right leg pain since June 16, 2013. (Id., 2). Petitioner reported having bilateral foot drop for just over a week. Dr. Strang reviewed a recent lumbar MRI noting significant stenosis at L3-L4 secondary to degenerative change, congenital stenosis, and a broad-based central disc herniation. Dr. Strang recommended surgery which he performed on July 10, 2013, consisting of right L3-L4 lateral decompression with diskectomy. Petitioner's pre-operative diagnosis was lumbar stenosis, lumbar spondylosis, lumbar disc herniation, bilateral foot drop, and lumbar radiculopathy. (Id., 49-50).

Regarding his back claim, Petitioner testified that following the March 2012, accident, he had back complaints although he did not see a doctor for his back until he began treatment with Dr. Stang in July 2013. (TX, 13).

On September 5, 2013, Petitioner, was back in Illinois, when he presented to Dr. Pacaccio with complaints of persistent right foot pain. At that visit, Dr. Pacaccio again discussed and recommended a second right foot surgery with Petitioner. (Id., 28).

On October 2, 2013, Petitioner underwent surgery consisting of hardware removal from the right calcaneus, a peroneal repair with AmnioFix graph, and sural nerve transection implantation, performed by Dr. Pacaccio. (PX1, 52-53). The preoperative diagnosis noted hardware pain in the right foot, peroneal tendinopathy, and sural neuritis with neuroma. 14 screws of different sizes and a 6.7 cm metal plate were removed from Petitioner's right calcaneus. (Id., p. 54).

On November 25, 2013, Petitioner returned to Dr. Pacaccio for his second post-op visit. At that time, Petitioner complained of right foot pain at 5/10. On exam, Dr. Pacaccio noted a "marked foot drop at the right foot". X-rays of the right foot revealed some early degenerative joint disease in the subtalar joint. Dr. Pacaccio recommended Petitioner undergo a tibiotalocalcaneal ("TTC") fusion noting:

> *At this point, I do not believe that therapy will fix drop foot. I did recommend TTC fusion as the patient states the brace does not provide enough stability to control the deficit and he also does not feel stable on the foot. Furthermore, he is unable to work with his foot in the condition it is in and a fusion will stabilize the joint and allow him back to work in a shoe the quickest.* (PX2, p. 51).

On December 31, 2013, Petitioner underwent his third surgery with Dr. Pacaccio consisting of an ankle fusion, subtalar TTC fusion, Achilles tendon lengthening, and an implantable bone stimulator in the right ankle. (PX1, pp.56-58). The doctor noted a preoperative diagnosis of drop foot in the right ankle, degenerative joint disease in the right subtalar joint, and ankle equinus in the Achilles tendon.

Following this surgery, Petitioner continued treatment with Dr. Pacaccio and returned to full-duty work for Respondent in September 2014. (TX. 29, 36-37).

Petitioner testified he saw Dr. Pacaccio several times in 2016 and also underwent additional physical therapy that year. Petitioner was discharged by Dr. Pacaccio on August 9, 2016. (Id., 14- 15).

Petitioner next saw Dr. Pacaccio for pain in his right foot on February 27, 2017. At that visit, Dr. Pacaccio recommended an ultrasound. (Id., 12-13). Petitioner underwent the ultrasound and returned to Dr. Pacaccio on March 16, 2017, at which time another right foot injection was administered. (Id., 9 -10).

Petitioner testified that he last saw Dr. Pacaccio about two weeks ago for his right foot. Petitioner testified that he periodically renews the orthotics and uses compression socks. (Id., 19).

Petitioner testified that he worked for Respondent, full duty, until March 2016 when he was fired. (Id., 30). Petitioner testified that if it were up to him, he would still be working for Respondent. (Id.). Currently, he works for Teddy Jems, a trucking company out of Lebanon, Missouri driving an 18-wheeler. He works one to three days a week and makes between $28,000.00 and $30,000.00 a year. (Id., 22).

Petitioner testified that he experienced back pain following the March 2012 accident but agreed that the first time he sought medical treatment for his back following his work accident was on July 8, 2013. (Id., 13).

Regarding the current condition in his right foot and ankle, Petitioner testified that he experiences varying degrees and types of pain in the heel of his right foot and along the right side of his leg. He described the pain as being sharp, throbbing, constant, and dull, depending on whether he is sitting or moving around. (Id., 20). He has sharp pain in his heel which comes up the side of his leg and into his hip. (Id.). Petitioner also testified that he no longer climbs up on any structures and is scared of heights.

On cross-examination, Petitioner testified he takes Gabapentin for his right foot and nerve pain running up and down his leg. He first started noticing the nerve pain going up and down his right leg while he was in therapy, especially work hardening. (Id., 24).

Petitioner agreed that he did not receive any treatment for his low back until 15 or 16 months following his work accident. (Id., 25).

He further testified on cross-exam, that he remembered treating with a chiropractor for several years before 2012 for neck and back pain related to a head-on collision, he had in 2007. (Id., 25-26).

Petitioner agreed that he told the ER staff in June 2013 that his back pain started "yesterday afternoon" after loading and unloading a lawn mower and lifting a trailer gate. (Id., 26).

Following the surgery performed by Dr. Strang on July 10, 2013, Petitioner was still having some element of a drop foot in his right foot. He started noticing this foot drop about a week before his initial encounter with Dr. Strang in July 2013. Petitioner testified that the drop foot never really went away. (Id., p. 27).

Petitioner testified that when he saw Dr. Pacaccio in December 2013, he still had the drop foot, but he also had a lot of pain in his right foot. (Id., 28).

Petitioner confirmed that he was examined by Dr. Mather in July 2014 at the request of the Respondent. He remembered telling Dr. Mather that he was having bad back pain, but it was not due to moving from Chicago to Lebanon, Missouri. (Id., 29). He testified there was a mover who came to pick everything up and he just drove his truck to Lebanon. Petitioner testified his back pain "started really extremely hurting" whenever he lifted the gate up on the back end of his trailer. (Id.).

Petitioner agreed that after recovering from his ankle fusion surgery, he returned to full-duty work for Respondent in September 2014 and continued working full-duty for the Respondent until he had another surgery involving the nerves in his right leg and ankle in January 2016. Following that procedure, Dr. Pacaccio discharged Petitioner from care in August 2016. (Id., 30).

Petitioner agreed that he worked for Respondent until March 2016 when he was fired. (Id.).

Testimony of Dr. Pacaccio

Dr. Douglas Pacaccio, DPM, testified via evidence deposition on August 12, 2020. (PX 4). Dr. Pacaccio is board certified by the American Board of Foot and Ankle Surgeons in surgery to the foot and ankle, and rear foot reconstruction. (Id., 7). Dr. Pacaccio confirmed that Petitioner presented for initial exam on March 9, 2012, with a history of right foot complaints after falling off the top deck of a car hauler. (Id., 8). Dr. Pacaccio diagnosed a comminuted right calcaneal fracture and equinus of the right calcaneus for which he performed initial surgery consisting of open reduction/internal fixation of Petitioner's calcaneal fracture along with an Achilles lengthening procedure. (Id., p. 9). The doctor performed a second right foot/ankle surgery consisting of peroneal nerve repair, AmnioFix grafting, removal of a sural neuroma, and removal of the previously fixated calcaneal hardware. (Id., 12-13). Both procedures, in his opinion, were causally related to Petitioner's March 8, 2012, work accident based on the presentation of symptoms, proximity to the injury, and the known sequela and side effects of Petitioner's injury and its repair. (Id.)

Regarding the timeline of surgical events, Dr. Pacaccio testified that Petitioner's second surgery was tentatively scheduled for "earlier that summer" but was delayed due to an "intervening" back surgery performed in Missouri. (Id., 13). Dr. Pacaccio testified that he did not review the entire chart pertaining to Petitioner's back surgery. He recalled that Petitioner "eventually" presented to him with "weakness and drop foot". (Id., 14).

Regarding the causal relationship between Petitioner's accident, back issues, and drop foot, Dr. Pacaccio testified that back problems and drop foot are sequela or co-injuries of a calcaneal fracture that can develop over time. (Id., 14-15).

In December 2013, Petitioner underwent a third surgery performed by Dr. Pacaccio which included a right ankle fusion, a subtalar fusion, and an Achilles lengthening procedure. According to Dr. Pacaccio, the ankle fusion and Achilles lengthening procedure were necessitated by Petitioner's drop foot. (Id., 15, 17). The doctor performed the subtalar fusion because Petitioner was symptomatic and "because we were there, we did them both so he wouldn't need a fourth surgery". (Id., 16). The doctor opined that the third surgery was more likely than not, a "sequela" of Petitioner's work injury based on the known mechanism and impact that a calcaneal fracture can have on the lower back and the sequential development of low back problems and drop foot after the initial injury, all of which, are well known to be interconnected. The doctor added, "it's not always the case, but it's very likely that they can happen together." (Id, 17).

On cross-exam, Dr. Pacaccio agreed that during the initial, thirteen-month period that he treated Petitioner between March 9, 2012, and April 9, 2013, he did not document any low back complaints in his chart. (Id., 21). His "first knowledge" of Petitioner's low back problems was in June 2013 when Petitioner advised him that he was scheduled to undergo back surgery. (Id., 22). He doesn't remember what explanation or history Petitioner reported regarding his back pain. (Id., 23). The doctor never reviewed any ER or hospital records from Lebanon, Missouri concerning Petitioner. (Id., 23).

Dr. Pacaccio agreed that one can develop drop foot from an acute low back injury. (Id., 24).

On re-direct examination, Dr. Pacaccio testified that he first noted Petitioner's drop foot on September 5, 2013, which was prior to his second surgery. (Id., 27). Dr. Pacaccio also reviewed two reports of Dr. George Holmes noting he disagreed with Dr. Holmes' opinion that Petitioner's drop foot could not be related to the initial work injury. He also noted Dr. Holmes inaccurately characterized the type of fusion that Dr. Pacaccio performed on

Petitioner clarifying that he performed a tibial talocalcaneal fusion which includes both the ankle joint and subtalar joint. (Id., 27-28).

Dr. Pacaccio further testified regarding Petitioner's second surgery in October 2013, that he transected the nerve because of a scar neuroma from the original calcaneal fracture. He testified sural nerve injuries, peroneal tendon tears and peroneal tendon entrapments are a very well-known sequela of calcaneal fractures. (PX4, p.31).

Testimony of Dr. George Holmes

Dr. George Holmes, who is a board-certified, practicing orthopedic physician with a sub-specialty in foot and ankle issues, testified in this matter on March 15, 2021. (RX 3). Petitioner presented to Dr. Holmes for an IME at Respondent's request on July 10, 2014, approximately 28 months after his work accident (Id., 11). At that time, Petitioner had returned to full-duty work after undergoing his third surgery with Dr. Pacaccio. (Id., 13). Dr. Holmes noted that Petitioner had a history of a work-related fall in which he sustained a right calcaneal fracture followed by surgery a few days later consisting of open reduction and internal fixation. (Id., 11-12). Petitioner reported some "heaviness" with weakness in the right knee and leg, some difficulty going up inclines, and a palpable screw near the tibia. (Id., 13). Petitioner also had some atrophy in the right calf, and an absence of dorsiflexion, plantarflexion, eversion, and inversion, consistent with the fusion. (Id.). X-rays performed that day showed a solid tibiocalcaneal fusion arthrodesis of the foot with a rod, fixed with two screws proximally and one screw distally, and an internal bone growth stimulator. (Id., 14).

Dr. Holmes reviewed additional records and issued a report dated July 21, 2014. (Id., 16). The doctor noted Petitioner's medical records showed complaints of low back pain that radiated to both legs in 2013. Petitioner was diagnosed with spinal stenosis and a herniated disc. (Id., 17). The records from July 12, 2013, noted that Petitioner had developed a bilateral drop foot. (Id.). Dr. Holmes related the drop foot to Petitioner's low back problem, not his foot/ankle injuries. (Id., 18). In his experience with treating patients with foot drop, the condition is related to back issues such as sciatica, stenosis, or disc problems as opposed to a foot injury, absent a laceration of a nerve or muscle in the foot. (Id.). The doctor noted no evidence of any such foot lacerations in this case. (Id.).

Dr. Holmes opined the tibiocalcaneal arthrodesis performed on Petitioner in December 2013 was not reasonable or related to the drop foot. The purpose of such a procedure is to fuse those joints in an individual with arthritis, locking in the foot to prevent dorsiflexion, plantarflexion, inversion, or eversion, reducing all motions of the ankle and subtalar joint. (Id., p.21). Dr. Homes never fuses an individual with a drop foot as these patients are generally treated with a brace. (Id., p.22). Following the right calcaneal fracture Petitioner sustained on March 8, 2012, Petitioner sustained posttraumatic arthritis of the subtalar joint. Dr. Holmes testified that patients who develop posttraumatic arthritis of the subtalar joint may require an AFO brace, a smaller UCBL brace, and/or a subtalar arthrodesis which is an isolated fusion of the subtalar joint. (Id., p.23).

Dr. Holmes noted that Petitioner was released to return to full duty work on November 13, 2012, pursuant to work hardening and an FCE at which time he was MMI. (Id., 24).

On cross-examination, Dr. Holmes testified that the October 2013, surgery which involved a sural nerve transection and hardware removal would be reasonable and necessary procedures following an open reduction internal fixation of the right ankle. (Id., 30).

Dr. Holmes further testified that Petitioner told him the drop foot was in both feet, as confirmed by the contemporaneous medical records. He related the bilateral foot drop to a low back condition. He noted the low back surgery did nothing to alleviate Petitoner's bilateral foot drop. Further, in his opinion, the fusion performed

was an "improper" treatment for a foot drop. A fusion would be warranted by arthritic changes in both the tibiotalar and subtalar joints. He found no evidence that Petitioner had arthritic changes in either of those joints.

In sum, Dr. Holmes concluded the third surgery performed by Dr. Pacaccio in December 2013, consisting of the ankle fusion, Achilles lengthening procedure, and implantable bone stimulator, was not reasonable or related to the March 20132 accident. The October 2013, surgery which involved a sural nerve transection and hardware removal were reasonable and necessary procedures following Petitioner's initial open reduction, and internal fixation of the right calcaneal intra-articular fracture.

Testimony of Dr. Steven Mather

Dr. Steven Mather, board certified in orthopedic surgery, testified on October 22, 2020, regarding his July 2014 IME of the Petitioner. (RX4). Dr. Mather testified that Petitioner reported complaints of low back pain with radiation down the right leg that developed in May 2013 while unpacking due to a move from Illinois to Missouri. On exam, Petitioner had a normal range of motion with a bilateral foot drop.

Regarding causation, Dr. Mather opined that Petitioner's low back condition was unrelated to the March 8, 2012, accident as Petitioner did not have low back or radicular symptoms "for close to a year" following the work injury when he reported a history of an acute back injury on June 16, 2013, at an ER in Missouri. Specifically, Petitioner reportedly was "loading and unloading a lawn mower yesterday and had to lift the gate on the trailer and thinks he may have really injured" his back at that time. (RX4, 15-17). Thereafter, Petitioner's back complaints consistently attributed his pain to that specific event involving the lifting of a trailer gate while moving a lawn mower. Dr. Mather also noted the presence of acute findings in the July 8, 2013, operative report documenting Petitioner's low back surgery, including a free fragment that, in Dr. Mather's opinion, had "been there just a month or two". In Dr. Mather's experience, a freed fragment will frequently resolve itself after four to six months. (Id., 15 – 16).

Regarding the bilateral drop foot, Dr. Mather noted Petitioner's left-sided drop foot had been present since 2004 following a severe left leg injury while Petitioner's right-sided drop foot developed following Petitioner's May 2013 back problem. (Id., 11). Dr. Mather related the foot drop to the non-work-related low back condition and not to the calcaneal fracture. (Id. 27)

Dr. Mather testified that Petitioner's right footdrop was partially treated with the fusion performed by Dr. Pacaccio which was required because of the calcaneal fracture. (Id., 26). In this August 19, 2014, addendum report, Dr. Mather opined that Petitioner's right drop foot was due to Petitioner's non-work-related herniated lumbar disc. (Id., p.27).

CONCLUSIONS OF LAW

F. Causal Connection

Based on the preponderance of evidence contained in the record, the Arbitrator finds a causal connection between Petitioner's March 8, 2012, accident, and the condition in Petitioner's right foot/ankle through October 28, 2013, only. The Arbitrator finds Petitioner's low back condition, bilateral foot drop, and December 31, 2013, right ankle surgery are not causally related to the March 8, 2012, accident.

There is no dispute that Petitioner sustained a comminuted intra-articular calcaneal fracture after falling 10-11 feet from the deck of his trailer on March 8, 2012, necessitating the right foot/ankle surgeries performed by Dr. Pacaccio on March 21, 2012, and on October 2, 2013. The treating medical records, chain of events, and opinions of Dr. Pacaccio and Dr. Holmes support this finding.

The real dispute pertains to Petitioner's low back, bilateral drop foot, and right foot/ankle condition following his second surgery in October 2013. Drs. Holmes and Mather opined that the aforementioned were unrelated to the March 2012 accident, and after reviewing the entire record, the Arbitrator agrees.

In support, the Arbitrator notes the treating medical records between March 3, 2012, and April 2013, are devoid of any low back or bilateral foot drop complaints. It is not until 15 months following his accident, on June 16, 2013, that Petitioner complained of acute back pain after moving a lawn mower and lifting a trailer gate as noted by the ER staff in Lebanon, Missouri. Petitioner's treating surgeon, Dr. Pacaccio, was not privy to those medical records and was unaware of the non-work-related cause reported by Petitioner to various medical professionals after he moved to Missouri in June 2013. Dr. Pacaccio confirmed at his deposition that Petitioner made no complaints regarding his back or right drop foot during his initial course of care between March 2012, and April 2013. Respondent's IME, Dr. Holmes, testified that Petitioner's 3rd foot surgery in December 2013, was unrelated to any work injury or medical condition. Dr. Holmes and Dr. Mather found the bilateral foot drop was related to Petitioner's back problems. The Arbitrator notes the treating records from November and December 2013, show that Dr. Pacaccio recommended and performed the TTC fusion, first and foremost, to address Petitioner's drop foot.

Regarding his IME, Dr. Mather testified that Petitioner reported low back pain with radiation down his right leg that developed in May 2013, while unpacking due to a move from Illinois to Missouri. Dr. Mather noted Petitioner's medical records from July 2013 showed severe, "acute" nerve compression at L3-4, including a free fragment that had "been there just a month or two" before the surgery performed by Dr. Stang. Dr. Mather concluded Petitioner's low back and bilateral foot drop condition were not related to the March 8, 2012 accident as Petitioner did not have low back, radicular symptoms, or foot drop problems "for close to a year" after the work injury.

Based on the preponderance of evidence contained in the record, the Arbitrator finds a causal connection between Petitioner's March 8, 2012, accident, and the condition in Petitioner's right foot/ankle through October 28, 2013, only. The Arbitrator finds Petitioner's low back condition, bilateral foot drop, and December 31, 2013, right ankle surgery are not causally related to the March 8, 2012, accident.

J. Medical Bills

Petitioner's Exhibit 5 contains a prescription printout. From Petitioner's testimony, it appears the only medication which would be causally related to his accident would be his Gabapentin. The Arbitrator finds that Petitioner is entitled to be reimbursed by the Respondent in the amount of $482.21 for his out-of-pocket expenses for this medication.

K. Temporary Total Disability

Petitioner is entitled to temporary total disability from March 9, 2012, through November 26, 2012, and a further period from October 2, 2013, through October 28, 2013, for a total of 41 1/7's weeks. Further compensation is denied.

L. Nature and Extent of the Injury

Pursuant to Section 8.1(b) of the Act, the Arbitrator must consider certain factors and criteria in assessing permanent partial disability including the level of impairment under the AMA guidelines, the occupation of the injured worker, the age of the injured worker, the future earning capacity of the injured worker and evidence of

disability as corroborated by the treating records. The Act provides that no single enumerated factor shall be the sole determinant of disability. With respect to the factors, the Arbitrator finds the following:

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

Regarding subsection (ii) of Section 8.1b(b), the occupation of the employee, Petitioner was employed by Respondent as an over-the-road car hauler at the time of the accident. Although he still works as a truck driver, he now works with reduced hours and does not climb up on top of trucks to perform his duties due to the current condition of his right foot and his fear of heights. The Arbitrator gives greater weight to this factor.

Regarding subsection (iii) of Section 8.1b(b), Petitioner was 52 years old at the time of the accident and is now 63 years old. The Arbitrator assigns greater weight to this factor due to Petitioner's somewhat advanced age at the time of the accident, his testimony regarding the current condition of his right foot, and the likelihood that his foot condition will worsen with age.

Regarding Section 8.1b(b), Petitioner's future earnings capacity, Petitioner testified he is currently making $28,000 to $30,000 a year which is less than half the salary he earned at the time of the accident. The Arbitrator infers from Petitioner's testimony and medical records that the reduced earnings capacity is due to the significant injury he sustained to his right foot/ankle. The Arbitrator gives greater weight to this factor.

Regarding Section 8.1b(b), the evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner's injury, a markedly comminuted intra-articular calcaneal fracture, is a complicated injury that is notoriously difficult to treat, as noted by Dr. Pacaccio when Petitioner presented for initial consult. On January 10, 2019, Dr. Pacaccio noted Petitioner's complaints of pain in his right foot/ankle on a scale of 5 out of 10. Petitioner reportedly was taking Aleve for the pain. He presented in custom tennis shoes with a heel lift. Dr. Pacaccio noted pain on palpation to the medial band and lateral band of the fascia with probable superimposed chronic diffuse fat pad atrophy/post-traumatic dysmorphism causing increased pain to the plantar fat pad. The neurological exam revealed light touch sensation to the dermatomes of the right foot with exception to the sural nerve dermatome. Regarding the current condition in his right foot and ankle, Petitioner testified that he experiences varying degrees and types of pain in the heel of his right foot (i.e. sharp, throbbing, constant, and dull) depending on whether he is sitting or moving around. Petitioner also testified that he no longer climbs up on any structures and is scared of heights. The Arbitrator finds Petitioner's testimony regarding his current is corroborated by the treating medical records. Accordingly, the Arbitrator gives greater weight to this factor.

Based upon the foregoing the Arbitrator finds that Petitioner sustained a 45% loss of his right foot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC010199
Case Name	Clyde Owen v. United Road Services
Consolidated Cases	
Proceeding Type	
Decision Type	***Corrected Decision***
Commission Decision Number	***24IWCC0123***
Number of Pages of Decision	14
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Michael Rolenc
Respondent Attorney	Elaine Newquist

DATE FILED: 3/26/2024

/s/*Stephen Mathis, 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 WILL	)	[ ] Reverse	[ ] Second Injury Fund (§8(e)18)
			[ ] PTD/Fatal denied
		[X] Modify [up]	[X] None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CLYDE OWENS,

Petitioner,

vs. NO: 12 WC 10199

UNITED ROAD SERVICES,

Respondent.

CORRECTED 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, temporary total disability, permanent partial disability, and nature and extent of disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission having fully reviewed the facts and law hereby modifies the Arbitrator's Decision and finds that the third surgery performed on Petitioner by Dr. Pacaccio, i.e., the right ankle fusion, subtalar TCC fusion, Achille's tendon lengthening, and implantation of bone stimulator on December 31, 2013, is causally connected to the work injury of March 8, 2012. The Commission relied upon the testimony of Dr. Pacaccio that the fusion procedure in its entirety was reasonable and necessary and causally related to Petitioner's accident.

The Commission further notes that there is no support in the medical records to suggest that any part of the December 31, 2013, procedure was due to some other, non-work-related condition involving Petitioner's right foot. Respondent presented no evidence of any intervening accident to suggest that the third procedure, in its entirety, was not causally related.

The Commission finds based upon the preponderance of evidence contained in the record, that there is a causal connection between Petitioner's March 8, 2012, work accident, and the condition of Petitioner's right foot/ankle through December 31, 2013. The Commission agrees with the Arbitrator that Petitioner's low back condition is not causally related to the March 8, 2012, accident.

Based upon the foregoing the Commission modifies the Decision of the Arbitrator and finds that Petitioner is entitled to temporary total disability benefits commencing March 9, 2012, through November 26, 2012; commencing October 2, 2013, through October 28, 2013; and from December 31, 2013, through September 23, 2014, representing 79- 4/7 weeks in total.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner is entitled to reimbursement by the Respondent in the amount of $482.21 for his out-of-pocket medication expenses.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to temporary total disability benefits from March 9, 2012, through November 26, 2012, from October 2, 2013, through October 28, 2013, and from December 31, 2013, through September 23, 2014, totaling 79-4/7 weeks. That being the total period of temporary total incapacity for work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 75.15 weeks, as provided in §8.1(b) of the Act, for the reason that the injuries sustained caused the 45% loss of use of the right foot.

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.

March 26, 2024

SJM/msb

o-2/7/2024

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

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

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC010199
Case Name	Clyde Owen v. United Road Services
Consolidated Cases	
Proceeding Type	
Decision Type	***CORRECTED*** Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Michael Rolenc
Respondent Attorney	Elaine Newquist

DATE FILED: 5/8/2023

/s/ Jessica Hegarty, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MAY 2, 2023 4.90%

STATE OF ILLINOIS)
)SS.
COUNTY OF)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED
ARBITRATION DECISION

Clyde Owen
Employee/Petitioner
v.
United Road Services
Employer/Respondent

Case # **12 WC 10199**

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 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. [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 [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [x] Is Respondent due any credit?
O. [ ] Other ______

FINDINGS

On **3/08/2012**, 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 in part*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**73,741.72**; the average weekly wage was $**1,418.11**.

On the date of accident, Petitioner was **52** 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 $**83,466.19** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**83,466.19**.

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

ORDER

Based on the preponderance of evidence contained in the record, the Arbitrator finds a causal connection between Petitioner's March 8, 2012, accident, and the condition in Petitioner's right foot/ankle through October 28, 2013, only. The Arbitrator finds Petitioner's low back condition, bilateral foot drop, and December 31, 2013, right ankle surgery are not causally related to the March 8, 2012, accident.

The Arbitrator finds that Petitioner is entitled to reimbursement by the Respondent in the amount of $482.21 for his out-of-pocket medication expenses.

Petitioner is entitled to temporary total disability from March 9, 2012, through November 26, 2012, and from October 2, 2013, through October 28, 2013, for a total of 41 1/7's weeks. Further compensation is denied.

Petitioner is entitled to $695.78 per week for 75.15 weeks, as the injury resulted in permanent partial disability to the extent of 45% loss of use of the right foot. (See the attached Addendum for the Arbitrator's analysis pursuant to Section 8.1(b) of the Act).

Respondent is entitled to a credit of $44,456.74 in overpaid TTD benefits paid after October 28, 2013.

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
ICArbDec p. 2

May 8, 2023

ADDENDUM TO THE DECISION OF THE ARBITRATOR

On March 8, 2012, Petitioner was working for Respondent as an over-the-road car hauler when he fell 10 to 11 feet from the deck of his work trailer, landing on his right heel. Petitioner was diagnosed with a right heel fracture later that day at Bolingbrook Hospital. The following day, Petitioner presented to Dr. Douglas Pacaccio, who issued off-work restrictions and ordered a right ankle/hindfoot CT scan which revealed a markedly comminuted intra-articular calcaneal fracture. (PX1, p. 2, 4-5). Dr. Pacaccio recommended surgery which he performed on March 21, 2012, consisting of open reduction, internal fixation of the right calcaneus fracture, and an Achilles tendon lengthening procedure. (Id., p.8).

Post-operatively, Petitioner wore a CAM boot and regularly followed up with Dr. Pacaccio who eventually prescribed a course of daily physical therapy which began in April 2012. The doctor also provided Petitioner with bilateral orthotics. (Id., p. 21).

On July 30, 2012, Dr. Pacaccio noted Petitioner's complaints of persistent pain in his right heel, calf, and Achilles tendon. Dr. Pacaccio instructed Petitioner to continue therapy and remain off of work. (Id., p. 23). On August 30, 2012, Petitioner reported little improvement following an injection to his right cuboid-metatarsal joint earlier that month. Petitioner complained of pain at the insertion of the peroneus brevis and at the cuboid-metatarsal joint with mild discomfort at the subtalar joint. Dr. Pacaccio administered another injection to the cuboid-metatarsal joint. (Id., p.26-29).

On November 13, 2012, Dr. Pacaccio noted Petitioner had completed 4 weeks of work hardening therapy. (Id., p. 34). Petitioner stated his pain level was a 4/10 while sitting but could increase to a 10/10. Petitioner stated his right foot pain never goes away. On exam, Dr. Pacaccio noted tenderness to the subtalar joint with eversion/inversion of the heel and positive Tinel's to the sural nerve with percussion both at the "incision line and at the posterior Achilles tendon area". (Id.). The doctor administered a third injection to Petitioner's right foot, this time, at the right sural nerve proximal to the insertion of the Achilles tendon. Pursuant to his review of a note from Petitioner's work hardening therapist and the recent Functional Capacity Exam, Dr. Pacaccio released Petitioner to full-duty work noting his ability to perform the minimal, basic job requirements for Respondent. Petitioner was instructed to follow-up in one month for reassessment. (Id., pp.34-35).

On January 15, 2013, Petitioner next presented to Dr. Pacaccio with complaints of right foot pain ranging from a 3 to a 10/10 after walking around for 2-3 hours at work. Petitioner reported the prior injection provided no lasting relief. The doctor recommended a diagnostic ultrasound which was performed in late February. (Id., p. 40, 58-59).

On April 9, 2013, Dr. Pacaccio noted Petitioner's complaints of shooting pain originating "at incision" and extending up his right leg. On exam, pain to palpation along the course of the peroneal tendons, the lateral sural nerve, and the posterior calf at the site of the Achilles tendon lengthening procedure was noted. The doctor reviewed the ultrasound noting tears at the peroneal longus and brevis tendons at the distal edge of the calcaneal plate along with sural nerve entrapment in the lateral scar and along the lateral foot. Such findings, in his opinion, were consistent with Petitioner's complaints. Surgery to remove the surgical hardware, repair the tendons, and transect the sural nerve was recommended by Dr. Pacaccio. (Id., pp. 56-57).

Petitioner testified that he moved from Illinois to Missouri and was seen at an ER in Lebanon, Missouri, shortly after his move. (TX 26).

The medical records in evidence show that Petitioner presented to an ER in Lebanon, Missouri on June 16, 2013, complaining of lower back pain that started yesterday afternoon. Petitioner reported that the pain "will shoot down

his legs". He rated the pain at a 10/10 and that he had taken Flexeril and Gabapentin for the pain without relief. The nurse also noted, "Pt reports that he was unloading a lawn mower yesterday and had to lift the gate on the trailer and thinks he may have really injured it then". (PX3,18).

On July 8, 2013, Petitioner presented to Dr. Robert Strang at the Springfield Neurological and Spine Institute in Springfield, Missouri. Dr. Stang noted Petitioner's complaints of low back and right leg pain since June 16, 2013. (Id., 2). Petitioner reported having bilateral foot drop for just over a week. Dr. Strang reviewed a recent lumbar MRI noting significant stenosis at L3-L4 secondary to degenerative change, congenital stenosis, and a broad-based central disc herniation. Dr. Strang recommended surgery which he performed on July 10, 2013, consisting of right L3-L4 lateral decompression with diskectomy. Petitioner's pre-operative diagnosis was lumbar stenosis, lumbar spondylosis, lumbar disc herniation, bilateral foot drop, and lumbar radiculopathy. (Id., 49-50).

Regarding his back claim, Petitioner testified that following the March 2012, accident, he had back complaints although he did not see a doctor for his back until he began treatment with Dr. Stang in July 2013. (TX, 13).

On September 5, 2013, Petitioner, was back in Illinois, when he presented to Dr. Pacaccio with complaints of persistent right foot pain. At that visit, Dr. Pacaccio again discussed and recommended a second right foot surgery with Petitioner. (Id., 28).

On October 2, 2013, Petitioner underwent surgery consisting of hardware removal from the right calcaneus, a peroneal repair with AmnioFix graph, and sural nerve transection implantation, performed by Dr. Pacaccio. (PX1, 52-53). The preoperative diagnosis noted hardware pain in the right foot, peroneal tendinopathy, and sural neuritis with neuroma. 14 screws of different sizes and a 6.7 cm metal plate were removed from Petitioner's right calcaneus. (Id., p. 54).

On November 25, 2013, Petitioner returned to Dr. Pacaccio for his second post-op visit. At that time, Petitioner complained of right foot pain at 5/10. On exam, Dr. Pacaccio noted a "marked foot drop at the right foot". X-rays of the right foot revealed some early degenerative joint disease in the subtalar joint. Dr. Pacaccio recommended Petitioner undergo a tibiotalocalcaneal ("TTC") fusion noting:

> *At this point, I do not believe that therapy will fix drop foot. I did recommend TTC fusion as the patient states the brace does not provide enough stability to control the deficit and he also does not feel stable on the foot. Furthermore, he is unable to work with his foot in the condition it is in and a fusion will stabilize the joint and allow him back to work in a shoe the quickest.* (PX2, p. 51).

On December 31, 2013, Petitioner underwent his third surgery with Dr. Pacaccio consisting of an ankle fusion, subtalar TTC fusion, Achilles tendon lengthening, and an implantable bone stimulator in the right ankle. (PX1, pp.56-58). The doctor noted a preoperative diagnosis of drop foot in the right ankle, degenerative joint disease in the right subtalar joint, and ankle equinus in the Achilles tendon.

Following this surgery, Petitioner continued treatment with Dr. Pacaccio and returned to full-duty work for Respondent in September 2014. (TX. 29, 36-37).

Petitioner testified he saw Dr. Pacaccio several times in 2016 and also underwent additional physical therapy that year. Petitioner was discharged by Dr. Pacaccio on August 9, 2016. (Id., 14- 15).

Petitioner next saw Dr. Pacaccio for pain in his right foot on February 27, 2017. At that visit, Dr. Pacaccio recommended an ultrasound. (Id., 12-13). Petitioner underwent the ultrasound and returned to Dr. Pacaccio on March 16, 2017, at which time another right foot injection was administered. (Id., 9 -10).

Petitioner testified that he last saw Dr. Pacaccio about two weeks ago for his right foot. Petitioner testified that he periodically renews the orthotics and uses compression socks. (Id., 19).

Petitioner testified that he worked for Respondent, full duty, until March 2016 when he was fired. (Id., 30). Petitioner testified that if it were up to him, he would still be working for Respondent. (Id.). Currently, he works for Teddy Jems, a trucking company out of Lebanon, Missouri driving an 18-wheeler. He works one to three days a week and makes between $28,000.00 and $30,000.00 a year. (Id., 22).

Petitioner testified that he experienced back pain following the March 2012 accident but agreed that the first time he sought medical treatment for his back following his work accident was on July 8, 2013. (Id., 13).

Regarding the current condition in his right foot and ankle, Petitioner testified that he experiences varying degrees and types of pain in the heel of his right foot and along the right side of his leg. He described the pain as being sharp, throbbing, constant, and dull, depending on whether he is sitting or moving around. (Id., 20). He has sharp pain in his heel which comes up the side of his leg and into his hip. (Id.). Petitioner also testified that he no longer climbs up on any structures and is scared of heights.

On cross-examination, Petitioner testified he takes Gabapentin for his right foot and nerve pain running up and down his leg. He first started noticing the nerve pain going up and down his right leg while he was in therapy, especially work hardening. (Id., 24).

Petitioner agreed that he did not receive any treatment for his low back until 15 or 16 months following his work accident. (Id., 25).

He further testified on cross-exam, that he remembered treating with a chiropractor for several years before 2012 for neck and back pain related to a head-on collision, he had in 2007. (Id., 25-26).

Petitioner agreed that he told the ER staff in June 2013 that his back pain started "yesterday afternoon" after loading and unloading a lawn mower and lifting a trailer gate. (Id., 26).

Following the surgery performed by Dr. Strang on July 10, 2013, Petitioner was still having some element of a drop foot in his right foot. He started noticing this foot drop about a week before his initial encounter with Dr. Strang in July 2013. Petitioner testified that the drop foot never really went away. (Id., p. 27).

Petitioner testified that when he saw Dr. Pacaccio in December 2013, he still had the drop foot, but he also had a lot of pain in his right foot. (Id., 28).

Petitioner confirmed that he was examined by Dr. Mather in July 2014 at the request of the Respondent. He remembered telling Dr. Mather that he was having bad back pain, but it was not due to moving from Chicago to Lebanon, Missouri. (Id., 29). He testified there was a mover who came to pick everything up and he just drove his truck to Lebanon. Petitioner testified his back pain "started really extremely hurting" whenever he lifted the gate up on the back end of his trailer. (Id.).

Petitioner agreed that after recovering from his ankle fusion surgery, he returned to full-duty work for Respondent in September 2014 and continued working full-duty for the Respondent until he had another surgery involving the nerves in his right leg and ankle in January 2016. Following that procedure, Dr. Pacaccio discharged Petitioner from care in August 2016. (Id., 30).

Petitioner agreed that he worked for Respondent until March 2016 when he was fired. (Id.).

Testimony of Dr. Pacaccio

Dr. Douglas Pacaccio, DPM, testified via evidence deposition on August 12, 2020. (PX 4). Dr. Pacaccio is board certified by the American Board of Foot and Ankle Surgeons in surgery to the foot and ankle, and rear foot reconstruction. (Id., 7). Dr. Pacaccio confirmed that Petitioner presented for initial exam on March 9, 2012, with a history of right foot complaints after falling off the top deck of a car hauler. (Id., 8). Dr. Pacaccio diagnosed a comminuted right calcaneal fracture and equinus of the right calcaneus for which he performed initial surgery consisting of open reduction/internal fixation of Petitioner's calcaneal fracture along with an Achilles lengthening procedure. (Id., p. 9). The doctor performed a second right foot/ankle surgery consisting of peroneal nerve repair, AmnioFix grafting, removal of a sural neuroma, and removal of the previously fixated calcaneal hardware. (Id., 12-13). Both procedures, in his opinion, were causally related to Petitioner's March 8, 2012, work accident based on the presentation of symptoms, proximity to the injury, and the known sequela and side effects of Petitioner's injury and its repair. (Id.)

Regarding the timeline of surgical events, Dr. Pacaccio testified that Petitioner's second surgery was tentatively scheduled for "earlier that summer" but was delayed due to an "intervening" back surgery performed in Missouri. (Id., 13). Dr. Pacaccio testified that he did not review the entire chart pertaining to Petitioner's back surgery. He recalled that Petitioner "eventually" presented to him with "weakness and drop foot". (Id., 14).

Regarding the causal relationship between Petitioner's accident, back issues, and drop foot, Dr. Pacaccio testified that back problems and drop foot are sequela or co-injuries of a calcaneal fracture that can develop over time. (Id., 14-15).

In December 2013, Petitioner underwent a third surgery performed by Dr. Pacaccio which included a right ankle fusion, a subtalar fusion, and an Achilles lengthening procedure. According to Dr. Pacaccio, the ankle fusion and Achilles lengthening procedure were necessitated by Petitioner's drop foot. (Id., 15, 17). The doctor performed the subtalar fusion because Petitioner was symptomatic and "because we were there, we did them both so he wouldn't need a fourth surgery". (Id., 16). The doctor opined that the third surgery was more likely than not, a "sequela" of Petitioner's work injury based on the known mechanism and impact that a calcaneal fracture can have on the lower back and the sequential development of low back problems and drop foot after the initial injury, all of which, are well known to be interconnected. The doctor added, "it's not always the case, but it's very likely that they can happen together." (Id, 17).

On cross-exam, Dr. Pacaccio agreed that during the initial, thirteen-month period that he treated Petitioner between March 9, 2012, and April 9, 2013, he did not document any low back complaints in his chart. (Id., 21). His "first knowledge" of Petitioner's low back problems was in June 2013 when Petitioner advised him that he was scheduled to undergo back surgery. (Id., 22). He doesn't remember what explanation or history Petitioner reported regarding his back pain. (Id., 23). The doctor never reviewed any ER or hospital records from Lebanon, Missouri concerning Petitioner. (Id., 23).

Dr. Pacaccio agreed that one can develop drop foot from an acute low back injury. (Id., 24).

On re-direct examination, Dr. Pacaccio testified that he first noted Petitioner's drop foot on September 5, 2013, which was prior to his second surgery. (Id., 27). Dr. Pacaccio also reviewed two reports of Dr. George Holmes noting he disagreed with Dr. Holmes' opinion that Petitioner's drop foot could not be related to the initial work injury. He also noted Dr. Holmes inaccurately characterized the type of fusion that Dr. Pacaccio performed on

Petitioner clarifying that he performed a tibial talocalcaneal fusion which includes both the ankle joint and subtalar joint. (Id., 27-28).

Dr. Pacaccio further testified regarding Petitioner's second surgery in October 2013, that he transected the nerve because of a scar neuroma from the original calcaneal fracture. He testified sural nerve injuries, peroneal tendon tears and peroneal tendon entrapments are a very well-known sequela of calcaneal fractures. (PX4, p.31).

Testimony of Dr. George Holmes

Dr. George Holmes, who is a board-certified, practicing orthopedic physician with a sub-specialty in foot and ankle issues, testified in this matter on March 15, 2021. (RX 3). Petitioner presented to Dr. Holmes for an IME at Respondent's request on July 10, 2014, approximately 28 months after his work accident (Id., 11). At that time, Petitioner had returned to full-duty work after undergoing his third surgery with Dr. Pacaccio. (Id., 13). Dr. Holmes noted that Petitioner had a history of a work-related fall in which he sustained a right calcaneal fracture followed by surgery a few days later consisting of open reduction and internal fixation. (Id., 11-12). Petitioner reported some "heaviness" with weakness in the right knee and leg, some difficulty going up inclines, and a palpable screw near the tibia. (Id., 13). Petitioner also had some atrophy in the right calf, and an absence of dorsiflexion, plantarflexion, eversion, and inversion, consistent with the fusion. (Id.). X-rays performed that day showed a solid tibiocalcaneal fusion arthrodesis of the foot with a rod, fixed with two screws proximally and one screw distally, and an internal bone growth stimulator. (Id., 14).

Dr. Holmes reviewed additional records and issued a report dated July 21, 2014. (Id., 16). The doctor noted Petitioner's medical records showed complaints of low back pain that radiated to both legs in 2013. Petitioner was diagnosed with spinal stenosis and a herniated disc. (Id., 17). The records from July 12, 2013, noted that Petitioner had developed a bilateral drop foot. (Id.). Dr. Holmes related the drop foot to Petitioner's low back problem, not his foot/ankle injuries. (Id., 18). In his experience with treating patients with foot drop, the condition is related to back issues such as sciatica, stenosis, or disc problems as opposed to a foot injury, absent a laceration of a nerve or muscle in the foot. (Id.). The doctor noted no evidence of any such foot lacerations in this case. (Id.).

Dr. Holmes opined the tibiocalcaneal arthrodesis performed on Petitioner in December 2013 was not reasonable or related to the drop foot. The purpose of such a procedure is to fuse those joints in an individual with arthritis, locking in the foot to prevent dorsiflexion, plantarflexion, inversion, or eversion, reducing all motions of the ankle and subtalar joint. (Id., p.21). Dr. Homes never fuses an individual with a drop foot as these patients are generally treated with a brace. (Id., p.22). Following the right calcaneal fracture Petitioner sustained on March 8, 2012, Petitioner sustained posttraumatic arthritis of the subtalar joint. Dr. Holmes testified that patients who develop posttraumatic arthritis of the subtalar joint may require an AFO brace, a smaller UCBL brace, and/or a subtalar arthrodesis which is an isolated fusion of the subtalar joint. (Id., p.23).

Dr. Holmes noted that Petitioner was released to return to full duty work on November 13, 2012, pursuant to work hardening and an FCE at which time he was MMI. (Id., 24).

On cross-examination, Dr. Holmes testified that the October 2013, surgery which involved a sural nerve transection and hardware removal would be reasonable and necessary procedures following an open reduction internal fixation of the right ankle. (Id., 30).

Dr. Holmes further testified that Petitioner told him the drop foot was in both feet, as confirmed by the contemporaneous medical records. He related the bilateral foot drop to a low back condition. He noted the low back surgery did nothing to alleviate Petitoner's bilateral foot drop. Further, in his opinion, the fusion performed

was an "improper" treatment for a foot drop. A fusion would be warranted by arthritic changes in both the tibiotalar and subtalar joints. He found no evidence that Petitioner had arthritic changes in either of those joints.

In sum, Dr. Holmes concluded the third surgery performed by Dr. Pacaccio in December 2013, consisting of the ankle fusion, Achilles lengthening procedure, and implantable bone stimulator, was not reasonable or related to the March 20132 accident. The October 2013, surgery which involved a sural nerve transection and hardware removal were reasonable and necessary procedures following Petitioner's initial open reduction, and internal fixation of the right calcaneal intra-articular fracture.

Testimony of Dr. Steven Mather

Dr. Steven Mather, board certified in orthopedic surgery, testified on October 22, 2020, regarding his July 2014 IME of the Petitioner. (RX4). Dr. Mather testified that Petitioner reported complaints of low back pain with radiation down the right leg that developed in May 2013 while unpacking due to a move from Illinois to Missouri. On exam, Petitioner had a normal range of motion with a bilateral foot drop.

Regarding causation, Dr. Mather opined that Petitioner's low back condition was unrelated to the March 8, 2012, accident as Petitioner did not have low back or radicular symptoms "for close to a year" following the work injury when he reported a history of an acute back injury on June 16, 2013, at an ER in Missouri. Specifically, Petitioner reportedly was "loading and unloading a lawn mower yesterday and had to lift the gate on the trailer and thinks he may have really injured" his back at that time. (RX4, 15-17). Thereafter, Petitioner's back complaints consistently attributed his pain to that specific event involving the lifting of a trailer gate while moving a lawn mower. Dr. Mather also noted the presence of acute findings in the July 8, 2013, operative report documenting Petitioner's low back surgery, including a free fragment that, in Dr. Mather's opinion, had "been there just a month or two". In Dr. Mather's experience, a freed fragment will frequently resolve itself after four to six months. (Id., 15 – 16).

Regarding the bilateral drop foot, Dr. Mather noted Petitioner's left-sided drop foot had been present since 2004 following a severe left leg injury while Petitioner's right-sided drop foot developed following Petitioner's May 2013 back problem. (Id., 11). Dr. Mather related the foot drop to the non-work-related low back condition and not to the calcaneal fracture. (Id. 27)

Dr. Mather testified that Petitioner's right footdrop was partially treated with the fusion performed by Dr. Pacaccio which was required because of the calcaneal fracture. (Id., 26). In this August 19, 2014, addendum report, Dr. Mather opined that Petitioner's right drop foot was due to Petitioner's non-work-related herniated lumbar disc. (Id., p.27).

CONCLUSIONS OF LAW

F. Causal Connection

Based on the preponderance of evidence contained in the record, the Arbitrator finds a causal connection between Petitioner's March 8, 2012, accident, and the condition in Petitioner's right foot/ankle through October 28, 2013, only. The Arbitrator finds Petitioner's low back condition, bilateral foot drop, and December 31, 2013, right ankle surgery are not causally related to the March 8, 2012, accident.

There is no dispute that Petitioner sustained a comminuted intra-articular calcaneal fracture after falling 10-11 feet from the deck of his trailer on March 8, 2012, necessitating the right foot/ankle surgeries performed by Dr. Pacaccio on March 21, 2012, and on October 2, 2013. The treating medical records, chain of events, and opinions of Dr. Pacaccio and Dr. Holmes support this finding.

The real dispute pertains to Petitioner's low back, bilateral drop foot, and right foot/ankle condition following his second surgery in October 2013. Drs. Holmes and Mather opined that the aforementioned were unrelated to the March 2012 accident, and after reviewing the entire record, the Arbitrator agrees.

In support, the Arbitrator notes the treating medical records between March 3, 2012, and April 2013, are devoid of any low back or bilateral foot drop complaints. It is not until 15 months following his accident, on June 16, 2013, that Petitioner complained of acute back pain after moving a lawn mower and lifting a trailer gate as noted by the ER staff in Lebanon, Missouri. Petitioner's treating surgeon, Dr. Pacaccio, was not privy to those medical records and was unaware of the non-work-related cause reported by Petitioner to various medical professionals after he moved to Missouri in June 2013. Dr. Pacaccio confirmed at his deposition that Petitioner made no complaints regarding his back or right drop foot during his initial course of care between March 2012, and April 2013. Respondent's IME, Dr. Holmes, testified that Petitioner's 3rd foot surgery in December 2013, was unrelated to any work injury or medical condition. Dr. Holmes and Dr. Mather found the bilateral foot drop was related to Petitioner's back problems. The Arbitrator notes the treating records from November and December 2013, show that Dr. Pacaccio recommended and performed the TTC fusion, first and foremost, to address Petitioner's drop foot.

Regarding his IME, Dr. Mather testified that Petitioner reported low back pain with radiation down his right leg that developed in May 2013, while unpacking due to a move from Illinois to Missouri. Dr. Mather noted Petitioner's medical records from July 2013 showed severe, "acute" nerve compression at L3-4, including a free fragment that had "been there just a month or two" before the surgery performed by Dr. Stang. Dr. Mather concluded Petitioner's low back and bilateral foot drop condition were not related to the March 8, 2012 accident as Petitioner did not have low back, radicular symptoms, or foot drop problems "for close to a year" after the work injury.

Based on the preponderance of evidence contained in the record, the Arbitrator finds a causal connection between Petitioner's March 8, 2012, accident, and the condition in Petitioner's right foot/ankle through October 28, 2013, only. The Arbitrator finds Petitioner's low back condition, bilateral foot drop, and December 31, 2013, right ankle surgery are not causally related to the March 8, 2012, accident.

J. Medical Bills

Petitioner's Exhibit 5 contains a prescription printout. From Petitioner's testimony, it appears the only medication which would be causally related to his accident would be his Gabapentin. The Arbitrator finds that Petitioner is entitled to be reimbursed by the Respondent in the amount of $482.21 for his out-of-pocket expenses for this medication.

K. Temporary Total Disability

Petitioner is entitled to temporary total disability from March 9, 2012, through November 26, 2012, and a further period from October 2, 2013, through October 28, 2013, for a total of 41 1/7's weeks. Further compensation is denied.

L. Nature and Extent of the Injury

Pursuant to Section 8.1(b) of the Act, the Arbitrator must consider certain factors and criteria in assessing permanent partial disability including the level of impairment under the AMA guidelines, the occupation of the injured worker, the age of the injured worker, the future earning capacity of the injured worker and evidence of

disability as corroborated by the treating records. The Act provides that no single enumerated factor shall be the sole determinant of disability. With respect to the factors, the Arbitrator finds the following:

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

Regarding subsection (ii) of Section 8.1b(b), the occupation of the employee, Petitioner was employed by Respondent as an over-the-road car hauler at the time of the accident. Although he still works as a truck driver, he now works with reduced hours and does not climb up on top of trucks to perform his duties due to the current condition of his right foot and his fear of heights. The Arbitrator gives greater weight to this factor.

Regarding subsection (iii) of Section 8.1b(b), Petitioner was 52 years old at the time of the accident and is now 63 years old. The Arbitrator assigns greater weight to this factor due to Petitioner's somewhat advanced age at the time of the accident, his testimony regarding the current condition of his right foot, and the likelihood that his foot condition will worsen with age.

Regarding Section 8.1b(b), Petitioner's future earnings capacity, Petitioner testified he is currently making $28,000 to $30,000 a year which is less than half the salary he earned at the time of the accident. The Arbitrator infers from Petitioner's testimony and medical records that the reduced earnings capacity is due to the significant injury he sustained to his right foot/ankle. The Arbitrator gives greater weight to this factor.

Regarding Section 8.1b(b), the evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner's injury, a markedly comminuted intra-articular calcaneal fracture, is a complicated injury that is notoriously difficult to treat, as noted by Dr. Pacaccio when Petitioner presented for initial consult. On January 10, 2019, Dr. Pacaccio noted Petitioner's complaints of pain in his right foot/ankle on a scale of 5 out of 10. Petitioner reportedly was taking Aleve for the pain. He presented in custom tennis shoes with a heel lift. Dr. Pacaccio noted pain on palpation to the medial band and lateral band of the fascia with probable superimposed chronic diffuse fat pad atrophy/post-traumatic dysmorphism causing increased pain to the plantar fat pad. The neurological exam revealed light touch sensation to the dermatomes of the right foot with exception to the sural nerve dermatome. Regarding the current condition in his right foot and ankle, Petitioner testified that he experiences varying degrees and types of pain in the heel of his right foot (i.e. sharp, throbbing, constant, and dull) depending on whether he is sitting or moving around. Petitioner also testified that he no longer climbs up on any structures and is scared of heights. The Arbitrator finds Petitioner's testimony regarding his current is corroborated by the treating medical records. Accordingly, the Arbitrator gives greater weight to this factor.

Based upon the foregoing the Arbitrator finds that Petitioner sustained a 45% loss of his right foot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC005582
Case Name	Mark Davis v. City of Springfield - Public Works
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0124
Number of Pages of Decision	16
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Martin Haxel
Respondent Attorney	L. Robert Mueller

DATE FILED: 3/14/2024

/s/*Christopher Harris, 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

MARK DAVIS,

Petitioner,

vs. NO: 22 WC 5582

CITY OF SPRINGFIELD PUBLIC WORKS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of permanent partial disability (PPD) benefits with regard to Petitioner's left hip 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 first affirms the Arbitrator's Decision with respect to the first factor [impairment rating] and fourth factor [Petitioner's future earning capacity] under Section 8.1b of the Act. The Commission further affirms the Arbitrator's findings for the second factor [occupation of injured employee] but reduces the weight assigned from significant to moderate. The third and fifth factors are additionally modified as follows:

(iii) Petitioner's Age: Petitioner was 43 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 related to Petitioner's left hip and left elbow resulting from the July 12, 2021 work accident. Nonetheless, the Commission finds that Petitioner must still live with his disabilities and gives moderate weight to this factor.

(v) Evidence of Disability: Evidence of Petitioner's disability is corroborated by the treating medical records. Following the July 12, 2021 work accident, Petitioner sustained a labral contusion to the left hip. He required no treatment for the left hip contusion and the condition improved on its own as of November 1, 2021.

Petitioner's work injury also resulted in a left elbow cyst with some sensory nerve involvement, or a neuroma. Petitioner underwent an unsuccessful aspiration for this injury as well as an injection and surgery to excise the neuroma. At Petitioner's last appointment with Dr. Wottowa on April 18, 2022, he reported that his elbow continued to bother him, he had tenderness, a little bit of swelling and was hypersensitive. He did have full range of motion. Dr. Wottowa stated that Petitioner would still have some discomfort and he recommended Vitamin E cream for desensitization. He released Petitioner with no work restrictions.

Petitioner testified at arbitration that he had pain in his left leg depending on how much work he performed, when the weather changed, while sleeping or relaxing on his left side, during sex and while exercising or doing squats. As to his left elbow, Petitioner experienced pain with excessive use of the left arm, while lifting weights, working out, performing repetitive movements at work or with weather changes as well. He also took Ibuprofen once or twice a month for pain or soreness. 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 modifies down the Arbitrator's PPD award for Petitioner's left hip labral contusion to one-percent (1%) loss of use of the leg pursuant to Section 8(e) of the Act. The Commission finds that this PPD award is in accordance with the evidence pertaining to the nature and extent of Petitioner's disability to the left hip and is consistent with prior, similar claims.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of $894.32 per week for 2.15 weeks because the injuries sustained caused one-percent (1%) loss of use of the leg pursuant to Section 8(e) 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.

March 14, 2024

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

CAH/pm
d: 3/7/24
052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC005582
Case Name	Mark Davis v. City of Springfield, Public Works
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Martin Haxel
Respondent Attorney	L. Robert Mueller

DATE FILED: 10/17/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 17, 2023 5.33%

/s/ *Jeanne AuBuchon, Arbitrator*

Signature

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

Mark Davis
Employee/Petitioner

Case # **22** WC **005582**

v.

Consolidated cases: _____

City of Springfield, Public Works
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 **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 **Credit for prior settlement**

FINDINGS

On **07/12/2021**, 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 $**77,480.00**; the average weekly wage was $**1,490.53**.

On the date of accident, Petitioner was **43** years of age, ***married*** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Petitioner sustained permanent partial disability to the extent of 5% loss of used of the left leg pursuant to Section 8(e) of the Act, 10.75 weeks, to be paid at $894.32 per week.

Petitioner sustained permanent partial disability to the extent of 12.5% loss of use of the left arm pursuant to Section 8(e) of the Act which, after giving Respondent credit for the prior PPD settlement, is 13.2825 weeks of permanent partial disability, to be paid at $894.32 per week.

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

OCTOBER 17, 2023

PROCEDURAL HISTORY

This matter proceeded to trial on August 29, 2023. The issues in dispute are: 1) the causal connection between the accident and the Petitioner's current left elbow and left hip conditions; 2) the nature and extent of the Petitioner's injuries; and 3) credit for a settlement for a prior injury to the Petitioner's left elbow.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 43 years old and employed by the Respondent as an operating engineer for the Public Works Department. (AX1, T. 8-9) On July 12, 2021, the Petitioner fell about 3-4 feet off the bumper of a street sweeper onto the ground and landed on his left side. (T. 9-10) He said his left elbow and left hip were hurting. (T. 13) He said he was unable to continue working, reported the accident to the safety coordinator, who directed him to go to the Orthopedic Center of Illinois (OCI). (T. 11-12)

The Petitioner acknowledged having a prior surgery on his left elbow by Dr. Christopher Maender, a hand an upper extremity surgeon at OCI, who removed a neuroma and skin nerves in March 2016 from an accident that occurred in June 2014. (T. 17, 21) The Petitioner said he was able to go back to work full duty until the accident in 2021. (T. 18) Dr. Meander's last report on May 2, 2016, stated that the Petitioner had full range of motion, excellent strength, tenderness to palpation along the posterolateral joint line but not elsewhere around the elbow, no pain with loaded forearm rotation, no crepitation, ability to push himself up from a chair with minimal symptoms and no evidence of instability. (R5) As a result of that incident, the Petitioner settled a workers' compensation claim in 2018 for 7.25 percent of the left elbow. (RX4)

On July 12, 2021, the Petitioner saw Physician Assistant Robert Whitman at OCI and was diagnosed with left elbow pain, left hip pain and greater trochanteric bursitis of the left hip and

given work restrictions. (PX1) After MRIs of the left hip and left elbow, the Petitioner saw Dr. Varun Sharma on September 10, 2021, who diagnosed a left hip labral contusion that resolved and a left elbow cyst with possible sensory nerve involvement. (Id.) He released the Petitioner from his care as to the left hip and recommended consultation with a microvascular and nerve specialist for his elbow. (Id.)

On September 14, 2021, the Petitioner saw Dr. Sabastien LaLonde, an orthopedist at OCI, and reported his 2014 accident and subsequent surgery, stating that he did not have any improvement or worsening of symptoms since the surgery until the accident on July 12, 2021. (Id.) Dr. LaLonde surmised that the Petitioner's pain was at baseline over the past few years with pain on pressure to the elbow but otherwise no significant pain at rest or with activity, but this changed with the recent work accident. (Id.) At the visit to Dr. LaLonde, the Petitioner complained of left posterior throbbing lateral elbow pain radiating both proximally and distally towards the wrist. (Id.) He also said he had numbness and tingling in the left median nerve distribution that was exacerbated since the work accident. (Id.) Dr. LaLonde reviewed X-rays and the MRI and diagnosed left posterior lateral elbow pain with previous history of query neuroma excision that was exacerbated by the latest fall, as well as a ganglion cyst and possible mild arthritis/osteophytes. (Id.) Dr. LaLonde stated that in many cases a ganglion cyst may be present without any symptoms. (Id.) He said it may have been possible that it may simply be an exacerbation of the Petitioner's chronic pain. (Id.)

Dr. LaLonde recommended a diagnostic and therapeutic aspiration and corticosteroid injection. (Id.) The Petitioner declined this treatment, having had a previous injection without significant relief, and was interested in surgical treatment. (Id.) Dr. LaLonde cautioned that surgery may exacerbate his pain symptoms and put him at risk for complex regional pain syndrome

(CRPS) (Id.) He also said that given that it was unclear whether the ganglion cyst was the course of the Petitioner's pain, excision may not improve him symptoms. (Id.) Based on his discussions with the Petitioner and the clinical findings, Dr. LaLonde recommended a left posterior lateral elbow excision of the ganglion cyst, excision of the osteophytes and a possible neuroma excision. (Id.)

The Petitioner testified that he decided to treat with another doctor because Dr. LaLonde did not have a very good bedside manner and his treatment suggestion was different from that of Dr. Sharma or his general practitioner. (T. 13-14) He said he was then referred to Dr. Christopher Wottowa, an orthopedic surgeon at Springfield Clinic. (T. 14)

The Petitioner presented to Dr. Wottowa on November 1, 2021, and reported pain in his left elbow that bothered him with any use of his hand, occasional pain radiating towards his fingers and numbness in the index and long finger. (PX2) After reviewing the MRI and performing an examination, Dr. Wottowa stated it was difficult to say whether the cyst was the source of all of the Petitioner's pain. (Id.) He said he would not jump right into surgery. (Id.) Instead, he attempted, unsuccessfully, to aspirate fluid in the elbow and performed a corticosteroid injection, which did relieve some of the symptoms. (Id.)

On November 22, 2021, the Petitioner returned to Dr. Wottowa and reported that he "did not get anything out of the injection." (Id.) Dr. Wottowa opined that the Petitioner may have had a neuroma and told him to "go away and live with this." (Id.) The Petitioner did not want to do this because it bothered him too much. (Id.) Dr. Wottowa then recommended excision of the neuroma. (Id.) At a preoperative visit on December 6, 2021, Dr. Wottowa stated that because other treatment had been unsuccessful, surgery was a reasonable next step. (Id.) The Petitioner

also was having unrelated triggering of the index, long and ring fingers on his left hands, for which he was treating with another doctor at the practice. (Id.)

On January 11, 2022, Dr. Wottowa performed an excision of the neuroma and trigger finger releases. (Id.) He sent tissues from the surgery for a pathological examination. (Id.) After the pathological examination by Dr Sheng Chen, a pathologist/dermopathologist at Pathology Associates of Central Illinois, Dr. Wottowa reported that the diagnosis was soft tissue with no significant pathological change, which Dr. Wottowa stated would indicate that the mass was not a neuroma. (Id.) Dr. Wottowa wanted to get clarification on what the tissue was. (Id.)

The Petitioner returned to Dr. Wottowa on February 21, 2022, and related that he did not feel like he was doing well, but Dr. Wottowa said he was. (Id.) Dr. Wottowa reported that the Petitioner was less sensitive over his elbow and still had some areas of point tenderness. (Id.) He had full range of motion. (Id.)

On March 28, 2022, the Petitioner underwent a Section 12 examination by Dr. Mitchell Rotman, an orthopedic surgeon specializing in upper extremities. (RX1) The Petitioner reported that he was continuing to have left elbow pain that was not helped by the surgery. (Id.) He had tenderness at the area of the incision and some hip pain rated at 2-3/10 that he felt was tolerable. (Id.) He reported that after the first accident, his pain was tolerable. (Id.) He said the symptoms became much worse after the recent accident. (Id.) At the time of the examination, he complained of stiffness, pain with overhead use, pain at night, weakness and trouble sleeping. (Id.)

Dr. Rotman reviewed medical records – except for the MRI – and performed a physical examination, during which he noted "a lot of magnification when it came to examining his left elbow." (Id.) The Petitioner exhibited non-physiologic responses such as pain in the elbow with testing of the left shoulder that should have had no effect on the elbow. (Id.) As a result, Dr.

Rotman noted that the Petitioner's subjective complaints "may not at all be reliable." (Id.) He concluded there was no evidence of an injury to the elbow from the July 12, 2021, accident – noting that the pathology was negative, there was no evidence of a neuroma, the tissue was normal, and there were no bone spurs on the X-ray. (Id.) He concluded that the Petitioner had two apparent work-related surgeries without any evidence of a work-related injury based on the pathology reports. (Id.) He said that if the Petitioner did have a ganglion cyst, that would have nothing to do with the Petitioner's complaints of pain from touching the skin and subcutaneous tissues. (Id.) Dr. Rotman stated that the Petitioner may have sustained a minor contusion and needed to return to full duty. (Id.)

The Petitioner testified that Dr. Rotman looked him over about 10 or 15 minutes and told him he could go back to work. When he asked Dr. Rotman what was wrong with his elbow, Dr. Rotman replied that he didn't know and told him to go back to work. (T. 16-17)

On April 18, 2022, the Petitioner saw Dr. Wottowa, who agreed that a full release was reasonable and thought the Petitioner reached his point of maximum medical improvement. (PX2) He said there was no other treatment he would recommend and gave the Petitioner a full release with no restrictions. (Id.)

Dr. Rotman issued an addendum report on May 9, 2022, after having reviewed the X-rays from July 12, 2021, and the MRI. (RX2) He agreed with the MRI findings of a ganglion cyst and found no spurs or contusions in the area of the cyst. (Id.) He said that while the MRI report suggested a mild contusion along the back of the elbow, he was not particularly impressed with that little signal change and did not find it to be clinically significant. (Id.) His opinions were unchanged. (Id.)

None of the doctors testified.

At arbitration, the Petitioner testified that he still has pain in his left hip depending on how much work he performs with his left leg, when the weather changes, when sleeping or relaxing on his left side, when performing sex and when doing squats while exercising. (T. 18-19) Regarding his left elbow, the Petitioner said he has pain with excessive use of his left arm – such as lifting weights, working out and performing his job with repetitious movements – and when the weather changes. (T. 19) He said he takes ibuprofen once or twice a month when he feels an unbearable amount of soreness. (T. 20)

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

CONCLUSIONS OF LAW

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

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982)

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

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

There seemed to be no dispute that the Petitioner suffered a labral contusion to his hip in the accident. The parties dispute the Petitioner's elbow injury. The Petitioner had continuing elbow problems since his first injury in 2014 but was able to work full duty after being released. Dr. Rotman opined that the Petitioner suffered no elbow injury in the 2021 accident.

The problem with Dr. Rotman's opinion is that it is based on an examination that occurred after the Petitioner's surgery. He had no meaningful way to compare the Petitioner's conditions prior to the accident, before the surgery and after other than looking at the records. He acknowledged seeing the signal change on the MRI but did not find it to be significant. Again, what is lacking is a physical examination at the time of the MRI that would have helped determine that the Petitioner's symptoms correlated with the results of the MRI.

Circumstantial evidence also supports a finding that the Petitioner's elbow condition was causally related to the 2021 accident. Dr. Meander's records show the Petitioner was doing well at the end of treatment in 2016. He was able to work full duty since that time. The medical records show that the Petitioner's symptoms worsened after the 2021 accident. He was taken off work as a result. After the surgery in 2022, he was able to return to full duty work. This circumstantial evidence establishes a chain of events showing the Petitioner's ability to perform manual duties

before accident but decreased ability to still perform immediately after the accident. Based on this, the Arbitrator finds the Petitioner at least suffered an aggravation of his prior elbow condition.

Also because Dr. Rotman's examination occurred after the surgery, his opinion that the Petitioner was magnifying his symptoms bears more on the question of the nature and extent of the Petitioner's injury, rather than the causal connection.

Therefore, the Arbitrator finds that the Petitioner has met his burden of proving by a preponderance of the evidence that the accident of July 12, 2021, was a contributing factor to his left hip and elbow conditions.

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 in the same capacity for the Respondent with the same physical demands. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 43 years old at the time of the injury. He has many work years left during which time he will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

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

(v) **Disability.** The Petitioner testified that he still has pain in his left hip depending on how much work he performs with his left leg, when the weather changes, when sleeping or relaxing on his left side, when performing sex and when doing squats while exercising. He said he had pain in his left elbow with excessive use and when the weather changes. Dr. Rotman believed that at the time of his examination, the Petitioner was magnifying his symptoms. 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 leg and 12.5 percent of the left arm.

Issue O: Is the Respondent entitled to credit for a prior settlement for an injury to the Petitioner's left elbow?

As the result of a work accident in 2014, the Petitioner settled a workers' compensation claim in 2018 for 7.25 percent of the left elbow. The Arbitrator finds the Respondent is entitled to a credit for 7.25 percent of the left elbow, resulting in a net award of 5.25 percent of the left elbow.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC031555
Case Name	Alfred Rich v. Continental Tire North America
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	24IWCC0125
Number of Pages of Decision	9
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	James Keefe Jr

DATE FILED: 3/14/2024

/s/*Christopher Harris, 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

ALFRED RICH,

Petitioner,

vs. NO: 20 WC 31555

CONTINENTAL TIRE NORTH AMERICA, INC.,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §19(h) and §8(a) OF THE ACT

This matter comes before the Commission pursuant to Petitioner's Petition for Review under Sections 19(h) and 8(a) of the Act. Petitioner herein alleges a material change in his bilateral shoulder condition since the Arbitrator's March 6, 2023 decision.

The Arbitrator had previously determined that Petitioner's bilateral shoulder condition was the result of his repetitive duties as an Apex operator for Respondent and found that his injuries manifested on January 22, 2018. The Arbitrator awarded temporary total disability (TTD) benefits and permanent partial disability (PPD) benefits. The parties filed a cross-review of the Arbitrator's decision before the Commission. While the claim was pending on review before the Commission, a hearing pursuant to Sections 19(h) and 8(a) of the Act was held on November 14, 2023. The Commission neither addressed nor gave any due consideration to the merits of this hearing until its January 19, 2024 decision became final.

In that decision, the Commission modified the Arbitrator's TTD award, increased the PPD award for the right shoulder to 20% loss of use of the person as a whole and affirmed the Arbitrator's award of 25% loss of use of the person as a whole for the left shoulder. The Commission affirmed and adopted the remainder of the Arbitrator's decision. The parties did not appeal the Commission's decision.

Turning to Petitioner's petition under Sections 19(h) and 8(a) of the Act, Petitioner, by his Brief, requests that the Commission award additional medical treatment and TTD benefits. Respondent, on the other hand, argues by its Brief that the recommended surgeries are neither reasonable, necessary or causally related to the work accident and further denies that Petitioner is entitled to TTD because it has continued to offer work within Petitioner's restrictions.

FINDINGS OF FACT

As of the October 21, 2022 arbitration hearing, Petitioner had undergone injections, physical therapy, two surgeries to the left shoulder and one surgery to the right shoulder as a result of his work-related injuries. He specifically underwent a left shoulder arthroscopy, extensive debridement of the labrum, debridement of the partial thickness rotator cuff tear, a subacromial decompression, bursectomy and acromioplasty, open sub-pectoral biceps tenodesis and open distal clavicle excision. Dr. George Paletta performed this surgery on August 28, 2018. Dr. Paletta performed a second surgery on January 8, 2019 – a left shoulder arthroscopic revision subacromial decompression, bursectomy and acromioplasty as well as left shoulder open revision sub-pectoral biceps tenodesis. Petitioner then had a third surgery with Dr. Corey Solman on August 13, 2019 for his right shoulder. He underwent an arthroscopic subacromial decompression, distal clavicle resection, supraspinatus repair and open sub-pectoral biceps tenodesis.

Dr. Solman determined that Petitioner had reached maximum medical improvement (MMI) on May 27, 2020 and gave Petitioner light duty permanent restrictions which Respondent accommodated. More than a year later, on August 6, 2021, Petitioner returned to Dr. Solman with complaints in both shoulders. Dr. Solman injected the right AC joint during the appointment and ordered an MRI of the left shoulder. Petitioner followed up with Dr. Solman on October 29, 2021 and reported that the right shoulder injection had helped for a period of time but that he was still having popping and pain. Petitioner also had increased pain in his left shoulder with a balling sensation of his biceps muscle belly at the end of a long day at work.

Dr. Solman examined Petitioner's shoulders and reviewed the October 5, 2021 MRI of the left shoulder. He noted that the radiologist found some tendinosis of the supraspinatus and subscapularis tendons, mild osteoarthritic changes in the glenohumeral joint and minimal subacromial fluid. Dr. Solman's findings included thinning but no complete tearing of the supraspinatus. There was also down-sloping of the acromion which could be creating impingement-type pain. Petitioner's diagnoses on this date were persistent right shoulder AC joint arthrosis and pain and left shoulder biceps muscle belly pain from the long-head biceps tear and also possible rotator cuff insufficiency.

Dr. Solman recommended right shoulder arthroscopy, AC joint debridement and resection of the distal clavicle bone. He also recommended a left shoulder arthroscopy with subacromial decompression, possible rotator cuff repair revision and/or graft augmentation of the rotator cuff. As to Petitioner's left biceps tendon, Dr. Solman stated that he could proceed with surgery to explore the area to see if there was any tendon whatsoever that could be pulled back up and re-attached to the humerus, but due to the amount of time passed, there may be too much scarring to appropriately repair the biceps tendon and/or the procedure may not provide Petitioner with any relief. Dr. Solman further adjusted Petitioner's work restrictions.

Petitioner's last visit with Dr. Solman as of the arbitration hearing was on March 11, 2022. Dr. Solman continued to recommend the surgeries and adjusted Petitioner's work restrictions again. Petitioner testified that he did not proceed with the recommended additional surgeries to both shoulders due to fear. He instead returned to work for Respondent but no longer performed

the same duties as he had pre-accident. He testified that he now assisted a co-worker who stripped beads. Petitioner confirmed that his current job duties did not require much physically and was within his work restrictions.

Dr. Solman testified at his first deposition on August 9, 2022 that without surgery for the right shoulder, Petitioner would remain status quo. If Petitioner did not proceed with surgery on the left shoulder, Dr. Solman predicted that Petitioner would have some chronic cramping and aching in the biceps muscle belly with any activity with the shoulder. He also testified that there was potential for the rotator cuff to worsen over time.

The parties offered additional evidence at the Section 19(h) and Section 8(a) hearing. Petitioner testified that since the arbitration hearing, his condition in both shoulders had worsened including the popping issue he had in both shoulders. He testified that his shoulders popped every time he raised them and he could hardly lift anything. Petitioner's sleep had also worsened especially when he rolled over his arms. He slept about three to four hours per night.

Petitioner last worked for Respondent on June 6, 2023. He testified to experiencing worsening shoulder pain in the weeks prior to that date. Petitioner further testified that during the week prior to him leaving work, his job duties increased because his helper went on vacation and by the end of the week, he could hardly move his arms. He did not recall asking Respondent for another helper and testified that Respondent never informed him that his accommodated position was still available. Petitioner stated, however, that there was no way he could perform his job duties now. He acknowledged that his bilateral shoulder condition had not gotten better while being off work.

Petitioner returned to Dr. Solman on June 7, 2023. The visit note stated that Petitioner continued to have severe popping and pain in the right acromioclavicular joint area. He was also having more moderate pain in the left shoulder subacromial space. Petitioner reported that his pain was worsening and he was having significant trouble with work activities. Dr. Solman noted that Petitioner stripped beads at waist to shoulder level and the beads weighed between five and 30 pounds. Examination of the right shoulder demonstrated popping in the AC joint with range of motion, tenderness in the AC joint, pain with cross-arm adduction and pain with O'Brien's sign. In the left shoulder, Dr. Solman noted abnormalities of the left biceps tendon which was torn and retracted. Petitioner also had some mild tenderness over the biceps muscle belly and pain with resisted abduction in the thumbs down position.

Dr. Solman assessed Petitioner with persistent right shoulder AC joint pain and popping, persistent left shoulder pain with rotator cuff syndrome versus clinically significant partial thickness to small full thickness recurrent rotator cuff tear, and chronic left biceps tendon rupture. He administered an injection to Petitioner's left shoulder and wanted to pursue the AC joint resection for the right shoulder. Dr. Solman also took Petitioner off work.

Dr. Solman's evidence deposition was taken a second time on September 26, 2023. He confirmed that he took Petitioner off work because he continued to have significant pain performing just some of the waist-to-chest-level work that he had been doing. Dr. Solman believed that Petitioner's work activities were irritating both shoulders even though Petitioner's duties were

seemingly not that repetitive or heavy. He testified that if Petitioner did not have surgery, his bilateral shoulder condition would be considered permanent and he would not be able to return to his job duties with Respondent unless he was given work that involved no repetitive use of the arms above waist to chest level or higher.

Dr. Solman stated that his prior surgical recommendations remained the same and he explained what he meant by Petitioner having a possible recurrent tear of the left rotator cuff. He stated that the MRI revealed a significant amount of thinning of the rotator cuff at the insertion which indicated that the rotator cuff was either partially re-torn or had not fully healed. He would be able to make that determination during surgery. Based on Petitioner's symptoms and MRI findings, Dr. Solman believed that the rotator cuff was the cause of Petitioner's pain and dysfunction in the left shoulder. He also opined that Petitioner probably had residual scar tissue in the AC joint from his first right shoulder surgery that was causing the persistent popping. Dr. Solman added that Petitioner's need for additional surgeries was causally related to the initial work injury.

The parties also took the evidence deposition of Dr. Lyndon Gross on September 21, 2023. Dr. Gross had performed a Section 12 examination of Petitioner on July 24, 2023 and prepared a report. He noted that Petitioner's left shoulder pain was mostly over the superior and anterior aspects of his shoulder and worsened with activities. Petitioner's right shoulder pain was mostly over the superior aspect of his shoulder and also worsened with activities. Dr. Gross noted no significant changes in Petitioner's bilateral shoulder motion, strength, x-ray findings or Quickdash scores in comparison to his last Section 12 examination in February 2022.

Dr. Gross opined that Petitioner had bilateral shoulder pain and related it to residual pain following his surgeries to both shoulders. He did not believe Petitioner required further intervention for the left shoulder. Dr. Gross explained that at the time of Petitioner's second surgery to the left shoulder, he was not having problems related to the rotator cuff and the MRI taken after the left shoulder surgery did not show a rotator cuff tear. He testified that during his recent examination, Petitioner demonstrated excellent strength in the rotator cuff. Dr. Gross also stated that Petitioner already had two surgeries to the left shoulder and he did not know if further surgery would make Petitioner better.

Dr. Gross additionally did not believe Petitioner required another surgery for his right shoulder. He stated that Petitioner had appropriate resection of his distal clavicle by Dr. Solman which was confirmed by x-rays. Dr. Gross testified that it was not uncommon to occasionally have some continued tenderness with palpation over the area where the distal clavicle resection was done but he found no evidence that Petitioner required further revision and he was unsure that Petitioner's complaints would improve with further surgery. He continued to recommend that Petitioner work with restrictions and he testified that Petitioner was capable of performing his job duties for Respondent.

Dr. Gross acknowledged that arthroscopies were sometimes performed because diagnostic testing would not always show everything. He noted, however, that Dr. Solman had already performed arthroscopic surgery on Petitioner. Dr. Gross then clarified during further testimony that although it would not be unreasonable to perform another surgery, he was cautiously

optimistic that there would be something different now if Dr. Solman did not see it at the time of surgery. He believed Petitioner's condition had plateaued. Dr. Gross also believed that if Petitioner's subjective pain complaints fit the objective findings, then surgery would not be unreasonable. He additionally stated that he found no evidence, such as significant cartilage damage, that would indicate that Petitioner would require shoulder replacement surgery. Dr. Gross did not believe seeking non-operative, pain management treatment was unreasonable.

Petitioner testified that he wanted to proceed with the surgeries recommended by Dr. Solman. He denied sustaining any new injury prior to June 7, 2023.

CONCLUSIONS OF LAW

Section 19(h) of the Act provides that:

> [A]s to accidents occurring subsequent to July 1, 1955, which are covered by any agreement or award under this Act providing for compensation in installments made as a result of such accident, such agreement or award may at any time within 30 months, or 60 months in the case of an award under Section 8(d)1, after such agreement or award be reviewed by the Commission at the request of either the employer or the employee on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended. *820 ILCS 305/19(h)*.

"'To warrant a change in benefits, the change in a [claimant's] disability must be material.' (Citation omitted). In reviewing a section 19(h) petition, the evidence presented in the original proceeding must be considered to determine if the claimant's position has changed materially since the time of the original decision." *Murff v. Ill. Workers' Comp. Comm'n*, 2017 IL App (1st) 160005WC, ¶ 22.

In the case at bar, the evidence demonstrated that Petitioner was capable of working his accommodated position with Respondent at the time of arbitration [October 21, 2022] and continued to do so until June 7, 2023 when he sought treatment with Dr. Solman. Petitioner last saw Dr. Solman on March 11, 2022. He had reported pain and popping in both shoulders at that time but by his next visit to Dr. Solman on June 7, 2023, it was noted that Petitioner was now having severe popping and pain in the right acromioclavicular joint area and moderate pain in the left shoulder subacromial space area. The visit note also stated that Petitioner's pain was worsening and he was having significant trouble with work activities. The record corroborated Petitioner's testimony that his condition in both shoulders had worsened and that he could hardly lift anything or move his arms. Petitioner denied sustaining any new injury prior to June 7, 2023.

The Commission notes that neither diagnostic testing nor Drs. Solman's and Gross' testimony identified any significant changes in Petitioner's bilateral shoulder condition from 2022 to 2023. However, Dr. Solman testified that Petitioner's current condition and need for surgery at the present time was based in part on his worsening symptoms. Based on the evidence, the Commission finds that Petitioner's condition has materially increased since the arbitration hearing

such that he is no longer able to work even on a light duty basis and now requires the surgeries that he had been able to postpone for more than two years.

As Petitioner sustained his burden of proving a material increase in his physical disability, the Commission finds that Petitioner is also entitled to the requested TTD benefits from June 7, 2023 through November 14, 2023. According to Dr. Solman's testimony, he had taken Petitioner off work on June 7, 2023 because Petitioner continued to have significant pain while performing his job duties for Respondent. Dr. Solman noted that although Petitioner's duties were seemingly not that repetitive or heavy, they were irritating his shoulders. Petitioner remained off work pending surgery through the hearing date of November 14, 2023.

With respect to Petitioner's request for additional medical treatment pursuant to Section 8(a) of the Act, the Commission notes that Dr. Solman had recommended surgeries to both shoulders as of October 29, 2021. As of the arbitration date, Petitioner did not want to proceed with surgery but his bilateral shoulder condition has deteriorated since then, resulting in his increased physical disability, inability to work his light duty position with Respondent and need for surgery.

The Commission finds the opinions of Dr. Solman more persuasive than Dr. Gross' opinions. Dr. Solman testified that Petitioner probably had residual scar tissue in the AC joint from his first right shoulder surgery that was causing the persistent popping and he believed that Petitioner's left rotator cuff was either partially re-torn or had not fully healed from the last surgery based on the October 5, 2021 MRI. Dr. Solman opined that Petitioner's need for additional treatment was causally related to the initial work injury. Dr. Gross similarly opined that Petitioner's bilateral shoulder pain was related to his prior surgeries. His primary disagreement with Dr. Solman pertained to the additional surgical recommendations.

The Commission had previously affirmed the Arbitrator's decision that Petitioner's current condition of ill-being in his shoulders was causally related to the January 22, 2018 work accident and that the medical treatment he had received through the arbitration date had been reasonable and necessary. With no evidence of an intervening injury between the arbitration date and June 7, 2023 to break the chain of causation, the Commission finds that Petitioner's bilateral shoulder condition remains causally related to the January 22, 2018 work accident as well as his need for the recommended surgeries.

The Commission is not persuaded by Dr. Gross' opinions and finds that Petitioner's present condition is no longer as it was in 2019 post-surgery to both shoulders. The Commission further notes Dr. Gross' concession that surgery could help clarify the true nature of Petitioner's bilateral shoulder condition. His further testimony that Petitioner did not require surgery for either shoulder because he did not know if surgery would improve his condition is also not compelling especially given his testimony that surgery would not be unreasonable if Petitioner's subjective pain complaints fit the objective findings. Dr. Solman had made his treatment recommendations based on Petitioner's pain complaints and MRI findings. The Commission therefore finds that Petitioner is entitled to the additional recommended surgeries to both shoulders as this treatment is reasonable, necessary and causally related to the January 22, 2018 work accident.

As a final matter, the Commission notes the disputed issue of mileage noted on the Request for Hearing form. Petitioner's counsel stated on the record that Petitioner was entitled to mileage for attending four office visits with Dr. Solman. Each trip was approximately 200 miles roundtrip. Travel expenses to cover the cost of transportation to and from treatment can be awarded under the same standard of reasonableness and necessity as medical expenses. *General Tire & Rubber Co. v. Indus. Comm'n*, 221 Ill. App. 3d 641, 651 (1991). However, the Commission finds nothing in the record to support Petitioner's claim for mileage. Petitioner provided no testimony relative to this issue at hearing, his Brief was silent on the matter and there is no evidence in the record indicating that the treatment he received from Dr. Solman was not available to him locally. As such, the Commission finds that Petitioner is not entitled to an award for mileage.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Section 19(h) and Section 8(a) Petition is granted for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to the bilateral shoulder surgeries recommended by Dr. Solman – namely, the right shoulder arthroscopy, AC joint debridement and resection of the distal clavicle bone, as well as the left shoulder arthroscopy with subacromial decompression, possible rotator cuff repair revision and/or graft augmentation of the rotator cuff. Petitioner is also entitled to further treatment as may be recommended by Dr. Solman to address the left biceps tendon. The Commission additionally awards attendant post-operative treatment.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $675.15 per week for 23 weeks, commencing June 7, 2023 through November 14, 2023, 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 Petitioner's request for an award of mileage for medical appointments is hereby 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 other amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $15,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

March 14, 2024

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

CAH/pm
3/13/24

052

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC024279
Case Name	Jeff Spencer v. Weeks Chrysler
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0126
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	James Kelly

DATE FILED: 3/14/2024

/s/Carolyn Doherty, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFF SPENCER,
Petitioner,

vs. NO: 20 WC 24279

WEEKS CHRYSLER,
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 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 May 17, 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 $65,400.00. 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.

March 14, 2024
O: 03/07/24
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	20WC024279
Case Name	Jeff Spencer v. Weeks Chrysler
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	James Kelly

DATE FILED: 5/17/2023

THE INTEREST RATE FOR THE WEEK OF MAY 16, 2023 4.98%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jeff Spencer
Employee/Petitioner
v.
Weeks Chrysler
Employer/Respondent

Case # **20** WC **024279**

Consolidated cases: ______

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **March 8, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **May 8, 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 $**12,108.39**; the average weekly wage was $**672.69**.

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

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

ORDER

Respondent shall pay Petitioner's medical expenses contained in Petitioner's Group Exhibit 6, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**448.46**/week for **3-5/7** weeks, commencing **4/21/21** through **5/16/21**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**403.61**/week for **36.20** weeks, because the injuries sustained caused **20%** loss of use of his right middle finger (trigger finger release and laceration); **30%** loss of use of his right ring finger (nondisplaced fracture of the proximal phalanx and trigger finger release); and **10%** loss of use of his right hand (carpal tunnel syndrome release at the acute, traumatic 205-week level), pursuant to Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 6/7/21 through 3/8/23, 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.

Arbitrator Linda J. Cantrell

MAY 17, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JEFF SPENCER,	)	
	)	
Employee/Petitioner,	)	
	)	
	)	**Case No.: 20-WC-024279**
v.	)	
	)	
WEEKS CHRYSLER,	)	
	)	
Employer/Respondent.		

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on March 8, 2023. On October 9, 2020, Petitioner filed an Application for Adjustment of Claim alleging injuries to his right hand/wrist as a result of a smash/crush injury on May 8, 2020. The parties stipulated that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent.

The issues in dispute are causal connection, medical expenses, temporary total disability benefits, and the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 40 years old at the time of accident. Petitioner testified he is no longer employed in the car business. He currently supervises 24 employees that performs machine and electrical work on presses. Petitioner testified that on 5/8/20 he worked for Respondent as an automobile mechanic. On that date, Petitioner was changing struts on a Jeep. He was working on a compression spring when the clamp broke and shot up, causing his right hand to slam all the way back. He had immediate pain in his fingers and both sides of his hand. Petitioner sustained lacerations to his fingers.

Petitioner went to the emergency room at Franklin Hospital where the lacerations were repaired. Petitioner treated with Dr. Young who performed an x-ray of his right hand and diagnosed a fracture at the base of the knuckle of the long finger. He underwent physical therapy through 7/13/20 that did not improve his symptoms. While undergoing therapy, Petitioner noticed his fingers were sticking, and he had no feeling in his right hand. Petitioner testified that his right ring and long fingers got stuck, he had no strength in his right thumb, and he could not make a closed fist or squeeze.

Petitioner testified he never had symptoms in his right hand or fingers prior to 5/8/20. He had swelling in the palm of his hand after the accident that worsened with increased activity. He attempted to continue working and began treating with Dr. Bradley in April 2021 as he had no improvement in his symptoms. Dr. Bradley performed a trigger finger and carpal tunnel release. Petitioner testified that following surgery he regained feeling in his hand.

Petitioner testified he has pain with using turn wrenches for a certain amount of time. His hand still swells but not as bad as it did prior to surgery. He has pain and swelling in his fingers and the palm of his hand where he underwent surgery. Petitioner testified he can make a strong full fist and the tingling in his fingers resolved. Petitioner has difficulty with forceful gripping while pulling.

On cross-examination, Petitioner testified he was honest, thorough, and complete in what he told his doctors at each visit. Petitioner testified he worked full duty until undergoing surgery on 4/21/21. Petitioner returned to work for Respondent with restrictions on 5/17/21 and without restrictions on 6/7/21.

MEDICAL HISTORY

On 5/8/20, Petitioner was treated in the emergency room at Franklin Hospital. The history states Petitioner injured his "left" hand in a work accident. The parties do not dispute that Petitioner alleged an injury to his *right* hand on 5/8/20. It was noted Petitioner lacerated his middle and index fingers with metal while working on a car. Physical examination revealed a laceration on the dorsal aspect of the distal phalanx index finger, on the dorsal aspect of the middle finger, and on the left index fingernail. A 2 cm laceration of the middle finger and a 1.5 cm laceration of the index finger were repaired.

On 5/11/20, Petitioner presented to Southern Illinois Healthcare Work Care ("SIHWC"). It was noted that on 5/8/20 Petitioner was removing a spring-loaded shock that struck him in his right hand when he touched it. Petitioner's lacerations were repaired, and he was given a splint in the emergency room, but no x-rays were performed and no antibiotics were prescribed. Physical examination revealed lacerations at the proximal joint dorsally of the right index finger and the proximal dorsal joint of the right middle finger. Petitioner reported pain to palpation of the right index, long, and ring fingers. X-rays showed a proximal phalanx fracture at the base of the right ring finger. Petitioner was diagnosed with a nondisplaced fracture of the proximal phalanx ring finger, a laceration without foreign body of the right index finger without nail damage, and a laceration without foreign body of the right middle finger without nail damage. Petitioner was placed on light duty of no use of his right hand. He was instructed to ice his hand for 20 minutes every two hours to reduce swelling and pain, elevate his hand, take Ibuprofen and acetaminophen, and wear a splint. Petitioner was referred to the Orthopedic Institute of Southern Illinois ("OISI") and instructed to return in one week.

On 5/18/20, Petitioner returned to SIHWC and reported he saw Dr. Young at OISI who recommended a splint and work restrictions. The Arbitrator notes that Petitioner did not offer medical records of OISI or Dr. Young into evidence.

Petitioner underwent seven physical therapy sessions at NovaCare Rehab from 6/24/20 through 7/13/20.

On 11/17/20, Petitioner was examined by Dr. Nathan Mall pursuant to Section 12 of the Act. Dr. Mall noted that on 5/8/20 Petitioner was working on a strut when the clamp came out, hit a wall, then hit Petitioner. He sustained an ulnar deviation of the right index and long fingers, lacerations, and a finger fracture. Petitioner treated conservatively for the finger lacerations. Petitioner reported a feeling like his right ring and long fingers were stuck, with numbness in the middle of his palm. Petitioner could not make a fist due to finger pain. Petitioner reported he had no feeling in the middle of his hand and ring finger and he dropped objections.

Dr. Mall performed a physical examination and noted Petitioner had pain over the A1 pulleys of the right ring, index, and long fingers within the palm without palpable triggering. Petitioner had a subjective inability to close his hand fully. Dr. Mall was able to passively close Petitioner's hand and Petitioner was able to hold the hand in a closed position.

Dr. Mall reviewed Petitioner's medical records from Franklin Hospital and OISI. He noted Petitioner was examined by Dr. Young on 5/12/20 and was diagnosed with a fracture of the right fourth proximal finger. He denied numbness or tingling. He had a laceration on the distal end of the right index finger and the proximal area of the long finger. Dr. Young found good range of motion in all joints, and light sensation was intact. Petitioner had pain with palpation at the ring finger fracture site. Petitioner returned to OISI on 5/26/20 and reported no numbness or tingling. He had persistent tenderness over the right ring finger fracture site. On 6/9/20, Dr. Young noted no numbness or tingling and removed Petitioner's splint. On 6/23/20, Dr. Young noted Petitioner complained of lack of grip strength. He had no pain to palpation over the ring finger fracture site. X-rays showed new bone growth at the ring finger fracture site. On 7/14/20, Dr. Young noted Petitioner's complaints of popping in his right ring finger and tenderness in the palm at the base of the finger. Petitioner reported his symptoms worsened with physical therapy. Dr. Young noted Petitioner had notable catching in the ring interphalangeal joint and pain with palpation of the ring finger A1 pulley. He recommended a right ring finger trigger release and restrictions of no gripping or heavy lifting.

Dr. Mall noted that at Petitioner's final visit with OISI on 10/12/20, Petitioner's ring finger fracture had healed. Petitioner complained of popping in the ring finger with pain just below the finger, some catching in the ring finger, and numbness and tingling in the ring, long, and index fingers. Petitioner reported he occasionally dropped objects, had a weak grip, and was awakened at night due to pain. Petitioner reported that his index finger locked at times. Dr. Young noted Petitioner had pain throughout the whole right hand, but the numbness and tingling were localized to the long, ring, and index fingers. Petitioner had a positive median nerve compression test in the right upper extremity but had a negative Tinel's test at the median nerve. He was tender to palpation at the ring finger A1 pulley. Fingertip sensation was intact. Dr. Young diagnosed index and long finger lacerations and ordered an EMG/NCS.

Dr. Mall noted that Petitioner told him he had carpal tunnel syndrome and trigger finger. Dr. Mall did not find clinical signs of either condition upon examination. He did not have the

EMG/NCS report to review. Dr. Mall noted that Petitioner had not undergone conservative treatment for trigger fingers. He opined that if Petitioner had clinically positive trigger fingers, appropriate treatment would include a corticosteroid injection into the tendon sheath. He noted that Petitioner's complaints of finger numbness and dropping objects may relate to carpal tunnel syndrome, but Petitioner had no clinical evidence of carpal tunnel syndrome. Dr. Mall did not feel Petitioner was a candidate for trigger finger or carpal tunnel releases. He noted that an injury to distal fingers would not typically produce significant swelling at the wrist or the carpal tunnel level. He opined that the finger lacerations and fracture could lead to trigger fingers in the attached digits, but there was no evidence of trigger fingers upon examination.

Dr. Mall diagnosed a right ring finger distal phalanx fracture. He opined that if Petitioner had trigger fingers, the work accident may have caused or aggravated the trigger fingers. He opined that Petitioner accident was not sufficient to cause or aggravate carpal tunnel syndrome. He opined that Petitioner's physical therapy and medical treatment through the date of his Section 12 examination was reasonable and necessary. He opined that the EMG/NCS was not necessary because Petitioner's mechanism of injury would not have produced or aggravated carpal tunnel syndrome. He opined that Petitioner did not require restrictions, regardless of causation, and was at MMI without the need for further treatment.

On 4/12/21, Petitioner was examined by Dr. Matthew Bradley who took a consistent history of injury. He noted that Petitioner's medical treatment to date had been conservative, and the fracture healed without complications. Petitioner complained of significant numbness and burning in his right hand since the accident. Petitioner reported that in the morning his right ring and long fingers were stuck in a flexed position, and he had difficulty opening his hand. He reported he often could not make a full fist at work due to pain. Petitioner reported he would often drop objects because of burning and numbness and he could not feel properly. He described pain in the palmar third and fourth right fingers.

Dr. Bradley performed a physical examination and noted no swelling or atrophy. He noted positive Phalen's and Tinel's signs at the right wrist. Petitioner had no obvious "walking" in the third or fourth digits but had a slight catch to palpation, greater in the fourth finger. Petitioner had significant pain in the third and fourth metacarpal during active range of motion. X-rays showed no acute fracture and a healing fracture of the right proximal phalanx without significant deformity. Dr. Bradley considered a corticosteroid injection, but he was concerned about a potential complication of fat atrophy that would be "devastating to a right hand dominant mechanic". Dr. Bradley recommended trigger finger and carpal tunnel releases, and restrictions of no lifting over 20 pounds.

On 4/21/21, Dr. Bradley performed a right carpal tunnel release and trigger finger releases of the right third and fourth fingers. Dr. Bradley's post-operative diagnoses were right carpal tunnel syndrome and right third and fourth trigger fingers. He placed Petitioner off work.

On 5/6/21, Dr. Bradley noted Petitioner was doing exceptionally well and he could feel his hand again. Petitioner reported some stiffness in his fingers without triggering. Physical examination revealed mild swelling of the entire hand and wrist. Dr. Bradley recommended home exercises and continued Petitioner off work until 5/17/21.

On 6/7/21, Dr. Bradley noted Petitioner had normal sensation and near normal strength with full range of motion. Petitioner denied triggering or pain. Dr. Bradley noted mild swelling of the entire hand and wrist. He recommended home exercises and anti-inflammatory medication as needed. Dr. Bradley placed Petitioner at MMI without restrictions. He opined that no further medical treatment or procedure would reliably or predictably improve Petitioner's function or pain control. He stated that strength, range of motion, and/or function may continue to improve over time without further intervention.

Dr. Mall authored an addendum report on 7/6/21 after reviewing Dr. Bradley's records. Dr. Mall noted that if Petitioner had trigger fingers, the trigger fingers could be related to the work accident. He disagreed with Dr. Bradley's opinion that a corticosteroid injection could lead to fat atrophy risk, noting there was no such conclusion in any published medical journals. Dr. Mall opined that a carpal tunnel release was appropriate if Petitioner had the condition, but he did not believe that carpal tunnel syndrome would be produced by a single event to the fingers. He stated there was no stress or trauma to Petitioner's wrist that would cause wrist swelling. Dr. Mall reiterated that Petitioner's carpal tunnel syndrome had no relationship to the work accident.

Dr. Matthew Bradley testified by way of deposition on 8/10/22. He is a board-certified orthopedic surgeon. He testified that Petitioner complained of right hand numbness and tingling and triggering/catching of his right long and ring fingers. He noted that Petitioner's lacerations and fracture had healed prior to his examination, but Petitioner continued to have a burning sensation and triggering of his ring and long fingers. Dr. Bradley testified that Petitioner had numbness, tingling, and burning that was consistent with carpal tunnel syndrome. He opined that cortisone injections were not going to provide Petitioner with sustained relief and since he was almost one year post-accident, he recommended surgery. Dr. Bradley performed a right carpal tunnel release and trigger finger releases of the right third and fourth fingers. He testified that Petitioner had a good recovery and all of his symptoms had resolved, including numbness, tingling, and catching. His range of motion was great, and he returned to work without restrictions. Dr. Bradley testified that a crush injury that creates a fracture can cause a significant amount of swelling and pain. He opined that Petitioner's trigger fingers were causally related to the work accident. Petitioner had no signs or symptoms of trigger finger prior to the work accident, and he was very consistent in his complaints following his injury.

Dr. Bradley testified that Petitioner's hand was crushed to such a degree it broke the base of his fingers which would cause a significant amount of swelling and can certainly lead to carpal tunnel syndrome. He testified that an injury to the wrist would cause inflammation. Dr. Bradley testified that Petitioner was a mechanic for ten years and had no difficulty with fine motor skills prior to the work accident, and no symptoms or treatment for numbness or tingling. He testified he would be hard-pressed to believe that anything other than the work accident caused Petitioner's carpal tunnel condition. He opined that Petitioner's work accident was the prevailing and major factor in his carpal tunnel syndrome condition.

On cross-examination, Dr. Bradley testified he believed Petitioner's lacerations of the index and middle fingers were at the interphalangeal joints. He stated Petitioner fractured the base of the fourth finger. He testified that if a patient had hand swelling, he would note that as a

significant symptom. Petitioner has not returned to his office since he was released at MMI on 6/7/21.

Dr. Nathan Mall testified by way of deposition on 9/12/22. Dr. Mall is a board-certified orthopedic surgeon with a fellowship in sports medicine. He testified that if the trigger finger diagnosis was accurate, the trigger fingers were causally related to Petitioner's work accident. Dr. Mall explained that lacerations on the fingers could cause stiffness and inflammation. Triggering of the fingers occurs when inflammation in the flexor tendon sheaths gets large enough it prevents the tendon from gliding nicely under the A1 pulley. Dr. Mall testified that Petitioner's finger lacerations were distal, or much further out to the fingertips, compared to the wrist, so there was no structural damage to the tendons.

Dr. Mall testified that the carpal tunnel syndrome diagnosis was not related to Petitioner's work accident. He explained that the finger injuries were well away from Petitioner's wrist where the carpal tunnel syndrome would be located. He testified that carpal tunnel syndrome is not typically related to a single traumatic event unless there is significant swelling at the wrist, such as a wrist fracture or disassociation. In Petitioner's case, the distal lacerations to the fingertips and fracture at the base of the ring finger would not cause wrist swelling. Dr. Mall testified that swelling travels distal to, or away from, an injury and out toward the fingertips.

Dr. Mall testified that the records from Herrin Hospital and Dr. Young/OISI for the months after Petitioner's work accident did not indicate he had hand or wrist swelling. Dr. Mall testified that if a doctor observed and found on exam that Petitioner had hand or wrist swelling, a doctor would note that finding in the medical records.

On cross examination, Dr. Mall admitted that the OISI records dated one month prior to his examination showed Petitioner complained of pain in his entire hand. He admitted that the fracture at the base of Petitioner's right ring finger was close to the A1 pulley, so the accident may have caused the trigger fingers. He testified that typically carpal tunnel syndrome does not develop from a single traumatic event unless there is a wrist fracture or dislocation or a significant amount of swelling at the wrist. He testified that based on his review of Petitioner's medical records from Herrin Hospital, SIWHC, NovaCare, and OISI, it did not appear Petitioner had a lot of swelling at his wrist and it was mostly in his fingers.

CONCLUSIONS OF LAW

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

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

There is no evidence Petitioner had any symptoms or treatment with respect to his right hand prior to 5/8/20. According to Dr. Bradley, Petitioner was an automobile mechanic for ten years and had no difficulty with fine motor skills prior to his work accident. It is undisputed that on 5/8/20 Petitioner sustained injuries to his right hand when a compression spring broke and slammed into his hand. He testified he had immediate pain in his fingers and on both sides of his hand. He went to the emergency room the day of the accident where a 2 cm laceration of the middle finger and a 1.5 cm laceration of the index finger were repaired.

On 5/11/20, Petitioner was diagnosed with a nondisplaced proximal phalanx fracture at the base of his right ring finger. He was placed on light duty restrictions and ordered to ice, elevate, and splint his hand. Petitioner underwent seven sessions of physical therapy from 6/24/20 through 7/13/20.

There does not appear to be a dispute that Petitioner sustained multiple finger lacerations and a nondisplaced proximal phalanx fracture at the base of his right ring finger as a result of the work accident on 5/8/20. Although initially disputed, Dr. Mall testified that if the trigger finger diagnosis was accurate, the trigger fingers were causally related to Petitioner's work accident. Respondent disputes that Petitioner's right carpal tunnel syndrome is causally connected to the work accident.

Dr. Mall examined Petitioner on 11/17/20 and noted Petitioner complained locking of his right ring and long fingers, with numbness in the middle of his palm. Petitioner could not make a fist due to finger pain. Petitioner reported he had no feeling in the middle of his hand and ring finger and he dropped objections. Dr. Mall noted Petitioner treated with Dr. Young at OISI from 5/12/20 through 10/12/20. Petitioner did not offer these records into evidence. Dr. Mall noted that Dr. Young's physical examination revealed persistent pain with palpation at Petitioner's ring finger fracture site. He denied numbness or tingling. On 6/23/20, Dr. Young noted Petitioner complained of lack of grip strength. On 7/14/20, Dr. Young noted Petitioner had popping in his ring finger and tenderness in the palm at the base of the finger. Dr. Young noted Petitioner had notable catching in the interphalangeal joint of the ring finger and pain with palpation of the ring finger A1 pulley. He recommended a right ring finger trigger release and restrictions of no gripping or heavy lifting.

On 10/12/20, Dr. Young noted Petitioner had persistent popping and catching in the ring finger and pain just below the finger. He had numbness and tingling localized in his ring, long, and index fingers. Petitioner reported he occasionally dropped objects, had a weak grip, and was awakened at night due to pain. Dr. Young noted Petitioner had pain throughout the entire right hand. Dr. Young ordered an EMG/NCS.

Dr. Bradley examined Petitioner on 4/12/21 and noted Petitioner's ring and long fingers were stuck in a flexed position and he had difficulty opening his hand. Petitioner reported he could not make a fist due to pain and he often dropped objects because of burning and numbness. He described pain in the palmar third and fourth right fingers. On 4/21/21, Dr. Bradley performed a right carpal tunnel release and trigger finger releases of the right third and fourth fingers. Post-operatively, Dr. Bradley confirmed right carpal tunnel syndrome and right third and fourth trigger fingers.

The Arbitrator finds the opinions of Dr. Bradley more persuasive than those of Dr. Mall. Dr. Bradley testified that Petitioner's hand was crushed to such a degree it broke the base of his ring finger which would cause a significant amount of swelling and can certainly lead to carpal tunnel syndrome. He found no evidence that anything other than Petitioner's work accident caused his symptoms and opined that the work accident was the prevailing and major factor in his carpal tunnel syndrome condition.

Dr. Mall testified that carpal tunnel syndrome is not typically related to a single traumatic event unless there is significant swelling at the wrist, such as a wrist fracture or disassociation. He testified that Petitioner's finger injuries were well away from his wrist where the carpal tunnel syndrome would be located, and it would not cause wrist swelling. He stated that Petitioner's medical records for months after his injury did not indicate he had swelling in his hand or wrist.

The records support that Petitioner had pain to his entire hand following the accident. He initially underwent treatment for lacerations and a fracture at the base of his right ring finger. Conservative treatment included splinting, medication, ice and elevation, light duty restrictions, and physical therapy. In June 2020, Dr. Young noted Petitioner had decreased grip strength, tenderness in his palm, he was dropping things, and the pain woke him at night. Petitioner's symptoms persisted until he underwent carpal tunnel and trigger finger releases by Dr. Bradley and the conditions were confirmed intraoperatively.

Based on the totality of the evidence, the Arbitrator finds that Petitioner's current conditions of ill-being, including right index and middle finger lacerations, a nondisplaced fracture of the proximal phalanx of the right ring finger, right middle and ring trigger fingers, and right carpal tunnel syndrome, are causally connected to the work accident of 5/8/20.

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?

Based on the above finding as to causal connection, the Arbitrator finds that Respondent is responsible for payment of the medical bills related to the care and treatment of Petitioner's injuries. Respondent shall therefore pay the medical expenses contained in Petitioner's Group Exhibit 6, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act.

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

Petitioner claims entitlement to temporary total disability benefits from 4/21/21 through 5/16/21. Petitioner underwent surgery on 4/21/21 and was placed off work. On 5/6/21, Dr. Bradley noted Petitioner was doing exceptionally well and continued Petitioner off work until 5/17/21. Petitioner testified he returned to work for Respondent with restrictions on 5/17/21 and without restrictions on 6/7/21.

Therefore, Respondent shall pay Petitioner temporary total disability benefits for the period 4/21/21 through 5/16/21, representing 3-5/7 weeks, pursuant to Section 8(b) of the Act.

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

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

(i) **Level of Impairment:** Neither party submitted an AMA impairment rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation:** Petitioner worked as an automobile mechanic for Respondent at the time of accident. Petitioner sustained injuries to his right fingers and hand and is right hand dominant. Petitioner returned to full duty work without restrictions for Respondent on 6/7/21. Petitioner currently works for another employer and supervises a team that performs machine and electrical work on presses. There was no evidence that Petitioner terminated his employment with Respondent due to his work-related injuries. The Arbitrator places some weight on this factor.

(iii) **Age:** Petitioner was 40 years old on the date of accident. He is a younger individual and must live and work with his 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 greater weight on this factor.

(iv) **Earning Capacity:** There is no evidence of reduced earning capacity contained in the record. Petitioner was released to return to work without restrictions on 6/7/21. Petitioner returned to his pre-accident job position with Respondent. The Arbitrator places some weight on this factor.

(v) **Disability:** Petitioner sustained a 2 cm laceration of the right middle finger that was repaired with three sutures; a 1.5 cm laceration of the right index finger that was repaired with two sutures; a nondisplaced fracture of the proximal phalanx of the right ring finger that was treated with splinting, medication, and physical therapy; trigger fingers of the right middle and ring fingers that required surgical releases, and right carpal tunnel syndrome that required a surgical release.

Post-operatively, Dr. Bradley noted Petitioner did exceptionally well and the feeling returned in his hand. At his final visit on 6/7/21, Dr. Bradley noted Petitioner had normal sensation and near normal strength with full range of motion. Petitioner's

triggering and pain had resolved. Dr. Bradley noted mild swelling of the entire hand and wrist. He recommended home exercises and anti-inflammatory medication as needed. Dr. Bradley placed Petitioner at MMI without restrictions. He opined that no further medical treatment or procedure would reliably or predictably improve Petitioner's function or pain control. He stated that strength, range of motion, and/or function may continue to improve over time without further intervention.

Petitioner testified he has pain with using turn wrenches for a certain amount of time. His hand still swells but not as bad as it did prior to surgery. The pain and swelling is located in his fingers and the palm of his hand where he underwent surgery. Petitioner testified he can make a strong full fist and the tingling in his fingers has resolved. Petitioner notices problems with forceful gripping to pull back items. The Arbitrator places greater weight on this factor.

Based on the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of use of his right middle finger (trigger finger release and laceration); 30% loss of use of his right ring finger (nondisplaced fracture of the proximal phalanx and trigger finger release); and 10% loss of use of his right hand (carpal tunnel syndrome release at the acute, traumatic 205-week level), pursuant to Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 6/7/21 through 3/8/23, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC033135
Case Name	Krzysztof Zaucha v. Esmark Steel Group, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0127
Number of Pages of Decision	10
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Matt Walker
Respondent Attorney	Grace Di Gerlando

DATE FILED: 3/18/2024

/s/Christopher Harris, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KRZYSZTOF ZAUCHA,

Petitioner,

vs. NO: 21 WC 33135

ESMARK STEEL GROUP MIDWEST, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, temporary total disability (TTD) benefits and credit, and being advised of the facts and law, reverses the Decision of the Arbitrator. The Commission additionally remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

FINDINGS OF FACT

Job Duties

Testifying through a Polish interpreter, Petitioner stated that he had worked for Respondent since 1999 as a helper performing the same duties as other machine operators. (T.4; T.17). He worked five to six days per week, eight hours per day, and had one 30-minute break during his shift. Petitioner's last day working for Respondent was on October 18, 2021. (T.17-18; T.32-33).

Petitioner testified regarding Respondent's Ergonomic Analysis and job video. He confirmed that the job video was an accurate depiction of his job duties for Respondent but that he was not in the video. (T.18-19; T.22; T.50; T.58; RX2; RX3). The video depicted the catcher position, where a worker sat at the back of a machine catching cut metal pieces, and also showed the feeder position which involved two workers feeding metal sheets into the same machine. (T.19-21; RX3). Petitioner's testimony with respect to how he performed the feeder and catcher duties was similar to what the video showed except that Petitioner testified that he would have to lift the

metal sheets about neck high before moving it to the cutting machine. He would then extend both arms forward and push the metal into the machine. (T.23-25; T.51-56). Petitioner testified that lifting the metal sheet and pushing the material really hard into the machine caused him pain in both shoulders. (T.25-27). He stated that the metal sheets weighed between 20 and 200 pounds, were 48 to 60 inches wide, and he moved approximately 50 to 70 40-pound metal sheets an hour and about 15 of the 200-pound metal sheets an hour. (T.22-25; T.52-53; T.56-57; RX3). When Petitioner worked as a catcher, he sat in a forward-leaning, hunched manner with his hands and arms in a reaching position. (T.28-29). Petitioner also worked fast moving his arms "forward and then backwards and down." (T.29). The metal pieces he would catch weighed between 10 and 60 pounds and he would catch approximately 200 pieces per hour. (T.29-30; T.56-57). Petitioner alternated working as a feeder and catcher every four hours in an eight-hour shift. (T.27-28; T.30-31).

Petitioner also built skids but he would only spend one hour on this task and did not do this every day. (T.31). The wood skids weighed 60 to 80 pounds. (T.31-32). Petitioner additionally performed the sheet packaging job which required him to reach for paper and bundle it using an air gun that weighed five to six pounds. He held the air gun in his right hand and away but in front of his body. (T.32).

Medical Evidence

Petitioner's medical records from Union Health Service documented that Petitioner sought treatment on January 10, 2019 for a growth on his left shoulder. He was referred to an orthopedic physician and saw Dr. Djuro Petkovic on April 16, 2019. Dr. Petkovic examined the left shoulder mass but also documented that Petitioner had full range of motion, normal strength and no significant tenderness to palpation. X-rays of both shoulders revealed mild degenerative changes of the glenohumeral and AC joint with possible evidence of bilateral rotator cuff impingement, greater on the left side. An MRI of the left shoulder, dated May 25, 2019, revealed chronic degenerative changes in the acromioclavicular joint and evidence of synovial cysts. The report also stated that Petitioner had a full-thickness tear of the supraspinatus with retraction nearly to the glenohumeral joint line, a full-thickness tear of the distal subscapularis with approximately 1-cm medial retraction and an intra-articular dislocation of the intact long head of the biceps tendon. (T.33; PX1).

The next visit related to Petitioner's shoulders was on October 8, 2021. Petitioner visited Union Health and the nurse noted that Petitioner was unable to lift his shoulders due to pain. (T.33-34; PX1). Dr. Petkovic evaluated Petitioner on October 19, 2021 and noted that he had not seen Petitioner since April 2019. "He did have a full-thickness rotator cuff tear, but, again, he never followed up for this, and he just went back to work. Now the right shoulder has been bothering him more recently. He said that overall both shoulders have been bothering him for about 5 years." (T.34; T.58-59; PX1). The visit note further stated that Petitioner did not have any specific injury before but that two months ago, he had another injury that set him back. (PX1). Petitioner clarified at arbitration that he had cracked two ribs and denied any injuries to his hands or forearms prior to this visit. (T.59-60).

Dr. Petkovic examined Petitioner's shoulders and reviewed x-rays of the right shoulder. He noted that the x-rays revealed moderate to severe osteoarthritis of the glenohumeral joint space with a large inferior humeral head osteophyte. There was no gross instability. The impression also noted osteoporosis, interval increased osteoarthritic degenerative changes greater in the AC joint and rotator cuff impingement pattern. Dr. Petkovic also reviewed the MRI report of the left shoulder from 2019, and noted the full-thickness tear of the subscapularis and possible full-thickness tear of the supraspinatus, with a large cyst around the AC joint. (PX1). Dr. Petkovic diagnosed Petitioner with right shoulder end-stage osteoarthritis and left shoulder rotator cuff tear with AC joint degenerative changes. He ordered physical therapy for both shoulders and administered a right shoulder corticosteroid injection during the appointment. He also ordered a new MRI of the left shoulder and took Petitioner off work for six weeks. (T.34; PX1).

At Petitioner's attorney request, Dr. Anatoly Gorovits evaluated Petitioner at Premier Occupational Health on November 18, 2021. (T.34; PX2). There was an Initial Clinic Visit note dated November 18, 2021 that was separate from Dr. Gorovits' narrative report. The visit note documented that the onset of Petitioner's bilateral shoulder repetitive injury was in 2016 but that it also began on November 16, 2021. Petitioner reported doing repetitive movements when he felt pain in both shoulders and lifting made it worse. (PX2).

Petitioner followed-up with Dr. Gorovits on December 1, 2021. Examination of both shoulders indicated pain with motion, pain with palpation, swelling, abnormal range of motion and abnormal strength. Dr. Gorovits diagnosed Petitioner with bilateral shoulder pain. He recommended that Petitioner remain off work. He also ordered an MRI of the right shoulder and prescribed medication. Dr. Gorovits further referred Petitioner to Dr. Paul Papierski, an orthopedic surgeon. (T.34; PX2).

Petitioner consulted with Dr. Papierski at Chicago Hand and Orthopedic Surgery Centers on December 20, 2021. (T.34; PX4). The visit note stated that Petitioner was right-hand dominant and that he presented with a gradual onset of bilateral shoulder pain, left greater than right. There was no traumatic history of injury. Examination revealed limited range of motion in both shoulders, bilateral subacromial crepitation, limited cross-arm reach, positive Hawkin's impingement test and tenderness at Codman's point. Dr. Papierski diagnosed Petitioner with non-traumatic complete tear of the left rotator cuff and right shoulder pain of unspecified chronicity. He recommended rotator cuff repair for the left shoulder, ordered an MRI for the right shoulder and deferred work statuses to Dr. Gorovits. (PX4).

Petitioner completed the MRI of the right shoulder on December 27, 2021. The impression demonstrated: (1) full-thickness, complete supraspinatus and infraspinatus tendon tearing, retracted up to the superomedial humeral head with mild infraspinatus muscle atrophy, (2) full thickness, non-retracted upper subscapularis tendon tearing with an old humeral fracture deformity at the lower tendon attachment and mild muscle atrophy, (3) long head biceps tendinosis and fraying with medial subluxation, (4) focus of suspected osteonecrosis at the posterosuperior humeral head, (5) os acromiale with significant fluid at the synchondrosis that can be seen with instability, and (6) superior humeral head subluxation with anterior subacromial enthesophyte and loss of the subacromial space. (T.35; PX3).

Petitioner followed-up with Dr. Papierski on January 3, 2022. The visit note documented: "He's had a relatively recent fall and a couple of ribs fractured with some pain extending to the shoulder, but not much change overall in the location or nature of pain that he has previously been feeling in the shoulder." (T.35; PX4). The visit note did not specify which shoulder. Dr. Papierski examined Petitioner's shoulders and reviewed the MRI reports of both shoulders. He stated that Petitioner had degenerative changes in the left shoulder glenohumeral joint and that the right shoulder had multiple rotator cuff tears with significant acromioclavicular joint osteoarthritis. Dr. Papierski again recommended surgery. He had previously recommended rotator cuff repair for the left shoulder but now added recommendations for rotator cuff repair on the right, distal clavicle resection, biceps tenodesis, repair of the subscapularis and superior capsular augmentation. Dr. Papierski referred Petitioner to Dr. Robert Brochin, a shoulder specialist. (T.35; PX4). Petitioner testified that he remained off work. (T.35; PX2).

Dr. Brochin examined Petitioner on May 10, 2022 at Chicago Hand & Orthopedic Centers. (T.35; PX4). The visit note documented Petitioner's bilateral shoulder pain, right greater than left, and his work in "heavy manual job for over 20 years. Patient states he has had approximately 2 years of right shoulder pain. This was acutely exacerbated in October 2021 while at work lifting some heavy metal sheets." (PX4). Dr. Brochin noted Petitioner's treatment to date, the x-rays of the right shoulder and the MRIs of both shoulders. His examination of the right shoulder indicated that Petitioner was unable to actively forward elevate past 80 degrees and had a positive drop arm test. Dr. Brochin also indicated that Petitioner's exam was consistent with pseudoparalysis and that he had a positive belly press test, positive impingement provocative maneuvers and tenderness to palpation of the bicipital groove and greater tuberosity. Petitioner was non-tender to palpation at the acromioclavicular joint. Dr. Brochin diagnosed Petitioner with rotator cuff arthropathy in both shoulders. He recommended a CT scan of the right shoulder for operative planning for a right reverse shoulder arthroplasty. (T.35; PX4). As of the arbitration date, Petitioner had not proceeded with Dr. Brochin's recommendations but confirmed that he wanted to have the surgery. (T.35-37).

Petitioner had continued to follow-up with Dr. Gorovits on a monthly basis through November 29, 2022 for refills on his prescription medication and work status updates. (T.40-41; PX2). Petitioner remained off work as of the arbitration date. (T.37; T.48).

Petitioner testified that he had non-stop pain in both shoulders, right worse than left. (T.38-39). His pain affected his ability to get dressed, shave, travel, lift things at home and reach out in front or to the side. (T.39-40). Petitioner no longer participated in soccer, billiards and table tennis. (T.42). He denied sustaining any injuries to his shoulders prior to October 2021 or any new injuries after October 2021. (T.48). Petitioner testified that he had received one month of Social Security disability benefits, but no short-term or long-term disability benefits or unemployment benefits while he was off work. (T.17; T.49). He also testified that he used to have health insurance through Respondent but about three years ago, he started using his wife's health insurance. (T.50).

Depositions

The evidence deposition of Dr. Gorovits, an immediate care and occupational medicine physician, was taken on September 13, 2022. He testified consistent with Petitioner's medical records and his November 18, 2021 report and noted Petitioner's occupation, his progressive

shoulder injuries while working for Respondent, his examination findings and Petitioner's bilateral shoulder imaging. He also testified that the October 28, 2021 MRI of the left shoulder [the actual report was not in evidence] was positive for complete massive full-thickness tear of the supraspinatus tendon with tendon retraction. Dr. Gorovits' diagnoses for Petitioner's shoulders corresponded with the imaging findings and he added left shoulder tendinopathy and degenerative tears of the superior anterior and posterior glenoid labrum as well. (PX6, pgs. 23-24). He found no past medical history or surgeries significant to Petitioner's shoulders. (PX2; PX6, pg. 6; pgs. 8-9; pgs. 13-19; Dep. Ex. 2).

Dr. Gorovits' understanding of Petitioner's job duties was for the most part consistent with Petitioner's testimony at arbitration and at the time he wrote his report, he believed that Petitioner's job required overhead reaching. (PX2; PX6, pg. 16; pgs. 20-21; Dep. Ex. 2). He then reviewed Respondent's Ergonomic Analysis and job video and noted that overhead reaching was not required. Dr. Gorovits did not review this evidence with Petitioner but testified that neither changed his opinion that Petitioner's repetitive work as a machine operator for 22 years could cause, accelerate and aggravate his bilateral shoulder conditions. (PX6, pgs. 21-25; pg. 37; Dep. Ex. 3). Dr. Gorovits further testified that it was very unlikely for the general population to have arthritis to the extent where tendons were being torn off the shoulder as was the case with Petitioner. (PX6, pgs. 31-33; pg. 36). He recommended that Petitioner remain off work, proceed with surgery and opined that the recommended treatment was related to Petitioner's work for Respondent. (PX6, pgs. 25-26).

On April 4, 2022, Respondent sent Petitioner for a Section 12 examination with Dr. Nikhil Verma, a board-certified orthopedic surgeon at Midwest Orthopaedics at Rush. His evidence deposition was taken on September 21, 2022. (T.47-48; RX1, pg. 6; pgs. 8-9; Dep. Ex. 2). Dr. Verma had reviewed Petitioner's medical records, x-rays taken during the appointment, the October 28, 2021 MRI of the left shoulder and the December 27, 2021 MRI of the right shoulder. He also reviewed a job description, the job summary analysis and the job video. (RX1, pgs. 9-10; pgs. 12-14).

Dr. Verma's findings related to Petitioner's imaging included significant glenohumeral arthritis with proximal humeral migration, hypertrophic changes of the acromioclavicular joint and the retracted rotator cuff tears in both shoulders. (RX1, pgs. 14-15; pgs. 19-20). He testified that the findings were all degenerative. (RX1, pgs. 15-16). Dr. Verma's examination of Petitioner indicated limited rotation consistent with arthritis and weakness which was consistent with the rotator cuff tears. There was no instability and neurovascular examination was normal. (RX1, pg. 20). He diagnosed Petitioner with bilateral shoulder massive, retracted rotator cuff tears with secondary degenerative changes in the joint itself and the AC joint. (RX1, pgs. 21-22).

Dr. Verma further testified regarding Petitioner's job duties for Respondent and indicated that the majority of the work was done below shoulder level with occasional overhead manipulation with a hoist. (RX1, pg. 18). He agreed that Petitioner's description of his job duties was consistent with the videotape and written job analysis he reviewed and again noted no significant evidence of repetitive overhead activity or lifting. (RX1, pgs. 17-19; pgs. 28-29; pgs. 32-34; Dep. Ex. 3). Dr. Verma explained that the type of job duties that could cause the findings in Petitioner's shoulders included long-standing, chronic overhead use, "meaning majority of the

work activities being done at or above shoulder level, with significant force such as lifting, pushing, pulling." (RX1, pg. 17). He stated that the overhead component was significant because it was the only data that existed between an occupational shoulder condition and repetitive use-type activities, specifically with regard to the rotator cuff. (RX1, pgs. 17-18).

Dr. Verma opined that Petitioner's diagnoses were not causally related to Petitioner's alleged repetitive trauma at work. (RX1, pg. 22). His opinion was based on the lack of any specific injury or trauma resulting in the onset or worsening of the shoulder pain, the history of a gradual onset of pain that was present over multiple years, the diagnostic imaging findings that were consistent with a chronic or long-standing degenerative disorder which occurred within the general population, and his review of Petitioner's job duties which "did not demonstrate any occupational movement patterns or repetitive use of the upper extremities that would be consistent with this type of rotator cuff pathology." (RX1, pgs. 19-23). Dr. Verma additionally opined that Petitioner's job duties for Respondent did not aggravate or accelerate his shoulder condition. (RX1, pg. 23; pg. 29; pg. 34).

Notwithstanding his opinion on causation, Dr. Verma agreed that the treatment Petitioner had received to date had been reasonable and necessary. He testified that any future treatment would not be related to Petitioner's work activities even though he did not have an opinion as to whether Petitioner was a surgical candidate. (RX1, pgs. 23-24; pg. 30). Dr. Verma also recommended light duty restrictions but indicated that the need for restrictions was unrelated to any work injury or work activities. (RX1, pg. 24; pg. 31). During further testimony, Dr. Verma agreed that individuals who were over 45 years old and had degenerative changes were more prone to injuries. He also acknowledged that Petitioner had more problems than simply massive rotator cuff tears in the bilateral shoulders. (RX1, pgs. 27-28).

CONCLUSIONS OF LAW

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

The Arbitrator found Petitioner credible but found Dr. Verma's opinions more persuasive than that of Dr. Gorovits', and based on this finding, together with Petitioner's testimony and the medical records, the Arbitrator determined that Petitioner was not exposed to any repetitive trauma at work that would result in his bilateral shoulder diagnoses. The Commission is not bound by the Arbitrator's findings. Our Supreme Court has long held that it is the Commission's province "to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *City of Springfield v. Indus. Comm'n*, 291 Ill. App. 3d 734, 740 (1997) (citing *Kirkwood v. Indus. Comm'n*, 84 Ill. 2d 14, 20 (1981)). Interpretation of medical testimony is particularly within the province of the Commission. *A.O. Smith Corp. v. Indus. Comm'n*, 51 Ill. 2d 533, 536-37 (1972).

The Commission has considered all the testimony, exhibits, pleadings and arguments submitted by the parties and finds that Petitioner's testimony regarding his job duties, the physicians' testimony regarding Petitioner's job duties, the Ergonomic Analysis and the job video were overall consistent. Petitioner testified to a variety of duties using both upper extremities over

22 years to catch, lift, move, push and pull metal pieces that weighed between 10 to 200 pounds. His testimony and the evidence also indicated that he moved his arms in various positions while working – extended, reaching forward, backwards, downward, held neck high and overhead. The Commission notes that the video demonstrated some of the movements Petitioner had described at arbitration. The catcher was catching metal pieces at near-shoulder level at times in the video and the feeders appeared to slightly lift the metal sheet to adjust the placement prior to sliding the material into the machine. They also appeared to use force to push the metal sheet through the machine. The Commission finds that neither the job video nor the Ergonomic Analysis undermined Petitioner's testimony with respect to how he performed his job duties for Respondent.

Petitioner's physicians were also consistent as to Petitioner's symptoms and complaints in his shoulders which had been ongoing for several years before reaching a breaking point in October 2021. There was no evidence of any specific injuries to Petitioner's shoulders and Petitioner did not attribute his bilateral shoulder condition to anything else other than his job duties for Respondent.

The Commission finds Dr. Gorovits' opinions more persuasive than Dr. Verma's opinions. Although Dr. Verma testified that there was no significant evidence of repetitive overhead activity or lifting in Petitioner's line of work, he nonetheless indicated that work activities in question being done at or above shoulder level, with significant force such as lifting, pushing and pulling could cause the findings in Petitioner's shoulders. Dr. Verma further agreed that individuals who were over 45 years old and had degenerative changes in their shoulders were more prone to injuries. Moreover, Dr. Verma testified that this overhead component was specific to rotator cuff injuries which was but one portion of Petitioner's diagnoses. The medical records documented not only the rotator cuff tears, but also degenerative changes of the glenohumeral and AC joint, including osteoarthritis, issues with the long head biceps tendon, suspected osteonecrosis in the humeral head, superior humeral head subluxation, arthropathy in the glenoid labrum and more – conditions all in close proximity to the rotator cuff. Furthermore, despite any evidence of pre-existing rotator cuff tears and degenerative conditions related to the rotator cuff or elsewhere in the shoulder, there was no evidence that Petitioner was having problems to the extent that he necessitated treatment and could not work until his condition deteriorated in October 2021.

Dr. Gorovits' opinions, on the other hand, were not limited to overhead work and rotator cuff injuries but instead took into consideration Petitioner's job duties, timeline of symptoms and complaints and diagnostic findings as a whole. His assessment of Petitioner's bilateral shoulder injuries and recommendation for surgery was based on his experience in occupational medicine and treating patients with shoulder injuries similar to Petitioner's every day and it was also consistent with what orthopedic physicians Dr. Papierski and Dr. Brochin had noted and suggested as well.

Therefore, the Commission finds that the preponderance of the evidence, including Petitioner's credible testimony regarding his job duties, the period of time he performed his duties before his injuries manifested, the timeline of symptoms and complaints and Dr. Gorovits' opinions, supports a finding that Petitioner sustained injuries to his shoulders as a result of his repetitive duties for Respondent and that such injuries manifested on November 18, 2021, the date of Dr. Gorovits' initial evaluation of Petitioner.

Based on the Commission's finding of accident and causal connection in favor of Petitioner, the Commission finds that Petitioner is entitled to worker's compensation benefits. Respondent did not dispute the reasonableness or necessity of the medical treatment rendered to Petitioner as Dr. Verma had agreed that the treatment Petitioner received through the date of the April 4, 2022 Section 12 examination had been reasonable and necessary notwithstanding his opinion on causation. The Commission thus finds no genuine dispute related to the claimed medical bills and awards the outstanding charges detailed in Petitioner's Exhibit 5 for American Diagnostic, Chicago Hand and Orthopedic Surgery Centers and Premier Occupational Health. These bills represent medical charges incurred as of the November 18, 2021 manifestation date.

The Commission further finds that Petitioner is entitled to the CT scan of the right shoulder for pre-operative planning and the right shoulder reverse total shoulder arthroplasty recommended by Dr. Brochin. Petitioner is also entitled to attendant post-operative care. The Commission finds this treatment plan to be reasonable and necessary.

With respect to TTD benefits, the Commission awards Petitioner TTD benefits from November 18, 2021 through April 13, 2023, the date of arbitration. The evidence demonstrated that Petitioner was taken off work by his treating physicians during this period. The Commission additionally finds that Respondent is entitled to a credit of $4,678.10 for TTD benefits previously paid to Petitioner and as stipulated by the parties on the Request for Hearing form.

As a final matter, the Commission notes that the Arbitrator awarded Respondent $4,678.10 for a PPD advance and also stated that any credit Respondent received would be pursuant to Section 8(j) of the Act. This matter was heard pursuant to Section 19(b) of the Act and the nature and extent of Petitioner's injuries was not at issue. As such, the Commission strikes the Arbitrator's award of credit for the PPD advance and reserves the matter for further proceedings, if any, related to compensation for permanent disability. The Commission further strikes the Arbitrator's award pursuant to Section 8(j) of the Act. Respondent made no claim and offered no evidence proving entitlement to credit under Section 8(j) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed on June 12, 2023, is hereby reversed for the reasons stated above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable, necessary, and related medical bills consistent with this Decision and pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the prospective medical care in the form of the CT scan of the right shoulder for pre-operative planning and the right shoulder reverse total shoulder arthroplasty recommended by Dr. Brochin along with the attendant post-operative care 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 $518.40 per week for 73 1/7 weeks, from November 18, 2021 through April 13, 2023, that being the period of temporary total incapacity for

work under Section 8(b) of the Act. Respondent is also entitled to a credit of $4,678.10 for TTD benefits previously paid to Petitioner and as stipulated by the parties.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of credit for the PPD advance and any credit pursuant to Section 8(j) of the Act is hereby stricken as indicated in this Decision.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $45,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

March 18, 2024
CAH/pm
O: 2/15/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC003165
Case Name	Louis Santiago v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0128
Number of Pages of Decision	16
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Steven Sigmond
Respondent Attorney	David Christensen

DATE FILED: 3/18/2024

/s/Kathryn Doerries, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LOUIS SANTIAGO,

Petitioner,

vs. NO: 11 WC 03165

STATE OF ILLINOIS,
ILLINOIS DEPARTMENT OF
TRANSPORTATION,

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 admissibility of medical records, causal connection, temporary total disability, medical expenses, prospective medical, and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

The Commission affirms the findings of causal connection, temporary total disability, prospective medical, and permanent partial disability. The Commission reverses the evidentiary ruling regarding the admissibility of medical records and makes further modifications as stated below.

Section 16 of the Act states:

> The records, reports, and bills kept by a treating hospital, treating physician, or other treating healthcare provider that renders treatment to the employee as a result of accidental injuries in question, certified to as true and correct by the hospital, physician, or other healthcare provider or by designated agents of the hospital, physician, or other healthcare provider, showing the medical and surgical treatment given an injured employee by such hospital, physician, or other healthcare provider, shall be admissible without any further proof as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters. There shall be a rebuttable presumption that any such records, reports, and bills received in response to Commission subpoena are certified to be true and correct. This paragraph does not restrict, limit, or prevent the admissibility of records, reports, or bills that are otherwise admissible. This provision does not apply to reports prepared by treating providers for use in litigation. 820 ILCS 305/16 (West 2008).

Pursuant to Section 16 of the Act, the Commission reverses the admission into evidence of Petitioner's exhibits PX1A, PX10, and PX11 because those exhibits were not offered pursuant to subpoena or certification. The Commission finds that the Arbitrator erred in admitting the above stated exhibits over Respondent's objection and reverses the ruling thereby excluding PX1A, PX10 and PX11.

Accordingly, the Commission modifies the award of medical expenses and denies the bill from Prescription Partners as said bill was admitted in Petitioner's exhibit PX11 which the Commission now excludes.

The Commission modifies the Findings section of the Arbitrator's Decision to include the parties' stipulation of TTD and maintenance benefits paid by adding the following: "Respondent shall be given a credit of $330,218.86 for TTD, $0 for TPD, $342,586.95 for maintenance, and $0 for other benefits, for a total credit of $672,805.81."

The Commission modifies the Order section of the Arbitrator's Decision and strikes, "[a]nd Respondent shall continue paying Petitioner TTD benefits."

The Commission further modifies the Order section and adds, "The Arbitrator denies Petitioner's Petition for Penalties and Attorney's Fees."

The Commission modifies the Arbitrator's Decision, page 7, Issue F, second paragraph, and strikes the word "bilateral" before "rotator cuff tendinitis."

The Commission modifies the Arbitrator's Decision, page 8, Issue K, and strikes, "[a]nd continuing TTD benefits shall be paid."

The Commission modifies the Arbitrator's Decision, page 9, Issue O, and strikes the last paragraph of the Decision.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 28, 2023, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of medical expenses is vacated, in part, and affirmed, in part.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical service, pursuant to the medical fee schedule, of $1,251.00 to United Rehab Providers, and $15,383.80 to Premier Healthcare Services, as provided in sections 8(a) and 8.2 of the Act, less any payments already made by Respondent towards these specific bills. Petitioner is not yet at MMI.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is ordered to authorize and pay for the following treatment: lumbar epidural steroid injection, continued pain management, and a second opinion right shoulder evaluation.

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.

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1) (West 2013)*.

March 18, 2024
o- 1/30/24
KAD/jsf

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

/s/*Maria E. Portela*
Maria E. Portela

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC003165
Case Name	Louis Santiago v. State of Illinois – Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Steven Sigmond
Respondent Attorney	David Christensen

DATE FILED: 2/28/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 28, 2023 4.94%

/s/Nina Mariano, Arbitrator
Signature

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

February 28, 2023

/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
ARBITRATION DECISION

Louis Santiago
Employee/Petitioner

Case # **11** WC **3165**

v.

IDOT
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 **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **August 17, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **1/17/2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**44,135**; the average weekly wage was $**848.75**.

On the date of accident, Petitioner was **44** years of age, ***married*** with **1** dependent children.

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

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

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

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $1,251.00 to United Rehab Providers, $15,383.80 to Premier Healthcare Services, and $51,811.77 to Prescription Partners, as provided in Sections 8(a) and 8.2 of the Act, less any payments already made by Respondent towards these specific bills.

Arbitrator finds Petitioner is not yet at MMI and Respondent shall continue paying Petitioner TTD benefits.

Respondent is ordered to authorize and pay for the following treatment: lumbar epidural steroid injection, continued pain management, and 2nd opinion right shoulder evaluation.

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

February 28, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

LOUIS SANTIAGO,	)	
	)	
PETITIONER,	)	
	)	
v.	)	**No.: 11 WC 3165**
	)	
IDOT,	)	
	)	
RESPONDENT.	)	

FINDINGS OF FACT

Procedural Background

Louis Santiago ("Petitioner") alleged injuries occurring January 17, 2011 arising out of and in the course of his employment with IDOT. An appearance of representative was filed February 10, 2011 on behalf of Respondent-Employer by the Illinois Attorney General's Office. Subsequently, a stipulation to substitute attorneys for Petitioner was filed on February 26, 2014 wherein Morici, Figlioli & Associates withdrew and Steven A. Sigmond appeared as Attorney for Petitioner.

Testimonial Evidence

Petitioner is 56 years old, married with three children over the age of 18. Petitioner worked for IDOT since 2008 and as a highway maintainer from 2010 to 2011. He operated a snowplow/dump truck. In addition to truck driving, his duties include vehicle maintenance, changing snow blades, road repair, moving and placing arrow boards, operating jackhammers, loading asphalt, putting up fencing and other physical labor. His highest level of formal education is a high school diploma. His vocational experience consists entirely of being a truck driver.

On January 17, 2011, at about 5:30 PM, Petitioner was working for Respondent driving a snowplow when he was rear-ended by a large pick-up truck driven by Jeffery Chin on I-94. Petitioner described it as a hard impact and that his body was thrown around the truck. Petitioner immediately reported the accident to the employer by calling dispatch. His supervisor came to the scene of the accident along with the police.

Petitioner felt immediate pain to his neck, back and right shoulder, along with numbness and tingling in his hands. These symptoms were worse the next morning when he reported to work, and his supervisor drove him to the hospital. At the hospital, North Shore Medical Center, the day after the accident, Petitioner was instructed to remain off work. He has never been cleared to return to work by any treating

physician since that day. Petitioner followed up with Dr. Stamelos, an orthopedic surgeon. He has been under a doctor's care for these injuries ever since then and has never been discharged from care.

Dr. Stamelos ordered injections, diagnostic testing and physical therapy. Dr. Stamelos recommended surgery. Second opinions from two other orthopedic surgeons, Dr. Ivankovic and Dr. Sokolowski, did not differ. Petitioner then decided to place himself under the care of Dr. Sokolowski. He has been seeing Dr. Sokolowski ever since and remains under his care at the present. Dr. Sokolowski performed what Petitioner understood to be a cervical fusion.

Petitioner had prior back injuries, but nothing about prior injuries or treatment had prevented him from returning to work and performing all of the duties of truck driving and highway maintenance.

Following spinal fusion surgery, Dr. Sokolowski referred Petitioner to Dr. Romano, a shoulder surgeon. After diagnostic testing and a consultation with Dr. Howard An at Rush, Petitioner proceeded to have multiple surgeries on his right shoulder performed by Dr. Romano. Dr. Romano also addressed bilateral carpal tunnel syndrome during surgery. Dr. An also performed spinal surgery on Petitioner.

Petitioner also sees Dr. Patodia, a pain management specialist. Her treatment has been limited to cervical issues. Petitioner's understanding is that despite the recommendations of Dr. Sokolowski and Dr. Patodia, she has not been able to address lumbar issues due to lack of authorization.

Currently, Petitioner is still under the care of Dr. Sokolowski and Dr. Patodia. Neither doctor has ever discharged him from care or released him back to work. He remains symptomatic in the neck, back and right shoulder, as well as both hands.

Petitioner believes it would be dangerous for him to operate a commercial truck in his condition. He cannot climb into the truck, operate the controls, perform routine maintenance or hook equipment to the truck. He is unable to do a blind side check. He is unable to move equipment such as sign boards.

Petitioner testified that all of his TTD benefits have been paid to date. He would like to return to work, but no doctor has ever cleared him to do so.

Respondent's only witness was Rob Kinsch, regional manager of Frasco Investigative Services. Mr. Kinsch did not participate directly in any investigation of Petitioner, but testified regarding readily available public information of prior claims. He testified that Petitioner had been involved in two other motor vehicle collisions 1) on February 10, 2016, Petitioner was the defendant in a civil suit arising from a motor vehicle accident; and 2) on May 9, 2012, Petitioner filed a civil suit arising out of a motor vehicle collision. Jeffery Chin, the other driver in this claim, was not involved in either of the other claims. He stated that the investigation of Petitioner raised no red flags. He did not know the parameters of the assignment and had no knowledge as to whether surveillance of Petitioner was requested or undertaken. He did not write the report that was entered into evidence, he did not review the entire investigation file before testifying and he did not bring the file with him to the hearing.

Petitioner was not questioned regarding the above referenced motor vehicle accidents by either Petitioner's or Respondent's Attorney. There was also no medical evidence presented regarding any treatment related to these motor vehicle accidents.

Petitioner admitted he had prior workers' compensation claims for injuries to his neck and back. A settlement contract for claim number 09WC05953, was submitted into evidence for which Petitioner claimed low back disc bulges/sprain and settled for 5% person as a whole. He was subsequently shown the award in 05WC010063, for which he received an award of 40% person as a whole. [Rx11, 12]. He testified that he thought he only received a settlement for his neck. Respondent's Ex10 also reflects an additional prior workers' compensation claim, 95WC033146, which Petitioner settled for 3% person as a whole.

Petitioner testified that he has a valid driver's license with no restrictions and has a valid CDL license issued in March of 2020, valid until 2024. Petitioner testified he cannot drive a truck right now because it is too painful and dangerous. Petitioner stated he cannot handle the equipment, the air brakes, the emergency lights, and that it is hard to climb into the truck, check the oil, open the hood, hook equipment up to the truck, change a snow plow or check his blind spot.

Medical Exhibit Evidence

Dr. Mark Sokolowski, an orthopedic surgeon, has been Petitioner's primary treating physician for the past 10 years, and saw Petitioner 2 days before the trial, which Petitioner testified to. His assessment states the following: "Louis Santiago is a 56 year-old male with the following diagnosis, causally related to work injury:

1. Cervical Pain.
2. Cervical radiculopathy.
3. Status post C3-T1 fusion.
4. Bilateral rotator cuff tendinitis.
5. Status post right shoulder surgery with adhesive capsulitis.
6. Carpal Tunnel syndrome.
7. Ulnar nerve entrapment at Guyon's canal.
8. Lumbar pain.
9. Lumbar radiculopathy.

(See exhibit 1A)

All of these diagnoses are unrebutted other than number 6, carpal tunnel syndrome, which is disputed by Respondent's 2nd report from Dr. Bernstein. There is also no evidence in the medical records providing an explanation for how numbers 6 and 7 are related to the work injury, which initially was reported as injuries to the neck, right shoulder and low back. While Petitioner reported numbness and tingling symptoms in his hands early on, which the medical records indicate may be related to cervical radiculopathy, there is no explanation as to how the work accident or treatment he underwent for the work accident would have caused on onset of carpal tunnel syndrome or ulnar nerve entrapment, especially since his initial EMG was negative for carpal tunnel syndrome and carpal tunnel surgical release did not appear to improve his symptoms. He was also not diagnosed with carpal tunnel syndrome until 2014, over three years after the accident date. There is a mention of double crush phenomenon in the medical records, but that was not confirmed nor explained.

Records from Dr. Stamelos (Petitioner's exhibit 10) show that Petitioner went to Dr. Stamelos within 24 hours of the accident, having first been to the North Shore Hospital ER. Dr. Stamelos ordered diagnostic testing and continued to hold Petitioner off work. On March 15, 2011, Dr. Stamelos recorded that "The patient's work status is severe whiplash and lumbar pain due to work-related motor vehicle accident on

January 17, 2011. Severe pain not improving with physical therapy, injection and medicines. The patient needs imaging studies." Work status reports from Dr. Stamelos reported petitioner to be "100% disable for work."

Imaging studies ordered by Dr. Stamelos showed that Petitioner suffered a central herniation at L5-S1, diffuse bulge at L3-4 and L4-5 narrowing the foramina, a left herniation at C6-7, and foraminal narrowing at C4-5 and C5-6. Later studies ordered by Dr. Sokolowski showed a superior labral tear and other findings in the right shoulder. (see Petitioner's exhibit 6, MRI Lincoln Imaging Center)

Petitioner has undergone numerous surgeries over the years to address these issues:

Cervical Surgeries

- Cervical fusion C3-C5, performed by Dr. Sokolowski in 2012
- Cervical diskectomy and fusion C5-6, C6-7, by Dr. Sokolowski in 2012
- Anterior cervical fusion by Dr. Sokolowski in 2013
- C5-T1 foraminotomy at C5/6 & C7-T1 in 2016
- Posterior cervical fusion by Dr. Howard An in 2016

Right Shoulder Surgeries

- Rotator cuff repair by Dr. Romano in 2014
- Manipulation under anesthesia by Dr. Romano in 2015
- Arthroscopy by Dr. Romano in 2017

Two reports from Respondent's IME Examiner, Dr. Avi Bernstein, offer no dispute regarding diagnosis or causation of the cervical and lumbar injuries, and no opinion regarding the shoulder injuries. On January 9, 2014, Dr. Bernstein assessed that Petitioner was doing poorly following a work-related incident and anterior cervical fusion. At that time, Dr. Bernstein recommended further diagnostic studies of the cervical, lumbar and shoulder injuries. In a follow-up report dated April 6, 2015, Dr. Bernstein found the fusion "difficult to assess" and further commented that "I am not convinced that this patient has a completely-healed fusion…" Dr. Bernstein's report concluded that he would recommend a permanent 15-pound lifting restriction and sedentary light duty, but did not believe additional surgery would improve his subjective complaints.

Dr. Sokolowski's records (Petitioner's exhibit 1) also exhibit concern that the cervical spine was not entirely fused, beginning with the report on 7/15/13. Dr. Sokolowski ordered use of a bone-stimulator for the non-union as well as further physical therapy. Dr. Sokolowski became concerned that the shoulder injury might be contributing to the failure of the spinal injury to heal. A shoulder MRI was ordered, as well as a consultation with a shoulder surgeon, Dr. Romano.

Records of Dr. Anthony Romano were admitted as Petitioner's exhibits 3 (Hinsdale Orthopedics) and 4 (Romano Orthopedics). Dr. Romano diagnosed a partial thickness articular surface tear of the right shoulder supraspinatus, along with multiple other findings, consistent with the shoulder MRI taken at Midwest open MRI on 1/15/2014, and recommended surgery. Dr. Romano performed surgery on June 3, 2014. The postoperative diagnosis was "Rotator cuff tear right shoulder with impingement with partial tear of the biceps tendon and superior anterior and posterior labral tear." Dr. Romano ordered post-op physical therapy. Reports from Athletico to Dr. Romano showed slow improvement.

An additional diagnosis of bilateral carpal tunnel is found in Dr. Romano's records beginning August 14, 2014, and also in Dr. Sokolowski's records beginning September 30, 2014, following receipt of materials from Dr. Romano. Reports from Athletico to Dr. Romano also comment that Petitioner's impairments would prevent a return to work, and that neck pain was limiting progress in shoulder physical therapy. Dr. Romano continued to treat Petitioner's shoulder injury up until 2018, giving injections, performing additional surgery, and continuing to order and monitor physical therapy.

Dr. Sokolowski continued to treat Petitioner during and after the time Petitioner was seeing Dr. Romano. On August 12, 2015, Dr. Sokolowski commented that "Mr. Santiago is in a difficult situation…Clearly the minimally mobile right shoulder is placing a significant stress upon his cervical spine and resulting in marked functional limitations…In the absence of improvement in his shoulder function, his functional limitations will be permanent. His need for pain medication would likely also be permanent." (Ex1. Pp338-9). On that date, as on many other occasions before and after, Dr. Sokolowski documented …" the following diagnoses causally related to work injury: 1. Cervical Pain. 2. Cervical radiculopathy. 3. Status post ACDF at C5-7 on December 6, 2012. 4. Lumbar pain and radiculopathy. 5. Bilateral rotator cuff tendinitis, right greater than left. 6. Status post right shoulder surgery. 7. Carpal tunnel syndrome. 8.Ulnar nerve entrapment at Guyon's canal. 9. Lumbar pain. 10. Lumbar radiculopathy."

On November 18, 2015, Dr. Sokolowski noted that shoulder therapy was causing Petitioner additional neck pain. On March 11, 2016, Dr. Sokolowski noted that the first lumbar injection was helpful, and that Petitioner was in need of a cervical CT. Concerned that the findings continued to suggest a non-union, Dr. Sokolowski recommended that Petitioner see Dr. Howard An.

Records of Dr. An, a spine surgeon with Midwest Orthopedics at Rush, were admitted as Petitioner's Exhibit 5. Dr. An examined Petitioner on May 24, 2016. He commented that the bone had not healed across the disc space at both the C5-6 and C6-7 levels, and that Petitioner remained symptomatic due to nonunion. His recommendation was that of posterior fusion with instrumentation from C5-T1 as well as a foraminotomy at C5-6 on the right side. Dr. Sokolowski agreed with this recommendation. Dr. An did in fact perform this surgery on October 6, 2016. Dr. An continued to follow Petitioner through June 9, 2017. At that time, he found Petitioner unable to return to work in any capacity. He also commented that Petitioner continued to suffer from rotator cuff pathology at that time.

Dr. Sokolowski continued to treat Petitioner during the time Petitioner was seeing Dr. An. Following the multi-level posterior cervical fusion surgery by Dr. An, records from Dr. Sokolowski dated 1/6/2017 showed that Petitioner's lumbar issues persisted, and an MRI was ordered. The lumbar MRI showed multi-level bulging. A repeat cervical CT was taken 3/21/17, and per Dr. Sokolowski's records from 5/12/2017, it showed that the T1 screw had loosened. Dr. Sokolowski recommended pain management, continued use of the bone stimulator and lumbar injections in subsequent notes made later in 2017. On 1/6/2018, Dr. Sokolowski noted that the cervical pain was worsened by shoulder dysfunction, and that Petitioner needed a shoulder evaluation, cervical CT and lumbar injections. These recommendations for a shoulder evaluation and lumbar injections have been repeated by Dr. Sokolowski since then, for over four years.

A Lumbar EMG taken 8/29/2019 (Ex 1 p100) showed evidence consistent with active lumbar radiculopathy, and a lumber MRI taken 11/6/2019 (Ex 1 p93) showed L4-5: 1-2 mm diffuse disc protrusion with effacement of thecal sac. Dr. Sokolowski's records from 10/2/19 (Ex 1 p94) noted that the EMG confirms radiculopathy and that Petitioner's chronic pain was the result of the work injury. In

records from 3/6/2020 (Ex1 p83), Dr. Sokolowski noted that radiculopathy had been consistent over the past 8 years, and that Petitioner may need a laminectomy for the L4-5 protrusion. Dr. Sokolowski's records from 2021 continued to note that disc pathology had been confirmed, that Petitioner will need 3 lumbar injections per year, and that Petitioner still needs a 2nd opinion regarding his shoulder (Ex1, pp 50,44,37).

Petitioner has also been under the care of Dr. Patodia, a pain management specialist. Her records were admitted as Exhibit 2. The most recent office note from Dr. Patodia (Ex2 p1) is for May 25, 2022 There, Dr. Patodia notes that without pain medication, Petitioner is totally disabled. Dr. Patodia states, "It is very difficult to state the patient has reached MMI and he will be able to return to work in any capacity." She feels that necessary treatment may take another 2-3 years. Dr. Patodia has expressed concerns that the patient is not being treated as recommended, and that he could use additional physical therapy, epidural steroid injections and possible surgery (Ex 2 p5). These same concerns have been noted and expressed by Dr. Patodia repeatedly over numerous office visits.

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).

Arbitrator finds that Petitioner testified credibly, honestly and to the best of his ability. The Arbitrator was not presented with any evidence indicating a willingness to lie or deceive on the Petitioner's part. Overall, his testimony was corroborated by the medical records in evidence. Arbitrator also observed Petitioner show signs of difficulty while sitting in the witness chair and in the hearing room while moving around.

Preliminary Issue: Foundation of Medical records

820 ILCS 305/16 creates a rebuttable presumption that medical records "certified to as true and correct … shall be admissible without any further proof as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters." Courts have held that "Section 16 of the Act relaxes the foundational requirement for the admission of hospital records" *National Wrecking Co. v. Industrial Comm'n*, 352 Ill. App. 3d 561, 567, 287 Ill.Dec. 755.

At the hearing, Respondent made several objections to admittance of medical records based on some missing information in the records and page inconsistencies. The Arbitrator overruled Respondent's objections and admitted the medical records but noted Respondent's objections. The Arbitrator overruled the objections because the pagination problems and other inconsistencies were minor in the context of the entire case, which involved extensive treatment for multiple body parts. Further, Petitioner's Attorney indicated that he did not remove any pages but had the exhibits Bates Stamped, which was likely the reason for a difference in page numbers and the Arbitrator was satisfied with that response.

The Arbitrator does not find that there were any intentional admissions as it relates to the medical records and that, additionally, the Arbitrator provided the Respondent with the opportunity to bifurcate the trial to provide Petitioner's Attorney time to cure any inconsistencies as it related to the certification of medical records and Respondent did not wish to bifurcate the trial for that reason. Further, Respondent's IME examiner, Dr. Bernstein, relied on records in his report which Respondent was objecting to. Finally, while the Arbitrator would have liked to see the emergency room records, the accident is not disputed and therefore the Arbitrator does not believe it is significant that they were not offered into evidence. Petitioner testified to his emergency room treatment and emergency room care is also referenced in other records. While some operative reports are missing from the medical records, the multiple operations are repeatedly referenced in the medical records, so the Arbitrator does not believe this to be of great significance either in the context of the entire claim.

With regard to Petitioner's Exhibit 1A, the most recent office visit notes that Petitioner's Attorney did not have time to get certified, was admitted over Respondent's objection, since Petitioner testified regarding the recent visit and his testimony supported its admission.

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

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 (1980), including that there is some causal relationship between his employment and his injury, Caterpillar Tractor Company v. Industrial Commission, 129 Ill.2d 52 (1989). To be compensable under the Act, an injury need only be a cause of an employee's condition of ill-being, not the sole or primary causative factor. Sisbro, Inc. v. Industrial Commission, 2017 Ill.2d 193 (2003).

Petitioner's current conditions of ill-being, specifically cervical pain, cervical radiculopathy, status post C3-T1 fusion, bilateral rotator cuff tendinitis, status post right shoulder surgery with adhesive capsulitis, lumbar pain, lumbar radiculopathy, are casually related to the injury. This finding is based upon Petitioner's testimony and the medical records. All of these diagnoses are corroborative and consistent with the testimony and other medical records submitted by Petitioner. Respondent presented no medical opinions to rebut the relatedness of these conditions.

Arbitrator finds that the conditions of carpal tunnel syndrome and ulnar nerve entrapment at Guyon's canal are not causally related to the work accident and relies on the opinions of Dr. Bernstein with respect to carpal tunnel syndrome. There was no evidence presented explaining the causal connection between the work accident and the onset of the two conditions. Additionally, Petitioner's initial EMG was negative for carpal tunnel syndrome and carpal tunnel syndrome was not diagnosed until 3 years

after the accident. The injuries initially reported and that Petitioner continuously treated for since the accident were to the neck, back and right shoulder.

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

All of the medical services provided to Petitioner are found to be reasonable and necessary to cure or relieve the effects of the injury. This finding is based upon Petitioner's testimony, the medical records and the opinions of the treating physicians.

While Respondent presented the report of Dr. Bernstein who indicated he did not believe another cervical surgery would improve Petitioner's subjective complaints, he also gave the opinion that he was not sure if Petitioner's prior surgical fusion was actually fused. Several treating physicians later indicated it was not fused and recommended further surgery. Therefore, Arbitrator finds the treating physicians' opinions more persuasive than Dr. Bernstein's on this issue as he only evaluated him two times.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services. Accordingly, the following medical bills are awarded: $1,251.00 to United Rehab Providers, $15,383.80 to Premier Healthcare Services, and $51,811.77 to Prescription Partners. Respondent presented no evidence or opinions disputing the reasonableness and necessity of these charges.

WITH RESPECT TO ISSUE (K) WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner has remained off work based on doctor's orders since the day of the accident. He has never returned to work or been cleared to return to work by any treating physician. Petitioner testified that all TTD has been paid to date and that he has never been notified of any change in status of his payments. While there are discussions in the medical records regarding some of his work related conditions and need for medication being permanent, his overall condition has never stabilized for more than a few months without additional treatment being recommended. Arbitrator finds that Petitioner is not at MMI and continuing TTD benefits shall be paid.

WITH RESPECT TO ISSUE (L) WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Arbitrator does not make a finding with regard to nature and extent of the injury as Arbitrator finds that Petitioner is not at MMI and additional treatment shall be authorized. Arbitrator does not find that Petitioner is permanently and totally disabled at the time of hearing and as his treating physicians have indicated, his work ability should be assessed when he has completed the recommended treatment.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT?

The Arbitrator finds no basis for any award of penalties and fees. Petitioner is seeking penalties based upon the lack of authorization for treatment the Petitioner's treating doctors have been seeking since 2018. While the Arbitrator does not see sufficient evidence in the record to support Respondent not authorizing the specified treatment, the Arbitrator does not have the authority to award penalties for not

authorizing medical treatment. The Arbitrator only has the authority to award penalties for failure to pay for incurred reasonable and necessary medical treatment, for which the reason for lack of payment is unreasonable or vexatious and no evidence was presented to support same. O'Neil v. IWCC, 2020 IL App (2d) 190427WC. No penalties or fees are merited, and therefore none are awarded.

WITH RESPECT TO ISSUE (O) OTHER (AUTHORIZATION OF SPECIFIC TREATMENT)

Respondent is ordered to authorize and pay for a lumbar epidural steroid injection to be administered by Dr. Patodia, continued pain management and a second opinion regarding Petitioner's right shoulder.

The Arbitrator notes that Dr. Sokolowski opined that Petitioner would require three epidural injections each year on an ongoing basis. The Arbitrator finds that such treatment is reasonable and necessary, and awards same pursuant to Section 8(a) of the Act until such time as they may no longer be necessary. Further, the Arbitrator notes the repeated medical opinions regarding ongoing pain medication, such as "As long as he takes his medication his pain is manageable" [Px2p01]. Based upon the same, the Arbitrator finds that such treatment is reasonable and necessary, and awards ongoing pain medication pursuant to Section 8(a) of the Act until such time as they may no longer be necessary.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010695
Case Name	Gary Hughes v. Western Illinois University
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0129
Number of Pages of Decision	17
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	J. Kevin Wolfe
Respondent Attorney	Brett Kolditz

DATE FILED: 3/19/2024

/s/Christopher Harris, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GARY A. HUGHES,

Petitioner,

vs. NO: 21 WC 10695

WESTERN ILLINOIS UNIVERSITY,

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 and necessity of the medical treatment and expenses, temporary total disability, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

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.

March 19, 2024

O: 3-7-24
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	21WC010695
Case Name	Gary Hughes v. Western Illinois University
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	J. Kevin Wolfe
Respondent Attorney	Brett Kolditz

DATE FILED: 6/5/2023

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

/s/ Bradley Gillespie, Arbitrator
Signature

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

June 5, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

Gary Hughes
Employee/Petitioner

Case # 21 WC 010695

v.

Consolidated cases: ______

Western Illinois University
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 Arbitrator Bradley Gillespie, Arbitrator of the Commission, in the city of Peoria, Illinois, on April 3, 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 16, 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 $83,490.68; the average weekly wage was $1,605.59.

On the date of accident, Petitioner was 48 years of age, with 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 $43,429.66 for TTD, $ for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $43,429.66.

Respondent is entitled to a credit of $41,625.20 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $871.73/week for 86.4 weeks, because the injuries sustained caused the 40% loss of the right leg, as provided in Section 8(e)(12) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $871.73/week for 6.325 weeks, because the injuries sustained caused the 2 ½% loss of the right arm, as provided in Section 8(e)(10) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $871.73/week for 12.5 weeks, because the injuries sustained caused the 2 1/2% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from May 29, 2021, to July 20, 2021 & August 19, 2021, to March 7, 2022, and May 2, 2022, to August 7, 2022, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of $43,429.66 for temporary total disability benefits that have been paid.

Respondent is responsible for all unpaid reasonable and necessary medical services as provided in Petitioner's Exhibit 4.

Respondent shall be given a credit of $41,625.20 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.

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

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

Bradley D. Gillespie
Signature of Arbitrator

JUNE 5, 2023

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GARY HUGHES,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No.:21WC010695**
	)	
WESTERN ILLINOS UNIVERSITY,	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR

FINDINGS OF FACT

Gary Allan Hughes, Jr., was employed by Western Illinois University, full time in the Steam and Power Plant #4 as a stationary engineer. Tr. 11. On March 16, 2021, he was under the art gallery basement, went to exit, and tripped over old equipment on the ground that he did not see. He landed on his whole right side, right elbow and right knee, twisting his back on the way down. Tr. 12. This caused him pain in his back, hip, and leg which he described as a shooting sharp pain in his back and hip area. He also had dull aching pain in his lower leg which just continued after that. Tr.12. Following the incident he tried to treat it on his own by taking over the counter medication and admittedly drinking more than normal. Tr. 17-18. He had some muscle relaxers leftover from his earlier hip replacement. Tr. 18. Pain led him to see Dr. Arnold in and around March 26, 2021. Records reflect Dr. Arnold tried to manipulate the right hip but that elicited pain. Tr. 19. Physical therapy was tried but it didn't last very long. They didn't want to pursue it because he was in too bad of shape. Tr. 20. Therapy records showed that he was having shoulder pain at a 2 out of 10 level; Right elbow pain at a 3 out of 10 level; and back, right hip and knee pain at a 10 out of 10 level. Tr. 20. He could not tolerate active range of motion secondary to hip pain. Tr. 20. He had several physical therapy visits but ultimately returned to Dr. Chukwunenye Osuji on referral from Dr. Arnold. Tr. 21.

Petitioner previously had a left hip replacement by Dr. Osuji in 2016 on the left side. Tr. 13. After the surgery and post-surgical therapies, he saw Dr. Osuji in and around May 2, 2017. Tr. 13. He was having some additional pain relative to the left hip surgery and was taking some over the counter medication for his right hip complaints. Tr. 14. However, as of that date he had not gotten any formal treatment for the right hip, did not use any assistive devices relative to the right hip, and had returned to work basically full duty. He continued working full duty until 2019. In 2019 he slipped off the rung of a ladder. The date of incident was June 7, 2019, when he was climbing down a ladder and had to step over a pipe. Tr. 15-16. In the report he indicated pain in his right shoulder, lower back, neck, and left leg. Tr. 16. His right leg was caught on a pipe. Tr. 16. He did not have pain in the right hip from the accident in 2019, did not seek out any extended treatment or any treatment at all for the incident, returned to work full duty with no problems after

the incident, and had no care, treatment, prescription medications or therapy for his right hip after this incident in 2019. Tr.17. He did not miss any work because of complaints of pain, difficulties or problems in his right hip between the 2019 incident and the incident of March 6, 2021. Tr. 17.

Petitioner saw Dr. Osuji on March 16, 2021, at which time he told the doctor he had no significant issues with right hip prior to this fall. Tr. 21-22. He was able to walk when he saw Dr. Osuji; however he did have difficulty because of the pain in his hip. He was having difficulty sitting, standing, climbing stairs and sleeping. Tr. 22. Dr. Osuji wanted to schedule him for surgery, but he couldn't get approval through workers' compensation. The delay between the initial visits and surgery in May of 2022 was due to the approval process. Tr. 23. He listened to the periods of time recited prior to his testimony regarding the periods he was off of work and those were accurate. Tr.23.

Petitioner had surgery on May 4, 2022. He followed up on May 19, 2022, and Dr. Osuji had him on a 20 pound lifting restriction and half days. However, he must be 100% to return to work. Tr.23. On August 5, 2020, there was a note he could return to work with no restrictions, and he returned on August 8, 2022. It was workers' compensation releasing him, not the doctor. Tr. 24. He last saw Dr. Osuji in September of 2022. Dr. Osuji never released him. Human resources called his boss, and his boss called him to come back to work, which he did. Tr. 24-25. He currently has soreness in his right hip, but he is able to walk, climb and kneel. He takes ibuprofen for his right hip. He has stopped drinking. He has no current complaints in his shoulder or elbow. He has no complaints about his back. He is doing his regular job, the same job he did when he got injured. Tr. 25-26.

On cross-examination Petitioner indicated he had received no wage increases since the accident of 2021. He had received no increases or bonus periods. His take home pay is essentially the same. He's worked at Western Illinois University for 20 1/2 years. He is on track to retire within the next 4 to 8 years and plans on doing so. When he retires he gets a pension along with medical benefits. Tr. 26-27.

After the injury report of 2019 that he discussed on direct examination, he had no other injuries to his right leg before 2021. He didn't recall reporting anything to Tristar during that time. Tr. 28. He could have worked in the art gallery in 2020 as he is all over campus all the time. Tr. 28. He recalls a situation where he was accessing an opening in a floor patch in the art gallery. There was a 2 foot stepladder, and when he stepped on the ladder it folded and he fell the rest of the way. Tr. 29. He reported it to Tristar as it was required. He reviewed the Tristar Notification of Injury which looks somewhat consistent with what he may have reported but he doesn't remember putting any injuries in. Tr.29. It wasn't really an accident. It was just a slip. The fitters had made a permanent ladder, someone else had fallen after he did and then he came the other way through the tunnel. Tr. 29. They're required to fill out paperwork and then call the representative. He thinks his boss did a lot of the paperwork. He just kind of told his boss. His boss asked him if he was hurt and he said a little bit, but he got over it. Tr. 30. He never sought any medical treatment for it. Tr. 30.

Regarding the time he was off in 2021 and 2022, he was using over the counter medication for those periods. He may have used Naproxen or something like that. Usually it was just over the counter. That allowed him to get through the day. Tr. 32.

On redirect examination, with regard to the supposed 2020 incident he did not get any treatment. Tr. 32. He did not miss any time from work, and he continued working the day it occurred. Tr. 33. Because it was witnessed it had to be reported. Other than reporting it, he had no problems that impacted his ability to work or go about his activities of daily living as a result of the incident reported in May of 2020. Tr. 33.

Petitioner provided medical evidence by means of records and testimony of Petitioner's treating physician. On March 25, 2021, Petitioner saw Dr. John Arnold. He presented to the office nine days after a fall at work on March 16, 2021. He tripped over a piece of equipment and landed directly on his right knee and right elbow, twisting his back basically on the way down. He was having persistent problems and pain in his right elbow and problems in his right shoulder. His right knee was hurting. He was having low back pain and right sided sciatica. In regard to his right hip, he could not turn his right lower leg and if he did it hurt in his hip so he could have an injury to his hip also. Px.1, pg. 3. Physical exam noted limited motion of the right shoulder and pain with rotation, joint line tenderness and discomfort in the right knee, standing low back pain right greater than left, and right sided sciatica. He could not turn his entire right leg. "When he does it hurts in his right hip." Px.1, pg. 3. He was assessed with pain and or injury to the right knee, right elbow, right hip, right shoulder, and lower back with sciatica. Px.1, pg.4. Pain medication, radiological studies and possible orthopedic referral were all discussed. Px.1, pg.4. X-ray of the same date revealed progressive osteoarthropathy of the right hip with severe narrowing worse when compared to March 17, 2016. Px.1, pg.1.

Petitioner submitted corresponding physical therapy forms and reports from May 11, 2021. Px.2. On that date he was having right shoulder and elbow pain of 3 out of 10 to start, but 10 out of 10 pain in his right hip, knee and back, reporting significant right hip pain which limited functional mobility. Px.2, pg.1. The therapist noted he demonstrated significant limits in the right hip range of motion with the inability to tolerate any form of manual therapy, including hip range of motion, joint mobilization or stretching to the right hip. The therapist contacted the primary care physician about a referral to orthopedics for the right hip. Px.2, pg.4. Petitioner was demonstrating good improvement in his right shoulder and right elbow for which further physical therapy would be of benefit. Px.2, pg. 4.

Dr. Chukwunenye Osuji testified by evidence deposition marked as Petitioner's Exhibit 3. He concentrates in orthopedics and does mostly hip replacements. Px.3, pg.5. He is board certified in orthopedics. Px.3, deposition exhibit 1. *[Further references to exhibits to Dr. Osuji's deposition will be noted as "Dx" with supporting page numbers of the exhibit.]* Petitioner presented on May 25, 2021, with right hip pain and pain that had worsened since a fall in March of 2021. Px.3, pg. 6; Dx.2, pg. 11. He had no significant issues with the hip prior to that time. Id. Physical therapy was too painful, he had difficulty walking, sitting and standing, negotiating stairs and ladders, inclines, and had pain with prolonged walking. Px.3, pg. 6-7; Dx.1, pg. 11. He even had pain when he sat. Dx.1, pg. 11. Physical examination showed severely antalgic gait. Dx.1, pg. 11. He was

unable to actively flex his right hip and it was stiff with zero degrees of internal rotation and pain when the doctor attempted rotation. Px.3, pg. 7. Passive range of motion elicited pain. Id. Radiograph showed obliteration of the right hip joint space with bone on bone contact between the femoral head and the acetabulum. Px.3, pg.8. Radiographic impression was severe right hip osteoarthritis. Px.3, pg. 9; Dx.1, pg.11.

The doctor's plan at this point was to proceed with hip replacement as a reasonable and necessary treatment for his condition. Px.3, pg.9. Surgery was performed May 4, 2022. Px.3, pg. 10; Dx.1, pg. 15-16. Follow up exams noted improvement 15 days postoperatively. Dx.1, pg. 21. He was placed on restrictions as of May 19, 2022, of half days only, no lifting greater than 20 pounds and no climbing ladders. Dx.1, pg. 23. He last saw Petitioner on September 20, 2022; He had previously released him with no restrictions as of August 5, 2022. Px.3, pg. 12.

Dr. Osuji previously replaced the left hip on February 13, 2017. Px.3, pg. 13. On the initial consultation for this surgery in October of 2016, there were some nonspecific complaints of right hip pain but no details. Px.3, pg. 14. The main focus was on the left hip. Id. On the May 2, 2017, examination he noted some complaints of right hip pain for which Petitioner was taking over the counter Aleve. Px.3, pg. 14-15. There was no examination of the right hip, no treatment options offered for the right hip. Px.3, pg. 15. Petitioner was walking well and was returned to work with restrictions of avoiding high impact activities in order to protect the left hip. Px.3, pg. 15. Dr. Osuji has no information of any contact, complaints, appointments, or difficulties with Petitioner's right hip between that point in time and the accident of March 16, 2021. Px.3, pg. 16.

Dr. Osuji was asked for his opinions and provided the following testimony:

Q. Do you have an opinion, within a reasonable degree of medical certainty, as to whether or not the fall that is described as March 16th of 2021 contributed to the need for right hip arthroplasty in Mr. Hughes?

A. March 16, 2021?

Q. Yes. As he described in his initial visit with you in May.

A. So when I look back, even from his x-rays in 2016 I mean it was obvious that the right hip was arthritic. Generally in these issues, and I've seen these in other cases where, you know, there's a preexisting condition, but, you know, having pain but then an incident, you know, causes worsening of that pain, so, yes, it is possible that he could have had a preexisting condition that was to some degree symptomatic but then an injury increased his severity of the pain.

Q. One of the reasons that you do a hip replacement or arthroplasty is to alleviate that pain; true?

A. Correct.

Q. Another reason is to give the person a better ability to ambulate and walk and function; true?

A. Yes. So the main reason for hip replacement is pain relief, and everything else that you described typically follows that, yes.

Q. All right. Assuming that there were no complaints or increases in pain between May 2nd of 2017 and the accident we're concerned with of March 16th of 2021,

would that be a basis for your opinion that the accident contributed to the need for right hip arthroplasty?

A. Again, all these things are just based on what the patient tells me, and my understanding from reviewing my notes was there was worsening of his right hip after that injury, to my recollection.

Q. And therefore that would be an additional basis for your opinion that it was a contributing factor.

A. Yeah. Based on the patient's history.

Q. Okay. And your review of the records.

A. Yes. Which reflects his history.

Q. All right. Treatment that you provided, including those periods of time when he was off work, any therapies and the surgery were reasonable and necessary to address the condition in the right hip; true?

A Yes.

Px.3, pg. 16 - 18.

On cross examination, Dr. Osuji stated he did not review Dr. Herrin's opinions. Px.3, pg. 18. It is not unusual for two doctors to come to differing opinions on causation. Px.3, pg. 19. Causation doesn't impact treatment. Px.3, pg. 19-20. His information is that Petitioner had no issues between 2017 and 2021, other than the fall in 2020. Px.3, pg. 20. He is aware of no injuries in 2018 or 2019. Px.3, pg. 21. In formulating opinions it's important to some degree, to know prior symptoms. Px.3, pg.21. Radiographs of May 25, 2021, showed joint space was all gone. Px.3, pg. 22. In general, looking at X-rays would make one believe the Petitioner was a surgical candidate; however, "… generally we look at progression of the patient's symptoms generally more than what the X-rays show. … Generally we just leave it alone." Px.3, pg. 23-24. Activities of daily living could aggravate Petitioner's hip based on X-rays. Px.3, pg.24. When he last saw Petitioner on September 20, 2022, he was doing very well with the hip. There was mild discomfort climbing ladders although this was improving, he walked without assistive devices, and he had occasional pain in the lateral aspect of his right mid-thigh. Px.3, pg. 24.

Respondent also submitted medical evidence and testimony. Dr. Rodney Herrin provided testimony in Respondent's Exhibit 2. He has been an orthopedic surgeon for 31 years. Rx.2, pg. 4. He practices at the Orthopedic Center of Illinois in Springfield with a subspecialty for certification in orthopedic sports medicine in addition to orthopedic surgery. Rx.2, pg. 5-6. He examined Petitioner at the request of Respondent on September 16, 2021, and issued a report attached to his testimony as deposition exhibit 2. Rx.2, pg.6. *[References directed to Dr. Herrin's report are hereinafter referred to as Rdx. 2.]*

Dr. Herrin obtained a brief history from Petitioner regarding his trip and fall of March 16, 2021, and injuries to his right side, including "aggravating his right hip." Rx.2, pg.7; Rdx. 2, pg.1. He noted prior to that time Petitioner did not really have any difficulties and he had a history of left sided hip replacement period Rdx.2, pg.7-8. He reviewed unspecified medical records and performed a physical examination. Rx.2, pg. 8. Significant findings included very limited motion of the right hip with essentially no internal or external rotation of the hip. He could only flex to 45 degrees which would be much less than normal. Rx.2, pg.9. X-ray showed severe end stage

degenerative arthritis of the right hip, meaning a complete loss of joint space. Id. There were bone spurs which limited motion. Rx.2, pg.10. This was chronic, years in the making. Id. His diagnosis was severe end stage arthritis of the right hip. Rx2, pg. 11.

Dr. Herrin recommended total hip replacement as reasonable and necessary care. However, this was not due to the work accident. This was because he had severe arthritis before the accident and the degree of injury wouldn't affect the need for total hip replacement. “It was inevitable, and I don't think it really changed anything.” Rx.2, pg.11. The work injury had no permanent impact on his arthritis. His conservative treatment up to that date was reasonable and necessary, and his prognosis with replacement was excellent. Rx.2, pg. 12.

On cross examination, he must have reviewed Dr. Osuji’s records but no outside X-rays. Rx.2, pg. 13-14. He had no information regarding positive right hip examination findings prior to the work accident. He had no information of complaints of pain in the right hip prior to March 16, 2021. Rx.2, pg.15. He had no information on right hip therapies or difficulty walking regarding the right hip before March 16, 2020. Rx.2, pg. 15-16. He was not aware that at the time of the examination of the left hip in 2016, examination of the right hip was essentially normal. Rx.2, pg. 16. He agrees pain and limitation of function are factors in deciding if hip arthroplasty is necessary. Rx.2, pg. 16. If function is limited but there is no pain, he wouldn't recommend total hip arthroplasty. Rx.2, pg. 17. If there is no pain and the hip is arthritic, one would not typically do arthroplasty. Rx.2, pg.17. He has no record of pain medication prior to March 16, 2021, no information on any chiropractic, napropathic or any other care before March 16, 2021. Rx.2, pg. 17.

On redirect examination, Dr. Herrin said prior complaints or treatment would not affect his opinions. Rx.2, pg.20. The severity of the arthritis leads him to conclude it was unlikely Petitioner had no prior symptoms. Rx.2, pg. 20; Rdx.2, pg. 4. Someone with arthritis will have pain that comes and goes, and pain can be elicited by common daily activities. Rx.2, pg. 21. He may have had a brief exacerbation of pain from the fall. Rdx.2, pg.4.

Respondent submitted a May 2, 2017, report of Dr. Osuji where Petitioner reported saying he “has been having more problems with his right hip and currently takes Aleve for that. … However, he ambulates without any assistive devices.” Rx.3, pg.1. As of May 8, 2017, he had no restrictions. Rx.3, pg.3. Further, a “Notification of Injury” of May 22, 2020, notes an incident of May 18, 2020, when Petitioner fell, and he had pain “in entire right leg, mostly upper leg, pain and throbs.” Rx.6, pg.2. It shows no treatment and he was not seeing a doctor. Id.

In addition to medical records and reports submitted by both parties, issues regarding payment of temporary total disability, short term disability and credits are also pending. The period of disability claimed by Petitioner is May 29, 2021, through July 20, 2021; August 19, 2021, to March 7 2022; and May 2, 2022 through August 7, 2022, representing a period of 50 and 2/7 weeks. Arb. Ex. 1. Respondent paid temporary total disability benefits on varying dates between June 21, 2021, through March 21, 2022, in the amount of $43,429.66. Rx.1. For the claimed period of May 2, 2022, through August 7, 2022, Petitioner used 304 hours of vacation time, 32 hours of sick time, and eight hours of “other” time between May 2, 2022, and June 30, 2022. Rx.4. From

July 1, 2022, through August 7, 2022, Petitioner used 12.9 vacation hours, 20.96 hours, 8 "other" hours, and was allotted 166.2 hours of "leave without pay." Total number of weeks for which no temporary total disability benefits were paid is represented by the period between May 2, 2022, and August 7, 2022, or a period of 14 weeks. Rx.4.

Respondent further shows payment for medical expenses between June 18, 2021, and March 26, 2021 having been paid. The total amount of payments is $4,398.93. Rx.1. Petitioner's exhibit shows medical bills paid through workers' compensation totaling $6,578.72. It shows Health Alliance paying $41,625.20. Px.4, pg. 1- 3.

CONCLUSIONS OF LAW

The Findings of Fact are incorporated into each of the following as if fully set forth therein.

WITH REGARD TO ISSUE F - Is Petitioner's current condition of ill-being causally related to the injury? – the Arbitrator Finds as Follows:

In determining the issue of causal relationship, the Arbitrator notes there are no issues of credibility in this matter. The Petitioner credibly and consistently testified as to not only the facts and circumstances of the accident and the injuries he claims resulting from it, but was candid in addressing what were alleged to be prior complaints that would arguably diminish his claim. Both Dr. Osuji, as the treating physician, and Dr. Herrin, the Section 12 examiner, provided credible reasons for their opinions. As such, the determination of causation is based purely on all of the facts elicited above. As such, it is found Petitioner has established the causal relationship between his accident, the injury to his right hip and other parts of the body, the need for treatment, including right hip arthroplasty, and the restrictions from work supported by the evidence.

Petitioner testified, and the record supports, that on May 2, 2017, he had pain in his right hip which he reported to his treating physician after having undergone left hip replacement. He testified, and the record supports, that he had no treatment, therapy, medication, or lost time from work due to right hip pain between that date and the incidents that were brought forth in his own testimony and by Respondent on cross examination. Petitioner testified on direct examination as to the June 7, 2019, slip and fall on a ladder while working for Respondent and which report indicates his complaints of right leg pain. Again, while there is this isolated incident, there is no record of any treatment, therapy, medication, or lost time as a result of continuing right hip pain following this 2019 incident. Moreover, there's no record of him missing any work as a result of this incident. The same was the case with the reported incident from 2020. Petitioner had an incident for which he was required to prepare an accident report. He believes the report was filled out by someone else. He testified, and there is no record to refute, that he had no treatment, missed no time from work, had no therapies, and had no difficulties following the date of that incident. Thus, from a review of the testimony and from the lack of any record or support, it appears there were only two isolated incidents where Petitioner may have complained of pain or possibly had an issue with his right hip between May 2, 2017, and the date of this accident. In other words, Petitioner was in a condition wherein he was able to perform his activities of daily living and work without difficulty until the incident that is the subject of this claim.

In addition, the testimony of both the treating physician and the examining physician supports the finding that the pain elicited as a result of this accident caused the need for the ultimate surgery. Dr. Osuji testified the main reason for hip replacement surgery is pain relief and restoring a person's ability to walk without difficulty. While radiographically one could assume Petitioner would be a candidate for surgery, the determination of surgery is driven by symptoms. Dr. Herrin agrees pain and limitation of function are factors in deciding if hip arthroplasty is necessary. If function is limited but there is no pain, he wouldn't recommend total hip arthroplasty. If there is no pain and the hip is arthritic, one would not typically do arthroplasty. As both doctors note, there is simply no evidence that Petitioner had to take any medication for right hip pain, had any therapy with regard to right hip pain, lost time from work due to hip right hip pain, nor had any indication of symptomatic right hip problems prior to the accident of March 16, 2021. The isolated incidents notwithstanding, the Arbitrator finds that Petitioner was in a condition of well-being, although not perfect health, prior to the accident and after the accident he was in such a condition as to require surgical intervention, treatment, and care. Accordingly, with regard to this issue, the Arbitrator finds that the Petitioner has established his concurrent condition of bill being was causally related to the accident of March 16, 2021.

WITH REGARD TO ISSUE J – Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services? – the Arbitrator Finds as Follows:

The dispute with regard to payment for reasonable and necessary medical services appears to be related to the dispute over causal relationship. Moreover, Petitioner’s Exhibit 4 shows that the majority of medical bills have been paid either through workers’ compensation or through group health insurance. The Arbitrator finds that the medical services provided were reasonable and necessary and to the extent not paid or paid through group health coverage that was not provided by the Respondent, the Respondent is responsible for all such charges as listed in Petitioner’s exhibit #4 with the limitation that they be paid that the appropriate fee schedule rates.

WITH REGARD TO ISSUE K – What temporary benefits are in dispute? – TTD – the Arbitrator Finds as Follows:

No benefits for the 14 weeks between May 2, 2022 and August 7, 2022, or 14 weeks of any kind were paid. The remaining periods claimed were paid either through TTD, vacation or sick time. The overall total number of weeks of 50 2/7 weeks claimed by Petitioner is supported by the testimony and the evidence. Respondent is responsible for payment of temporary total disability benefits for that period of time subject to credits for those benefits paid and which are referred to below. Those periods of sick time or vacation time that were allotted per Respondent’s exhibit shall be credited to Petitioner. The total amount of benefits due after credits is $8,331.23 payable to Petitioner. Those calculations are addressed in the findings regarding credits, Issue N, below.

WITH REGARD TO ISSUE L – What is the nature and extent of the injury? – the Arbitrator Finds as Follows:

As the accident occurred after September 1, 2011, the nature and extent of the injury must be determined through the five-factor test set out in §8.1b(b) of the Act.

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

With regard to Subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a stationary engineer 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. The Arbitrator notes Petitioner indicates some limited pain and limit on ability to climb but otherwise is able to do his current job and plans to continue until retirement. Because of the nature of employment and the number of years Petitioner will be engaged in this activity, at least four to eight years by his testimony, the Arbitrator gives greater weight to this factor.

With regard to Subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 48 years old at the time of the accident. Because of the longer life expectancy of Petitioner and his relatively young age, the Arbitrator therefore gives greater weight to this factor.

With regard to Subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes no evidence of impact on his future earning capacity. The Arbitrator therefore gives no weight to this factor.

With regard to Subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner currently has soreness in his right hip, but he is able to walk, climb, kneel. He takes ibuprofen for his right hip. He has stopped drinking. He has no current complaints in his shoulder or elbow. He has no complaints about his back. He is doing his regular job, the same job he did when he got injured. This comports with the medical testimony and record. Because of extent of surgery, the need for arthroplasty of the right hip, the treatment modalities for the additional lower back and arm, 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 40% loss of use of the right leg pursuant to Section 8(e)(12); 2 ½% loss of use of the right arm pursuant to Section 8(e)(10) of the Act, and 2 ½% loss of Person as a Whole pursuant to Section 8(d)(2)of the Act.

WITH REGARD TO ISSUE N – Is the Respondent due any credit? – the Arbitrator Finds as Follows:

Respondent's evidence shows payment of TTD in the amount of $43,429.66 for which it will receive a credit for the total 50 2/7 weeks of benefits due. The total amount payable during that period would have been $51,760.89; with credit, the amount due and owing is $8,331.23.

To the extent provided through the applicable group coverage, Respondent will receive credit for the medical payments listed as Health Alliance payments in Petitioner's Exhibit 4 of $41,625.20.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC016942
Case Name	Robert Danley Jr v. City of Chicago - Department of Water
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision Remand Arbitration
Commission Decision Number	24IWCC0130
Number of Pages of Decision	7
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Craig Scarpelli

DATE FILED: 3/20/2024

/s/Deborah Simpson, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT DANLEY, JR.,

Petitioner,

vs. NO: 18 WC 16942

CITY OF CHICAGO,

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 the law, reverses the Decision of the Arbitrator and finds that the law of the case doctrine barred Petitioner from re-litigating the issue of causation for his right shoulder condition at the second §19(b) hearing on January 31, 2023. 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).

Petitioner, a construction laborer, claimed injury to multiple body parts, including his right shoulder, after being hit on the head by a floorboard while inspecting a leak on February 22, 2018. The parties proceeded to an initial bifurcated §19(b) hearing on August 21, 2019, and September 23, 2019, before Arbitrator Paul Cellini. Petitioner's shoulder injury was placed at issue by the parties at that time. Following the hearing, Arbitrator Cellini issued a §19(b) decision on November 21, 2019, finding that Petitioner's accident arose out of and in the course of his employment on February 22, 2018, and that Petitioner's current condition of ill-being was, in part, causally related to said accident. Specifically, Arbitrator Cellini found that Petitioner established causation for his cervical condition but failed to prove causation for any right shoulder or left hand conditions. Arbitrator Cellini stated that there was no evidence that any right shoulder condition was ever treated or diagnosed, and therefore, Petitioner had failed to prove any causal relationship between the right shoulder and the work accident of February 22, 2018. Neither party sought

review before the Commission of Arbitrator Cellini's decision.

Thereafter, Petitioner claimed that he began to experience worsening right shoulder pain and sought further right shoulder treatment, which culminated in a surgical recommendation. In response, Petitioner wanted to proceed with a second §19(b) hearing on December 21, 2021, regarding his right shoulder condition and the recommended surgery, but Respondent objected to the hearing and argued that Petitioner was barred from re-litigating the issue of causation that had been previously decided by Arbitrator Cellini. On February 25, 2022, Arbitrator Elaine Llerena issued an Order denying Respondent's motion to strike Petitioner's request for the §19(b) hearing and finding that the law of the case doctrine did not bar Petitioner from pursuing the second §19(b) hearing regarding his right shoulder. In support of her finding, Arbitrator Llerena cited to *Weyer v. IWCC*'s determination that the law of the case doctrine did not prohibit the litigation of new and different legal and factual issues than those addressed in a prior §19(b) hearing. *See* 387 Ill.App.3d 297 (1st Dist. 2008). Arbitrator Llerena reasoned that since Petitioner now sought benefits for his right shoulder condition that did not become prevalent until after the first §19(b) hearing, the second §19(b) hearing dealt with entirely different issues of facts and law.

Respondent subsequently sought review of Arbitrator Llerena's Order before the Commission. On September 27, 2022, the Commission issued a decision finding that the Order was interlocutory, and as such, the Commission lacked jurisdiction to review said Order. The Commission dismissed Respondent's Petition for Review and remanded the matter to the Arbitrator for a further hearing on all pending matters. In so finding, the Commission indicated that the Order had ruled on Respondent's motion to strike without contemplating the merits of the case.

This matter resultantly proceeded to its second §19(b) hearing before Arbitrator Llerena on January 31, 2023, in which the only body part in dispute was Petitioner's right shoulder. At the hearing, Respondent preserved its objection to proceeding pursuant to the law of the case doctrine. The matter nevertheless proceeded over Respondent's objection, and as consistent with her prior Order, Arbitrator Llerena determined that the law of the case doctrine did not apply to Petitioner's current claim for benefits. On August 30, 2023, Arbitrator Llerena issued a decision, finding that Petitioner's current right shoulder condition was causally related to the work accident that occurred on February 22, 2018. Arbitrator Llerena awarded reasonable and necessary medical expenses of $9,209.51 for Petitioner's right shoulder treatment, as well as prospective care in the form of a right shoulder MRI and right shoulder arthroscopic surgery with possible rotator cuff repair and open subacromial decompression. Arbitrator Llerena further awarded TTD benefits commencing February 23, 2018, through January 31, 2023.

However, upon a careful review of the entire record, the Commission reverses Arbitrator Llerena's decision and finds that the law of the case doctrine did in fact prohibit Petitioner from re-litigating the issue of causation for his right shoulder, because Arbitrator Cellini's finding that the right shoulder condition was not causally related to the accident became final and the law of the case once neither party sought review of the initial §19(b) decision. The Commission does not believe that the second §19(b) hearing before Arbitrator Llerena covered new and different factual and legal issues than those already decided in the initial §19(b) decision issued by Arbitrator Cellini.

An immediate hearing held pursuant to §19(b) "shall be conclusive as to all other questions except the nature and extent of said disability." 820 ILCS 305/19(b). See also *Irizzary v. Industrial Comm'n*, 337 Ill.App.3d 598, 606-07 (2nd Dist. 2003) (determinations made pursuant to an immediate hearing under §19(b) are considered the "law of the case" and cannot be re-litigated in future proceedings in the case). Under the law of the case doctrine, a court's unreversed decision on an issue that has been litigated and decided settles the question for all subsequent stages of the action. *Ming Auto Body/ Ming of Decatur, Inc. v. Indus. Comm'n*, 387 Ill. App. 3d 244, 252 (1st Dist. 2008). "The rule of the law of the case is a rule of practice, based on sound policy that, where an issue is once litigated and decided, that should be the end of the matter and the unreversed decision of a question of law or fact made during the course of litigation settles that question for all subsequent stages of the suit." *Irizarry v. Industrial Comm'n*, 337 Ill.App.3d 598, 606 (2nd Dist. 2003), citing *McDonald's Corp. v. Vittorio Ricci Chicago, Inc.*, 125 Ill. App. 3d 1083 (1984).

Arbitrator Cellini's decision became final, and thus the law of the case, once neither party sought review of it. Arbitrator Cellini explicitly stated that causation was at issue in the first §19(b) hearing and specifically found no causal connection concerning Petitioner's right shoulder. As such, it follows that pursuant to the law of the case doctrine, Petitioner should not be permitted to re-litigate the issue of causation for his right shoulder condition in future proceedings.

Nevertheless, Petitioner argues that he should not be barred from pursuing another §19(b) hearing to consider causation for the right shoulder, because as analogous to *Weyer*, he is attempting to present new and different legal issues than those presented at the first §19(b) hearing. In *Weyer*, an initial §19(b) decision determined that Petitioner's left shoulder injuries were causally related to his work accident but his low back condition was not. 387 Ill.App.3d 297, 298 (1st Dist. 2008). The Commission affirmed the arbitrator's decision, and neither party sought review of the Commission's decision. *Id.* After this §19(b) hearing, the *Weyer* clamant obtained further medical treatment, including an MR-arthrogram that revealed a SLAP lesion of the left shoulder glenoid labrum. *Id.* at 304. The claimant's treating doctor opined that the SLAP lesion was caused by the initial work accident and recommended surgery. *Id.* However, the §12 examiner opined that the labral tear was not caused by the accident and pointed to an MRI obtained a few days after the accident that demonstrated an intact left shoulder labrum. *Id.* at 305.

The *Weyer* claimant then pursued a second §19(b) hearing, seeking TTD benefits from the date of the initial §19(b) hearing. *Id.* at 298. In the second §19(b) hearing, the arbitrator found that the left shoulder SLAP tear was not causally related to the accident, as the SLAP lesion was diagnosed years after the accident date and an MRI taken a few days post-accident revealed an intact labrum. *Id.* at 305. After the Commission and Circuit Court affirmed the arbitrator's decision, the matter was appealed to the Appellate Court, where the claimant argued that the parties should not be allowed to re-litigate the causation of the left shoulder since that issue had been resolved in the first §19(b) decision. *Id.* at 298; 306. The *Weyer* claimant argued that the causal finding from the first §19(b) hearing became final when neither party pursued review of the Commission's decision. *Id.* at 306-307.

The Appellate Court in *Weyer* ultimately decided that the second §19(b) hearing involved different legal and factual issues than the first §19(b) hearing, and as such, the law of the case

doctrine did not prohibit litigation of those issues. *Id.* at 307. Specifically, the Appellate Court stated that the first §19(b) hearing addressed the claimant's entitlement to TTD benefits up through the first hearing date, whereas the second §19(b) hearing addressed TTD benefits after the first hearing date. *Id.* Moreover, the Appellate Court found that the arbitrator did not reverse her own causal findings in the two §19(b) decisions, because her finding from the first §19(b) hearing that Petitioner had suffered an aggravation to his preexisting left shoulder condition remained undisturbed. *Id.* at 307-308. In the second §19(b) hearing, the arbitrator then determined that this aggravation had since resolved and the claimant now sought to address the new and different issue of whether a SLAP tear, which was diagnosed two years after the accident, was also causally related and whether the claimant was entitled to more TTD benefits after the first hearing date. *Id.*

In the present matter, Petitioner contends that, like *Weyer*, the law of the case doctrine does not prevent him from litigating the issue of causation for his right shoulder condition at a second §19(b) hearing, because it would involve different issues and diagnoses that did not arise until after the first hearing. Petitioner argues that the first hearing involved causation only as it related to his cervical spine and not his right shoulder. Petitioner further states that it was not until after the §19(b) hearing that he underwent a right shoulder MRI and was diagnosed with right shoulder tears. Petitioner argues that Arbitrator Cellini never determined if the rotator cuff tear was causally related to the accident, because this diagnosis and issue arose only after the first §19(b) hearing.

However, the Commission finds that *Weyer* is distinguishable from the present case. In *Weyer*, the first §19(b) decision found causation for an aggravation of Petitioner's left shoulder condition and the second §19(b) hearing found that this aggravation had resolved and a newly diagnosed SLAP tear was not causally related. The second §19(b) hearing in *Weyer* was also to contemplate whether benefits that were awarded in the first §19(b) hearing should continue. Whereas, in the present matter, Arbitrator Cellini never found causation for any specific right shoulder condition, and instead, determined that Petitioner failed to prove causation for any right shoulder condition whatsoever and awarded no benefits for the right shoulder accordingly. Although Petitioner's treatment prior to the initial §19(b) hearing focused predominantly on his cervical spine, Arbitrator Cellini's decision contemplated causation for the right shoulder and Arbitrator Cellini was presented with evidence regarding Petitioner's post-accident right shoulder complaints. Since Arbitrator Cellini made the finding that no right shoulder condition was causally related to the accident, Petitioner's attempt to now litigate whether a more specific right shoulder condition, a rotator cuff tear, is causally related to the accident does not present a significantly different legal issue. Arbitrator Cellini's finding that no right shoulder condition was causally related to the accident became final and the law of the case once no party sought review of it. To allow Petitioner to revisit causation for the right shoulder in a second §19(b) hearing would disregard the established law of the case, which is that no right shoulder condition is causally related to the accident.

Instead, the Commission finds that Petitioner's case is more analogous to *Help at Home v. IWCC*, 405 Ill.App.3d 1150 (4th Dist. 2010). In *Help at Home*, a §19(b) decision found that the claimant had sustained injuries to her low back and right shoulder arising out of and in the course of her employment. *Id.* at 1150-1151. The decision was reviewed by the Commission, which found that the claimant had failed to prove causation as it pertained to her right shoulder but otherwise affirmed the arbitrator's decision. *Id.* at 1151-1152. The Commission also remanded

the matter back to the arbitrator and specifically provided that "on remand, the Arbitrator may consider any additional evidence with respect to the causal connection of the right shoulder to the accident." *Id.* at 1152. The Circuit Court confirmed the Commission's decision, and Respondent appealed with the argument that the Circuit Court had erred in confirming the part of the Commission's decision that said the arbitrator could consider additional evidence relating to causation for the right shoulder injury. *Id.*

The Appellate Court sided with Respondent pursuant to the law of the case doctrine. *Id.* The Appellate Court determined that when the Commission found that Petitioner had failed to prove causation for her right shoulder and the claimant never sought review, the Commission's finding became the law of the case and the claimant was now barred from raising the issue of causation for her right shoulder injury in any further proceedings. *Id.* The Appellate Court therefore concluded that the Circuit Court erred in affirming the part of the Commission's decision that provided that, on remand, the arbitrator could consider additional evidence relating to a causal connection between the work accident and the claimant's right shoulder injury. *Id.*

Similar to *Help at Home*, Petitioner in the present case essentially asked Arbitrator Llerena to consider additional evidence relating to the issue of causation for the right shoulder, even though Arbitrator Cellini already found that no causal connection existed between Petitioner's work accident and his right shoulder condition.

In conclusion, the Commission finds that the law of the case doctrine bars Petitioner from re-litigating the issue of causation for his right shoulder in the second §19(b) hearing. Arbitrator Cellini's determination that the right shoulder condition was not causally related to the accident became final and the law of the case once neither party sought review of the initial §19(b) decision issued on November 21, 2019. The issue of causality for Petitioner's right shoulder was contemplated and determined in the first §19(b) hearing with Arbitrator Cellini. Petitioner's attempt to now revisit causation for the right shoulder does not present a significantly different legal issue, as the second §19(b) hearing would not be dealing with a different body part not covered in the first hearing. Moreover, pursuant to 820 ILCS 305/19(b), an immediate hearing held pursuant to §19(b) "shall be conclusive as to all other questions except the nature and extent of said disability." The first §19(b) hearing conclusively resolved the issue of causation for the explicitly listed body parts. Therefore, the Commission finds that Arbitrator Llerena lacked jurisdiction to rule upon the issue of causation for Petitioner's right shoulder at the subsequent §19(b) hearing.

For said reasons, the Commission reverses Arbitrator Llerena's decision issued on August 30, 2023, and denies Petitioner's claim for all benefits under the Illinois Workers' Compensation Act related to his right shoulder condition accordingly.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated August 30, 2023, is hereby reversed as stated herein.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner was barred from re-litigating the issue of causation for his right shoulder condition at the second §19(b) hearing, as that issue was previously adjudicated to a final decision by Arbitrator Cellini on November 21,

2019, that henceforth became the law of the case. Accordingly, the Commission finds that Arbitrator Llerena lacked jurisdiction to hear the parties' arguments regarding causation for Petitioner's right shoulder condition at the second §19(b) hearing on January 31, 2023.

IT IS FURTHER ORDERED that Petitioner is denied all benefits under the Illinois Workers' Compensation Act as related to his alleged right shoulder condition, including but not limited to, medical expenses, prospective care, and TTD benefits.

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

The party commencing proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

March 20, 2024
DLS/mek
O- 1/24/24
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/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Maria E. Portela*
Maria E. Portela

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC014619
Case Name	Tomeka McKinney v. City of Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0131
Number of Pages of Decision	10
Decision Issued By	Marc Parker, Commissioner, Deborah Simpson, Commissioner

Petitioner Attorney	Scott Goldstein
Respondent Attorney	Elaine Newquist

DATE FILED: 3/21/2024

/s/*Deborah Simpson, Commissioner*

Signature

DISSENT; /s/*Marc Parker, Commissioner*

Signature

STATE OF ILLINOIS	)
	) SS.
COUNTY OF COOK	)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TOMEKA McKINNEY,

Petitioner,

vs. NO: 21 WC 14619

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, permanent partial disability, and medical expenses, and being advised of the facts and law, reverses the Decision of the Arbitrator, finds that Petitioner did not sustain her burden of proving a compensable repetitive traumatic accident, and denies compensation.

Findings of Fact – Testimony

Petitioner testified she worked for Respondent and had for 16&1/2 years. She started working in Streets & Sanitation as a laborer emptying garbage cans and sweeping streets. In that job she injured her left elbow which required multiple surgeries by Dr. Fernandez. When Dr. Fernandez released her to work in April of 2019, Respondent transferred her to the Department of Finance/Citations. For the previous claim she was off work for about four years. That claim was settled.

In her job in Finance/Citations, Petitioner reviewed camera footage of speeding vehicles for about 80%-85% of her workday. She did a lot of data entry, entering license plate numbers of speeding vehicles on a computer. She reviewed and entered data for about six hours of her seven-hour workday. She had a break and lunch.

After about a year in an office setting, Petitioner was sent to work from home because of COVID. She was provided a desktop computer with a separate keyboard. The keyboard was in an elevated position. When typing she did not keep her hands in a flat position, because "you can't type that way." She also did not type with her hands "in a position that's perpendicular to the table with [her] hands sticking straight up." As Petitioner demonstrated the way she typed, the Arbitrator noted she kept "her wrists on the front of the edge of the table with her fingers over the keyboard." Petitioner testified she kept her wrists in "about a 90° angle." Then as she demonstrated she agreed it was more like a 45° angle. Her hands were in that position both at the office and at home.

Petitioner began to experience pain/numbness/tingling in her right wrist and then left elbow. That began "like a few months" before she reported the injury when she "couldn't work anymore." She reported the accident/injury around March 8, 2021. She was sent to Concentra that day. Concentra restricted Petitioner to no typing, which Respondent could not accommodate. She began receiving temporary total disability benefits ("TTD"). She associated her development of symptoms to "an influx of work" "in the months prior to" March 8, 2021.

Concentra referred her to Dr. Patel at Hinsdale Orthopedics. After an MRI, Dr. Patel referred Petitioner to his partner, Dr. Nacke. He provided her a splint and administered an injection in her right wrist. He imposed restrictions, which again Respondent did not accommodate. Petitioner was then referred to Dr. Ghodasra, who recommended "possible" surgery on her right wrist. She got a second opinion from Dr. Fernandez, her prior surgeon, with whom she felt more comfortable. He concurred with the recommendation for surgery. Petitioner wants the recommended surgery.

Petitioner testified that currently she was in pain with numbness/tingling in her right wrist and shooting in her left elbow. She has returned to work for Respondent but not in the finance/citation office, but rather in the Water Department. Her new job was still clerical and involved data entry. Petitioner had a Section 12 medical examination with Dr. Balaram, after which Respondent stopped paying her TTD benefits.

Petitioner had to return to work for financial reasons. She has different splints for typing and for when she was not typing. Her job activities caused symptoms in her right wrist and left elbow. Petitioner noted that she received a written warning because she "wasn't keeping up with the rest of the people with" her typing. She was typing as fast as she could.

On cross examination, Petitioner agreed that she previously went by the name of Tomeka Price before she was married in May of 2013. She went to work as a traffic enforcement technician after her elbow surgeries which resulted in permanent restrictions. The restrictions involved a 10-pound lifting restriction with her left arm, so she could no longer work as a laborer. Respondent helped her evaluate her new position in traffic enforcement which were within her permanent restrictions.

Petitioner testified that while typing, she rested her wrist on an ergonomic pad provided by Respondent. She agreed that her typing was “constant or fairly constant over that seven hours every day.” She has one monitor but can get three screen shots to see the moving car as well as the license plate and pedestrians. Once she confirmed the speeding and license number, she issued a ticket. She did not “recall” whether any data other than license plate numbers had to be entered. She probably looked at “thousands” of videos a day. Once she determined a violation occurred she only had to enter the license plate number to issue the citation.

The keyboard she used at home was similar to the one she used in the office. She agreed that overall traffic was down during COVID, but denied she had fewer citations to view. Petitioner testified her workload increased “because the mayor lowered the speed threshold and it in turn made more people get tickets.” Petitioner did not recall being on leave of absence from March 13, 2020 to July 7, 2020 or from middle December of 2020 to January 12, 2021, but that was possible.

Petitioner agreed that initially Respondent told her she could work modified duty, but she did not remember what that entailed. She disagreed with a notation in the Concentra records that she was working modified duty from March 8th to the end of April of 2021. She was not working at all during that period. She agreed she might have told doctors at Concentra that she had pain for about a week. However, she denied that she initially told doctors at Hinsdale that she had pain for six years which worsened over the past three months.

Petitioner agreed that the pain in her left elbow was similar to the pain she had from the epicondylitis, which required surgery. She applied for her current job of district clerk. It is a full-time job which requires the similar use of a keyboard. She has to input personnel records; “it’s the same data entry, but not timed” and she did not have production levels to meet.

On redirect examination, Petitioner testified she guessed her prior job with finance/citations was “probably timed.” She felt the need to increase her amount of typing. While she agreed that the pain she had in her left elbow was similar to the pain she had previously, that pain had gone away and returned.

Mr. John Paul Jael was called to testify by Respondent for which he worked as Deputy Director of the Department of Finance. He was in charge of the speed camera program. He was in his position for almost 10 years. He first came to know Petitioner since she came into his unit in April of 2019.

When a driver speeds, the vendor captures the data into the system with two photos and the video, "and they also crop one of the photos so you can have a zoomed-in picture of the license plate." The videos are about six to 10 seconds long. They can be played and replayed. The monitor is split into two screens one of the still and one of the video. One would use the mouse to pick/choose between the video/pictures. In addition, accepting a violation is done with a mouse click after the license plate number is entered. "For the most part" that is the extent of typing that is required.

If the technician declines to issue a citation, she will not enter the license number, click the reject button, and indicate the reason for the rejection in a drop box. One can include a typed explanation for why a citation was rejected, but that was not used in about 98% of the rejections. He estimated that a technician can view two to three events per minute. He noted that a violation in a school zone takes longer because you have to determine whether any children were present. If the technician finds a violation, it may take five seconds to input the license number.

Mr. Jael testified that between March of 2020 and March of 2021 there was less traffic and less speed camera violations, especially less school zone cases. He was shown RX2, a productivity report showing the specific number of alleged speeding events viewed. On Petitioner's first day she viewed 332 events, while the next lowest viewed 652 events. Mr. Jael performed that job and was not surprised that initially her production was low, but that should be corrected within two weeks. However in the May 2019 report, Petitioner was still at the bottom. The highest number of events viewed in an hour was 124.9, while Petitioner viewed 52.9. She was consistently low in production. The production level of the unit decreased during the COVID lockdown because there were fewer cars on the road. While Petitioner was consistently below the group average, it was not so far below to warrant discipline.

Mr. Jael demonstrated the system Petitioner used on a laptop he brought. Besides typing in the license plate number on accepted violations, all other functions are performed with a mouse click.

On cross examination, Mr. Jael testified he heard Petitioner testify that she viewed thousands of events per day. That was not correct; he would say it was hundreds, not thousands. He was shown records showing she viewed 1,461 event on February 3rd and there were some other days in which she reached/surpassed 1,000. He agreed that Petitioner's performance improved since she first started. While Mr. Jael demonstrated the system on a laptop, Petitioner used a desktop. He did not know the position of Petitioner's hands when she was viewing the videos. He agreed that they saw more events starting on January 15, 2021 when the threshold was reduced from 10 miles-per-hour over the limit to six. Employes under his supervision are not expected to type at a certain pace and/or go through a certain number of events per day. They are not supposed to work fast.

Petitioner testified in rebuttal that she did not perform her job exactly how Mr. Jael demonstrated. She kept her hands in the same flexed, typing position when she viewed the videos as she did when actually typing.

On cross examination, Petitioner agreed that the base of her hands rested on the pad and her fingers were "loitering over the keys." She disagreed with Mr. Jael's description of the amount of typing she had to do. They "had to go into other systems, too" like CARFAX, where they had to do some typing also. In addition, Mr. Jael did not show the box. "You type in the box as well and send it off to the supervisor, review of why you rejected something." She did not remember how often she filled in the box. She had to go into CARFAX "often" to determine the type of car.

Findings of Fact – Medical/Documentary records

A description of Petitioner's job of traffic enforcement technician, involves reviewing photographic evidence of possible traffic violations, determining whether a violation has occurred under the Municipal Code, obtaining information on registered owner, entering the license plate number and related data such as vehicle, location, time of day, and preparing daily activity reports.

On March 8, 2021, Petitioner presented to PA McHugh at Concentra for left lateral epicondylitis. He referred Petitioner to physical therapy ("PT") for six sessions, prescribed Ibuprofen, prescribed ice/heat, provided elbow/wrist splints, and released her to work full time but with limiting typing to 20 minutes per hour.

Two days later, Petitioner returned to PA McHugh for recheck of her left lateral epicondylitis and right carpal tunnel syndrome ("CTS") "from repetitive typing at work." It was noted that she had Diabetes Type II. The numbness/tingling had improved since wearing the wrist splint overnight. Her condition was exacerbated by pressure, gripping, repetitive use, wrist movement, and typing, and relieved by Ibuprofen and splints. PT was waiting authorization. Mr. McHugh continued Ibuprofen, bracing, application of ice, and work restrictions.

A week later, Petitioner presented to PA McHugh for recheck of her left lateral epicondylitis and right CTS "from repetitive typing at work." Mr. McHugh continued Ibuprofen, splinting, application of ice, and work restrictions.

On March 31, 2021, Mr. McHugh noted that Petitioner had significant difficulties with the physical requirements of her job. PT was prescribed but waiting authorization and her claim was under investigation. Mr. McHugh prescribed Cyclobenzaprine, continued Ibuprofen, and prescribed wrist/elbow splints.

Petitioner last saw Ms. McHugh on May 27, 2021. She had had 10 PT visits but reported her pain was the same. She had surgical repair of left epicondylitis three years previously. Mr. McHugh continued treatment plan and work restrictions.

On June 9, 2021, Petitioner presented to Dr. Patel at Hinsdale Orthopedics for chief complaint of 8/10 left elbow pain, which was present for six years. She was typing at work and felt increased right wrist and left elbow pain and could not continue typing. The pain increased in severity over the last three months. She was in PT at Concentra. She had two injections in the elbow in 2014 and 2016 with no benefit, and prior elbow surgeries in 2016 and 2017. Levothyroxine was noted as one of her medications. After his clinical examination, Dr. Patel diagnosed medical epicondylitis and TFCC tear and noted "this is a work related injury." He took Petitioner off work and ordered MRIs of the elbow and wrist.

An MRI of the left elbow taken on June 16, 2021 was unremarkable with no significant abnormalities to explain her symptoms. On July 1, 2021, Petitioner returned and saw Dr. Nacke who noted the elbow MRI was unremarkable and the wrist MRI was not yet performed. He diagnosed recurrent left elbow lateral epicondylitis and right wrist pain, likely from a combination of ECU tenosynovitis and degenerative TFCC pathology. Dr. Nacke kept Petitioner off work and noted she would return after the wrist MRI. The MRI of the right wrist taken on August 17, 2021 showed enlarged median nerve which should be correlated with medical neuropathy or CTS, tenosynovitis of the second extensor compartment, and 1 cm ganglion cyst in the radio scaphoid articulation. On September 30, 2021, Dr. Nacke administered an injection in the radiocarpal joint. He restricted Petitioner to five pounds lifting with hands bilaterally and a 20 minute break for every hour worked.

On November 4, 2021, Petitioner returned to Dr. Nacke reporting 4/10 right-wrist pain and no improvement after the injection. They discussed possible wrist surgery of diagnostic arthroscopy with possible TFCC debridement versus repair. Petitioner wished to proceed. Twelve days later, Petitioner presented to Dr. Ghodasra with chief complaint of 4/10 right-wrist pain. She reported an injury at work on March 8, 2021 when she started feeling pain while typing. She had intermittent numbness/tingling with some weakness in all the fingers of her right hand. Bracing/PT provided little benefit. Dr. Ghodasra believed the wrist pain was from possible TFCC strain versus partial tear. However, he noted that the numbness/tingling concerned him about possible CTS. He recommended an EMG/NCV and retained work restrictions.

Petitioner returned to Dr. Ghodasra on January 18, 2022 still complaining of 4/10 right-wrist pain. It began six years previously but worsened over the past three months. He noted that MRI showed significant lodgment of the medial nerve just proximal to the carpal tunnel and the EMG showed evidence of CTS. They discussed surgery and Petitioner wanted to proceed with right endoscopic possible open CTS release.

On May 19, 2022, Petitioner presented to Dr. Fernandez for right hand pain. It was noted that she had Diabetes and Thyroid problems and was taking Synthroid. She reported she was "constantly on her computer typing." On March 8, 2021 she had a sharp increase in her pain/numbness/tingling in her right hand/wrist. An EMG confirmed CTS. Dr. Fernandez wanted an MRI to evaluate possible TFCC tear, prescribed Medrol Dosepak/Celebrex, prescribed PT/OT, sent for a radial Orthoplast splint, and took her off work.

An MRI taken on June 2, 2022 was of limited diagnostic value due to poor resolution but showed probable mild intrasubstance degeneration of the dorsal aspect of the ulnar attachment of the TFCC with no evidence of a tear, and a small ganglion cyst in the radiocarpal joint.

On September 7, 2022, Dr. Fernandez issues a narrative statement at the request of Petitioner's lawyer. He noted that Petitioner worked as a traffic technician which required "constant computer typing." She noticed a sharp increase in the pain/numbness in her right hand. An EMG confirmed right-sided CTS. She has been wearing splints with little benefit. Dr. Fernandez then answered queries.

Dr. Fernandez' diagnosis was right CTS. She also had right wrist pain relating to the TFCC, which was a separate condition involving cartilage. He opined that it appeared that her right CTS "would be related to work activities based on positional factors. If she was engaged in extended or frequent keyboarding and if her wrist is in a hyperflexion or extension position beyond 40 degrees, this would be a valid contributory factor in the causation or aggravation of underlying" CTS. He noted increased symptoms with those types of activities. He also noted extended/flexed position causes greater pressure on the carpal tunnel. However, he acknowledged that "the active keyboarding in and of itself would not be a major reason," for developing CTS. He noted that either conservative treatment or surgery were reasonable treatment options.

At Respondent's request, Dr. Balaram examined Petitioner pursuant to §12 of the Act, and issued a report on May 27, 2022. She apparently worked in data entry and reported that while typing on March 8, 2021 she experienced "immediate pain associated with her right wrist. She reports no awkward wrist positions, trauma, or accident." She also reported intermittent left elbow pain. Petitioner "denied any heavy lifting, forceful gripping, awkward wrist positions and/or use of vibratory tools." She stated she was evaluated at Concentra, started therapy (which did not provide relief), and had tests from specialists. She had been wearing a splint at night and had a steroid injection (which also provided no relief). "There has been consideration for surgical release of the carpal tunnel."

Currently, Petitioner reported pain and swelling, the pain was exacerbated by gripping, and numbness in the palm which can wake her at night. Dr. Balaram indicated that he has Petitioner demonstrate the manner in which she typed. After summarizing treatment to date, Dr. Balaram answered queries.

Dr. Balaram's diagnoses were mild right CTS and left elbow pain. He concluded that Petitioner's work activities as a data enterer involving typing and using a mouse did not contribute to her diagnoses. There was no evidence that Petitioner's job involved forceful gripping, awkward wrist positions, use of vibratory tools, or work on a line. He also noted that the common belief that typing leads to CTS "has been refuted in the medical community." Finally, he pointed out that Petitioner had two co-morbidity factors of Diabetes and Thyroid disorder, which can cause CTS. He also wrote that the mechanism of injury Petitioner described did not correlate with left elbow pain. Although he found no causation to her work activities, Dr. Balaram agreed that surgery was indicated.

Conclusions of Law

In finding Petitioner sustained her burden of proving accident/causation, the Arbitrator found her credible and that her testimony was not materially contradicted. She also found the opinions of Dr. Fernandez "significantly more persuasive" than those of Dr. Balaram. She also cited Petitioner's testimony and statistics indicating the number of entries she had to make per workday.

Respondent argues the Arbitrator erred in finding Petitioner proved accident and causation. It points out inconsistencies between Petitioner's testimony and the medical records regarding the onset of symptoms. Specifically, it stresses that Petitioner told Dr. Patel that she had symptoms for six years, which would have predated her employment as traffic enforcement technician. Respondent also stresses that while Petitioner testified that she reviewed "thousands" of events per workday, the productivity reports indicate that Petitioner only reviewed more than 1,000 events on only one day in 2021 and actually averaged only 439 entries per workday in 3/21. Finally, Respondent argues the Arbitrator erred in finding Dr. Fernandez more persuasive than Dr. Balram.

First, the Commission notes that we find unpersuasive statements from PA. McHugh and Dr. Patel who wrote respectively that Petitioner's CTS was "from repetitive typing at work" and that "this is a work related injury." These statements simply parrot Petitioner's report to the medical providers and they provide neither analysis nor reasoning for to support those statements. Similarly, just because Petitioner experienced increased symptoms while typing does not equate to typing "caused" her CTS. It is well known that sleeping can exacerbate symptoms of CTS, but obviously sleeping does not cause CTS.

The Commission agrees with Respondent that the opinions of Dr. Balaram are more persuasive than those of Dr. Fernandez. First, Dr. Fernandez' opinion was conditional/speculative. He acknowledged that simply "the active keyboarding in and of itself would not be a major reason," for developing CTS. However, "if she was engaged in extended or frequent keyboarding and if her wrist is in a hyperflexion or extension position beyond 40 degrees, this would be a valid contributory factor in the causation or aggravation of underlying" CTS.

In that regard, Dr. Balaram noted that Petitioner did not report any awkward wrist positions in her typing and he actually had her demonstrate the manner in which she typed. There is no indication that Dr. Fernandez had her demonstrate her tying positions. Finally, Dr. Balaram noted her co-morbid conditions of Diabetes and Thyroid disorder, which are clearly substantial contributory factors for developing CTS, which Dr. Fernandez did not address. Accordingly, the Commission agrees with Dr. Balaram's conclusion that Petitioner did not sustain her burden of proving accident/causation because there was no evidence that Petitioner's job involved forceful gripping, awkward wrist positions, use of vibratory tools, or work on a line and that the common belief that typing leads to CTS "has been refuted in the medical community."

IT IS THEREFORE ORDERED BY THE COMMISSION finds that Petitioner has not sustained her burden of proving a compensable repetitive traumatic accident nor her burden of proving causation to a current condition of ill-being.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 17, 2023 is hereby reversed and compensation is denied.

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 21, 2024

DLS/dw
O-1/24/24
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/s/*Deborah L. Simpson*
Deborah L. Simpson

/s/*Maria E. Portela*
Maria E. Portela

Dissent

I respectfully Dissent from the Decision of the Majority. I would have affirmed the well-reasoned Decision of the Arbitrator.

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC013501
Case Name	Adam Gordon v. Cook County Department of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0132
Number of Pages of Decision	20
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Randall Manoyan
Respondent Attorney	Daniel Swanson

DATE FILED: 3/21/2024

/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 COOK	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☒ Modify Penalties & Attorney's Fees	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ADAM GORDON,

Petitioner,

vs. NO: 22 WC 13501

COOK COUNTY DEPARTMENT OF CORRECTIONS,

Respondent.

DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to timely Petitions for Review under §19(b) filed by the Respondent and Petitioner herein. Notice given to all parties, the Commission, after considering the issues of the Arbitrator's denial of Respondent's Emergency Motion to Re-Open Proofs and Respondent's Motion to Issue Dedimus Potestatem, as well as the propriety of the imposition of penalties and attorney's fees, 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).

FINDINGS OF FACT

The issues argued on Review center on the failure to obtain the deposition of Respondent's §12 physician, Dr. Mark Cohen, prior to the deadline imposed by the Arbitrator. As such, the Commission provides the following recitation of the facts pertaining to the scheduling of the deposition.

The record reflects the parties appeared before Arb. Llerena for a specially-set pre-trial on November 17, 2022. That day, Petitioner's Counsel emailed Respondent's Counsel with a

summary of the parties' discussion with the Arbitrator as well as the Arbitrator's recommendations; included in Petitioner's Counsel's email is a request that Respondent's Counsel provide potential dates for the deposition of Dr. Cohen:

> The Arbitrator also indicated her expectation that Respondent will have obtained a deposition date for its IME examiner prior to hearing next month (pursuant to the 19b/8a we will be filing before the end of the week)…please obtain several dates for the deposition of your IME examiner ASAP. PX18.

On December 7, 2022, Petitioner's Counsel sent a follow-up email to Respondent's Counsel which, among other things, made a second request for deposition dates: "Also, once again, please obtain dates for the deposition of your IME examiner, Dr. Mark Cohen, immediately." PX18. Respondent's Counsel quickly responded that she would "follow up with my clients on this and get right back to you." PX18. After two more emails from Petitioner's Counsel requesting an update, Respondent's Counsel sent an email on December 20, 2022 which addressed benefit payments and rates, but did not include deposition dates. PX18.

On January 13, 2023, the parties again appeared before Arb. Llerena for a pre-trial. Later that day, Petitioner's Counsel re-sent his November 17, 2022 email to Respondent's Counsel and reiterated his request to "please obtain several dates for the deposition of your IME examiner ASAP." PX18. The record reflects Respondent's Counsel did not reply to the January 13, 2023 email, and on January 26, 2023, Petitioner's Counsel again emailed Respondent's Counsel asking for an update. PX18. On January 27, 2023, Respondent's Counsel replied as follows: "I am still working on this. I will have a response prior to our hearing February 15, 2023." PX18.

At 8:53 a.m. on the morning of the specially-set February 15, 2023 pre-trial, Respondent's Counsel emailed Petitioner's Counsel: "Are you open to getting another short date? Risk Management is still in the process of scheduling our IME expert's deposition. The adjuster on the file is new. She has been working on it but she does not have the available dates yet." PX18. The record reflects that during the February 15, 2023 pre-trial, the Arbitrator allowed Respondent's Counsel a final continuance and imposed a deadline of 10:00 a.m. on March 1, 2023; if Respondent's Counsel did not provide available dates for Dr. Cohen's deposition at that time, the matter would be set for trial.

On March 1, 2023, at 9:32 a.m., Respondent's Counsel sent the following email to the Arbitrator and Petitioner's Counsel:

> Good morning Your Honor,
> This matter is specially set before you at 10:00 am for status update regarding IME and Treater deposition scheduling.
> Respondent has been in contact with the IME expert and we are working with him for a date sooner than 90 days, due to his schedule. We do not want to have to push the trial out that far, so we are working to move things up. I am unsure if Petitioner's Attorney was able to secure a date for the Treater deposition, yet.
> Respondent requests that this matter be returned to the call to allow the parties more time for trial preparation. PX18.

At 9:45 a.m., Petitioner's Counsel replied and voiced his objection to any further delay. Three minutes later, at 9:48 a.m., Respondent's Counsel advised she would not be appearing at the pre-trial: "Your Honor - Respondent is not able to attend today at 10:00 am, due to a work-related emergency meeting." PX18.

The record reflects Petitioner's Counsel attended the 10:00 a.m. pre-trial and later that morning, he emailed Respondent's Counsel to advise that in her absence, the Arbitrator set the case for trial on March 30, 2023; Petitioner's Counsel further advised he "will not waive hearsay for your Section 12 report, and the Arbitrator will no longer entertain any objection made by Respondent regarding its failure to obtain dates for the deposition of its Section 12 examiner." PX18.

At 5:13 p.m. on March 30, 2023, Respondent's Counsel emailed the Arbitrator and Petitioner's Counsel to report she had Dr. Cohen's deposition dates:

> I understand trial has been scheduled for March 30, 2023. I was just notified that our IME expert is available to be deposed virtually on Monday, March 6, 2023 at 1:00 PM. Additionally, he is available on April 10, 2023 and April 17, 2023, both at 1:00 PM.
> Counsel, please advise which date works best for you to depose Respondent's IME doctor. PX18.

Petitioner's Counsel replied the next day and objected to taking the deposition:

> Respondent has had since November 2022 to obtain dates for its IME deposition. In fact, I have discussed this issue at each of our recent pre-trial hearings (on 11/17/23 [*sic*], 1/13/23 and 2/15/23). On 1/13/23, Arb. Llerena directed Respondent to obtain dates for its deposition prior to the specially-set hearing date of 2/15/23. Respondent failed to obtain deposition dates prior to the February 15, 2023 pre-trial hearing date. At the 2/15/23 pre-trial hearing, Arbitrator Llerena accommodated Respondent providing it an additional 2 weeks to obtain dates for its deposition, setting a specially-set hearing date of 3/1/23. The Arbitrator clearly warned Respondent to obtain dates for its deposition prior to the specially-set hearing on 3/1/23. However, not only did Respondent fail to obtain dates prior to the 3/1/23 hearing, but Respondent also failed to appear for this hearing at all.
> On several occasions since January 2023 the Arbitrator has recommended that Respondent make a TTD advance to Petitioner Officer Adam Gordon while the parties waited to set this case for trial. As you will recall, the Arbitrator tolerated this "wait" (as it relates to setting this case for trial), in order to allow Respondent time to obtain dates for the deposition of its IME examiner. Respondent continues its refusal to issue any TTD Advance to Officer Gordon.
> We strongly object to Respondent's request for further accommodation. We look forward to trying this case pursuant to Petitioner's 19(b) on 3/30/23. PX18.

On March 6, 2023, the Arbitrator emailed both Counsels to advise she would not continue the matter absent an agreement by the parties; as there was no such agreement, she directed the parties to be prepared for trial as previously scheduled. PX18.

On March 30, 2023, the case proceeded to arbitration. The issues in dispute were causal connection, temporary disability, incurred medical expenses, prospective medical treatment, §4(c), penalties under §19(l) and §19(k) as well as attorney's fees under §16, and Respondent's entitlement to credit. ArbX1. During the submission of exhibits, when Respondent's Counsel offered the September 14, 2022 §12 report of Dr. Mark Cohen (RX4), Petitioner's Counsel raised a hearsay objection; the Arbitrator sustained the objection and rejected the exhibit. T. 74-75. The Arbitrator then allowed Respondent's Counsel to make a statement on the record:

> Ms. Cockrell: Yes, that we contended to schedule a deposition and Petitioner's attorney refused. And that's, if we had the deposition, this would have been admitted. I would request that Your Honor grant an exception because Respondent was literally fighting to get a deposition for our IME doctor. T. 76

In response, Petitioner's Counsel noted "the true nature of how this whole situation about taking the dep progressed" is documented in the emails contained in Petitioner's Exhibit 18. T. 76. The Arbitrator then made her own statement for the record:

> Arb. Llerena: This was - - there were attempts to set up a deposition. However, it took more than two cycles. It took over six months. I put a deadline of two weeks at the final pre-trial where I was told that I would have a date. A date was not provided on that date, and at that point I went ahead and set the case for trial because I felt we had waited long enough in trying to get this deposition done. There had already been two cycles, status cycles gone through by that point. So the dep was not done. Obviously you do have the IME. Currently because the deps are not done, they are hearsay. I am rejecting it, but I wanted to put it on the record should either party appeal my decision. T. 77.

In response, Respondent's Counsel stated, "I did meet that deadline on that day you gave. I provided all the dates that were available, but at that point Petitioner's attorney wanted to proceed with trial." T. 78. Respondent's Counsel then requested a continuance "to allow for a deposition," which the Arbitrator denied. T. 78. The Arbitrator also sustained a hearsay objection to Dr. Cohen's October 24, 2022 addendum (RX7) and a relevance objection to Dr. Cohen's C.V. (RX8). T. 81, 82. Proofs were closed on March 30, 2023.

On April 28, 2023, Respondent filed a Stipulation to Substitute Attorneys identifying IMFK Law, Ltd. as its new representative. On May 2, 2023, Daniel Swanson, the attorney now handling the matter for Respondent, filed three post-trial motions[1]: Emergency Motion to Re-Open

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[1] The Commission observes Respondent's Emergency Motion to Re-Open Proofs as well as its Motion to Issue Dedimus Potestatem both include an exhibit dehors the record. Specifically, the last exhibit attached to both motions is a March 1, 2023 email from Dr. Cohen's office to Ms. Cockrell; as that email was not offered as an exhibit and is not in the authenticated transcript, the Commission has not considered it.

Proofs, Motion to Extend Time for Filing Proposed Decision, and Motion to Issue Dedimus Potestatem.

On May 30, 2023, Arbitrator Llerena held a hearing on Respondent's motions. In arguing the merits of the motions, Respondent's new attorney explained he only recently received the file, as such he "do[es]n't know the whole subtext. I wasn't there," but his impression from reading the transcript was deposition dates were provided, "which is contrary to what [the Arbitrator] indicated on the record on Pages 77 and 78." 5.30.23 Trans., p. 7. Respondent's attorney then argued that refusing to re-open proofs would be highly prejudicial to Respondent and would result in a prolonged appeal, and repeatedly claimed Petitioner's Counsel had "unclean hands" and should shoulder the responsibility for Respondent's inability to schedule Dr. Cohen's deposition. 5.30.23 Trans. 8-14.

In response, Petitioner's Counsel explained the record contradicts Mr. Swanson's arguments, then emphasized the prejudice additional delay would cause Petitioner. 5.30.23 Trans. 14-20. When Mr. Swanson stated his impression was the Arbitrator "gave her two weeks after the March 1 pretrial," the Arbitrator clarified the timeline:

> Arb. Llerena: On February 15, that was the final pretrial. At that point I set it specially for another pre-trial specific to the deadline of getting dates for an IME…For March 1 at 10:00 a.m. That morning Miss Cockrell sent an e-mail…Specifically stating she did not have any dates yet but hoped to have some soon, and she sent a second e-mail explaining that there was an emergency meeting at work and therefore she would not be attending - - the pre-trial. At 5:13 p.m., March 1, so after business on March 1 - - is when she did send dates - - of March 6 at 1:00 p.m., April 10 and April 17 at 1:00 p.m. as well…So they were not within the deadline I set at that point, but they were eventually provided. 5.30.23 Trans. 28-29.

Mr. Swanson then argued Respondent was being prejudiced by a "petty technical issue," again warned a lengthy appeal would result if the Arbitrator did not admit Dr. Cohen's report, and repeated his claim that Petitioner's Counsel has "unclean hands" regarding the failure to schedule the deposition. 5.30.23 Trans. 29-32.

On June 12, 2023, the Arbitrator issued her Decision. The Arbitrator found Petitioner's current left elbow condition is causally related to the undisputed May 12, 2022 accident and awarded incurred medical expenses, prospective treatment in the form of work conditioning as ordered by Dr. Watson, and Temporary Total Disability ("TTD") benefits from May 13, 2022 through March 30, 2023. As to penalties and fees, the Arbitrator found Respondent failed to pay TTD benefits from May 13, 2022 through May 15, 2022, and November 16, 2022 through March 30, 2023, and "failed to provide any justification for the delay in payments on this undisputed claim"; with respect to medical, the Arbitrator found "Respondent's reliance on the report to deny authorization for additional treatment was not unreasonable." Arb.'s Dec., p. 7. The Arbitrator imposed §19(l) penalties but denied §19(k) penalties and §16 attorney's fees. The Arbitrator further found Respondent proved entitlement to credit for TTD benefits previously paid and a PPD advance.

The same day, the Arbitrator issued Orders denying Respondent's three post-trial motions. In each Order, the Arbitrator detailed the procedural history of the claim, emphasized that "Respondent was aware of Petitioner's objections to the reports from Dr. Cohen [and] had months to set up the evidence deposition of Dr. Cohen and failed to do so," then ruled that "[a]llowing Respondent a second bite at the apple would be contrary to the interests of fairness and justice."

CONCLUSIONS OF LAW

Respondent's Petition for Review identifies causal connection, medical expenses, prospective medical, TTD duration, §19(l) penalties, and the denial of its Motion to Re-Open Proofs as well as its Motion to Issue Dedimus Potestatem as issues on Review, however Respondent's Statement of Exceptions only advanced argument on its Motions and the imposition of §19(l) penalties. Therefore, the Commission views the remaining issues as forfeited.

Petitioner's Petition for Review identifies penalties and attorney's fees as well as Sections 4(c) and 4(d) as issues on Review. However, as Petitioner's Statement of Exceptions only presented argument on penalties and attorney's fees, the Commission finds Petitioner has similarly forfeited the §4(c) and 4(d) issues.

I. Respondent's Post-Trial Motions

On Review, Respondent argues it was an abuse of discretion for the Arbitrator to deny its Emergency Motion to Re-Open Proofs and its Motion to Issue Dedimus Potestatem. In so doing, Respondent claims it was the obstructive conduct of Petitioner's Counsel as well as the impatience of the Arbitrator that prohibited Respondent from obtaining the deposition of Dr. Cohen, and decries the unfairness and prejudice that will result to Respondent if Dr. Cohen's opinions are not entered into evidence. The Commission finds Respondent's arguments without merit.

The Commission first emphasizes the record is devoid of any evidence substantiating Mr. Swanson's repeated allegations that Petitioner's Counsel impeded the scheduling of the deposition. To the contrary, Petitioner's Exhibit 18 establishes that on multiple occasions (November 17, 2022; December 7, 2022; and January 13, 2023) Petitioner's Counsel sent a written request to Ms. Cockrell asking that she obtain and forward Dr. Cohen's available deposition dates, yet over the course of five months, she did not do so. Furthermore, the recurring assertion that Petitioner's Counsel has unclean hands is an allegation the Commission takes seriously and given the emails which belie Mr. Swanson's claims, the Commission finds it a wholly baseless allegation.

In the Commission's view, the Arbitrator afforded Ms. Cockrell every opportunity to provide deposition dates, including granting an additional two-week extension at the February 15, 2023 "final" pre-trial, yet Ms. Cockrell inexplicably failed to do so. Ms. Cockrell's contention on March 30, 2013 that she was "literally fighting" for the deposition is contradicted by the evidence, and Mr. Swanson's post-hearing claims of unfairness and unclean hands on the part of Petitioner's Counsel are untenable. The Commission finds Respondent's post-trial motions were properly denied.

II. Penalties and Attorney's Fees

A. §19(l)

Under §19(l), the penalties are in the nature of a late fee and are mandatory if the payment of benefits is late and the employer cannot show an adequate justification for the delay. *Jacobo v. Illinois Workers' Compensation Commission*, 2011 IL App (3d) 100807WC, ¶ 20. The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness: The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. *Id* (Emphasis added).

The Arbitrator found Respondent failed to justify its refusal to pay TTD benefits from May 13, 2022 through May 15, 2022 and November 16, 2022 through March 30, 2023, and assessed $4,140.00 in §19(l) penalties, based on the 138-day TTD period. Both parties challenge the award of §19(l) penalties on Review: Respondent argues no penalties are warranted and Petitioner argues the penalties were miscalculated. We address Respondent's claim first.

In arguing §19(l) penalties are not warranted, Respondent asserts it had a "bona fide dispute as to the causal connection," the utilization review ("UR") report "served as a reasonable basis to deny further physical therapy," and Petitioner "admitted that Dr Cohen 'let me know that he didn't find anything' wrong. (Transcript at page 45)," so it was not unreasonable for Respondent to rely on Dr. Cohen's conclusion. Respondent further posits penalties are unfair because Petitioner's Counsel "reject[ed] deposition dates for multiple months and multiple pre-trials" and unreasonably prohibited Respondent from scheduling Dr. Cohen's deposition. The Commission finds Respondent's argument is contradicted by the record.

As detailed above, Respondent's claim that it made several attempts to schedule the deposition in the months prior to hearing only to be thwarted by Petitioner's Counsel has no basis in the record. The Commission further observes Respondent's other attempts at justifying its conduct are similarly incompatible with the record. For example, while Respondent claims the "Utilization Review report (PX 16) served as a reasonable basis to deny further physical therapy," the Commission emphasizes the UR report is not in evidence; rather, the only UR document in the record is the "Notice of Determination" sent by Kristen Hillyer, RN. Respondent failed to offer the Peer report into evidence, so the Commission has no way of assessing whether Respondent reasonably relied on it. Additionally, Respondent asserts it reasonably relied on Dr. Cohen's opinion, despite the fact his reports were subsequently denied admission, as Petitioner reviewed both reports "and accurately summarized the conclusion that Dr. Cohen, 'Let me know in a way that he really didn't find anything, you know, he claims that he didn't find anything.'" The Commission notes, however, Petitioner was not referring to Dr. Cohen but instead was discussing the physician who administered the EMG:

> Q. Okay. Were you aware that in the EMG you tested negative for cubital tunnel syndrome?
> A: During the test it was quite clear that, you know, he, I feel that he was a little one-sided, you know. So he did let me know that in a way that he didn't really find

> anything, you know. He claims that he didn't find anything I should say. T. 44-45 (Emphasis added).

The Commission, like the Arbitrator, finds Respondent failed to justify its refusal to pay benefits and §19(l) penalties were appropriate. However, we view the calculation differently.

Section 19(l) provides penalties are to be calculated on the time benefits were withheld or refused without adequate justification. *820 ILCS 305/19(l)*. The Commission finds §19(l) penalties were triggered as of the January 13, 2023 pre-trial. We observe that Respondent's Counsel was put on notice on November 17, 2022 that, by the January 13, 2023 pre-trial, she was to obtain available dates for Dr. Cohen's deposition. PX18. The record further reflects, however, Respondent's Counsel appeared at the January 13, 2023 pre-trial having failed to obtain deposition dates. Respondent's Counsel thereafter failed to obtain the necessary deposition dates and no dates were provided prior to the final deadline of 10:00 a.m. on March 1, 2023. The Commission finds Respondent withheld benefits without adequate justification for a total of 77 days, representing January 13, 2023 through the March 30, 2023 arbitration hearing, and imposes §19(l) penalties of $2,310.00 (77 x $30 = $2,310.00).

B. §19(k) penalties and §16 attorney's fees

The Arbitrator declined to impose §19(k) penalties or §16 attorney's fees. The Commission views the evidence differently.

The standard for awarding penalties under §19(k) requires more than an "unreasonable delay" in payment of an award; instead, §19(k) penalties 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." *Jacobo* at ¶ 24, quoting *McMahan v. Industrial Commission*, 183 Ill. 2d 499, 515. The Commission observes Respondent failed to meet its evidentiary burden on the penalties issue: not only did Respondent fail to offer the UR report into evidence, but dating back to November 2022, Respondent was aware of the hearsay objection to Dr. Cohen's reports yet for over five months, it failed to provide available dates to take the deposition it clearly knew was necessary in order to render the doctor's opinions admissible. We emphasize that the mere fact that Respondent was in possession of a competing medical opinion is insufficient to insulate Respondent from penalties. To be clear, the Commission must evaluate the opinion itself to determine whether relying on it was reasonable: "The test is not whether there is some conflict in medical opinion. Rather, it is whether the employer's conduct in relying on the medical opinion to contest liability is reasonable under all the circumstances presented." *Continental Distributing Co. v. Industrial Commission*, 98 Ill. 2d 407, 415-16 (1983) (Emphasis added). Here, Respondent's own inaction precluded us from doing so. As such, the Commission finds Respondent's conduct meets the higher standard of a deliberate delay, and we find §19(k) penalties and §16 attorney's fees are appropriate.

Our analysis then turns to calculation of the §19(k) penalties and §16 attorney's fees. As detailed above, the Commission finds the Act's penalties provisions were triggered on January 13, 2023; on that date, Respondent's Counsel was expected to provide available dates for Dr. Cohen's deposition, yet she failed to do so. From January 13, 2023 through the March 30, 2023 hearing, Respondent refused to pay $10,747.77 in TTD benefits ($977.07 x 11 = $10,747.77) as well as

$13,587.22 in outstanding medical expenses, for a total of $24,334.99 in benefits that Respondent vexatiously withheld from Petitioner. The Commission orders Respondent to pay §19(k) penalties of $12,167.50 ($24,334.99 x 50% = $12,167.50) and §16 attorney's fees of $4,867.00 ($24,334.99 x 20% = $4,867.00).

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 12, 2023, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $977.07 per week for a period of 46 weeks, representing May 13, 2022 through March 30, 2023, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall be given a credit of $20,845.60 for temporary total disability benefits previously paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $13,587.22 for medical expenses, 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 work conditioning as recommended by Dr. Jonathan Watson, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §19(l) penalties in the amount of $2,310.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §19(k) penalties in the amount of $12,167.50.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §16 attorney's fees in the amount of $4,867.00.

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

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

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

Under 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.

March 21, 2024

MP/mck

O: 2/7/24

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/s/_*Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC013501
Case Name	Adam Gordon v. Cook County Department of Corrections
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Randall Manoyan
Respondent Attorney	Daniel Swanson

DATE FILED: 6/12/2023

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 6, 2023 5.25%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

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

Adam Gordon Case # **22** WC **013501**
Employee/Petitioner
v.
Cook County Department of Corrections
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 **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **March 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 **8(j) Credit & Respondent Credit**

Adam Gordon v. Cook County Department of Corrections, 22WC013501

FINDINGS

On the date of accident, **May 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*** 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 $**76,211.20**; the average weekly wage was $**1,465.60**.

On the date of accident, Petitioner was **28** years of age, ***single*** with **0** dependent children.

Respondent shall be given a credit of $**20,845.60** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**20,845.60**.

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 $977.07 per week for 46 weeks, commencing May 13, 2022, through March 30, 2023, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $20,845.60 for temporary total disability benefits paid to Petitioner.

Respondent shall pay reasonable and necessary medical services of $13,587.22, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care in the form of work conditioning as recommended by Dr. Jonathan Watson.

Respondent shall pay Petitioner penalties of $4,140.00, as provided in Section 19(l) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Elaine Llerena
Signature of Arbitrator

ICArbDec19(b) **June 12, 2023**

FINDINGS OF FACT

This matter proceeded to hearing on March 30, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Petition for Immediate Hearing under Section 19(b) and 8(a). The issues in dispute are causal connection, medical expenses, 8(j) credit, temporary total disability benefits, Respondent's credit, prospective medical care and penalties and attorney's fees. Arbitrator's Exhibit 1 (AX1).

Job Duties

Petitioner is employed as a correctional officer with Respondent. At the time of his work accident, he had been employed by Respondent since February 12, 2020. (T. 8-9) He was 28 years old at the time of his work accident.

Prior Medical Condition

Prior to his work accident, Petitioner was in good health and without injury. Petitioner had no prior injuries or conditions of ill-being relating his to left arm or left elbow. (T. 31-32)

Accident

On May 12, 2022, Petitioner sustained a work-related accident when an inmate attacked him. Petitioner is left-hand dominant. (PX10)

The Employee Accident Report, dated May 14, 2022, indicates that Petitioner reported injuries to his head, face, mouth, left elbow, left hand, left wrist, right hand, and right wrist. (PX1) Immediately after the incident, Petitioner began to experience numbness in his left arm. (T. 10)

Petitioner was first evaluated at Cermak Health Services. (RX1) The Chicago Fire Department then transported Petitioner by ambulance to St. Anthony Hospital. (PX6, RX1)

The physicians at St. Anthony Hospital took Petitioner off work pending further evaluation from his primary care physician. (T. 12) Petitioner saw his primary care doctor, Dr. Navneet Singh of Advocate Health Group, on May 18, 20223, and on May 26, 2022. (T. 13-14) Dr. Singh took Petitioner off work and referred him for an orthopedic evaluation. (T. 13-15)

Summary of Medical Records

Petitioner saw Dr. Jonathan Watson of Skyline Orthopedics on May 31, 2022. (PX10) Petitioner complained of left elbow pain and left arm weakness. Petitioner reported that he had no prior history of injury to either his left arm or his left elbow. Dr. Watson ordered an MRI of the left elbow and kept Petitioner off work.

On June 21, 2022, Petitioner underwent a left elbow MRI arthrogram at American Diagnostic MRI, the results of which revealed a grade 1 sprain of the anterior bundle of the ulnar collateral ligament complex. (PX9)

Dr. Watson reviewed the MRI images with Petitioner on June 27, 2022, and noted a collateral ligament tear of the left elbow. (PX10) Dr. Watson ordered physical therapy and kept Petitioner off work.

Petitioner began physical therapy at Sports & Ortho Physical Therapy and Sports Medicine on July 5, 2022. (PX11)

On August 1, 2022, Petitioner followed-up with Dr. Watson who ordered additional physical therapy and kept Petitioner off work. (PX10)

Respondent obtained a Utilization Review dated August 11, 2022, which denied additional physical therapy. (PX16 & PX17) Petitioner was discharged from physical therapy on August 12, 2022. (PX11, PX16, PX17)

On August 22, 2022, Dr. Watson determined that Petitioner had failed conservative treatment and ordered surgery in the form of a repair of the partial tear of the left ulnar collateral ligament. (PX10) Dr. Watson kept Petitioner off work. Petitioner continued to follow up with Dr. Watson, who continued to recommend surgery and keep Petitioner off work.

Respondent obtained a Section 12 examination of Petitioner and addendum report. The Arbitrator rejected these reports due to a hearsay objection by Petitioner.

On October 12, 2022, Petitioner underwent an EMG of the left elbow at University of Chicago Medicine, the results of which were normal. (RX5) Petitioner followed up with Dr. Watson on October 18, 2022. (PX10) Dr. Watson reviewed the EMG, continued to recommend surgery, and kept Petitioner off work pending surgery.

On December 21, 2022, Dr. Watson performed a left elbow ulnar nerve transposition. (PX10)

On January 3, 2023, Dr. Watson ordered post-operative physical therapy and kept Petitioner off work. (PX10) On February 2, 2023, Petitioner reported that he was recovering well and that he was experiencing no pain that day. During his physical examination, Dr. Watson noted improved range of motion with left elbow flexion. Dr. Watson kept Petitioner off work while Petitioner completed his physical therapy.

On February 21, 2023, Dr. Watson recommended that Petitioner begin a work conditioning program and kept Petitioner off work. (PX10) Petitioner began work conditioning program at ATI Physical Therapy on March 9, 2023. (PX12 & PX13) On March 20, 2023, Dr. Watson indicated that they would discuss Petitioner's return to work once he completed work conditioning. (PX10)

Petitioner's Current Condition

Petitioner had already attended 13 work conditioning sessions at the time of trial and had four additional sessions scheduled between April 3, 2023, and April 6, 2023. (PX13)

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 finds that Petitioner's testimony was credible and supported by the evidence.

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 employee must establish the existence of a causal relationship between his or her current condition of ill-being and employment. *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1202 (2000). An occupational accident need not be the sole or principal causative factor in the resulting condition of ill-being, as long as it was a causative factor. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 205 (2003). Hence, a claimant need prove only that some act or phase of his employment was a causative factor in the resulting injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005).

"Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26.

The parties stipulated that Petitioner suffered injuries to his left elbow as a result of a work-related accident on May 12, 2022. Petitioner was in good health prior to his work accident and had suffered no prior left arm or left elbow injuries, nor had he treated for any left arm or left elbow issues. Dr. Watson identified a partial tear of the ulnar collateral ligament during his review of the MRI. Neither Dr. Watson's diagnosis of a torn ligament nor his opinions about Petitioner's need for surgical intervention to his left elbow were refuted by Respondent. Likewise, Dr. Watson's opinions regarding Petitioner's current condition were not refuted by Respondent.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the May 12, 2022, work accident.

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

A claimant is entitled to recover reasonable medical expenses that are determined to be required to diagnose, relieve, or cure the effects of the claimant's condition of ill-being. *F & B Manufacturing Co. v. Industrial Comm'n*, 325 Ill.App.3d 527, 534 (2001). The Arbitrator notes that Petitioner underwent conservative care which failed and then underwent the recommended surgery.

Based on the above and the Arbitrator's finding on the issue of causal connection, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services provided in the treatment of Petitioner's injuries sustained during the May 12, 2022, work accident pursuant to Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Under section 8(a) of the Act, claimant is entitled to recover reasonable medical expenses that are causally related to the work accident. 820 ILCS 305/8(a) (West 2010); *University of Illinois v. Industrial Comm'n*, 232 Ill. App. 3d 154, 164, 596 N.E.2d 823, 830 (1992). "Whether an incurred medical expense was reasonable and necessary and should be compensated is a question of fact for the Commission, and the Commission's determination will not be overturned unless it is against the manifest weight of the evidence." *City of Chicago v. Illinois Workers Compensation Comm'n*, 409 Ill. App. 3d 258, 267, 947 N.E.2d 863, 870 (2011). Questions regarding entitlement to prospective medical expenses under section 8(a) are also questions of fact for the Commission to resolve. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10.

The Arbitrator notes that Dr. Watson ordered work conditioning for Petitioner following his surgery and post-operative physical therapy. Dr. Watson indicated that he and Petitioner could discuss Petitioner's return to work after the completion of work conditioning.

Based on the above and the Arbitrator's finding on the issue of causal connection, the Arbitrator finds that Respondent shall authorize and pay for work conditioning for Petitioner as recommended by Dr. Watson.

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:

An employee is temporarily totally disabled "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." *Sun Choi v. Indus. Comm'n*, 182 Ill. 2d 387, 398, (1998) A claimant may recover temporary total disability benefits up until the point that his or her condition eventually stabilizes. *Mechanical Devices v. Industrial Comm'n*, 344 Ill.App.3d 752, 759 (2003). A condition has stabilized where the claimant has recovered to the extent that the nature of the injury will permit, that is, when the claimant reaches maximum medical improvement (MMI). *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill.App.3d 463, 471 (2011); *Briggs Manufacturing Co. v. Industrial Comm'n*, 212 Ill.App.3d 318, 320 (1989).

As of the date of trial, March 30, 2023, Petitioner remained off work due to the injuries sustained from the May 12, 2022, work accident. Petitioner was still participating in a work conditioning program as of that date and had not yet reached MMI for his left elbow injury.

The Arbitrator notes that Respondent paid temporary total disability benefits to Petitioner from May 16, 2022, through November 15, 2022. (RX9)

Based on the above and the Arbitrator's finding on the issue of causal connection, the Arbitrator finds Petitioner is entitled to temporary total disability benefits from May 13, 2022, through March 30, 2023. Respondent shall receive a credit for the temporary total disability payments made to Petitioner from May 16, 2022, through November 15, 2022.

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

Pursuant to Section 19(l) of the Act, where the employer or its insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay. 820 ILCS 305/19(l). Penalties under Section 19(l) are mandatory unless the employer can provide adequate justification for the delay in payment. Reasonableness is the critical test for determining whether penalties under §19(l) should be imposed. *Board of Education of City of Chicago v. Industrial Commission*, 93 Ill.2d 1 (1982).

In the case at bar, Respondent failed to pay Petitioner temporary total disability benefits from May 13, 2022, through May 15, 2022, and from November 16, 2022, through March 30, 2023. The delay in payment of 46 weeks has created a rebuttable presumption of unreasonable delay. Additionally, Respondent failed to provide any justification for the delay in payments on this undisputed claim.

Pursuant to Section 19(k) of the Act, "where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay." 820 ILCS 305/19(k). Pursuant to Section 16 of the Act, "[w]henever the Commission shall find that the employer, his or her agent, service company or insurance carrier … has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier." 820 ILCS 305/16.

The Arbitrator notes that Respondent relied on a utilization review report dated August 11, 2022 (PX16), to deny authorization for the additional physical therapy recommended by Dr. Watson. While the Arbitrator does not find the utilization review report persuasive in this matter, Respondent's reliance on the report to deny authorization for additional treatment was not unreasonable. Additionally, the Arbitrator notes that while Respondent's failure to pay temporary total disability benefits for a period of time was based on its dispute as to a causal connection regarding Petitioner's ongoing condition and the May 12, 2022, accident. While the Arbitrator did not find Respondent's basis for the dispute to be persuasive, it was not unreasonable.

Based on the above, the Arbitrator finds that Respondent shall pay penalties of $30.00 a day from May 13, 2022, through May 15, 2022, and from November 16, 2022, through March 30, 2023, pursuant to Section 19(l) of the Act, totaling 138 days. The Arbitrator denies Petitioner's claim for penalties under Sections 19(k) and 16 of the Act.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Section 8(j) grants employer's credit for any benefits paid pursuant to a full or partially funded employer group health program. An employer is not entitled to credit for any payments made by a group health plan not paid in part or in full by the employer including any payments made pursuant to Medicare or Medicaid.

The Arbitrator notes that Respondent introduced into evidence a payment ledger of medical expenses paid on Petitioner's claim as RX10. However, the ledger fails to identify if the payments were made by a group health plan. Instead, the ledger indicates that the payments made were regarding Petitioner's workers' compensation claim.

Based on the above, the Arbitrator finds that Respondent is due a credit of $0.00 under Section 8(j) of the Act.

Respondent is also claiming a credit for temporary total disability benefits it made to Petitioner. As proof of these payments, Respondent provided a payment ledger (RX9) detailing the temporary total disability benefits made to Petitioner from May 16, 222, through November 15, 2022, and a permanency disability benefit payment advance of $11,690.42.[1]

Based on the above, Respondent is entitled to a credit for the temporary total disability paid to Petitioner from May 15, 2022, through November 15, 2022, totaling $20,845.60.

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[1] Petitioner's attorney acknowledged this amount was a PPD advance at trial. (T. 46). Additionally, Respondent included the issue of a credit on the Request for Hearing form, detailing the payment of $11,690.42 as a "PPD Advance."

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC025168
Case Name	John Ballas v. Menards, Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0133
Number of Pages of Decision	21
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	David Olivero
Respondent Attorney	Robert Doherty

DATE FILED: 3/22/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS	)		
	) SS.	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
COUNTY OF KANKAKEE	)	☒ 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 BALLAS,

Petitioner,

vs. NO: 14WC025168

MENARDS, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses 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.

On page 9, at the end of the third full paragraph beginning with "On 8/1/18," we add the following:

> Petitioner had a telemedicine visit with Dr. Gruft on November 5, 2020. *Px4 at 269*. This record states, "Pain is under control. Pain is 2/10. Had a bony mass in the back of his head that was removed 3 days ago and headaches are gone the [first] time since 2013." The treatment section indicates, "Doesn't need [D]ilaudid anymore since Medical Marijuana continues working well for pain control."

On page 15, in the third paragraph under issue (K), we correct a scrivener's error to reflect that the first period of temporary total disability (TTD) ended on "5/29/13" instead of "5/19/13." Although the TTD dates are accurately listed in the Order section, we also correct the calculation of the number of weeks from 156-2/7 to 156-5/7 weeks as follows:

February 22, 2013 through May 29, 2013	13-6/7 weeks
January 19, 2015 through February 22, 2015	5 weeks
September 17, 2015 through May 8, 2018	137-6/7 weeks
Total:	156-5/7 weeks

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 6, 2023 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.

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.

March 22, 2024

/s/ *Maria E. Portela*

SE/

O: 3/5/24

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/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC025168
Case Name	John Ballas v. Menards, Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	David Olivero
Respondent Attorney	Robert Doherty

DATE FILED: 2/6/2023

THE INTEREST RATE FOR THE WEEK OF JANUARY 31, 2023 4.68%

/s/ *Paul Cellini, Arbitrator*

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF KANKAKEE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOHN BALLAS
Employee/Petitioner
v.
MENARDS, INC
Employer/Respondent

Case # **14** WC **25168**

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 **Kankakee**, on **November 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 **November 26, 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 $**21,687.12**; the average weekly wage was $**417.06**.

On the date of accident, Petitioner was **38** years of age, ***married*** 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 $**40,899.46** for TTD, $**0** for TPD, $**0** for maintenance, and $**204,352.56** for medical expenses.

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 cervical and left shoulder conditions of ill-being are causally related to the November 26, 2012 accident.

Respondent shall pay Petitioner temporary total disability benefits of $330.00 per week for 156-2/7 weeks, commencing February 22, 2013 through May 29, 2013, from January 19, 2015 through February 22, 2015, and from September 17, 2015 through May 8, 2018, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $40,899.46 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of $19,430.73, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for the causally related medical expenses that have been paid by Respondent, 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 $330.00 per week for 125 weeks, because the injuries sustained caused the loss of use of 25% of the person as a whole with regard to the cervical spine, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $330.00 per week for 75 weeks, because the injuries sustained caused the loss of use of 15% of the person as a whole with regard to the left shoulder, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from **November 26, 2012** through **November 21, 2022**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Signature of Arbitrator

FEBRUARY 6, 2023

STATEMENT OF FACTS

Petitioner worked for Respondent at their distribution center as a picker/general laborer, which he described as a very physical job. He denied any neck or left shoulder problems prior to 11/26/12. He is right hand dominant. He has worked other jobs which include a video game business including repair, construction with his dad, and restaurant work.

One of the Petitioner's tasks with Respondent was to pick items from a conveyor system and build up pallets with the products. In the afternoon on 11/26/12, he was lifting an approximate 70 pound fireplace from the conveyor when paint cans hit it and knocked it out of his hands. He reached out with his left hand to catch it and immediately felt a loss of strength and numbness in his left arm. After informing his supervisors, he went to the ER at Rush-Copley Hospital.

The report from Rush-Copley Occupational Health with complaints of left shoulder pain and numbness to the left hand. He gave a history of lifting a fireplace weighing 75 pounds and experienced pain in his left shoulder and tightness in the left hand. He was unable to lift the left arm to shoulder height due to pain. Petitioner rated his pain 7-8/10 and denied any prior left shoulder injury or radicular symptoms into the left arm. On examination, left shoulder range of motion was diminished significantly. A left shoulder x-ray was negative for

fracture or dislocation. Petitioner was placed on light duty with no use of the left arm, prescribed Naproxen and icing of the left shoulder 2-3 times a day. (Px1).

On 12/7/12, Petitioner returned to Rush-Copley for follow up on what the report noted to be left shoulder strain and radiculitis. He noted no real improvement, indicating that while he was able to operate his forklift, he couldn't lift his left arm to shoulder height without a pinching pain. He also noted left trapezius pain into the shoulder blade and significant pain and weakness when raising his arm away from his side. He also complained of numbness in the thumb and index finger. On examination, left shoulder abduction was limited to approximately 30-40 degrees with significant pain. Diagnosis was left shoulder strain, possible internal disruption, and radiculitis. Petitioner was given work restrictions of no lifting over 2 pounds, no overhead reaching, no over the shoulder work and avoidance of repetitive motion and use of the left arm. He also was prescribed hydrocodone and also referred to Castle Orthopedics. (Px1).

Petitioner saw Dr. Marciniak at Castle on 12/12/12. He gave a history of injuring his left shoulder and arm at work with pain, swelling and numbness in the left hand, wrist, and shoulder, as well as radial arm numbness to the dorsum of the hand. Dr. Marciniak's provisional diagnoses were possible cervical injury, rotator cuff tear and/or brachial plexus injury. Mobic and Norco were prescribed. MRIs of the neck and left shoulder were ordered, and Petitioner was restricted to no use of the left arm and use of a sling for comfort. (Px2).

The 12/26/12 left shoulder MRI showed no tendon tears but did show a limited tear in the labrum, mild-to-moderate rotator cuff and biceps tendinopathy, and mild posterior humeral subluxation. The cervical MRI from the same date showed a C6/7 disc herniation. (Px2).

Petitioner was referred to Dr. McGivney at Castle on 1/15/13 for a cervical evaluation. Petitioner testified he didn't consider that he might have something wrong with his neck until after the MRI. Dr. McGivney's exam showed that Petitioner had pain in the shoulder with movement. Following his review of the MRI, Dr. McGivney recommended an anterior cervical diskectomy, allograft arthrodesis and plating at C6/7 in attempt to resolve Petitioner's numbness, tingling and burning into his left arm. The doctor indicated the surgery was not going to resolve any shoulder limitations. On 2/25/13, Dr. McGivney performed an anterior cervical microdiscectomy, allograft fusion/arthrodesis with plating at C6/7. Petitioner returned to Dr. McGivney on 4/2/13 with complaints of having a stiff neck and headaches. Physical therapy and Flexeril were prescribed. On 5/28/13, Dr. McGivney found that Petitioner had reached maximum medical improvement (MMI) with regard to the cervical condition. (Px2).

On 2/3/14, Petitioner returned to Dr. McGivney with complaints of neck pain and upper extremity pain, numbness, and tingling that he had been experiencing ever since the neck surgery. Cervical x-ray showed some adjacent segment degeneration at C5/6, which he believed could be the source of Petitioner's symptoms. A repeat cervical MRI reflected a small central protrusion, mildly flattening the anterior aspect of the cervical cord and mild central canal stenosis. On 2/28/14, Dr. McGivney referred Petitioner to pain physician Dr. Bansal, where Petitioner reported severe pain in his neck and left arm since the accident. Dr. Bansal advised Petitioner that he did not manage chronic opioid medication and referred him to Dr. Gruft. (Px2).

On 6/19/14, Petitioner saw pain physician Dr. Gruft for his neck pain, noting this started following a work accident where he was carrying a fireplace that was knocked out of his hands. He also reported developing significant weakness and numbness in the left upper extremity and being diagnosed with a torn tendon in the shoulder and a herniated disc in his neck. He reported working with restrictions of no pushing/pulling and no

lifting more than 20 pounds. On exam, he had limited cervical range of motion. The plan was to modify his pain medication and obtain an EMG of upper extremities. (Px4).

On 7/21/14, Petitioner was referred back to Dr. Bansal by Dr. Gruft for a cervical epidural steroid injection. Dr. Bansal however did not believe he could administer an injection in that region due to minimal amount of epidural fat in that region, and instead injected the T11/12 level. (Px2). On 8/28/14 Petitioner received trigger point injections to suboccipital attachment site and bilateral upper trapezius at Dr. Gruft's office. Dr. Duggal also referred Petitioner to a 21 day chronic pain program. This was followed up on 9/15/14 with trigger point injections to the left upper trapezius and left pectoral major muscle groups. (Px4).

Petitioner was initially evaluated by physiatrist Dr. Frank on 10/13/14 at the Respondent's request (Section 12). His evaluation focused on Petitioner's cervical injury, and he diagnosed cervical disc herniation and left radiculopathy resulting from the November 2012 work injury. His assessments included cervical post laminectomy syndrome, chronic pain syndrome, myofascial pain syndrome and insomnia. He opined that the care and treatment to Petitioner's cervical spine was reasonable, necessary, and related to Petitioner's work accident, but believed that Petitioner's current neck and arm pain were likely not related to Petitioner's cervical spine injury and fusion surgery. He noted he had not reviewed any imaging, but that Petitioner's examination was inconsistent with any specific neurologic compression emanating from the spine. It was noted that an EMG could potentially clarify if there were any existing neurologic conditions and could help identify the source of Petitioner's continuing pain, though Dr. Frank believed it was most likely myofascial pain. He believed that chronic pain, morbid obesity, and sleep apnea were "clearly aggravating his level of pain." While treatment was "paramount", he opined that it may be difficult given the multifactorial nature of the Petitioner's condition. Dr. Frank believed that a 2 to 3 month multidisciplinary pain program would be reasonable. Finally, he opined that Petitioner had reached MMI, meaning he did not expect any further significant improvement "other than better symptom control and perhaps better general functioning." (Rx1).

At an 11/10/14 follow up with Dr. Duggal, Petitioner reported no change in his pain level. He was advised to continue mediation and referred to physical therapy. Petitioner continued to follow up at Dr. Gruft's office and on 1/16/15, it was noted he was being evaluated that day at physical therapy. On 1/26/15 and 3/4/15, repeat trigger point injections were performed in the same muscle groups as before. On 3/4/15, Petitioner told Dr. Gruft he was doing reasonably well since leaving the pain management program. He indicated that Dilaudid helped with pain, but muscle relaxers hadn't provided much relief. On 4/15/15, Petitioner's medications were continued. On 6/11/15, Petitioner reported to Dr. Duggal that he was experiencing pain and bilateral shoulder pain, and on 7/12/15 he reported head pain, neck pain and back pain. On 8/20/15, he reported to Dr. Duggal that he had low back and neck pain. Medication management was continued through this time. (Px4).

When Petitioner returned to Dr. Frank for reevaluation on 8/17/15, he noted Petitioner had not undergone EMG testing and no new x-rays or MRI studies had been provided. He did review updated medical records from Dr. Duggal and Dr. Gruft's office dated from 11/10/14 to 6/11/15, and Petitioner indicated he was not improved via their treatments with ongoing 8/10 level pain. Following examination, Dr. Frank again diagnosed cervical post-laminectomy syndrome, chronic pain syndrome, myofascial pain syndrome, and insomnia, adding the diagnosis of left shoulder impingement syndrome. Dr. Frank opined that the cause of Petitioner's neck and bilateral arm pain and need for treatment was the accident of 11/26/12. Petitioner had completed a structured multi-disciplinary pain program but was no better. Dr. Frank believed Petitioner only needed medication management at that time and opined his current regimen was reasonable. He did opine Petitioner had "obvious" rotator cuff

syndrome/tendinitis, which he opined was not related to the work injury. Dr. Frank again concluded Petitioner had reached MMI for his cervical spine as of 4/28/14 and that he otherwise needed no further treatment. (Rx2).

On 8/26/15, Petitioner saw Dr. Gruft for a medication reaction that led to him being brought to the emergency room for over-sedation and urinary retention. On 8/27/15, Petitioner returned with neck and shoulder pain along with low back and bilateral leg pain. Nurse Practitioner Van Der Laan, administered trigger point injections in the bilateral trapezius, bilateral suboccipital and bilateral pectoralis minor. On 9/1/15, Petitioner reported to NP Van Der Laan, that he was having neck pain and left shoulder pain. An MRI of the left shoulder was ordered, and he was restricted from work activities. A 9/7/15 note of Dr. Gruft specifies Petitioner was to be off work. On 10/15/15, NP Van Der Laan prescribed a pain cream and physical therapy for the cervical and lumbar radiculopathy. Petitioner was restricted from all work. (Px4; Px19). On 10/6/15, Petitioner underwent a left shoulder MRI reflecting a small insertional avulsion from the supraspinatus insertion in an arthroscopically occult position. Additional there was an associated component of edema within the humeral head at the same location suggesting that it could be acute or subacute. Minimal subdeltoid bursitis was also noted. (Px3; Px7). On 11/12/15, Petitioner complained that his upper extremity and neck pain was worse, and he was referred for cervical epidural evaluation. On 12/11/15, Petitioner complained that he had trouble raising his arm above his head and clasping hands behind his back. NP Van Der Laan advised him to see a pain specialist for cervical epidurals and referred him to an orthopedic surgeon regarding the left shoulder pain and defect of left supraspinatus on MRI. Petitioner was restricted from work until evaluated for further treatment. (Px4; Px19).

On 1/8/16, Petitioner saw Dr. Gruft with complaints of neck and shoulder pain. It was noted that he was scheduled for cervical epidurals on 1/11/16, 1/15/16 and 1/25/16 with Dr. Kahn at Modern Pain Consultants. On 1/15/16, Petitioner reported minimal sustained relief with the first epidural, and on 1/25/16 he noted sustained benefit from the 1/15/16 injection, which utilized a different corticosteroid than the initial shot. On 2/4/16, Petitioner reported to NP Van Der Laan that he underwent 2 injections and he was encouraged to do exercises and stretches at home. On 2/8/16, Dr. Khan noted Petitioner had sustained benefit from the second injection until he fell at home, and a fourth injection appears to have been performed at C5/6. (Px4; Px6). The Arbitrator notes that Petitioner testified he received three injections.

On 3/18/16, Petitioner noted neck, low back, and left shoulder pain. Dr. Gruft reiterated the referral to a left shoulder surgeon for evaluation, noting it was work related and that Petitioner was still waiting on authorization. He continued Petitioner off work pending the evaluation, and this was again continued on 4/15/16 and 6/10/16. On 5/13/16 and 7/8/16, NP Van Der Laan noted ongoing complaints of neck and left shoulder pain and that Petitioner was awaiting the left shoulder evaluation before going back to work. (Px4).

At Respondent's request pursuant to Section 12 of the Act, Petitioner was next evaluated by orthopedic surgeon Dr. Thangamani on 7/15/16. He was provided with a consistent history of Petitioner's medical care and treatment since the 11/26/2012 accident date. Dr. Thangamani noted Petitioner had an MRI of the left shoulder which showed a possible interstitial tear of the rotator cuff as well as some bone edema of the humeral head. He noted that Petitioner had a very flat affect during the examination and his pupils were "constricted bilaterally." Petitioner had limited range of motion in his neck in all planes throughout the full examination. There was weakened grip strength on the left and he had difficulty actively flexing or abducting the left shoulder. The doctor ultimately could not perform a detailed rotator cuff or shoulder examination secondary to Petitioner's guarding and pain. Dr. Thangamani ultimately concluded, after reviewing all the records and performing the evaluation, that Petitioner was in no need of further diagnostic testing for his cervical spine and was at MMI. As to the left shoulder, Petitioner had a number of health issues that were apparently mixed in with his work injury.

Dr. Thangamani noted Petitioner had an MRI of the left shoulder performed in December of 2012 and again in October of 2015 which showed changes in the left shoulder, but the claimant had not been working. Upon his evaluation, he did not believe the left shoulder issue was related to the November, 2012 injury and believed Petitioner could return to work. (Rx3).

On 8/8/16, Dr. Gruft noted Petitioner saw an IME physician for a very brief examination and continued to await authorization for his left shoulder evaluation. On 9/6/16, NP Van Der Laan recommended 6 sets of cervical injections. She reiterated that Petitioner could not return to work until being evaluated for the left shoulder. On 10/4/16, NP Van Der Laan discussed the pros and cons of medical marijuana with Petitioner. (Px4).

On 10/25/16, Petitioner was examined by pain management physician Dr. Candido at Respondent's request. Following his examination and review of Petitioner's medical records, Dr. Candido opined that while Petitioner had motion limitations of both the neck and left shoulder, the primary problem appeared to be the shoulder with a mild impingement syndrome, and he believed the original work injury likely involved the shoulder and not the cervical spine despite the opinions of his treaters, noting he had only incremental cervical findings from a preexisting disc protrusion and that he didn't have significant improvement with cervical surgery. Dr. Candido's exam reflected pathological degenerative left shoulder issues, noting Dr. Gruft had similar findings. He opined Petitioner had reached MMI as to the neck and that Petitioner should have an orthopedic evaluation for the shoulder. Dr. Candido went on to opine that Petitioner needed to be weaned from opioids. The only significant functional limitation he found was with reaching overhead, which was mildly limited. He believed Petitioner could perform his "usual and customary job of driving or driving heavy machinery" even if the "left shoulder degenerative condition proves to be one that might require surgical intervention." (Rx5).

On 11/2/16, Petitioner discussed medical marijuana with Dr. Gruft, who indicated he would need to wean off of Dilaudid if he was going to use medical marijuana. On 11/7/16, Dr. Gruft performed cervical trigger point injections and on 11/14/16 injected the cervical and left trapezius areas. He continued to hold Petitioner off work pending the recommended left shoulder evaluation. On 11/30/16, Petitioner advised that he continued to have neck and left shoulder pain despite the trigger point injections. On 1/3/17, Dr. Gruft refilled Dilaudid for pain and noted that Petitioner still had not had orthopedic evaluation and could not return to work. On 2/2/17, NP Van Der Laan noted Petitioner had obtained a medical marijuana card and that it was helping tremendously with pain. He finally had been authorized to see Dr. Komanduri for the left shoulder. He reported continued problems lifting and performing activities of daily living with the left arm. He was to wean from Dilaudid. On 3/2/17, Petitioner reported he had been using medical marijuana for 6 weeks and had not used opioids during that time, and his pain had been manageable. It had changed his life. He remained off work pending orthopedic shoulder evaluation. (Px4).

On 5/3/17, Petitioner saw Dr. Komanduri on referral from Dr. Gruft. He gave a history of left shoulder pain since his 2012 work injury. The doctor referenced the findings in the prior 2015 MRI where the radiologist referenced a rotator cuff tear, and noted the MRI was non-arthrogram. Based upon the physical examination and review of the diagnostic imaging, Dr. Komanduri believed that Petitioner had a left rotator cuff tear and possibly a SLAP tear, so he ordered a left shoulder MRI arthrogram and outpatient therapy, holding Petitioner off work. (Px8).

Petitioner testified that Dr. Gruft restricted him from all work duties from 12/6/16 to 5/2/17 and continued to recommend he be evaluated for the left shoulder. After 5/2/17, he was authorized to treat with Dr. Komanduri on 5/3/17, at which point his TTD benefits were restarted.

On 6/21/17, Petitioner returned to Dr. Komanduri to discuss the 6/16/17 MRI results. The doctor advised Petitioner had a left rotator cuff tear, impingement of the AC joint and a SLAP tear. He recommended a left shoulder arthroscopy, subacromial decompression, AC joint resection, mini open rotator cuff repair, labral debridement, and possible biceps tenodesis. On 7/26/17, Dr. Komanduri states that the rotator cuff tear was proven by MRI in 2015 and that the employer needed to either get an independent medical examination or that the Petitioner should pursue litigation given the tear occurred 5 years prior and treatment was indicated. Petitioner was continued off work. (Px8).

On 8/1/17, Petitioner told NP Van Der Laan that his left shoulder was still painful, but that marijuana was helping him sleep and he had lost 16 pounds since his last visit in May. He hadn't taken any narcotics since February. (Px4).

Petitioner underwent left shoulder surgery on 9/21/17 with Dr. Komanduri involving a left shoulder arthroscopy with subacromial decompression, AC joint resection, labrum repair and mini open rotator cuff repair. (Px8). He testified that he felt great after the left shoulder surgery versus how he felt prior to surgery, "like night and day."

On 9/25/17, Petitioner saw Dr. Komanduri for a follow-up and stated that he was doing well and does not have any major complaint. Petitioner's prescriptions were refilled and physical therapy was to be started. On 10/25/17, Petitioner returned to Dr. Komanduri for recheck of the left shoulder. He complained of pain at a 4 out of 10 level and that his shoulder felt like it was cramping up. Dr. Komanduri noted a full active range of motion, but some ongoing weakness and stiffness that was to be expected. (Px8).

On 11/2/17, Petitioner followed up with NP Van Der Laan, noting he had left shoulder surgery. He continued to report that medical marijuana had helped significantly with pain, sleep, mood, motivation and increased physical activity. He had lost an additional 26 pounds. He was to remain off work pending clearance from his orthopedic surgeon regarding the left shoulder. (Px4).

On 11/27/17, Dr. Komanduri noted continued gains in flexibility and range and that Petitioner's biggest problem was some shoulder impingement. Petitioner also complained of significant neck pain and soreness on both sides of his neck over the trapezius. On 1/3/18, Petitioner told Dr. Komanduri that if he worked out with 5 pound weights, he would struggle with shoulder soreness radiating to the left bicep. The doctor believed he needed to continue to work on strengthening the shoulder before moving on to work conditioning. He opined that if Petitioner still had deficits at the end of the first month of work conditioning, the deficits would likely be permanent. (Px8).

On 2/14/18, Petitioner saw Dr. Gruft, reporting his pain was much better controlled with medical marijuana and that he had lost 60 pounds since July 2016. His pain scale was at a 4/10 level and remained off work. (Px4).

On 4/27/18, Respondent had Petitioner reevaluated by Dr. Thangamani. He reviewed the records from Dr. Komanduri, the updated records of Dr. Gruft, the 10/25/16 report of Dr. Candido and the physical therapy records. He noted Petitioner had lost a lot of weight with a near-normal BMI and indicated he was off narcotics and was using medical marijuana. Examination findings were essentially normal. Dr. Thangamani noted that the 6/16/17 left shoulder MRI revealed a tear involving the bursal surface of the insertional fibers of the supraspinatus tendon, likely high-grade partial thickness, low grade interstitial partial-thickness tear of the infraspinatus tendon. There were also findings consistent with a possible subtle posterior superior labral tear,

mild AC joint disease and mild to moderate subacromial-subdeltoid bursitis. Dr. Thangamani noted that there was an obvious interval change since Petitioner had last been seen which included the 9/27/17 surgery. Petitioner's shoulder surgery recovery was progressing "quite quickly" as confirmed in the physical therapy notes and reports of Dr. Komanduri regarding a fast recovery. He opined that the diagnosis of Dr. Komanduri was "not properly stated and supported by the records", as the interstitial tearing of the rotator cuff in his opinion was not related to the work accident given the edema seen in the humeral head, meaning the injury was "quite current" when that MRI was obtained well after the alleged work-related injury. Upon completion of the evaluation, Dr. Thangamani indicated Petitioner had no preexisting conditions with regard to his left shoulder but did have preexisting conditions with regard to the neck which required epidural injections in the past possibly from a car accident. Dr. Thangamani concluded that there was no evidence of an acute injury, and he did not believe the mechanism of injury supported the findings seen on the MRI. Based on that, he believed Petitioner was at MMI with regard to his shoulder surgery on 9/21/17 and was capable of working full duty. However, he went on to say he would reach MMI by 3/21/18, 6 months after the surgery. (Rx4).

On 5/5/18, Petitioner saw NP Slattery, who appears to have taken over from NP Van Der Laan. Petitioner indicated he was feeling better and losing weight, and that marijuana worked better than Dilaudid, (Px4).

On 5/23/18, Petitioner last saw Dr. Komanduri. He reported continued constant pain with stiffness and tightness from the left side of his neck down to his shoulder, which Dr. Komanduri indicated would probably not change. He did have excellent range of motion, strength, and function, and he released Petitioner to return to work full duty. He noted he reviewed the 4/27/18 report of Section 12 examiner Dr. Thangamani and indicated the following "Plan": "The patient has a copy of Dr. Thangamani's IME dated 4/27/18. Surprisingly, Dr. Thangamani goes on to state that the patient's injury is not clear and perhaps not related to his original work injury. I would suggest that Mr. Ballas has been a lingering workmen's compensation claim for some five-and-a-half years until he saw me. Consequently, the fact that we fixed his rotator cuff and cleared him to return to work full duty should have some weight to the matter. Dr. Thangamani provides no treatment recommendations, no suggestions on how to resolve this claim, and no real evidence other than reviewing records some six years after the injury. Frankly, I saw the patient earlier and sooner than his IME examiner and I think that the wait of my initial examination a year prior to Dr. Thangamani's should have more value than an individual who saw him postoperatively. These are opinions, not facts, and there is clear evidence that the patient had pain in the region of his shoulder dating back to his treatment at Castle Orthopaedics. It is clear that he was not perhaps the most compliant of patients at that time; he did have some narcotic issues. He was clearly marginalized perhaps for some of these reasons which we all at various times are guilty of doing as surgeons and as physicians. I think that in the end the most important thing here is returning the patient to work full duty." (Px8).

On 8/1/18, Petitioner told NP Slattery he was having increased problems with his neck and requested more physical therapy. Petitioner returned to Dr. Gruft on 11/5/19 complaining of neck pain going into right shoulder blade. Dr. Gruft indicated he prescribed physical therapy, but it was not approved by workers' compensation. On 5/5/20, Petitioner told Dr. Gruft he continued to have neck pain. He also told him he had been managing an O'Reilly's auto parts store and working 50 to 60 hours a week. He continued to have neck pain for which he was continuing to use medical marijuana. (Px4).

Dr. Gruft testified via deposition on 3/4/16. He testified that Petitioner was referred to him by Dr. Bansal, and at the initial visit of 6/19/14 Petitioner indicated he developed weakness and numbness in his left upper extremity. Petitioner said he had been diagnosed with a torn tendon in the left shoulder and a herniated cervical disc and

underwent the cervical fusion, after which he continued to have pain in his neck and both arms, left greater than right. Dr. Gruft testified that Petitioner's work injury could or might have caused his chronic cervical pain given he had no similar problems prior to the work injury. Dr. Gruft's examination indicated diminished reflexes in the triceps bilaterally and somewhat limited cervical range of motion. Dr. Gruft diagnosed cervical radiculopathy, ordered physical therapy, changed Petitioner's pain medications, and ordered an EMG. Petitioner already had been restricted to no lifting greater than 20 pounds. In September 2014, Petitioner underwent trigger point injections for his cervicalgia and neck pain with his colleague Dr. Duggal. He also was referred to the "jump start to wellness" program, a 21 day program that entails physical therapy, medical management, stress management, and coping strategies. At a 3/4/15 follow up, Petitioner advised he had done well in the program and returned to work. Dilaudid helped pretty well for his pain, and he was taking Lunesta for sleep and Gabapentin for nerve pain, as well as Atarax. He noted NP Van Der Laan was also part of his office. Dr. Gruft had no opinion regarding the causal relationship of any lumbar condition. On 9/17/15, Petitioner was taken off work due to increasing left shoulder pain and an MRI was requested. On 1/8/16, his primary complaint was neck pain, and while he wanted more pain medication, Dr. Gruft did not want to provide that. NP Van Der Laan had prescribed a topical pain cream. As of 11/12/15, Petitioner continued to be held off work and he was referred for cervical epidurals, which he ultimately underwent and indicated no significant improvement. Dr. Gruft testified that he did not expect Petitioner to improve beyond a light physical capacity and opined that his cervical radiculopathy condition could or might be permanent and he would likely need ongoing pain and sleep medications. On cross, Dr. Gruft was asked about a 10/16/15 note indicating he was at MMI with light duty restrictions, but a subsequent 11/12/15 note took him off work and prescribed epidurals, and he testified that his understanding of MMI was that there would be no further functional improvement, but he agreed the purpose of the epidurals would be to hopefully improve his function. He agreed Petitioner had been diagnosed with sleep apnea and was using a CPAP machine when he first saw him, which was not a work related condition, and that this was a partial contributor to his sleep dysfunction. He began drug testing Petitioner in November 2015, and nothing was identified that he was not prescribed. He agreed Petitioner reported a 2007 cervical injury in a car accident and that he recovered after an epidural, also agreeing if evidence was provided showing an ongoing problem prior to the work accident, it could impact his causation opinion. (Px5).

Anesthesiologist and surgeon Dr. Candido provided his testimony on 6/18/19. Included in his deposition transcript was a copy of his 10/25/16 report, and his testimony on direct was consistent with that report. He noted that his diagnosis of left shoulder impingement syndrome was based both on his exam as well as the MRI imaging. He testified that he tested Petitioner's shoulder and found positive Neer's and Hawkins signs which are significant for shoulder impingement typically but can also reference an ongoing labral tear or, more commonly, a tear of the rotator cuff. He opined the shoulder condition was related to the work accident, most significantly referencing an initial report wherein he stated he felt a pop in the shoulder at the time of the work accident. He had no opinion as to the causal relationship of the cervical spine. As to his opinion that Petitioner needed to wean from narcotics, he referenced two hospitalizations of Petitioner for kidney issues that were possibly due to medication use. As noted in his report, he believed Petitioner could continue to work his regular duties pending orthopedic shoulder evaluation, and his testimony added that he would be limited as to overhead work. On cross-examination, Dr. Candido testified that, based on his review of the records, Petitioner's left shoulder condition remained the same between 11/29/12 and 10/25/16. He believed some of Dr. Gruft's trigger point injections may have been related to the shoulder, but he had not undergone surgical shoulder treatment. As to his reference to Petitioner being able to operate heavy machinery at work, he agreed this was in reference to driving a forklift. He agreed Dr. Frank had opined that Petitioner should continue medication management which included dilaudid and gabapentin. He agreed that as long as Petitioner remained on narcotics, Dr. Thangamani's recommended restrictions of 7/15/16 (seated job, no operating heavy machinery, minimal

walk/bend/climb/stoop/crawling) were reasonable based on the use of the medications. On redirect, Dr. Candido agreed he had not reviewed any of Petitioner's records since he examined him and could not say what shoulder treatment he had undergone since that time. (Rx5).

Petitioner testified he saw Dr. Gruft in 2020 via telehealth after the Covid pandemic began but had not seen him since 2020. He testified he also saw Dr. Bansal at some point for a cervical epidural. He has been concerned about his bills being paid if he returned for treatment. Petitioner testified he returned to work for Respondent for a period of time in 2015 with light duty restrictions, and the job involved sweeping and addressing recyclables. He had to walk up and down aisles to pick up items and trash and put them in a plastic dumpster, noting he had to take frequent breaks. He had been restricted to lifting up to 20 pounds with just the right arm, and he would keep his left arm close to his body with a sling. He testified that his co-workers were advised to leave things on the floor so Petitioner would have to pick it up. He testified the Respondent also had him painting forklifts using the right arm only. He was taking many medications, including dilaudid and depression and blood pressure medication, which made him feel like a zombie, and his weight got up to 300 pounds. When he stopped taking prescribed medications in January 2017 and began to use medical cannabis, he lost 100 pounds pretty easily. Petitioner testified that he was still an employee of Respondent and was advised they had a position available for him following his 5/23/18 release (see Rx6) but he did not return to work for Respondent. At some point he referenced a hospitalization in Texas where he was very ill due to his medication use, but no records of this incident were noted in the evidence presented. Petitioner testified that Dr. Gruft recommended medical marijuana. He has no pain with marijuana and indicated he can focus on his work, unlike when he was on medications and was quiet and unresponsive. He has spent in excess of $20,000 since 2017 for marijuana. He uses it three times a day, including before work and during his lunch break. He has more pain when he doesn't use it.

Petitioner testified that he has been working for O'Reilly Auto Parts for approximately five years and is earning more now than he did with Respondent. He acknowledged that his use of marijuana prevents him from being promoted further to a Territory Sales Manager because it involves driving and he could be drug tested. It also limits him from doing deliveries, noting he would only be tested in his current position if he were involved in an auto accident or if he appeared intoxicated. He works 11 to 12 hours per day, 5 to 6 days per week, and is on his feet about 12 hours per day. He does also take ibuprofen once in a while. He uses ice on his neck when it is really sore, maybe two or three times a week. He sleeps three or four hours at a time, then is up for one or two hours before he is able to fall back to sleep. He doesn't notice any side effects from marijuana use, though he does have some breathing issues/cough when using a vape pen. He testified he has not done outdoor work since the work accident as his children have been doing it since he got hurt.

On cross-examination, Petitioner agreed that he's worked as a store manager for O'Reilly's for about 4 years, and in that position is paid a salary of $52,000 a year, after initially starting with the company making less as an hourly worker. He acknowledged this is more than he was making with Respondent. He testified he recalled receiving the job offer letter of May 2018 (Rx6) after he was released from care and agreed he was represented by counsel at that time.

Petitioner testified that he answered honestly when discussing his case with Section 12 examiners Dr. Frank, Dr. Thangamani, and Dr. Candido, though he questioned how thoroughly he was examined by Dr. Thangamani. He affirmed that the focus of examination at his initial ER visit to Rush Copley, where the Respondent (Alex) brought him the day after the accident, was the left shoulder. He also agreed, however, that he noted at Rush on 12/7/12 that he had symptoms into a portion of his hands. Petitioner acknowledged he had no low back

complaints until seeing Dr. McGivney on 5/28/13 and that it was “probably from sitting around a lot” as opposed to any injury. He testified that Dr. Bansal in 2014 would sometimes test arm sensation, including once biting his arm on 3/31/14 to show him he had no feeling in the arm. He indicated that with his physicians around that time, he felt very put off anytime he had a question and that he was getting the run-around. Petitioner testified that Dr. Gruft was the main physician prescribing medications to him, and that Dr. Bansal prescribed minimal medications and Dr. Khan prescribed none, just epidurals. He felt like the combinations of medications he was receiving canceled each other out and left him feeling like a zombie.

Petitioner’s return to light duty work per Dr. Bansal on 4/28/14 was following an FCE and he testified he felt a lot better just driving the forklift, as he was able to do this facing to his left to see behind him while operating the machine with his right extremity. As to the cervical surgery, Petitioner testified he felt the surgery went well at the time, and while Dr. McGivney released him from care as to the cervical spine, it didn’t resolve his left shoulder problems. Dr. Komanduri then released him with no restrictions regarding the left shoulder in May 2018. With O’Reilly’s, Petitioner testified he does have to lift up to 60 pounds occasionally, but he also has 7 employees who help him with any physical work, and he helps them in some of their job tasks.

Petitioner’s wife, Tammy Ballas, testified on his behalf. She testified to how active Petitioner had been prior to the work accident and how much more energy he had, including being very physically active with outdoor activities and the Boy Scouts. After the injury, Petitioner was in a lot of pain. After the cervical surgery, he continued to have the same complaints. She testified they were surprised when his doctors indicated the problem was cervical as he sought treatment for a shoulder problem. Prior to Petitioner undergoing shoulder surgery, he was taking a lot of medications and was basically a zombie and he and his friends became distant. At some point he was advised he would not be able to drive with any Scouts due to the medications. He had significant weight gain. She testified that despite telling his physicians the medications were not helping he continued to be prescribed medications by Dr. Gruft until he finally listened. Once the medications were stopped, he almost immediately improved. Tammy testified that she was against the Petitioner using medical marijuana but acknowledged that there was improvement with his use, but that it is expensive. Once Petitioner underwent shoulder surgery, it also helped his neck pain. On cross, Tammy testified that because Dr. Gruft indicated he couldn’t prescribe marijuana, Petitioner had to find another doctor, Dr. Footerman in Rockford, to do so. She indicated that Dr. Gruft did ultimately endorse the idea to use medical marijuana after a trial period.

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 claimed conditions of ill-being in the neck and left shoulder are causally related to the 11/26/12 work accident with Respondent.

Petitioner credibly testified that he was in his normal state of good health prior to 11/26/12 with no problems associated with the cervical spine of left shoulder. His testimony, along with the histories contained in his medical records, indicated he was moving a 70 pound fireplace from a conveyor when a number of paint cans came down the conveyor and knocked the fireplace out of his hand, causing him to reach with his left hand to grab the fireplace and feeling a tearing and pop in the left shoulder area with numbness and a loss of strength in the left arm. Initially, following MRIs of both the neck and left shoulder, Dr. Marciniak referred Petitioner to

Dr. McGivney for a cervical evaluation. That doctor prescribed cervical surgery which he indicated was to try to resolve the pain, numbness and tingling in the left arm, but he acknowledged that the surgery would not resolve any left shoulder-related symptoms. The diagnosis was a C6/7 disc herniation and on 2/25/13, Dr. McGivney performed an anterior cervical microdiscectomy and allograft fusion/arthrodesis with plating at C6/7. Petitioner testified, and the medical records confirm, that while he did gain some relief with the surgery, he continued to have significant symptoms, particularly with overhead use of the left arm. Petitioner then basically remained in pain management which consistent of injections and medications including narcotics. These subsequent therapies and multiple injections over the years did not provide Petitioner any lasting relief of his symptoms. Dr. McGivney opined that the Petitioner's cervical condition was related to the 11/26/12 work accident. Dr. Gruft then prescribed ongoing pain medication and continued to make those prescriptions until Petitioner, his wife and her sister complained to the doctor, which ultimately led the Petitioner to start using medical marijuana.

Ultimately, Petitioner had treatment to the left shoulder based on the opinions of Dr. Komanduri and Section 12 examiner Dr. Candido, that Petitioner's ongoing symptoms were likely related to the left shoulder and not the cervical spine, despite disagreement from Section 12 examiner Dr. Thangamani. Dr. Komanduri ordered an MRI arthrogram of the left shoulder, which he indicated revealed a rotator cuff tear, impingement of AC joint and a SLAP tear. Dr. Komanduri believed the left shoulder condition was related to the 11/26/12 work injury, and Dr. Candido also opined that the left shoulder condition was causally related to the work accident, though he seemed to believe it was as an aggravation of a degenerative condition. On 9/21/17, Dr. Komanduri performed a left shoulder arthroscopy with subacromial decompression, AC joint resection, labrum repair and mini open rotator cuff repair. This led to an immediate and significant improvement in Petitioner's shoulder symptoms and, eventually, a full duty release in May 2018. Petitioner testified he has not returned to Dr. Komanduri since that release and he has not returned to see Dr. Gruft since 2020, noting his visits with him in 2020 involved telehealth due to the Covid pandemic.

Dr. McGivney and Dr. Komanduri have clearly opined in their records Petitioner's neck surgery and shoulder surgery were caused, exacerbated, or accelerated by Petitioner 11/26/12 accident. Again, the Arbitrator notes Petitioner denied any preexisting issues or injuries to the left shoulder. The Arbitrator has reviewed the reports of Section 12 examiners Dr. Frank and Dr. Thangamani. While questions were raised by Dr. Thangamani, and to a lesser degree by Dr. Frank, about a causal relationship between Petitioner's neck and shoulder complaints and his work-related accident, Dr. Candido noted Petitioner's left shoulder symptoms were likely caused by the work-related incident. Specifically, he opined Petitioner's symptoms were likely always related to Petitioner's left shoulder and not the preexisting condition to the cervical spine, which is exactly what was indicated by Dr. Komanduri. Dr. Candido had no opinion regarding the causal relationship of Petitioner's cervical spine to the work accident.

The Arbitrator finds that the most persuasive opinions in this case came from Dr. McGivney, Dr. Komanduri, and Dr. Candido versus the opinion of Dr Thangamani. On 8/17/15, Dr. Frank diagnosed both neck and left shoulder conditions and opined the Petitioner's pain was related to the work accident, but the left shoulder was not, and this discrepancy was not sufficiently explained by Dr. Frank. Additionally, a basic chain of events analysis supports the findings that Petitioner's post-11/26/12 symptoms in the neck, including some radicular symptoms, and left upper extremity began after the work accident, as he testified to no prior symptoms before the accident, and no other evidence was submitted which would contradict or rebut that testimony. He had been working full duty for Respondent prior to the accident, and while his main job involved driving a forklift and apparently moving pallets, the accident itself makes clear that he had to do some amount of significant physical

work with the upper extremity in moving items off of the conveyors and only pallets. One of those items was a 70 pound fireplace, indicating he has to perform heavy lifting, and he testified he had moved a large number of these fireplaces prior to the injury occurring.

It is clear that one of the key disputes in this case arose due to the question of whether the Petitioner's accident caused injury to both the cervical spine and the left shoulder. While the Arbitrator acknowledges, as per Dr. Candido, that there is some likelihood that the original injury was to the left shoulder, the Petitioner himself is in no position to make such determination when Dr. McGivney determined that cervical surgery was indicated. He relied on the opinions of his treating physicians, which was reasonable. He testified that he questioned these physicians throughout his case as to his belief that his shoulder was the problem, but again, it is more than reasonable that he ultimately relied on Dr. McGivney based on the symptoms he was complaining of and the MRI findings. It is entirely possible, and it is supported by the greater weight of the evidence in the Arbitrator's view, that he injured both his neck and his left shoulder trying to reach out and catch a large 70 pound item that was falling from his hands.

Taking all of this evidence together, the Arbitrator finds that a significantly greater weight of the evidence supports a causal relationship of his cervical and left shoulder conditions to the 11/26/12 work accident.

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

The Arbitrator finds that the medical bills from Dr. Gruft, Dr. Kahn and Dr. Komanduri (Px9, 10, and 11) were all reasonable, necessary, and related to the accident. Their treatment is documented in the medical records and is consistent with the submitted billing. The parties have further confirmed the current bills outstanding from Dr. Gruft total $201.00 (Px9) and from Dr. Kahn total $2,590.00 (Px10). The parties have confirmed the bills from Dr. Komanduri (Px11) are paid in full. The Arbitrator also awards the bills from Specialty Pharmaceutical (Px12) in the amount of $8,078.22, from IWP in the amount of $6,076.36 (Px13), and from Champion Medical Services totaling $1,799.94 (Px14). The Arbitrator awards the out of pocket expenses for prescriptions from multiple providers including Target, CVS, IWP totaling $268.14 (Px15). The Arbitrator specifically awards only $417.07 in bills for the reimbursement of the Public Aid lien, as the parties acknowledged that all other charges are related to Petitioner's low back, which is not a part of this claim. (Px18). The Arbitrator notes that the bills were being processed at the time of the arbitration hearing and the Arbitrator awards these bills and notes that the parties have agreed Respondent is entitled to a credit for all of the bills paid to these various providers. The Arbitrator awards the bills totaling $19,430.73 pursuant to Section 8(a) of the Act and subject to the Section 8.2 Fee Schedule with Respondent receiving a credit for any of these awarded bills that have already been paid, so long as Respondent holds Petitioner harmless with regard to same.

The expenses listed in Px16 are the reimbursement amounts Petitioner seeks for his payments towards medical marijuana. The Arbitrator notes that, per the Petitioner's testimony, his ability to discontinue narcotic medications and to lose a large amount of body weight was significantly tied to his use of medical marijuana. He also testified that his continued use allows him to have ongoing pain reduction. That said, as of the hearing date, while Illinois has passed laws to legalize both medical and recreational marijuana, the Federal government continues to identify marijuana as a Schedule 1 controlled substance under the Controlled Substances Act. Despite Petitioner's testimony of the improvement to his physical and mental well-being by getting off

narcotics that had been prescribed primarily by Dr. Gruft and the objections that were voiced to same by Petitioner, Petitioner's wife and even her sister, the Arbitrator notes that federal law (Controlled Substance Act, 21 U.S.C. 801) continues to prohibit the possession and/or sale of cannabis. As such, the Arbitrator does not believe it is currently appropriate to award expenses for the purchase of marijuana in the workers' compensation setting, as such would essentially require the Respondent to potentially violate federal law. While the Arbitrator recognizes that the federal government continues to discuss the potential legalization of marijuana nationally, as of the date of hearing, the Arbitrator, unfortunately in this case given the evidence of efficacy in this particular case, believes there is no latitude to make such an award unless and until federal law changes or a court of higher authority dictates that such an award is proper. Therefore, the charges from Px16 are denied.

The Arbitrator notes that a specific medial expense credit was agreed to by the parties totaling $204,352.56 according to Arbx1, but the parties also have acknowledged that the Respondent may have made additional payments as well, and that the Petitioner is not seeking a double recovery. Thus, the Respondent is entitled to any additional credit that may be applicable for payments made towards any alleged outstanding medical expenses. As noted above, Respondent is entitled to such credit consistent with any proof required by Petitioner to acknowledge said credit, and the Respondent shall hold Petitioner harmless with regard to any such additional credit.

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:

As explained above, the Arbitrator has determined that the Petitioner's current conditions of ill-being (cervical and left shoulder) are causally related to this accident at work. Petitioner claims he was temporarily totally disabled from 2/22/13 to 5/29/13; 1/19/15 to 2/22/15; and 9/17/15 to 5/8/18. The parties submitted a post-hearing stipulation (marked as Arbitrator's Exhibit 5) indicating agreement that the Respondent paid $40,899.46 in TTD benefits and is entitled to credit for same.

The Arbitrator finds the Petitioner's testimony is persuasive, and that the medical records in evidence support the claimed periods of TTD. The Arbitrator also notes Dr. Gruft authorized Petitioner off work for some of that timeframe. Specifically, within Dr. Gruft's records there is a clear indication he repeatedly recommended an evaluation of Petitioner's left shoulder and continued to authorize Petitioner off work until that left shoulder evaluation was completed. Once Petitioner finally underwent the left shoulder evaluation with Dr. Komanduri in 2017, and Dr. Komanduri recommended surgery, benefits resumed, after which Dr. Komanduri also continued to advocate for left shoulder treatment he opined was related to the original work accident.

Based on these facts, the Arbitrator finds Petitioner is entitled to TTD benefits from 2/22/13 to 5/19/13, from 1/19/15 to 2/22/15, and from 9/17/15 to 5/8/18. As noted, the parties have stipulated that the Respondent is entitled to a credit of $40,899.46 for TTD paid.

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

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

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's (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 neither party has presented an AMA permanent partial impairment rating or report into evidence. Therefore, this factor carries no 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 picker/general laborer at the time of the accident. While he did not return to this position, the Arbitrator notes that he was released to his full work duties by both Dr. McGivney as to the cervical spine and Dr. Komanduri as to the left shoulder. He testified that he now works for O'Reilly's Auto Parts as a manager, and while he does have to do a certain amount of physical work and lifting in this position, he only lifts heavy items occasionally, and he has 7 workers he supervises who can handle the more physical activities that need to be performed. The Arbitrator believes that this factor carries some weight in the permanency determination, but no significant weight.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 38 years old at the time of the accident. Neither party has submitted evidence which would tend to show how the Petitioner's age impacts any permanent disability he sustained related to the 11/26/12 accident. The Arbitrator notes that the hearing in this matter took place ten years after the accident, and that the Petitioner is thus approximately 48 years old now. 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 the Petitioner testified that following his release from care to unrestricted duties, he obtained new employment with O'Reilly's, and that after initially starting in an hourly wage capacity, he has been a manager for the last 4 years and as of the hearing date was earning more than he had earned with Respondent. The Arbitrator notes that he testified to earning a salary of $52,000 per year, which is double the amount indicated as his earnings with Respondent at the time of the accident. However, the Arbitrator also notes, again, that we are now ten years out from the accident date, and that the Petitioner testified he works anywhere from 50 to 72 hours per week. This factor carries moderate 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 the Petitioner underwent both a one level cervical fusion surgery as well as a left shoulder surgery involving repairs to the labrum and rotator cuff as well as decompression. The Petitioner suffered with ongoing symptoms for a long time prior to the September 2017 left shoulder surgery. His testimony in this regard is clearly supported by the medical records in evidence. He also had a longstanding history of prescribed narcotic use for several years prior to 2016, at which point he sought out and was prescribed medical marijuana, after which he discontinued all use of narcotics. He referenced two instances of significant kidney problems which may have at least in part been connected to such use. The Arbitrator also notes that with the narcotic use he testified that he became a zombie and significantly decreased his activities and got up to 300 pounds, and that after going off of the narcotics he lost a significant amount of weight, which likely also has assisted in symptoms relief. He has been released to full work duties, though he testified he does have some ongoing problems.

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 25% of the person as a whole with regard to the cervical spine, and to the loss of use of 15% of the person as a whole with regard to the left shoulder, pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC012272
Case Name	Anthony Kuraja v. Village of Matteson
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0134
Number of Pages of Decision	7
Decision Issued By	Deborah Simpson, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Peter Bobber
Respondent Attorney	Michael Rusin, Jeffrey Rusin

DATE FILED: 3/22/2024

/s/Deborah Simpson, Commissioner
Signature

DISSENT: /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 COOK	)	☒ Reverse: Occupational disease, exposure	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANTHONY KURAJA,

Petitioner,

vs. NO: 20 WC 12272

VILLAGE OF MATTESON,

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, occupational disease, causation, temporary total disability, and permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator, finds that Petitioner did not sustain his burden of proving he sustained COVID 19 from occupational exposure, and denies compensation.

Findings of Fact – Testimony

Petitioner testified he was a firefighter/paramedic for Respondent for nine years. Previously he worked in that line of work for another four to five years. He had a B.S. degree and various certifications as a firefighter/paramedic. He also had a certificate in Vehicle and Machinery Operations which indicates that he knew how to use extraction equipment for bad MVAs. Occasionally, he also served as acting Lieutenant and even for one day as battalion chief. Prior to March 22, 2020, he had no cardiovascular illness and was able to perform all the requirements of his job as firefighter/paramedic. He passed all his required annual physical examinations.

On March 22, 2020, he was dispatched for a "lift assist" on a 3rd party call from a neighbor. Because of the shortage of masks, they were not supposed to wear masks unless flu-like symptoms

were reported. Dispatch indicated that no such symptoms were reported and they did not wear masks. Upon arrival the police were already there gaining access to the house. The police opened the front door. Petitioner went to the second floor to see about the purportedly distressed woman on the second floor. His partner was buttonholed by a policeman noting the woman's husband was dead. Petitioner found the woman who indicated she was OK and did not need medical attention. He then noticed she was coughing and had trouble breathing. He asked whether she had been sick and she responded that she had been for a couple of days.

Petitioner had to inform the woman about her husband's demise. He needed to get information from her even though it was difficult for her. She told him that Petitioner was not feeling well for some days and was supposed to go to an ER, but never did. Petitioner was concerned about COVID and told the woman that she should go to a hospital to get tested. She refused. The bedroom they were in together was "a smaller bedroom, like, a standard 10 by 10." The woman was not wearing a mask. Petitioner was no more than a couple of feet from her and they were together in to the room for at least 10 to 15 minutes. Petitioner informed both Lieutenant Nicholson and Battalion Chief Klinger about his possible exposure to COVID. He identified PX5 as his incident report. He also identified PX6 which was a report regarding the dead man in the house. There was no such EMS report regarding the woman because she refused any treatment.

Maybe three to four days after that encounter, Petitioner noticed extreme fatigue, pain in the center of his chest, difficulty taking deep breaths, and a slight cough. He never experienced such symptoms in the past. On March 28, 2020, a Saturday, Petitioner was at work when he was told that the woman he had encountered on March 22nd had tested positive for COVID. No evidence was admitted confirming any such diagnosis and Petitioner acknowledged he did not see any documentation confirming any such diagnosis. Upon recommendation from Respondent, Petitioner went to a drive-through testing location. They did not get results immediately, and on March 28th, Respondent sent him to Ingalls. They did not test him because he "wasn't sick enough." They advised him not to return to work until he received the results from the drive-through test.

Petitioner's symptoms got worse. He called Ingalls on April 4th and was told not to go there. On April 5th, his symptoms continued to worsen and Respondent advised him to go to Franciscan to he tested. He was diagnosed with pneumonia in the right lung, "and they believed it was from COVID." He was prescribed medication and told to quarantine unless he got worse and the pneumonia traveled to the other lung, at which time he should go to an ER. Petitioner's condition continued to deteriorate. He "could hear and feel the fluid in his lungs." He had to sleep sitting up, had a high fever, and even called 911 a couple of times due to difficulty breathing. He lost 10 to 15 pounds. He took two antibody tests, both of which "confirmed" the diagnosis of COVID. He was ultimately returned to work effective May 15, 2020. Petitioner acknowledged that he had been exposed to other COVID patients but never got sick and was never previously diagnosed with COVID.

Petitioner testified that since the March 22, 2020 incident he had been exposed to people who had COVID, but had not developed symptoms nor had he had a positive COVID test. He also testified that currently, his "cardiovascular never fully recovered to where it was prior to the

incident." He got winded a lot easier. He has continued to pass his annual medical evaluation. He has a persistent "cough which seems to not really go away." The cough is exacerbated by exertion. He has difficulty when exerting himself fighting fires or lifting heavy individuals. He was worried about possible future complications.

On cross examination, Petitioner testified he first started working for Respondent in June of 2013, about seven years prior to the incident. He worked as firefighter/paramedic for that entire period. The notation on the incident report that a lift was not needed was entered by Battalion Chief Klinger. Petitioner noted that upon his arrival, the woman was already sitting in a chair; he wasn't sure whether the police put her in the chair. Petitioner interpreted that the statement that a firefighter was not in personal contact with the wife was referring to Petitioner's partner.

Petitioner reiterated his testimony that he had a personal conversation with the wife no more than a couple of feet away. He also reiterated that he noticed COVID-like symptoms of shortness of breath and cough. He agreed that there was no indication that the man died from COVID. He never got the results from the drive-through test. It was Petitioner's understanding that the chest x-rays taken at Ingalls were essentially negative and he did not have a fever. He was told not to return to work because of his exposure to COVID. Petitioner also agreed that he took a COVID test at the Olympia Fields ER on April 5, 2020, which was negative. He was not diagnosed with COVID at that visit.

The first positive test was the anti-body test which was performed on April 24, 2020; there was no positive test from March 22, 2020 to April 24, 2020. Petitioner agreed that he passed his fitness-for-duty examination on August 20, 2020, as well as in July 2021. He has not had any other days off work due to COVID. He has not seen medical providers for his persistent cough, and shortness of breath, "outside the annual physical." Petitioner acknowledged that he never saw any official documentation that the woman had COVID and "was just told."

On redirect examination, Petitioner testified the medical treatment about which he testified was for his cardiovascular/breathing deficiency. He did not receive any other medical treatment. He actually passed three annual physicals after the March 22, 2020 incident. Those physicals are required by Respondent and are done by doctors chosen by Respondent. At the last one he was advised to consult a pulmonologist for his cardiovascular issues, which he hasn't done.

Lt. Scott Gilliam was called as a witness by Respondent for which he worked as firefighter/paramedic for more than 20 years. He has been Lieutenant for about eight years. In his supervisory capacity he still actively worked as a firefighter/paramedic. He has known Petitioner for "12 years plus" since he was hired. He worked as driver for Lt. Gilliam since January 1st of this year. Since supervising him, Petitioner had always been able to perform his job as firefighter.

He was not aware of Petitioner taking any time off due to cardiovascular issues. He has no issues with Petitioner returning to work as firefighter/paramedic without restrictions.

On cross examination, Lt. Gilliam testified he was aware of Petitioner's possible exposure to COVID. He agreed that he advised Petitioner of his possible exposure to COVID after his discussion with Matteson Police Officer Sprapazzon.

Findings of Fact – Medical/Documentary evidence

The incident report dated March 22, 2020 indicated that a call came in from a neighbor who talked to an elderly fallen female neighbor through a door. She thought the husband was home. It was indicated that "CALLER HAS NO FLU LIKE SYMPTOMS." In a narrative section added on March 28th, Mr. Klinger noted that Lt. Gilliam notified him that MPD officer Strapazzon informed him that "the wife had been tested positive for COVID-19." A lift was not needed but the husband was found dead in the basement. "FD did not have personal contact with the wife but was in the same room per FF Kuraja."

In a client care notation concerning the husband also from March 22, 2020, it was noted that the wife could he be heard from the second floor but was unable to open the house door. Entry was gained and the husband was found dead and rigor mortis had set in. Death had been declared at 12:24 p.m. and the scene transferred to the police department. Wife indicated that her husband had not felt well lately.

On March 30, 2020, Petitioner presented to the ER at Ingalls Memorial Hospital with gradual onset of shortness of breath the previous day, which had since resolved. He also noted chest tightness. He reported exposure to COVID on March 22, 2020 while working as a firefighter. He was tested and should get results on April 3rd. His employer sent him to get a note to be taken off work. Petitioner's temperature was normal (98.6) and his chest x-rays were normal. Dyspnea/COVID exposure was diagnosed. He was discharged home in stable condition and advised to follow-up with his primary care physician and/or return to ER if his condition worsened.

On April 5, 2020, Petitioner presented to the ER at Franciscan St. Francis Hospital complaining of fever/cough, chest pain, fatigue, and exposure to COVID as a paramedic. He had symptoms for seven to nine days. X-rays showed suspected COVID pneumonia. He was given a COVID test. He was discharged pending results and "given self-isolation instruction." The next day, Petitioner was informed that the COVID test was negative. It was noted that a negative test only does not preclude "SARS-CoV-2." Petitioner was advised to continue self-quarantine. A COVID serology/blood test taken on April 24, 2020 was deemed positive, showing his body was "showing an appropriate immune response." He was advised to isolate for seven days from his test date. Another COVID antibody serology test taken at Health Lab Client Services on May 11, 2020 was also deemed positive. It is also noted that "this test has not been reviewed by the FDA."

Conclusions of Law

The Arbitrator found that Petitioner sustained his burden of proving he contracted COVID through work-related exposure. She cited the statutory presumption that a first responder who contracts COVID is presumed to have contracted the disease in the course of his/her employment. She also cited the way in which an employer can rebut such presumption, which it did not do this

claim. She also found the Petitioner's testimony about his unprotected exposure to a person found to have COVID credible and persuasive.

Respondent argues the Arbitrator erred in finding that Petitioner "presented sufficient evidence that his condition of ill-being was caused by COVID-19 sustained during his alleged employment." It stresses that there was no actual proof that the woman or her husband actually had COVID. It also notes that Petitioner tested negative for COVID on April 5, 2020 and "never had a true COVID-19 diagnosis."

First, the Commission concludes that Petitioner did not sustain his burden of proving that he actually had contracted COVID after the alleged exposure on March 22, 2020. The first and only actual test to determine current infection was the one taken on April 5, 2020, which was negative. Petitioner's symptoms could certainly have been explained by his diagnosis of pneumonia seen on x-rays. At that time it was suspected to be COVID related, but that suspicion was apparently quashed by the negative COVID test.

Second, the positive antibody tests administered on April 24, 2020 and May 11, 2020 are not a definitive diagnoses of current COVID infection. Rather, they only identify that the body has developed antibodies in response to some infection sometime in the past. Therefore, they could have detected an infection from before the alleged exposure or at some time after the exposure. In this context, the Commission notes that nothing was presented at arbitration or on review on how to interpret these antibody test results, how long did it take for such antibodies to develop, or when the person actually had the disease of COVID. These factors militate against Petitioner's proving his claim by a preponderance of evidence.

In addition, Petitioner acknowledged that he had been exposed to people with COVID since the alleged instant exposure. He indicated he did not have symptoms after those encounters and that he did not have a positive COVID test any time thereafter. However, not all people who contract COVID become symptomatic. In addition, although Petitioner never had a positive COVID test from these exposures, it was not likely that he had one if he did not exhibit symptoms.

Third, the "proof" that Petitioner was actually exposed to COVID is suspect. No documentation was submitted into evidence attesting to any such diagnosis of the woman and the incident report indicated that she did not seek medical attention. In addition, both Petitioner and Lt. Gilliam only testified about the woman's possible diagnosis through rank hearsay.

Finally, the Commission notes that although Petitioner testified about current symptoms and impairment, he submitted no evidence in any way supporting any such impairment. Petitioner acknowledged that he had not sought treatment for his alleged persistent cough, shortness of breath, or any difficulty he had exerting himself performing his work activities. He passed two fitness of duty examinations after the alleged date of exposure.

The Commission concludes that while the presumption exists that a first responder that contracted COVID is presumed to have contracted it in the course of employment, it does not

relieve the burden on Petitioner to prove that he actually contracted COVID after exposure. Therefore, the Commission reverses the Decision of the Arbitrator.

The Commission stresses that nothing in our decision casts any doubt on the testimony or veracity of Petitioner. Apparently, he had symptoms which could have been COVID related, he sincerely believed he was exposed to a person with COVID in the course of his employment, and as noted by the Arbitrator, he testified truthfully and credibly. After his suspected exposure to COVID, Petitioner did everything he was supposed to do. The Commission simply concludes that the preponderance of the evidence does not support his claim.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated June 7, 2023 is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner has not proven that he contracted an occupational disease, COVID, in the course of his employment and denies compensation.

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

March 22, 2024

DLS/dw
O-1/24/24
46

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

/s/*Maria E. Portela*
Maria E. Portela

Dissent

I respectfully dissent from the Decision of the Majority. I would have affirmed and adopted the well-reasoned decision of the Arbitrator.

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC002389
Case Name	Robert Kries v. Martin & Bayley, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0135
Number of Pages of Decision	10
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Tyler Dihle
Respondent Attorney	Michael Karr

DATE FILED: 3/22/2024

/s/Maria Portela, 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 MADISON	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT KRIES,

Petitioner,

vs. NO: 22WC002389

MARTIN & BAYLEY, 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 causation, medical expenses and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes clarifications 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).

We clarify the Decision to reflect that Dr. Lyndon Gross, Respondent's §12 physician, did not provide a causation opinion that was supportive of Petitioner's claim. Although Dr. Gross did opine that Petitioner suffered an "exacerbation" of underlying right knee osteoarthritis, he distinguished that from an "aggravation or acceleration" of the degenerative process and he opined that the meniscal tears were degenerative rather than acute. *Rx1 at 12-15*. However, we also note that Dr. Gross's written report, dated September 23, 2022, indicated Petitioner's work injury "did not change the natural history of underlying right knee osteoarthritis where he would require a total knee arthroplasty [TKA] *at some point in time.*" *Rx1-DepRx2 at 8 (#3) (Emphasis added).* Although Dr. Gross indicated Petitioner would have required a TKA "at some point in

time," this does not refute the testimony of Dr. J. Michael Davis that Petitioner's work injury accelerated his symptoms and contributed to the need for eventual surgery. *Px1 at 9*. Therefore, we find that Petitioner has proven that the work injury, which caused his previously asymptomatic osteoarthritic condition to become symptomatic, hastened his need for the TKA.

We also add that Respondent had Petitioner examined by its §12 physician, Dr. James Stiehl, on January 27, 2022. Dr. Stiehl opined that "there is a strong possibility of tearing of at least the medial meniscus and possibly the lateral meniscus of the right knee" caused by the work injury. *Rx2, T.263*. He opined that an arthroscopic procedure could be beneficial but that the ACL reconstruction had previously destabilized and the recommendation for a TKA was not related to the work injury. *Id. at 263-64*. Despite this opinion by Dr. Stiehl that a TKA was not related or optimal in Petitioner's case, a February 16, 2022 phone message by Melanie Molina with Dr. Paik's office indicates that the workers' compensation insurance carrier had approved the TKA. *Px2, T.122*. Similarly, the February 22, 2022 record of Dr. J. Michael Davis reflects, "He has been approved from Workers' Compensation to have the procedure." *Id. at T.118*. Petitioner underwent the TKA surgery on March 2, 2022. *Id. at T.170*.

Respondent's changed position regarding the causal relationship between Petitioner's need for the TKA and his work accident seems to have occurred when Petitioner did not have a successful outcome from the TKA. Respondent had Dr. Stiehl perform a records review and a report was issued on July 26, 2022. *Rx3, T.267*. Interestingly, this time Dr. Stiehl was not provided all of the records and, in particular, it does not appear that he had Petitioner's October 12, 2021 MRI. It is unclear from this report if Dr. Stiehl remembered that he had also examined Petitioner six months prior. In this new report, Dr. Stiehl opined that Petitioner's degenerative arthritis was not caused or aggravated by his work injury but he was "unable to state if the possible torn meniscus had been aggravated by this injury and cannot rule it out." This is somewhat similar to his previous report, which indicated that Petitioner's lateral and medial meniscus tears were possibly caused by the work injury and an arthroscopic procedure could be beneficial but a TKA was neither causally related nor an "optimal solution." Unlike that previous report, in the new report Dr. Stiehl opined that he would not dispute that the TKA that was performed was reasonable and necessary. However, he still did not believe it was related to the work injury and that "it is unlikely that his preexisting condition was significantly aggravated beyond normal progression."

We find Dr. Stiehl's opinion unpersuasive for the same reason we find Dr. Gross's opinion unpersuasive. Petitioner was previously asymptomatic, able to work full duty, had not returned to his baseline condition despite significant conservative measures and there is credible evidence, by Dr. Stiehl's own report, that supports the opinions of Dr. J. Michael Davis and Jeremy Palmer, PA-C, that Petitioner most likely sustained an acute lateral and medial meniscus tear in the work injury. Again, we find the opinion of Dr. J. Michael Davis most persuasive and find that Petitioner's need for a TKA was hastened by the work injury.

Regarding temporary total disability and Respondent's credit, we affirm the award but clarify that Respondent's credit is applicable only to the 48-2/7 weeks that were paid prior to October 10, 2022, as stipulated on the Request for Hearing form. *ArbX1*.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 15, 2023 is hereby affirmed and adopted with the clarifications 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 $45,000.00. 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.

March 22, 2024

/s/ *Maria E. Portela*

SE/
O: 3/5/24
49

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC002389
Case Name	Robert Kries v. Martin & Bayley, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Tyler Dihle
Respondent Attorney	Michael Karr

DATE FILED: 8/21/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 15, 2023 5.29%

/s/*Edward Lee, Arbitrator*

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Robert Kries
Employee/Petitioner

v.

Martin & Bayley, Inc.
Employer/Respondent

Case # **22** WC **002389**

Consolidated cases: ______

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Collinsville**, on **06/29/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

B. ☐ Was there an employee-employer relationship?

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

D. ☐ What was the date of the accident?

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

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

G. ☐ What were Petitioner's earnings?

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

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

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

K. ☒ 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 **Prospective medical.**

FINDINGS

On the date of accident, **8/16/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**70,366.40**; the average weekly wage was $**1,353.20**.

On the date of accident, Petitioner was **46** 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 $**43,561.71** for TTD, $**0** for TPD, $**0** for maintenance.

Respondent is entitled to a credit of $**47,377.82** under Section 8(j) of the Act.

ORDER

Petitioner's current condition of ill-being is causally related to the 08/16/21 accident.

Petitioner is entitlement to prospective medical treatment, including surgery being proposed by Dr. Barr.

The Arbitrator awards Petitioner $396.00 in medical bills per PX 3.

Petitioner is entitled to TTD benefit from October 11, 2022 to June 29, 2023 for 37 3/7 weeks.

Respondent shall be given a credit of $**43,561.71** for temporary total disability benefits that have been paid.

Respondent shall be given a credit of $**47,377.82** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Edward Lee______________________________ **AUGUST 21, 2023**

Signature of Arbitrator

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT KRIES,	)	
	)	
Petitioner,	)	
	)	
v.	)	22 WC 002389
	)	
MARTIN & BAYLEY, INC.,	)	
	)	
Respondent.	)	

ARBITRATOR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on August 16, 2021. This case was tried through a 19(b) proceeding in which Petitioner sought an order for additional payment of temporary total disability benefits and prospective medical. Specifically, Petitioner is asking for approval of a revision surgery. Petitioner and Respondent stipulated that an accident did occur on the above referenced date. However, Respondent disputed liability on the basis of causal relationship of future treatment. (Arbitrator's Exhibit 1.)

Testimony of Petitioner

Petitioner testified live at trial on June 29, 2023. Petitioner testified that he was working for Martin and Bayley Trucking in August of 2021 (Page 7). Petitioner testified that he was working as a fuel hauler which required him to work a 12-hour shift (Page 7). That job involved driving and also offloading fuel (Page 8). As part of his employment, Petitioner is required to get in and out of a semi-truck twenty to thirty times per day (Page 9). Getting in and out of the truck requires him to take two fairly high steps each time he enters or exits his truck (Page 9). Petitioner has prior knee problems, however; he has not missed work since his previous knee injury in 2012 with regard to his right knee (Page 10-11). Prior to the work accident in August of 2021, Petitioner had not had any pain in his right knee since 2012 (Page 11).

On August 16, 2021, Petitioner was unloading fuel and tripped over hoses on the ground (Page 11). During that fall he landed in a twisting motion and heard a pop in his right knee (Page 11). Petitioner continued to work that day, but could not exit the truck at the end of his shift due to pain from the work accident (Page 11). Petitioner felt a popping in his knee and experiencing swelling following the injury (Page 12). Petitioner notified his employer the morning of the injury (page 12). Petitioner testified that he received medical treatment including injections and a knee replacement. The knee replacement surgery went well at first, but Petitioner did not improve significantly (Page 14). Specifically, Petitioner's knee was sliding (Page 14). During Petitioner's testimony, a video was shown that illustrated the sliding motion that Petitioner described (Page 15). That video was admitted into evidence as Exhibit 5.

Petitioner testified that the sliding that was illustrated in Exhibit 5 occurs while he is walking (Page 16).

Petitioner further testified that he has been referred to a Dr. Roland Barr who has recommended additional treatment (Page 17-18). Petitioner has indicated that he wants to pursue that treatment (Page 18). Petitioner further testified that he does not feel he can do his normal job because he can't go up steps and that he is at a risk of falling while doing his job (Page 19).

J. Michael Davis, M.D. Deposition

Dr. J. Michael Davis testified on behalf of Petitioner. Dr. Davis first evaluated Petitioner on February 22, 2022 for persistent right knee pain (Page 6 of Petitioner's Exhibit 1). At that visit Petitioner gave a history of an interior cruciate ligament reconstruction many years ago and also a work accident on August 16, 2021 where he tripped over a fuel hose and injured his knee (Page 6 of Petitioner's Exhibit 1). Petitioner previously treated with Dr. J.T. Davis and received conservative treatment of injections, medication and therapy (Page 6-7 of Petitioner's Exhibit 1). Ultimately, Dr. Davis performed a knee replacement surgery for Petitioner (Page 7 of Petitioner's Exhibit 1). That procedure went well, but Petitioner had complications which resulted in Dr. Davis referring Petitioner to Dr. Barr (Page 8 of Petitioner's Exhibit 1). In Dr. Davis's opinion, the work accident was a cause of the need for a knee replacement (Page 9 of Petitioner's Exhibit 1). Specifically, Dr. Davis opined that the work accident accelerated Petitioner's symptoms and contributed to the need for a surgery (Page 9 of Petitioner's Exhibit 1).

Medical Treatment

Following the work injury, Petitioner sought treatment at the Orthopedic Institute of Southern Illinois (Exhibit 2). Petitioner received significant treatment including a knee replacement (Exhibit 2). Petitioner underwent treatment at the Orthopedic Institute of Southern Illinois, but did not fully recover (Exhibit 2). Ultimately, Petitioner developed patellar mal tracking which Dr. Barr felt may be related to retinacular repair (Exhibit 2). Dr. Barr recommended a revision (Exhibit 2). Specifically, Dr. Barr recommended a revision of the tibial polyethylene to eliminate any wear and tear on the bearing surface and revise the patellar component if there is evidence of damage to the articular surface (Exhibit 2).

Lyndon Gross, M.D. Deposition

Petitioner was seen pursuant to Section 12 of the Illinois Workers Compensation Act by Dr. Lyndon Gross. Dr. Gross did a physical examination as well as a medical history (Page 8 of Respondent's Exhibit 1). Dr. Gross opined that Petitioner suffered an exacerbation of underlying right knee osteoarthritis (Page 12 of Respondent's Exhibit 1). Dr. Gross admitted on cross examination that Mr. Kries had persistent knee pain that never stopped following his work related injury (Page 24 of Respondent's Exhibit 1).

Conclusions of Law

The Arbitrator finds that Petitioner's current condition is related to his work accident. The Arbitrator finds the Petitioner to be credible. Further, the Arbitrator finds Dr. Davis's testimony to be credible. Additionally, though the Arbitrator does not agree with the conclusions of Dr. Gross, he gives great weight to Dr. Gross's testimony that Petitioner had persistent pain from the time of injury. The Petitioner's current state of ill being is partially caused by the work accident, and therefore the treatment recommended by Dr. Barr is necessary as a result of that accident. Consequently, the Arbitrator awards Petitioner prospective medical care as recommended.

The Arbitrator, also finds that as that as a result of his injury the Petitioner was unable to work from Oct 11, 2022 to June 29, 2023 and accordingly awards Petitioner 37 3/7 weeks of TTD benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031836
Case Name	Sashko Ginev v. TarpHaus, Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0136
Number of Pages of Decision	10
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Angel Bakov
Respondent Attorney	Daniel Orenstein

DATE FILED: 3/22/2024

/s/*Deborah Simpson, Commissioner*

Signature

STATE OF ILLINOIS	)		
	) SS.	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
COUNTY OF COOK	)	☐ 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

SHASHKO GINEV,

Petitioner,

vs. NO: 21 WC 31836

TARPHAUS INC.,

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, employment relationship, causation, temporary total disability, and permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator, finds that Petitioner sustained his burden of proving an employment relationship, accident, as well as causation to a current condition of ill-being of his lumbar spine, and awards benefits.

Findings of Fact – Testimony

Petitioner testified on April 22, 2021 he was "sent from [his] workplace to pick up a truck part." He testified that another driver turned left in front of him while Petitioner had a green light. Petitioner was traveling about 35 MPH and could not stop in time. He was employed by TarpHaus, which had two sections. One side was a mechanic shop and on the other side "they would construct – for trailers" "for flood beds." He began working there in October of 2020. At the time of his hire he was interviewed by a man named Daniel. He worked as a mechanic for them. Two older mechanics showed him how to perform his job. He worked Monday through Friday, 7 a.m. to 5 p.m. He was paid $17.50 per hour.

Petitioner did not remember whether he was told he was being hired as an employee or independent contractor; all he knew was that he had to "sign some documents that [he was] employed there." He understood that he was an employee of TarpHaus and wore a uniform. The equipment he used was provided by TarpHaus. He was told what vehicles to work on and how to perform his job. He had several managers at TarpHaus.

At times, he was instructed to pick up parts and/or make deliveries. It was fair to say that it occurred at least once a week. On those errands, he used a company vehicle. On the day of the accident "both company vehicles were out of the yard." He asked Daniel whether he should wait, and Daniel "specifically told [him] to take my (apparently Petitioner's) car and go." Petitioner did not think he had the freedom to say no to his boss' request. His destination was about seven to eight miles from TarpHaus. On his way back with the part, a car turned left in front of him. Petitioner was wearing his uniform at the time. He was on work time when the accident occurred and believed he was being paid for that time.

Petitioner testified he lost consciousness initially after the collision. When he came to he was already in the ambulance. He identified PX2 as a photo of his car he took after the motor vehicle accident ("MVA"). He had pain in his neck, back, shoulder, right forearm, and "couldn't move." He also most likely struck his head on the deployed air bag. He then testified that before he "completely lost consciousness" he made a call to Daniel, told him he got into an accident, stated his location, and hung up. The accident occurred about 11:00 a.m. to 12:00 noon. He was discharged from hospital at 8:00 p.m. or 9:00 p.m. He did not return to work the next day because he could not move due to the level of pain.

Two days after the accident, Daniel asked him what happened, and what he had told the police/EMTs. He "told them what happened and they asked [him] to change" his statement. Daniel specifically wanted him to change his statement that he was on work hours at the time of the accident. Petitioner refused to change his statement. Vlatko, another manager at TarpHaus, also called him and 'basically" told him the same thing.

Petitioner testified that a week or two after being discharged, his father made him see a doctor because he was "screeching in pain," mostly from his lower back. He went to Dr. Lazarevic. He ordered an MRI of his lower back and referred him for physical therapy ("PT"). He had PT with Dr. Mention for "maybe a couple of months." Dr. Menton noted that the MRI showed he had four "discs popped in" his lower spine. After PT his neck pain went away completely but he still felt his back sometimes.

Petitioner testified that he never had any prior problems with his neck or back. Besides continued back pain. Petitioner can't do the "day-to-day things that" he used to. He cannot lift as much in the gym, cannot sit/stand for extended periods, and "during intimacy" he did not "feel it as well." Currently, he works driving trailers from one yard to another. Sometimes his back will bother him is he was sitting on the truck waiting for a load. Petitioner did not have health insurance at the time of the MVA.

On cross examination, Petitioner agreed that there were two different Daniels that he worked with. Petitioner testified he was not familiar with an entity called TruckHaus. He agreed that he was a 1099 employee with TarpHaus, Inc. Petitioner was never previously instructed to use his personal vehicle in performing errands. He was aware that a police report was done. He did not know who the report put at fault for the MVA, but he acknowledged that "when everything was said and told, the policeman said that" Petitioner was at fault. The Daniel that sent him on the errand was manager or owner of TarpHaus, he was not certain. Petitioner had liability insurance on his car, but not collision coverage, so the damage to his care was not repaired by his insurance. Petitioner denied speeding at the time of the MVA.

Petitioner was not a certified mechanic, and had no previous training as a mechanic before working for TarpHaus. He was able to take a day off if needed. Normally in performing errands a manager's car would be available if the two company pick-up trucks were not. He did not take a manager's car on the day of the MVA, because "they didn't offer it." He has no work restrictions regarding his current employment. He "had to slow down and stop" his gym workouts due to his work. He last worked out before his new employment started about two weeks previously. He worked the nightshift and did not have much time.

On redirect examination, Petitioner testified he first realized he was a 1099 employee when he got his tax returns, which was after the accident. He does not understand the implications of that designation. Daniel never brought up the issue of whether he was being hired as an independent contractor. He was not issued a speeding ticket in relation to the MVA. He only started working out again seven or eight months after the MVA out of fear of injuring his back. He feels some pain in his back once or twice a day and he felt a lot of discomfort after doing certain exercises. He was able to exercise more before he accident. On re-cross examination, Petitioner agreed that he signed documents when he started working for Respondent, but did not know if any of them were tax documents.

Mr. Vlato Manev was called by TarpHaus, a company he owned. It performs "cargo control and covering and repairs on rolling tarp systems and installation." There are no other owners of TarpHaus. He knew Petitioner from when he worked for TruckHaus. It is in the same building as TarpHaus, but they are different entities. It appears that Petitioner had been fired by TruckHaus, and Mr. Manev talked to him about working for TarpHaus. Petitioner was performing minor mechanical work for TruckHaus and the witness considered him a "handy guy." The work they did at TarpHaus was much simpler than the work at TruckHaus. Petitioner was hired as a 1099 employee. Mr. Manev had 4 W-2 employed who get health benefits.

Petitioner's testimony that he worked seven to five was not entirely correct. He told Petitioner that the hours were eight to five. Petitioner indicated that "he had personal problems that he need to address" and was "petrified" about being away from work taking care of those issues. He informed Petitioner that would give Petitioner leeway as long as he was up front with him and his work was done. He did not work for TarpHaus as a mechanic. TarpHaus does not employ mechanics.

Mr. Manev had at times asked Petitioner to make deliveries "for the cargo control end." However, he never asked him to use his own vehicle and was provided a TarpHaus vehicle for such work. On April 22, 2021 TarpHaus had three vehicles. Mr. Manev did not ask Petitioner to perform any errand on that date. He was sure that there was one TarpHaus vehicle available for use on that date. On the day of the MVA, Petitioner simply told him he had personal problems he had to take care of and he indicated that was OK.

Mr. Manev only learned about the accident when Daniel, the owner of TruckHaus the company that had fired Petitioner, informed him of the MVA. He called Petitioner as soon as he learned of the MVA. Petitioner indicated that he told police that he was making a delivery for TarpHaus, which was untrue. Mr. Manev "was like, why would you say that." However, he never told Petitioner to change his history to the police or insurance company.

TarpHaus does not have workers' compensation insurance. He explained that the general contractors have their own insurance and he provides health insurance for the employees. Mr. Manev did not provide Petitioner health insurance. He considered the employment of Petitioner to be temporary as an independent contractor until he could get something better. He specifically hired Petitioner as an independent contractor.

On cross examination, Mr. Manev testified he did not know whether TruckHaus was incorporated. The approximately 20,000 square foot building is split in half between the operations of TarpHaus and TruckHaus. TarpHaus started operations six years ago, and Mr. Manev believed TruckHaus began operation about 2&1/2 years ago at a different location. TarpHaus was already in the building and it was too large for it to fully occupy. So Daniel brought in his truck repair shop into the building. He agreed that part of Petitioner's duties with TarpHaus was to make deliveries, he had a set work schedule, and he had set hours.

Mr. Manev testified that on April 22, 2021 Petitioner "never" informed him that there were no TarpHaus vehicles available to make deliveries and asked what he should do. He agreed that he bought lights in bulk from the place Petitioner was picking up a part. Mr. Manev reiterated that his pickup truck would have been available on April 22, 2021 if Petitioner had asked for it. TarpHaus had tools Petitioner was able to use. Petitioner did not bring his own tools to work with. Mr. Manev had known Daniel for about 10 years. He has no involvement in the TruckHaus business. None of TarpHaus' employees had to check in or out.

On redirect examination, Mr. Manev testified employees of TarpHaus are not also employees of TruckHaus; they did not borrow employees. He reiterated that Petitioner had flexibility in his hours.

On re-re-cross examination, Mr. Manev testified that he paid Petitioner the full $700 per week, thinking that he would make up most of the time he may have missed attending to his personal problems.

Mr. Daniel Trajkovski was called by Respondent, Tarphaus. He owned a mechanical shop, Truck House. He knew Petitioner who used to work for Truck House as a 1099 employee. Mr. Trajkovski started the company in September 2019 and he believed Petitioner began working for him in March or April of 2020. Truck House shares a building with TarpHaus and Mr. Manev. Truck House is incorporated. Truck House repairs trucks, while TarpHaus worked in cargo control equipment. He hired Petitioner primarily to work on tires. Petitioner worked for him for about six or seven months. He was terminated in December of 2020. Later, he saw Petitioner working for TarpHaus.

Mr. Trajkovski testified that on the day of the MVA, he asked Petitioner to do him a favor and pick up some parts at a location five to 10 minutes away. Truck House has two company vehicles to use. He thought one of the vehicles was available. Petitioner never informed him that no company car was available. He did not know why Petitioner used his own car. Petitioner called him after the accident. He did not know whether he also called Mr. Manev. He did not pay Petitioner for performing the favor.

On cross examination, Mr. Trajkovski testified Petitioner was picking up a part to fix trailers. The part he was picking up were for Truck House and not TarpHaus. He believed he or the Truck House manager, Dimche, provided Petitioner a company credit card to pay for the part. After Petitioner called, Mr. Trajkovski went to the scene. Petitioner was still there. He did not remember whether he retrieved the part from Petitioner's car.

Mr. Trajkovski agreed that when Petitioner was doing him the favor, he was being paid by TarpHaus. However, he then testified he thought Petitioner was on break time. Petitioner first earned $12 an hour and later $15 an hour working for Truck House. Petitioner was not punctual, which was why they fired him. Petitioner was an independent contractor for Truck House, which was his agreement with Petitioner. Truck House currently has W-2 employees, but did not when Petitioner worked for it.

The company cars are parked in a certain location and the keys were in them. If an employee is doing an errand they would take a company vehicle. He did not remember Petitioner telling him all the trucks were unavailable. He often allowed employees to use his personal vehicle for errands, and if Petitioner had asked he certainly would have allowed him to use it. He had no idea why Petitioner used his own vehicle.

Mr. Trajkovski testified that while most employees at Truck House have their own tools, Petitioner was young and they bought what he needed to perform his job. He believed Petitioner began working for TarpHaus almost immediately after he was terminated by Truck House. They had no hard feelings for Petitioner and wanted him to do well. Mr. Trajkovski then testified the companies shared vehicles.

Findings of Fact – Medical/Documentary evidence

On April 22, 2021, Petitioner presented in the Advocate Christ Medical Center ER after an MVA with whiplash injury to his neck and contusion of the left chest wall. He also had a right wrist deformity with pain. He reported his vehicle collided into the side of another vehicle going about 35 MPH. The front air bags deployed and Petitioner believed he struck his head; he lost consciousness. He believed the other car blew a red light and may have turned in front of him.

Petitioner was given Norco, Cyclobenzaprine, and Ibuprofen. X-rays of the right forearm, elbow, wrist, and chest were normal. A CT of the cervical spine showed no clear evidence of acute fracture but did show sclerotic change along the inferior endplate or C5-6 which raised suspicion of impaction type of facture. An MRI was recommended if there were persistent symptoms. Dr. Girzadas indicated that "CT workup and plain x-rays do not show any acute abnormalities" and labs were normal. After discussion of his condition with Petitioner and his uncle, Petitioner wanted to be discharged home. He was advised of possible consideration of a cervical MRI, but Dr. Girzadas noted he did not have any midline tenderness. Petitioner was discharged home.

An MRI of the lumbar spine taken about two weeks later ordered by Dr. Lazarevic showed a four to five mm left-sided disc herniation with extruded nucleus pulposus indenting the thecal sac with left lateral/neuroforaminal stenosis which was exacerbated by some *ligamenta flava* hypertrophy.

On May 24, 2021, Petitioner presented to Dr. Menton for 4/10 low back pain after an MVA "while driving during working hours." He was struck by another vehicle while going through an intersection on a green light. Dr. Menton provided chiropractic evaluation/treatment. "Due to patient's current amount of deterioration of their state of health and condition upon examination, at this time [Dr. Menton expected] a partial recovery of the patient's symptoms and their functional deficits. Because of this [he expected] the case to possibly extend longer than usual due to a slower than usual recovery period to get to MMI." Dr. Menton diagnosed sprain of lumbar/cervical ligaments, segmental/somatic lumbar/cervical dysfunction, lumbar radiculopathy, muscle contracture, LBP, and cervicalgia.

A note dated August 4, 2021 appears to the last treatment noted upon about 22 chiropractic sessions. Petitioner reported no change of his condition since the previous visit. He reported 2/10 pain and that his condition improved 90% since initial onset. He still had some difficulty performing various activities of daily living. Dr. Menton believed Petitioner was at maximum medical improvement, but recommended he continue exercises in his home exercise program.

Conclusions of Law

The Arbitrator found that Petitioner did not sustain his burden of proving a current employment relationship with Respondent, TarpHaus. She noted that the preponderance of the evidence supported finding Petitioner was an independent contractor hired by TarpHaus. She also noted that Petitioner testified he was hired by Daniel Trajkovski from TruckHaus and not Vlatko Manev of TarpHaus. She found Petitioner's testimony that he was unaware of the existence of TruckHaus to be not credible.

Petitioner argues the Arbitrator erred in finding no employment relationship. He stresses that he testified he worked as a mechanic for a "supplier of truck and trailer products," and provided a uniform and tools, his duties included changing oil, changing tires, break repairs, and performing errands. He further claims that his managers included Daniel Trajkovski, Vlatko Manev, Dimce, and Alex. He characterizes the testimony of Mr. Trajkovski and Mr. Manev as "self-serving."

In arriving at her decision, the Arbitrator found that Mr. Manev and Mr. Trajkovski's testimony was more credible than that of Petitioner. Despite, the Arbitrator's conclusion, also as original finder of fact, the Commission finds Petitioner to be a credible witness. While, he was uncertain about some circumstances, we find such discrepancies to be based on youth, inexperience and naiveté, rather than obfuscation. On the other hand, the Commission has some concerns about the testimony of Daniel Trajkovski. He indicated that he asked Petitioner to do him a favor by picking up truck part. It seems somewhat incongruent for a person who recently fired an employee to ask that employee for a favor, and for that fired employee to perform that favor without any compensation. It would seem that Petitioner had an understanding or belief, that Mr. Trajkovski had some authority over him. It is also interesting that Mr. Trajkovski testified that his company and TarpHaus "shared vehicles." Such sharing of assets would support Petitioner's believe that these companies were effectively operating as a single entity.

The Commission finds Petitioner's testimony credible that he understood that he was an employee of TarpHaus, he wore a uniform, the equipment he used was provided by TarpHaus and he was told what vehicles to work on and how to perform his job. In addition, the Commission notes that Respondent never submitted any employment records to show Petitioner's employment status. Therefore, the Commission finds that Respondent controlled Petitioner's work and therefore Petitioner was an employee and not an independent contractor.

Next, is the issue of whether Petitioner' actions in picking up truck parts occurred in the course of his employment. Both Petitioner and Mr. Manev testified that performing errands, including picking up parts/supplies was part of Petitioner's job. The Commission finds that Petitioner's involvement in the MVA while performing an errand, arose out of and was in the course of his employment. In this regard the Commission notes that it is irrelevant that Petitioner was ticketed with regards to the MVA. Even if at fault, Petitioner's actions were not so outrageous so as to take him out of his employment.

The Commission notes that in her order section, the Arbitrator indicated that she found Petitioner's condition of ill-being was not causally related to the accident. However, in the body of her decision, the Arbitrator indicated that she did not need to make a ruling on causation because of her decision on employment relationship. The Commission has found in favor of employment relationship and that the accident arose out of and in the course of his employment. Based on the lack of any evidence that Petitioner had any pre-existing lumbar condition and the MRI findings of significant lumbar pathology immediately after the MVA, the Commission finds Petitioner's current condition of ill-being was causally related to his work-related MVA.

The Commission must now award benefits. Respondent has not presented any evidence suggesting that any medical treatment Petitioner received was in any way unnecessary, unreasonable, or not associated with his work-related condition of ill-being. Therefore, the Commission awards the medical expenses introduced into evidence, $31,256.33, which is subject to the applicable medical fee schedule. On the issue of temporary total disability, the Commission notes that Petitioner was off work from April 22, 2021 through August 4, 2021, for a total of 15 weeks. Therefore, the Commission awards Petitioner temporary total disability benefits of 15 weeks.

On the issue of permanent partial disability benefits, the Commission is statutorily obliged to consider certain factors. First, neither party has submitted an impairment rating under AMA Guides. Therefore, the Commission places no weight on that factor. Second, Petitioner currently works as a short-distance truck driver with some limitations due to his back. The Commission places some weight on his ability to work as a truck driver. No evidence was presented on any loss of future earning potential. The Commission gives no weight to that factor. The Commission notes that Petitioner was 20 years of age at the time of his accident. In combination with the evidence of disability supported by the medical records, the Commission places great weight on these factors because the record shows significant impairment and his young age means he will have to live with the disability for many years of his future working life.

On the issue of impairment, Petitioner testified that he had continued back pain. In addition, Petitioner can't do the "day-to-day things that" he used to. He cannot lift as much in the gym, cannot sit/stand for extended periods, and "during intimacy" he did not "feel it as well." Currently, he works driving trailers from one yard to another. Sometimes his back will bother him is he was sitting on the truck waiting for a load. The MRI of the lumbar spine taken about two weeks later ordered by Dr. Lazarevic showed a four to five mm left-sided disc herniation with extruded nucleus pulposus indenting the thecal sac with left lateral/neuroforaminal stenosis which was exacerbated by some *ligamenta flava* hypertrophy. Dr. Menton diagnosed sprain of lumbar/cervical ligaments, segmental/somatic lumbar/cervical dysfunction, lumbar radiculopathy, muscle contracture, LBP, and cervicalgia.

After his initial chiropractic evaluation, Dr. Menton wrote "due to patient's current amount of deterioration of their state of health and condition upon examination, at this time [Dr. Menton expected] a partial recovery of the patient's symptoms and their functional deficits. Because of

this [he expected] the case to possibly extend longer than usual due to a slower than usual recovery period to get to MMI." In the final treatment note dated August 4, 2021, Petitioner reported 2/10 pain and that his condition improved 90% since initial onset. He still had some difficulty performing various activities of daily living. Dr. Menton believed Petitioner was at maximum medical improvement, but recommended he continue exercises in his home exercise program. In evaluating the above cited statutory factors, the Commission awards Petitioner 62.5 weeks of permanent partial disability benefits representing loss of the use of 12.5 of the person-as-a-whole

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated May 30, 2023 is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay medical expenses in the amount of $31,256.33, 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 pay Petitioner the sum of $466.67 per week for 15 weeks, from April 22, 2021 through August 4, 2021, that being the period of temporary total incapacity for work pursuant to §8(b) of the Act.

IT ISFURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $420.00 per week for a period of 62.5 weeks as the work-related injuries resulted in the loss of the use of 12.5% of the person-as-a-whole pursuant to §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 $70,000.00. 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.

March 22, 2024

DLS/dw
O-1/24/24
46

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

/s/*Maria E. Portela*
Maria E. Portela

/s/*Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC002681
Case Name	Jaclyn Vercler v. State of Illinois - Department of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0137
Number of Pages of Decision	11
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Bradley Defreitas

DATE FILED: 3/25/2024

/s/Amylee Simonovich, 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 MCLEAN	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jaclyn Vercler,

Petitioner,

vs. NO: 17 WC 2681

State of Illinois—Illinois Department of Corrections,

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 causal connection, medical expenses, temporary total disability, and permanent disability, 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.

The Commission clarifies that the causal connection of Petitioner's left shoulder condition to the November 18, 2015, work accident ended on June 23, 2016. In the Order section of the Arbitration Decision Form, the Arbitrator wrote, "…benefits are denied for medical services rendered after June 24, 2016." The Commission modifies the relevant portion of this sentence to read, "…benefits are denied for medical services rendered after June 23, 2016." On page four (4) of the Decision, the Arbitrator wrote, "…Respondent to pay all reasonable and related medical bills through June 24, 2016…" The Commission modifies this sentence to read as follows:

> After finding Petitioner's current condition of ill-being is not related to the work accident due to the June 24, 2016, independent intervening accident, the Arbitrator orders Respondent to pay all reasonable and related medical bills through June 23, 2016.

On page one (1) of the Decision, the Arbitrator wrote, "…overhand strikes where her should came partially out of socket." The Commission modifies the relevant portion of this sentence to read, "…overhand strikes where her shoulder came partially out of socket." On page three (3) of the Decision, the Arbitrator mistakenly wrote, "…Petitioner's original injury suffered on November 18, 2018," The Commission strikes "2018" from this sentence and replaces it with "2015." Finally, on page four (4) of the Decision, the Arbitrator mistakenly wrote, "…the

Arbitrator has found that there is on causal connection…" The Commission strikes "on" from this sentence and replaces it with "no."

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 January 4, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that Petitioner's left shoulder condition was causally related to the November 18, 2015, work accident only through June 23, 2016. Petitioner sustained an independent intervening accident on June 24, 2016.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical services rendered by June 23, 2016, pursuant to the fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Any treatment rendered after June 23, 2016, was not causally related to the November 18, 2015, work accident.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner permanent partial disability benefits of $489.60/week for 10 weeks, because the injuries sustained caused the 2% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review.

March 25, 2024
d: 3/5/24
AHS/jds
51

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

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC002681
Case Name	VERCLER,JACLYN v. STATE OF IL/
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	Bradley Defreitas

DATE FILED: 1/4/2023

THE INTEREST RATE FOR THE WEEK OF JANUARY 4, 2023 4.63%

/s/Kurt Carlson, Arbitrator

Signature

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

January 4, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

Jaclyn Vercler Case # **17** WC **002681**
Employee/Petitioner/ bill@williamsandswee.com
v.
Illinois Department of Corrections
Employer/Respondent/ Bradley.Defreitas@ilag.gov

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 **Bloomington**, on **November 29, 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 **Independent Intervening Accident**

FINDINGS

On **11-18-15**, 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 $42,432.00; the average weekly wage was $**816.00**.

On the date of accident, Petitioner was **23** years of age, ***single*** with **0** dependent children.

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

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

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $489.60/week for 10 weeks, because the injuries sustained to Petitioner's left shoulder caused the 2% loss of the person as a whole, as provided in Section 8(d)2 of the Act.
As Petitioner has not proven that her current condition of ill-being is causally related to the work accident then all benefits are denied for medical services rendered after June 24, 2016. Respondent shall pay medical bills, per the fee schedule, for only the treatment received before June 24, 2016. TTD 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.

Kurt A. Carlson
Arbitrator

January 4, 2023

Jaclyn Vercler v State of Illinois-Department of Corrections
17-WC-002681

Findings of Fact

This matter was heard on November 29, 2022 by Arbitrator Carlson in Bloomington, Illinois. Petitioner was the only witness at trial and she testified as to the injury, treatment and her current condition. The issues in dispute are causal connection, average weekly wage, medical bills, temporary total disability, and nature and extent of the injury.

Petitioner's testimony

Petitioner testified that on November 18, 2015 she was a correctional officer trainee in the academy for the Illinois Department of Corrections. TX 7. On that date she was practicing control tactics and specifically overhand strikes where her should came partially out of socket. Id at 8.

Petitioner further testified that later on that night she decided to seek treatment at Priority Care in Springfield, Illinois. She had an x-ray and was advised to go to the ER to follow up with orthopedics. She further followed up with McLean County Orthopedics on December 1, 2015 with Dr. Armstrong. She then testified that she did not seek further treatment until July of 2016 after an intervening accident in Memphis. Petitioner stated "I was swimming in [the] pool, and I went to do a handstand in the pool, and my shoulder subluxated." Id at 13-14.

She testified that she then did not seek treatment until January of 2017 when she began physical therapy. She agreed that she was working full duty at that time still and received an injection in February of 2017. Petitioner testified that she received another injection and then was seen in January of 2019 by Dr. Norris at McLean County Orthopedics. Id at 20.

Petitioner testified that she had surgery on January 18, 2019. She was taken off work for the first two weeks following surgery and she was able to return to work on light duty on January 28, 2019. Petitioner testified that she did not agree with the records that show she was released with no restrictions as of May 6, 2019.

Petitioner noted that she still has days where her shoulder is sore but that it is 100% better than before surgery.

On cross-examination, Petitioner agreed that her pay rate was lower on the day she was injured since she was a cadet and not yet a correctional officer. Id at 35. She further agreed that on December 1, 2015 she was released with no restrictions by Dr. Armstrong. She then agreed that between December 1, 2015 and June of 2016 she sought no treatment. She also agreed she was working full duty before the handstand incident in June of 2016. Id at 36-37.

In regard to time off Petitioner agreed that she never missed any pay while off for surgery. She used her sick time and potentially some comp time as well. Id at 39-40. In regard to work duties now Petitioner testified that her work evaluations have "been getting higher and higher". Id at

40. Petitioner further testified that she was on the TAC team and was able to complete all duties as required.

Petitioner's exhibits

The deposition of Dr. Joseph Norris was entered as Petitioner's exhibit 1. The relevant testimony from Dr. Norris connects the original injury to Petitioner's surgery. Dr. Norris noted a history of injury while performing self-defense tactics while at the Illinois Department of Corrections Academy. Dr. Norris testified that as of April 29, 2019 he did not continue her restrictions as "[s]he requested to go back to work without restrictions at that time." PX 1 at 15. On cross-examination Dr. Norris said that Petitioner did not note any other instances of subluxation when he first treated her. Petitioner's exhibit 2 is the curriculum vitae for Dr. Norris.

Petitioner's exhibit 3 contain the records from Priority Care. The relevant records reflect that Petitioner was seen on November 18, 2015 with complaints of left shoulder pain from tactics class at the IDOC Academy. The x-ray report from that date was included as well and noted a mild subluxation is suggested. PX 3.

Petitioner's exhibit 4 contains records from St. John's Hospital. The relevant records reflect that Petitioner was seen in the early morning of November 19, 2015 with complaints of left shoulder pain and to follow up from Priority Care. She was referred as an outpatient to Ortho with a rotator cuff strain. PX 4.

Petitioner's exhibit 5 contains medical records from McLean County Orthopedics. The relevant records reflect that Petitioner was seen on December 1, 2015 and released to work with no restricitons by Dr. Armstrong. Dr. Armstrong noted very mild tenderness and no limitation in her range of motion. PX 5 at p. 13. She was next seen on July 15, 2016 where it was noted that she was doing a handstand in the pool when her shoulder dislocated and it took approximately twenty minutes to get it back in place. Id at p.10.

Petitioner's exhibit 6 also contain medical records from McLean County Orthopedics. The relevant records reflect that she was seen July 6, 2018 where an injection to her left bicep as well as her left shoulder. PX 6 at p. 40. She was then seen by Dr. Norris on January 3, 2019 where he recommended left shoulder arthroscopy to repair a rotator cuff tear. The follow up visits are then contained in the records as well. At her visit on April 29, 2019 she requested to be released to full duty which Dr. Norris agreed to. Id at p. 24.

Petitioner's exhibit 7 is the MRI that was conducted on July 21, 2016 which noted no rotator cuff tear and that the labrum was not seen well due to movement during the scan.

Petitioner's exhibit 8 is the surgical report where it is noted that Petitioner underwent left shoulder arthroscopy with capsulorraphy, biceps tenodesis and subacromial decompression. Petitioner's exhibit 9 contains the physical therapy records and bills from ATI Physical Therapy.

Petitioner's exhibit 10 contains the initial evaluation for ATI Physical Therapy from February 13, 2019 which was after Petitioner's left shoulder surgery. The exhibit further contains the final

discharge note from May 31, 2019 where it is noted that she met all goals for therapy. PX 10 at p. 8. Petitioner's exhibit 11 contains the medical bill exhibit which notes $58, 387.39 owed. It further notes that Petitioner's group health insurance has already paid $9,967.68.

Respondent's Exhibits

Respondent's exhibit 1 is the employee notice of injury where Petitioner noted that she was injured while delivering an angle 2 strike as part of control tactics class. RX 1. Respondent's exhibit 2 is the supervisor report of injury where it is noted that while completing control tactics Petitioner felt a pop in her shoulder. RX 2. Respondent's exhibit 3 is the wage statement which shows that Petitioner earned a base pay of $1,768.00 for the pay period of November 1, 2015.

Conclusions of Law

As an initial matter the Arbitrator notes Petitioner has the burden of proving all of his case by a preponderance of the evidence. Chicago Rotoprint v. Industrial Comm'n, 157 Ill.App.3d 996, 1000, 509 N.E.2d 1330, 1331(1st Dist. 1987).

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

"To obtain compensation under the Act, a claimant must show, by a preponderance of the evidence, that he suffered a disabling in jury that arose out of and in the course of his employment. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 203.

Respondent and Petitioner both agree that Petitioner suffered an initial left shoulder injury on November 18, 2015. The dispute arises out of the accident on June 24, 2016 where Petitioner suffered a left shoulder subluxation while attempting to perform a handstand while in a pool. Respondent claims that this is an independent intervening accident that breaks the causal chain of connection to the current condition of ill-being. For the foregoing reasons the Arbitrator finds that Petitioner's accident on June 24, 2016 is an independent intervening accident and does sever the causal connection.

"Every natural consequence that flows from an injury…is compensable under the Act absent an occurrence of an independent intervening accident that breaks the chain of causation between the work related injury and an ensuing disability. National Freight Industries v. Illinois Workers' Compensation Comm'n, 2013 993 N.E. 2d 473. Thus under such an analysis "compensability for an ultimate injury or disability is based upon a finding that the employee's condition was caused by an event that would not have occurred but for the original injury.

Here, the incident cannot be considered an occurrence that was a natural consequence of Petitioner's original injury suffered on November 18, 2018. There was no evidence presented that Petitioner was more likely than others to suffer another subluxation and in fact Petitioner's surgeon was unaware of the Memphis swimming pool handstand. The evidence presented by Petitioner does not show that but for this November 18, 2018 injury then she would not have subluxated her shoulder in June of 2016. Dr. Norris' opinion that the original training accident was the "sentinel event" seems compelling, but is far too speculative to withstand any real scrutiny. There was no need for an MRI after the training accident, Petitioner was discharged

from care and seven months had passed since the original injury. The likelihood of another dislocation is unquantifiable, and the injuries may not have been identical. For all we know, Petitioner's current injuries could have been caused by the attempts to 'reset' the shoulder poolside.

Issue (G): What were Petitioner's earnings?
Petitioner presented no evidence on this matter. Respondent submitted a wage statement that showed that Petitioner's average weekly wage was $816.00 and the correct TTD rate is $544.02 and the correct PPD rate is $489.60.

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?

After finding that Petitioner's current condition of ill-being is not related because of an independent intervening accident the Arbitrator orders Respondent to pay all reasonable and related medical bills through June 24, 2016 which is the date of the independent intervening accident.

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

Petitioner is claiming temporary total disability benefits for the date ranges of January 18, 2019 through February 1, 2019 and then again for May 4, 2019 through May 31, 2019. Since the Arbitrator has found that there is on causal connection then these benefits are denied. The Arbitrator does note that Petitioner was paid for both of these date ranges per her own testimony.

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

As Section 8(d) has two option for permanent partial disability awards then an analysis for a PPD award is necessary. With respect to disputed issue (L), pertaining to the nature and extent of Petitioner's injury, and 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 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.

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

With regard to subsection (ii): the occupation of the employee: The Petitioner is employed currently as a correctional officer and she is also on the TAC team. Petitioner does have a physically demanding job and therefore the Arbitrator gives greater weight to this factor.

With regard to subsection (iii): the Arbitrator notes that Petitioner was 23 years old at the time of the accident. Petitioner is still employed by Respondent and even noted that her reviews are getting higher and higher. Petitioner has significant amount of time to be in the work force and therefore, the Arbitrator gives moderate weight to this factor.

With regard to subsection (iv): Petitioner's future earnings capacity: There was no evidence presented about Petitioner's future earning capacity. Therefore, the Arbitrator places little weight on this factor.

With regard to subsection (v): evidence of disability corroborated by the treating medical records: The Arbitrator notes that since causal connection has been severed that this claimant had only a couple visits with for the accident on November 18, 2015. The notes reflect that Petitioner suffered from a rotator cuff strain. There were no injections or surgery until after the intervening accident. Therefore, the Arbitrator gives this factor greater weight.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	95WC041447
Case Name	Marko Urukalo v. State of Illinois - Northeastern Illinois
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	24IWCC0138
Number of Pages of Decision	7
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Matthew Rokusek
Respondent Attorney	Charlene Copeland

DATE FILED: 3/25/2024

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS	)
	) SS.
COUNTY OF COOK	)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARKO URUKALO,

Petitioner,

vs. NO: 95 WC 41447

STATE OF ILLINOIS,
NORTHEASTERN ILLINOIS,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT
TO §8(a), §16, §19(k) and §19(l) OF THE ACT

This matter comes before the Commission pursuant to Petitioner's petition for continuing benefits under Section 8(a) of the Act and penalties pursuant to Sections 19(k), 19(l), and attorney fees pursuant to Section 16 of the Act. For reasons stated below, the Commission grants Petitioner's petition pursuant to Section 8(a) and awards Petitioner penalties pursuant to Section 19(k), Section 19(l), and Section 16 of the Act.

PROCEDURAL HISTORY

Petitioner sustained a work-related injury on March 16, 1995 and was found permanently and totally disabled effective March 4, 1998. No appeal was taken from the Decision of the Arbitrator dated May 6, 1999. (PX.1.)

Petitioner subsequently filed a Section 8(a) petition on January 18, 2001 seeking authorization for a modified van that would accommodate his disability. Before the Section 8(a) hearing, Respondent agreed to provide Petitioner with a specially equipped van. The van was provided to the Petitioner on March 19, 2004. (PX.3.)

Petitioner filed a second Section 8(a) petition on May 16, 2012 seeking a replacement van as well as travel and training expenses for the replacement van. In its decision dated September 30, 2013, the Commission granted Petitioner's Section 8(a) petition and ordered Respondent to provide Petitioner with a handicapped-accessible van and provide Petitioner with the training

necessary to operate the van. (PX.3.) The Respondent provided Petitioner with a 2013 Dodge Caravan with 14,000 miles.

Petitioner filed a third Section 8(a) petition on November 23, 2022 requesting Respondent provide to him a new van with the necessary modifications to accommodate his work-related disability and for travel expenses for fitting and training. At the request of the parties, this petition has been continued on several occasions. A hearing was held before Commissioner Christopher A. Harris on February 8, 2024.

FINDINGS OF FACT

Petitioner testified that he was born with a form of muscular dystrophy known as spinal muscular atrophy, Type 2. (T.7.) He requires the use of a wheelchair, and he needs assistance with his day-to-day living. (T.9.) His van is required to have a lockdown system for his wheelchair. (T.12.) This requires specific measurements so that the van can accommodate his wheelchair. (*Id.*)

Petitioner testified that his 2013 Dodge Caravan now has 91,000 miles, and that its condition has deteriorated to the extent that it is no longer safe to drive. Specifically, he testified that various controls do not work, the air conditioning does not work, there is a leak in the roof or rear door, the left turn signal does not work, the headlights turn off randomly, the windshield wipers randomly do not operate, the doors and ramp do not function properly, and that there is a hole in the van that was caused by his wheelchair. (T.27-30.) Further, the check engine light has been on for three years and there are numerous electrical issues. (T.30.) He has not been able to find a mechanic that can restore his van to its working order. (T.42.) Petitioner's Exhibits 4 through 6 document the condition of the van.

On January 20, 2023, field representative John Bausch inspected Petitioner's van. In an e-mail from Brian Lewis, regional manager for Frasco Investigative Services, to Respondent's counsel dated January 23, 2023, Mr. Lewis documented the field representative's findings. It was noted that the wheelchair ramp did not deploy unless the van was rocked, there were water stains from a possible leak in the rear compartment, the magnet back up to the remote does not open the door, the front turn signal does not work, and the left rear turn signal works intermittently. Lastly, it was confirmed that the wheelchair locking mechanism did not work with his current Permobil wheelchair and that the Petitioner has to use his older Invacare Storm wheelchair while operating the van. (PX.11.)

Petitioner testified that he has to use his Invacare Storm wheelchair to drive as it is compatible with the DSI system used in his van. (T.10.) However, this wheelchair causes pain to his right hip and buttocks area and is very painful to use while driving. (T.10, 46.) While he has had a Permobil wheelchair for the past 7 years, it is not compatible with the van's locking system. (T.13.) The Permobil wheelchair is designed to alleviate his pain, help with circulation, and prevent pressure sores and neuropathy. (T.65.)

The Respondent obtained an estimate totaling $126,669.00 from DSI Driving Systems Inc. on May 26, 2023 to retrofit a 2022/2023 Chrysler Pacifica Touring van. (PX.7.) Respondent's

attorney submitted an e-mail to Petitioner's counsel on January 17, 2024 estimating the cost of a new van at $90,000.00. (PX.9.)

Respondent obtained an Occupational Therapy Driver Rehabilitation Clinical/Readiness Evaluation from STRIVE for Independence on December 21, 2023. Per the report, it was noted that Petitioner should not drive the van as it is unsafe. It was recommended that a replacement vehicle be obtained, and the same brand of system be installed. Voice activation was recommended. (PX.8.)

Petitioner testified that he is requesting a new van with the DSI driving system as that system has been used in his prior vans. (T.17.) To obtain this system, he has to fly to California for the final fitting and training. (T.55.) He has to fly first class as the transfer equipment necessary to move him from his wheelchair to the airplane seat does not fit in the aisle. (T.57.) He also has to travel with a companion so that person can help assist him. (T.58.) The training lasts between 4 to 5 days. (T.59.) He would like the lockdown system to fit to his Permobil wheelchair as that wheelchair is more comfortable. (*Id.*)

CONCLUSIONS OF LAW

Petitioner was found to be permanently and totally disabled as a result of his March 16, 1995 work-related injury. That finding is binding on the Commission under the law-of-the-case doctrine. (A court's unreversed decision on an issue that has been litigated and decided settles the question for all subsequent stages of the action. *Miller v. Lockport Realty Group, Inc.*, 377 Ill. App. 3d 369, 374, 878 N.E.2d 171, 315 Ill. Dec. 945 (2007).)

Under Section 8(a) of the Act, an employer is required to "provide and pay *** for all 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." 820 ILCS 305/8(a). To be entitled to additional compensation under Section 8(a), the claimant must initially establish, by a preponderance of the evidence, some causal relationship between his or her employment and the condition of ill-being for which he or she seeks additional benefits. See *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63, 541 N.E.2d 665, 133 Ill. Dec. 454 (1989).

The Commission previously found that Petitioner is permanently and totally disabled as a result of his work-related injury. Thereafter, the Commission found that the need for a "handicapped accessible van was due in part to his work injury, which rendered him permanently and totally disabled." Respondent complied with the award and provided Petitioner with a handicapped-accessible van.

Respondent now disputes the need for a new van arguing that the Petitioner failed to prove that the van cannot be repaired and that his need for an accessible van is reasonable, necessary, and causally related to his work injury. They argue that the request for a new van is due to his desire for a new lockdown system that would allow him to drive with his new wheelchair, which is not causally connected to the work injury.

Respondent has offered absolutely no evidence to support any of its arguments. It is patently clear from the evidence tendered by all parties that Petitioner needs the new van as the old van has broken down, cannot be repaired by conventional mechanics, and is unsafe to drive. The fact that the ramp and doors not operating unless the van is rocked by someone else physically capable of rocking it - standing alone – would have been enough to call into question the van's practical usefulness to Petitioner. However, Respondent's procured STRIVE report categorically eliminates any doubt as to the veracity of Petitioner's arguments on its motion.

Having found that Petitioner's current condition is causally related, in part, to his work-related injury, the Commission hereby grants Petitioner's Section 8(a) petition and finds that the Petitioner is entitled to the relief sought in his Section 8(a) petition including the replacement van as referenced in the DSI Driving Systems, Inc. estimate dated May 26, 2023, and associated costs and training.

Next, the Commission finds that Petitioner is entitled to penalties pursuant to Section 19(k), 19(l), and attorney fees pursuant to Section 16.

In cases where 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 *** have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." 820 ILCS 305/19(*l*). Penalties imposed under section 19(*l*) are "in the nature of a late fee." *McMahan v. Indus. Comm'n*, 183 Ill. 2d 499, 702 N.E.2d 545, 1998 Ill. LEXIS 1572, 234 Ill. Dec. 205. Moreover, the award of section 19(*l*) penalties 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." *Id.* "The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness." *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC. According to the December 21, 2023 STRIVE report, Petitioner's van was found unsafe to drive. Upon receipt of this report, the Respondent continued to delay the purchase of a handicapped-accessible van while advancing arguments not supported by the evidence. Because of this, the Commission finds that the Respondent failed to provide adequate justification under Section 19(l) for its delay in providing the van to the Petitioner knowing that the van was not safe to drive. Therefore, the Commission awards Petitioner penalties pursuant to Section 19(l) totaling $1,470.00, representing 49 days of non-payment from December 22, 2023 through the date of hearing on February 8, 2024.

Finally, Section 19(k) provides, in pertinent part, that "where there has been any *unreasonable or vexatious delay* of payment *** 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." 820 ILCS 305/19(k). Section 16 provides for an award of attorney fees and costs when an award of additional compensation under section 19(k) is appropriate. 820 ILCS 305/16. The amount of attorney fees to be awarded is a matter within the discretion of the Commission. *Jacobo, 2011 IL App (3d) 100807WC.*

The standard for awarding penalties and attorney fees under sections 19(k) and 16 is higher than the standard for awarding penalties under section 19(l) because sections 19(k) and 16 require more than an "unreasonable delay" in payment of benefits. *McMahan,* 183 Ill. 2d 499. For the award of penalties and attorney fees under sections 19(k) and 16, 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. *Id.* at 515, 702 N.E.2d at 552. Instead, penalties and attorney fees under sections 19(k) and 16 are "intended to address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose." *Id.*, 702 N.E.2d at 553.

The Commission finds Respondent's conduct unreasonable and vexatious. The Respondent offered no evidence to support any of its arguments or that the van is repairable or safe to drive, or that its need is not causally related to his work-related injury. The Petitioner filed its Section 8(a) petition on November 23, 2022. The Respondent did not obtain an evaluation of the van until December 21, 2023. Through its own report, the Respondent was aware that the van was unsafe to drive as of December 21, 2023 and needed to be replaced. Despite this report, the Respondent continued to dispute the need for a new van and continued to advance arguments unsupported by the evidence. As such, the Commission finds that the Respondent is liable for 19(k) penalties of $63,334.50 representing 50% of the $126,669.00 written estimate to retrofit the replacement van. The Commission declines to award penalties on the $90,000.00 estimated cost of a new van as neither party offered actual evidence as to the cost of a new van. The Commission also awards attorney fees of $12,666.90 representing 20% of the 19(k) penalties.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Section 8(a) petition is granted. Respondent shall authorize the purchase of a handicapped-accessible van as referenced in the DSI Driving Systems, Inc estimate dated May 26, 2023, and further authorize and pay for said vehicle to be retrofitted by DSI Driving Systems, Inc. and pay for all necessary training and travel expenses incidental thereto.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's petition for penalties pursuant to Section 19(k), Section 19(l), and Section 16 is granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner penalties of $63,334.50 as provided in Section 19(k) of the Act, $1,470.00 pursuant to Section 19(l) of the Act, and $12,666.90 in attorney fees as provided in Section 16 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 other amounts paid, if any, to or on behalf of 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.

March 25, 2024
CAH/tdm
r: 2/8/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC027159
Case Name	Justin Ellis v. City of O'Fallon
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0139
Number of Pages of Decision	10
Decision Issued By	Christopher Harris, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Patrick Keefe

DATE FILED: 3/26/2024

/s/Marc Parker, Commissioner
Signature

DISSENT: /s/Christopher Harris, 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

Justin Ellis,

Petitioner,

vs. NO: 21 WC 27159

City of O'Fallon,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 13, 2023, is hereby affirmed and adopted.

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

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

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

March 26, 2024
MP: ns
o 3/7/24
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/s/ *Marc Parker*
Marc Parker

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

DISSENT

I respectfully dissent from the Majority Decision and would instead award three-percent (3%) loss of use of the person as a whole in PPD benefits. Petitioner's COVID-19 diagnosis resulted in minimal treatment [two doctor's visits and prescriptions for allergy medication], he missed about four weeks of work and was then allowed to return to work without restrictions or further treatment recommendations. Petitioner testified to ongoing issues related to fatigue, concentration, shortness of breath and his ability to taste and smell. The medical evidence as of June 22, 2021 stated that Petitioner denied having fatigue and does not mention any COVID-related complaints. The evidence, however, does show that his last appointment related to COVID-19 was in December 2020. Thereafter, he treated for unrelated conditions including shift work sleep disorder and circadian rhythm sleep disorder. The evidence does not delineate the extent that Petitioner's COVID-19 illness versus his sleep disorder may be contributing to his ongoing symptoms, especially as it pertains to fatigue and concentration. As such, I find that 3% loss of use of the person as a whole is a more appropriate award that is consistent with the evidence.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC027159
Case Name	Justin Ellis, v. City of O'Fallon,
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Patrick Keefe

DATE FILED: 9/13/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 12, 2023 5.30%

/s/Maureen Pulia, Arbitrator
Signature

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

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

JUSTIN ELLIS,
Employee/Petitioner

v.

CITY OF O'FALLON,
Employer/Respondent

Case # **21** WC **27159**

Consolidated cases: ______

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Collinsville**, on **8/31/23**. By stipulation, the parties agree:

On the date of accident, **8/12/20**, 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 $**84,986.72**, and the average weekly wage was $**1,634.36**.

At the time of injury, Petitioner was **30** years of age, ***married*** with **1** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $**4,202.51** for TTD that has been paid, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**4,202.51**. There is no additional period of TTD being claimed.

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 $**871.73**/week for a further period of **37.5** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **petitioner a 7.5% loss of use of his person as a whole**.

Respondent shall be given a credit of $224.08 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner compensation that has accrued from **8/12/20** through **8/31/23**, 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.

SEPTEMBER 13, 2023

Signature of Arbitrator

ICArbDecN&E p.2

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 30 year old Police Officer, sustained an occupational exposure to COVID 19, that arose out of and in the course of his employment by respondent on 8/12/20. Petitioner began working for respondent on 9/11/17. His duties involved patrolling the city, enforcing the criminal code of the state and city, and interviewing witnesses. Petitioner denied any symptoms of COVID 19 prior to 8/10/20.

On 8/8/20 petitioner was performing a Drug Recognition Expert Interview (DRE), at the request of the Freeberg, IL, Police Department. The interview was conducted in a 10x10 foot room without any windows. Although the prisoner he was interviewing had a mask on, that mask had to be removed so that petitioner could do a cavity search of the mouth and nose. This required petitioner to be less than 1 foot away from the petitioner's mouth and nose.

On 8/12/20 petitioner received a call from Officer Ruhmann from the Freeburg Police Department. Officer Ruhmann told petitioner that the prisoner he was conducting a DRE interview of on 8/8/20 tested positive for COVID 19 when they took him to jail. Petitioner then presented to Walgreen's and underwent COVID 19 testing. The results of that testing were Positive for COVID 19. Petitioner testified that at the time of the testing he was experiencing congestion, a cough, and sinus problems. Petitioner testified that he had pre-existing sinus problems, but they were not chronic.

Petitioner testified that in the weeks leading up to the DRE interview, he and his wife were essentially barricaded in their house because she was expecting a baby. Petitioner's child was born just two days before he tested positive for COVID 19. Petitioner's wife and baby did not get COVID 19.

On 9/30/20 petitioner was seen at Anderson Medical Group by Michael Barajas, PA-C. He reported that he tested positive for COVID 19 on 8/12/20. His symptoms consisted of sinus congestion, loss of taste and smell, cough, and mild shortness of breath with exertion. Petitioner reported that his dyspnea on exertion (DOE) and paroxysmal nocturnal dyspnea (PND) still persist, but all other symptoms had resolved. He stated that his DOE improved for a few days before returning again. He noted that he had not yet been cleared to return to work by the Health Department because of his DOE. An x-ray of the chest showed no acute cardiopulmonary abnormality. Petitioner was given Flonase and Zyrtec. Petitioner testified that he also reported trouble concentrating.

Petitioner returned to full duty work on 9/8/20. He testified that when he returned to work he was still experiencing fatigue, concentration problems, and a loss of taste and smell. Petitioner testified that he was tired all the time and felt drained and worn out. He testified that it took him longer to complete written reports after calls because he could not focus and concentrate. He stated that he would make lists to keep himself on track. He also had to remove any distractions. At times, he would go to a smaller substation to work.

On 12/10/20 petitioner returned to Anderson Medical Group and was seen by Corinne Murphy, PA-C. He reported that he still had slight shortness of breath with exertion. Petitioner reported that his DOE had improved since 9/3/20. Petitioner denied fever, cough, chest pain, lightheadedness, weakness or fatigue. He reported that he still had a slight decrease of taste and smell. Murphy examined petitioner and told him that they would continue to monitor his symptoms. Petitioner testified that he was told that there was nothing more they could do for his COVID 19 symptoms.

On 4/29/21 petitioner was seen by Dr. Jason Barnett at Anderson Medical Group on 4/29/21. He reported that he was seen at Mercy emergency room on 4/26/21 for headache, neck pain, fatigue, dizziness, and vomiting. He reported a possible tick bite. He did not recall being bit, but was out in the woods. Petitioner had an apparent bite on his face. He was diagnosed with viral meningitis and discharged with doxycycline. His CBC, CMP, and Lyme panels were normal. Petitioner reported worsening neck pain and headaches after returning home. He reported that he was unable to sleep due to pain. He noted that ibuprofen and Tylenol were not providing any relief. Petitioner was instructed to go to the emergency room if his symptoms worsened.

On 6/22/21 petitioner went for a 6 month wellness exam follow-up to Anderson Medical Group and was seen by Corinne Murphy PA-C. Petitioner did not complain of loss of taste and smell, any shortness of breath, or any dyspnea on exertion.

On 11/7/21 petitioner left his employment with respondent and moved to Montana to get away from larger populated areas, and improve his quality of life for him and his family. In Montana, petitioner took a position with the Department of Justice, Division of Criminal Investigation, Narcotics Division. Petitioner is a Narcotics Agent that does undercover investigations. Petitioner testified that overall, this job is less physical. However, he did testify that at times his job could be more physical (i.e., raids). Petitioner stated that in this job, he does more investigative desk work.

Currently, petitioner testified that he is still fatigued, and has concentration issues. He also testified that his sense of taste and smell have improved slightly. He testified that he still has trouble with subtle smells. He reported shortness of breath after going up a few flights of stairs. Petitioner still uses a notebook to write things down and continues to remove all distractions from his desk. Petitioner testified that his current fatigue is related to endurance, and feeling drained every day. It is most prevalent with distance and stairs. Petitioner does not take any medications for these symptoms.

Petitioner did not think in his current state that he could pass the Physical Fitness test required by the State of IL to be a police officer. He was of the opinion that he could not run the mile and half in the required time. He testified that he has less cardio endurance now. Petitioner testified that he is currently working with a

running coach, but has to stop every 5-10 minutes to catch his breath. Petitioner runs 60-70 miles a month. Petitioner started with his running coach in October of 2022.

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.

With respect to factor (i), the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act, neither party offered into evidence any impairment rating. 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 Police Officer for respondent on 8/12/20. On 9/8/20 petitioner returned to full duty work while still experiencing fatigue, concentration issues, and a loss of taste. He testified that his concentration issues caused him to take longer to complete written reports, and he had to remove distractions from his desk. He also felt tired, drained and worn out. Petitioner continued in his full duty capacity for respondent until 11/7/21 when he resigned, and took a position with the Montana Department of Justice, Division of Criminal Investigation, Narcotics Division. There petitioner is a Narcotics Agent that does undercover investigations. Petitioner testified that overall, this job is less physical. He did state that at times his job could be more physical, if he was doing activities such as raids. He stated that in this job he does more investigative work. For these reasons, the arbitrator gives greater weight to this factor.

With respect to factor (iii), the age of the employee. Petitioner was 30 years old on 8/12/20. On that date petitioner had an approximate 30 year work life remaining. The arbitrator finds it significant that despite having been found to have reached maximum medical improvement, petitioner is still fatigued, has concentration issues, and still has difficulty with smell and taste. For these reasons, the Arbitrator gives greater weight to this factor.

With respect to factor (iv), the future earnings of the petitioner, neither party offered any evidence with respect to petitioner's future earning capacity. Therefore, the arbitrator gives no weight to this factor.

With respect to factor (v), evidence of disability corroborated by the treating medical records, the Arbitrator finds that as a result of the exposure to COVID 19 on 8/12/20 petitioner still suffers from ongoing symptoms from this exposure. On 12/10/20 petitioner reported that he still had slight shortness of breath with exertion, and that his DOE had improved since 9/3/20. Petitioner denied fever, cough, chest pain,

lightheadedness, weakness or fatigue. He reported that he still had a slight decrease of taste and smell. Murphy examined petitioner and told him that they would continue to monitor his symptoms. Petitioner testified that he was told that there was nothing more they could do for his COVID 19 symptoms.

Currently, petitioner testified that he is still fatigued; that he has concentration issues; that his sense of taste and smell have improved slightly; that he has trouble with subtle smells; and, that he has shortness of breath after going up a few flights of stairs. Petitioner still uses a notebook to write things down and continues to remove all distractions from his desk. Petitioner testified that his current fatigue is related to endurance, and feeling drained every day. It is most prevalent with distance and stairs. Petitioner does not take any medications for these symptoms.

Petitioner did not think in his current state that he could pass the Physical Fitness test required by the State of IL to be a police officer. He was of the opinion that he could not run the mile and half in the required time. He testified that he has less cardio endurance now. Petitioner testified that he is currently working with a running coach, but has to stop every 5-10 minutes to catch his breath. Petitioner runs 60-70 miles a month. Petitioner started with his running coach in October of 2022.

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 7.5% 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	12WC011534
Case Name	Jeffrey A. Downing v. Freeport Metal Specialties Co.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0140
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Gregory Tuite
Respondent Attorney	Jane Ryan

DATE FILED: 3/27/2024

/s/Marc Parker, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeffrey A. Downing,

Petitioner,

vs. No. 12 WC 011534

Freeport Metal Specialties Co.,

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 causal connection, medical expenses, permanent disability, and evidentiary/procedural, 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.

Procedural History

On February 22, 2023, this matter was tried before the Arbitrator and proofs were closed. After Respondent submitted its proposed decision, in which it noted that some of Petitioner's medical bills in evidence were not supported by medical evidence, Petitioner filed, on March 13, 2023, a Motion to Reopen Proofs. On May 17, 2023, the Arbitrator granted that motion, reopened proofs, and allowed Petitioner to offer new evidence into the record. On July 18, 2023, the Arbitrator issued his decision, and on August 7, 2023, Respondent timely filed a review.

Facts

On February 22, 2023, Petitioner, 46, was struck on the head by the fork of a forklift. Although he did not seek immediate medical treatment, over the next two weeks, he experienced light-headedness and headaches. On March 28, 2011, Petitioner was found unconscious and was transported to the emergency room of Freeport Memorial Hospital, where he was diagnosed with an acute CVA. Petitioner was then transferred to Alexian Brothers Medical Center, where it was confirmed that he had suffered an acute cerebrovascular accident, likely secondary to a carotid artery dissection, with complete occlusion of the artery. Petitioner was diagnosed with aphasia and right-sided hemiparesis.

Petitioner remained hospitalized at Alexian Brothers until April 5, 2011, when he was transferred to Van Matre Rehabilitation Hospital. There, he commenced an intense course of treatment consisting of medication, physical therapy, occupational therapy, and speech therapy. Petitioner made improvements, and on April 27, 2011, he transitioned to outpatient care at Van Matre.

While some of Petitioner's symptoms improved, he also developed new ones. On June 7, 2011, neurologist Dr. Khan reported Petitioner exhibited slurred speech and had experienced episodes of syncope, some of which were accompanied by convulsions or twitching – resembling complex partial epilepsy. Dr. Khan ordered an EEG which, on July 14, 2011, was found to be abnormal. On July 20, 2011, Dr. Khan diagnosed Petitioner with: post-traumatic complex partial epilepsy; status post severe closed head trauma; status post carotid artery dissection; status post left middle cerebral artery distribution, and large ischemic infarct with residual right hemiparesis. On that date, Dr. Khan strongly cautioned Petitioner not to drive a motor vehicle, be near stoves, operate complicated machinery, or climb roof or ladders alone.

Petitioner concluded his outpatient therapy at Van Matre Rehabilitation Hospital in July, 2011. On August 15, 2011, he commenced care with Dr. Schleich. That doctor reported, "At this time the patient is controlled. Continue to monitor and follow up as needed."

Beginning in 2013, Petitioner made annual visits to doctors at Freeport Health Systems to monitor his condition. On November 20, 2013, Dr. Chacon reported that Petitioner exhibited: disfluent language, impaired repetition, and impaired naming with multiple phonemic paraphasic errors. Petitioner also had mild dysarthria, hemiparesis involving his arm and leg, and a hemiparetic gait. Dr. Chacon reported Petitioner developed a new problem which was not present before his stroke: mood issues, with significant disinhibition and impatience. In addition, Dr. Chacon reported that Petitioner had experienced a "grand mal" seizure two weeks earlier, and noted that seizures which occur remotely from strokes have a significant risk for recurrence, meriting long term treatment with anti-epileptic medication.

On February 13, 2018, Petitioner underwent a Section 12 examination by Dr. Lazar. Dr. Lazar opined that Petitioner demonstrated residual speech, cognitive, and motor manifestations of a major dominant hemisphere infarction caused by a work-related traumatic left internal artery dissection. Dr. Lazar also believed Petitioner displayed secondary manifestations of his work-related condition, including: permanent language and cognitive deficits, right-sided weakness, impaired gait, seizures, and depression. Dr. Lazar opined Petitioner was unable to hold a job and was permanent and totally disabled.

The Arbitrator, after reopening proofs and admitting new evidence from Petitioner on May 17, 2023, issued his decision in which he found, inter alia, that Petitioner was temporarily totally disabled from March 28, 2011 through August 30, 2011, and that Petitioner became permanently and totally disabled on August 31, 2011. The Arbitrator awarded Petitioner TTD benefits for the period March 28, 2011 through August 30, 2011, and permanent and total disability benefits for life, commencing August 31, 2011. The Arbitrator ordered Respondent to pay the reasonable and necessary unpaid medical bills listed in Petitioner's Exhibit #1.[1] Finally, the Arbitrator ordered Respondent to hold Petitioner harmless from claims by providers of the services for which Respondent received credit, as provided in Section 8(j) of the Act.

Petitioner was Permanently and Totally Disabled on August 15, 2011

At arbitration, Respondent stipulated that Petitioner has been permanently and totally disabled since February 14, 2018. Respondent also stipulated that between August 31, 2011 and February 13, 2018, Petitioner was totally disabled, but Respondent asserts that Petitioner's disability during that period was only *temporary*, not permanent – because no doctors prior to Dr. Lazar on February 13, 2018 pronounced Petitioner to be permanently and totally disabled.

Based on the medical evidence, the Commission affirms the Arbitrator's finding that Petitioner was permanently and totally disabled between August 31, 2011 and February 13, 2018.

An employee is temporarily totally disabled from the time an injury incapacitates him until such time as he is as far recovered as the permanent character of the injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118, 561 N.E.2d 623, 149 Ill. Dec. 253 (1990). Once an injured employee has reached MMI, the disabling condition has become permanent and he or she is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n, 353 Ill. App. 3d 1067, 1072, 820 N.E.2d 570, 289 Ill. Dec. 794 (2004).* The factors to consider in determining whether an employee has reached MMI include a release to work, medical testimony or evidence concerning the employee's injury, and the extent of the injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594, 834 N.E.2d 583, 296 Ill. Dec. 26 (2005).

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[1] With the exception of Freeport Health charges for service on May 1, 2015 and July 17, 2018.

There are three ways by which employees can demonstrate that they are permanently and totally disabled: by a preponderance of the medical evidence, by showing a diligent but unsuccessful job search, or by demonstrating that because of their age, training, education, experience, and condition, no jobs are available to a person in their circumstances. *ABB C-e Servs. v. Indus. Comm'n,* 316 Ill. App. 3d 745; 737 N.E.2d 682 (2000).

The Commission finds, by a preponderance of the medical evidence, that Petitioner reached MMI on August 15, 2011, and that his condition reached a state of permanent and total disability not on August 31, 2011, but on August 15, 2011, the date of Dr. Schleich's exam. On August 15, 2011, Petitioner had recovered as far as the permanent character of his injuries would permit. On that date, Dr. Schleich reported Petitioner's condition was controlled, and his plan going forward was to only monitor Petitioner and follow up with him as needed.

Other records confirm that Petitioner's condition after August 15, 2011 was virtually the same as it was on February 13, 2018, when Dr. Lazar declared him permanently and totally disabled. On November 20, 2013, Dr. Chacon reported Petitioner was on disability, and his only recommendation was to adjust Petitioner's medications. On March 10, 2015, Dr. Chacon examined Petitioner and found no further focal neurologic or other new symptoms. At that visit, Dr. Chacon reported Petitioner's fiancée had to relay most of Petitioner's history because Petitioner was, "limited by aphasia."

On April 17, 2016, Dr. Cranberg reported that Petitioner, "remains with permanent cognitive (aphasia) and physical (right hemiparesis, seizure disorder) impairments that render him disabled from gainful employment. His cognitive deficits preclude a desk job, and his physical deficits preclude an active/physical job." At arbitration, Petitioner acknowledged that the annual visits he made to doctors at Freeport Health Systems since 2013 were for the purpose of monitoring his condition.

Although we find Petitioner became permanently and totally disabled on August 15, 2011, our award of permanent and total disability benefits begins on August 31, 2011 – the date on which Petitioner stipulated, on his Request for Hearing sheet, that his permanent and total disability began.[2]

Petitioner's Motion to Reopen Proofs

We find, upon our de novo review, that it was improper for the Arbitrator to have granted Petitioner's Motion to Reopen Proofs after they had been closed on February 22, 2023. The sole purpose of Petitioner's motion was to offer medical records which were available at the February

[2] The language of Ill. Admin. Code tit. 50, § 7030.40 (now recodified as § 9030.40) indicates that the request for hearing is binding on the parties as to the claims made therein. *Walker v. Indus. Comm'n,* 345 Ill. App. 3d 1094, 804 N.E.2d 135 (2004).

hearing, but not offered into evidence at that time. Petitioner filed his motion only after Respondent submitted its proposed arbitration decision in which Respondent pointed out that many of Petitioner's bills in evidence were not supported by corresponding medical evidence.

Petitioner's claim was filed in 2012. Petitioner had 11 years leading up to the arbitration hearing to obtain all of the medical records needed to prove his case. Petitioner's reason for not offering medical evidence to support the bills in evidence at the February 22, 2023 hearing was that he was unaware the bills were being disputed, and that his first indication of a bill dispute was when Petitioner received Respondent's proposed arbitration decision. That claim is not supported by the record. On the Request for Hearing sheet, Respondent expressly stated that it was disputing all of the bills in evidence, and that Respondent was demanding proof thereof. We find that at the start of the arbitration hearing, Petitioner was made aware that all of the medical bills were being disputed. At that time, Petitioner did not request a continuance or bifurcation of the hearing to offer additional medical records not then in his possession.

Nor do we find persuasive Petitioner's claim that Respondent did not make a "specific objection" to the bills. That was not required. A Petitioner has the burden of proving all elements of his case, including that medical services received were reasonable, necessary, and causally related to the accident. Allowing a party to rectify deficiencies in their case, after proofs have been closed and their opposing party has pointed out those deficiencies, prejudices that party by allowing their opponent, "two bites of the apple."

For these reasons, we find it was error for the Arbitrator to have granted Petitioner's motion to Reopen Proofs, and we vacate the granting of that motion. We strike from the record the "revised" Petitioner's exhibit 2, and Petitioner's exhibit 2A, which were offered into evidence on May 17, 2023, when proofs were reopened. At that time, Petitioner withdrew his original PX2, and it is no longer in the record. The Arbitrator erred by not preserving the original PX2 in the record so that the Commission could consider it if the Commission disagreed with the Arbitrator's ruling.

Medical Expenses

Many of the bills for Petitioner's accident-related medical care have already been paid. Petitioner only sought payment of the unpaid medical bills contained in Petitioner's exhibit 1 (PX1).

The medical records in evidence support some, but not all, of the claimed unpaid bills. Those records which support the unpaid bills are contained in Petitioner's exhibits numbered PX4 through PX9, and include records from Freeport Memorial Hospital, Alexian Brothers Medical Center, Van Matre Rehabilitation Hospital, Freeport Health Network, and UW Health Madison.

The Commission finds that the medical records contained in Petitioner's exhibits numbered PX4 through PX9 sufficiently establish that the following unpaid bills in PX1 were reasonable, necessary, and causally related to Petitioner's accident: all bills for services between March 28, 2011 and August 15, 2011, and Dr. Chacon's bill for treatment on November 20, 2013. We reverse the Arbitrator's award of the remaining bills in PX1, as those have not been proven, by medical evidence, to have been reasonable, necessary, or causally related to Petitioner's accident.

Section 8(j) Credit and Hold Harmless

The Arbitrator ordered Respondent be given a credit for medical benefits that have been paid. The Arbitrator also ordered Respondent hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving that credit, as provided in Section 8(j) of the Act.

We find that order unnecessary. At arbitration, Respondent stipulated that it, "paid $0 in medical bills through its group medical plan for which credit may be allowed under Section 8(j) of the Act." As there is no Section 8(j) credit to be given in this case, there was no reason to order Respondent hold Petitioner harmless from any providers' claims. Accordingly, the Commission vacates the Arbitrator's order that Respondent hold Petitioner harmless from any providers' claims.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 18, 2023, is hereby modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Motion to Reopen Proofs is denied, and the exhibits offered during the May 17, 2023 hearing – Petitioner's revised exhibit 2, and Petitioner's exhibit 2A – are stricken.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of medical bills contained in Petitioner's exhibit 1, is modified. Respondent shall pay only those unpaid bills in that exhibit for services which were provided to Petitioner from March 28, 2011 through August 15, 2011, and Dr. Chacon's bill for treatment on November 20, 2013. All other bills in Petitioner's exhibit 1 are denied, as they were not proven to have been reasonable, necessary, or causally related to Petitioner's accident.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's order that Respondent hold Petitioner harmless from any providers' claims, is vacated.

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.

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.

March 27, 2024

MP/mcp
o-02/07/24
068

/s/ *Marc Parker*
Marc Parker

/s/ *Stephen Mathis*
Stephen Mathis

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC011534
Case Name	DOWNING, JEFFREY A v. FREEPORT METAL SPECIALTIES CO
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Gregory Tuite
Respondent Attorney	Jane Ryan

DATE FILED: 7/18/2023

/s/Gerald Napleton, Arbitrator
Signature

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jeffrey A. Downing
Employee/Petitioner
v.
Freeport Metal Specialties Co.
Employer/Respondent

Case # **12** WC **011534**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Rockford**, on **2/22/2023 & 5/17/2023**. 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 **When did permanent total disability begin**

FINDINGS

On **3/9/2011**, 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 $**32,760.00**; the average weekly wage was $**630.00**.

On the date of accident, Petitioner was **46** 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 $**273,056.11** for PTD and TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**32,451.77** for other benefits, for a total credit of $**305,507.88**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $420.00/week for 22 2/7 weeks, commencing 3/28/2011 through 8/30/2011, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent and total disability benefits of $466.13/week for life, commencing 8/31/2011, as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the *Rate Adjustment Fund*, as provided in Section 8(g) of the Act.

Respondent shall pay reasonable and necessary medical services of listed in Petitioners Exhibit 1 with the exception of the Freeport Health charges dated 5/1/15 and 7/17/18 as provided in Sections 8(a) and 8.2 of the Act.

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

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

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

/s/ Gerald W. Napleton

Signature of Arbitrator

July 18, 2023

JEFFREY A. DOWNING VS. FREEPORT METAL SPECIALTIES CO.
12 WC 011534

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 9, 2011, Petitioner Jeffrey Downing sustained an undisputed work-related accident while employed by Respondent, Freeport Metal Specialties Co., as an auto-body repair worker. On that day, he was assigned to repair the rear door of a box truck. Petitioner was inside the back of the box truck attempting to lift the rear door. Another employee brought a forklift to the box truck and attempted to raise the door with the forks. Petitioner was struck on the left side of his head by one of the forks. The incident was reported to the owner of the company that day.

Petitioner had nearly constant headaches over the two weeks following the accident at work. On March 28, 2011, Petitioner was preparing to go to work and was waiting outside his home for a ride. While waiting, Petitioner became dizzy and passed out. An ambulance was called. The ambulance transported him from his home to the Freeport Memorial Hospital emergency room. He was evaluated there and was immediately transferred by helicopter to the Alexian Brothers Medical Center in Hoffman Estates, Illinois. Further testing done that day revealed a left cerebral infarct. An angiogram was performed which showed "a dissection of the left interior carotid artery with an occlusion also of the left middle cerebral artery presuming from thromboembolic disease." The doctor also noted that "dissection of the carotid artery is likely secondary to previous trauma earlier this month ...". (PX 5). Petitioner was discharged from Alexian Brothers on April 5, 2011 to be transferred to an acute inpatient rehab center in Rockford, Illinois.

Later that day, Petitioner was admitted to the Van Matre Health South Rehab Hospital and came under the care of Dr. Jantra. He indicated that the rehabilitation plan included occupational, physical and speech therapy. (PX 6 p.2). Weekly staffing assessments took place at Van Matre. Hava Muldoon, a Nurse Case Manager employed by the Respondent's workers' compensation carrier, attended the staffing on April 20, 2011. (PX 3). Petitioner participated in physical therapy, occupational therapy, and speech therapy at Van Matre.

Mr. Downing was discharged from Van Matre inpatient on April 27, 2011. He then continued outpatient therapy with them beginning on May 3, 2011. Van Matre made specific recommendations for activities and restrictions within the home to be implemented subsequent to the discharge. This included checking on Petitioner every 30 minutes while at home and constant supervision of him if outside the home.

Petitioner then came under the care of Advanced Practice Nurse Tracey DySard of the Freeport Health Network Burchard Hills facility. (PX 8 p.1). Petitioner also continued working with Van Matre occupational and speech therapy providers. His final discharge from Van Matre occurred on July 27, 2011. At Freeport Health Network, Mr. Downing came under the care of Dr. Farouk Kahn of the FHN Stroke Services Department. (PX 8). Dr. Kahn noted a number of physical deficits. Dr. Kahn recommended a 12 hour sleep deprived EEG because of syncopal episodes with convulsions or twitching. This was performed on July 14, 2011. He recommended Lamictal Extended Release for the seizures. He also strongly

cautioned Mr. Downing not to drive a vehicle or be near open fires or stoves, and to not operate complicated machinery or climb roofs, ladders, or swim alone. He suggested Mr. Downing return in two months.

On August 15, 2011 Petitioner began care with Dr. Jeffrey Schleich of FHN Burchard Hills. He noted an unremarkable exam and recommended that Coumadin be continued. Petitioner returned to Dr. Kahn on December 29, 2011. Dr. Kahn noted the ongoing deficits and the fact that Petitioner suffered from Post Traumatic Complex Partial Epilepsy. He recommended increasing the Lamotrigine and to take Diazepam at bedtime. Mr. Downing's final visit with Dr. Kahn took place on March 28, 2012. The findings at that visit were similar to those in December 2011.

Petitioner saw a new physician, Dr. Kumar, on February 12, 2013. She recommended an MRI of the head and neck, continuing the Lamictal, and referral for speech therapy. Petitioner experienced a grand mal seizure on October 21, 2013. He was kept overnight in the hospital and discharged the following day. He saw Dr. Kumar on November 8, 2013 and his exam demonstrated ongoing physical deficits. Petitioner was also seen by Dr. Marcus Chacon of the University of Wisconsin Hospital & Clinics on November 20, 2013. (PX 9 p.1). Again, the ongoing physical impairments involving walking and use of the right arm were noted. Dr. Chacon recommended that he start Celexa and discontinue Warfarin. Petitioner then went approximately one and a half years without medical care. He saw Dr. Chacon on

one occasion on December 23, 2015. Petitioner's condition appeared the same and the only recommendation was to discontinue Aspirin.

On April 17, 2016 Petitioner's counsel obtained the opinion of Dr. Lee Cranberg of Harvard University. (PX 10). He indicated that the need for anti-seizure medication will probably be lifelong. He also noted that Petitioner remains with permanent cognitive (aphasia) and physical (right hemiparesis, seizure disorder) impairments that rendered him disabled from gainful employment. He noted Petitioner's cognitive deficits precluded a desk job, and his physical deficits preclude an active/physical job. Petitioner then had no treatment until a visit with his primary physician on January 17, 2018. Dr. Schleich only recommended slight changes in his medication.

On February 13, 2018 Petitioner was seen by Dr. Richard Lazar for a §12 evaluation at the request of Respondent. (PX 11). Dr. Lazar agreed there was a causal relationship between the accident and the internal carotid artery dissection. He indicated that all of the care at Freeport Hospital, Alexian Brothers, Health South Rehabilitation, and the University of Wisconsin Madison was "exemplary" and related to the work injury of March 9, 2011. He indicated that Petitioner's mental capacity had been described in his exam report. He also indicated that Petitioner was unable to hold a job and was permanently and totally disabled. He also indicated that no further care would have any impact on his recovery. Since the §12 evaluation, Petitioner's only care has been routine visits with his primary

physician at the Freeport Health Network Family Healthcare Center. Petitioner has not worked since the March 9, 2011 stroke.

CONCLUSIONS OF LAW

Regarding Issue (K), the temporary benefits in dispute, the Arbitrator finds as follows:

As a threshold matter, the Arbitrator reserved his ruling on a hearsay objection regarding Petitioner's Exhibit 3, the records of Nurse Case Manager, Hava Muldoon. The availability of the declarant at issue was not submitted. The Arbitrator sustains Respondent's hearsay objection as the records as the records contained in PX3 are not treating records covered by Section 16 and thus subject to hearsay objection. PX3 is rejected.

The primary issue in this case is when Mr. Downing's temporary total disability ended, and permanent total disability began. Entitlement to temporary total disability benefits (TTD) is dependent on a claimant showing not only that he or she did not work but also that he or she was unable to work. *Gallentine v. Industrial Comm'n,* 201 Ill. App. 3d 880, 887, 559 N.E.2d 526, 531 (1990). A claimant is entitled to temporary total disability benefits until such time that claimant's condition has recovered to such a degree that the permanent nature of the injury is discernable. *Westin Hotel v. Industrial Comm'n.,* 372 Ill. App. 3d 527, 542, 865 N.E.2d 342, 356 (2007). The dispositive question is whether the claimant's condition has stabilized, i.e. reached maximum medical improvement. *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n,* 236 Ill. 2d 132, 142, 923 N.E.2d

266, 271 (2010). Factors considered when determining whether a condition has stabilized include a release to return to work, medical testimony, and the extent of the injury. *Land & Lakes Co. v. Industrial Comm'n,* 359 Ill. App. 3d 582, 594, 834 N.E.2d 583 (2005).

Petitioner was released from inpatient and outpatient stroke care at Van Matre Hospital on July 27, 2011. He had seen Freeport Memorial stroke physician Farouk Kahn on June 7, 2011 for an assessment where Dr. Kahn recommended a sleep-deprived EEG which he interpreted to show post-traumatic complex partial epilepsy. All of the visits after the EEG involved physical examinations and an adjustment in medications. No further physical rehabilitation was performed. He had one visit with Dr. Kahn and one visit with Dr. Schleich in 2012. Respondent paid TTD through August 30, 2011. Petitioner alleges that temporary total disability ended on that date. At that time, Petitioner alleges that "the permanent nature of the injury was discernable," that Petitioner was not going to significantly improve, and that he was not capable of gainful employment.

The Commission has dealt with similar catastrophic injuries in the past. In the case of *Wentz v Truck Centers Inc.,* 14 IWCC 0091 (2014), the Petitioner had undergone surgery for a rotator cuff tear. During the surgery, Petitioner suffered a loss of vision due to a medication that had been prescribed prior to the surgery. The surgery took place on May 14, 2009. Because of the loss of vision, Petitioner could no longer hold a commercial driver's license. On October 27, 2009 Petitioner's orthopedic surgeon released him from care and determined that he had reached

maximum medical improvement. He had indicated that Petitioner had no restrictions as a result of his shoulder surgery, but had lost his ability to drive because of the vision loss. The Arbitrator awarded Temporary Total Disability from May 14, 2009 through October 27, 2009, and determined that Petitioner was entitled to Permanent Total Disability benefits as of October 28, 2009. Upon Review, the Commission affirmed these findings.

Petitioner in the instant case has a similar situation. He had a period in which he underwent intensive rehabilitation and made some improvement in his condition. There is nothing in the record, including Respondent's Section 12 examination report, that persuades the Arbitrator to find that Petitioner improved or was able to return to any kind of work. In addition, it appears that the majority of his care took place prior to his final release from Van Matre.

Respondent's position is that Petitioner is not entitled to permanent and total disability benefits until the date of its Section 12 exam on February 13, 2018. This is seven years after the accident. As noted above, the question whether the Petitioner's condition has recovered to such degree, that the permanent nature of the injury is discernible. Here, Petitioner made some improvement during his rehabilitation at Van Matre Hospital in April and May of 2011. It was clear upon discharge that there was not going to be a significant improvement in the future. The medical records show that there little, if any, improvement after his release from Van Matre. He had minimal treatment, except for a grand mal seizure, from the time of his release from rehabilitation up to the date of hearing.

The record demonstrates that Petitioner's condition had stabilized in August of 2011, and he had reached maximum medical improvement as of August 30, 2011. Accordingly, Petitioner is entitled to TTD benefits from March 28, 2011 through August 30, 2011.

Regarding Issue (O) when Permanent Total Disability Benefits began, the Arbitrator finds as follows:

There is no dispute that Petitioner is currently permanently and totally disabled. Respondent alleges that PTD benefits begin as of its Section 12 examination with Dr. Lazar. Petitioner alleges that PTD benefits begin on August 31, 2011. There is nothing in the record to support a finding that Petitioner improved, could have improved, or was capable of work between August 30, 2011 and the date of Respondent's Section 12 hearing. His condition had stabilized as of August 30, 2011. There is no evidence in the record to suggest that Petitioner was employable at any time after his accident. Having already determined that Temporary Total Disability benefits ended on August 30, 2011, the Arbitrator finds that Petitioner is entitled to Permanent Total Disability benefits at the rate of $466.13 from August 31, 2011 through the date of hearing and thereafter for life pursuant to section 8(f) of the Act.

Regarding Issue (J), whether Respondent has paid all appropriate charges for reasonable and necessary medical services, the Arbitrator finds as follows:

The Arbitrator awards the medical charges listed in Petitioner's Exhibit 1 (excluding two exceptions listed below) as well as the reimbursement requests from Illinois Medicaid/IDHFS. Included in the Medicaid reimbursement request are

payments made to Ms. Thea Bruce, Petitioner's partner, and mother of their child. These payments were made to her as his caregiver when he was recovering from the stroke. Payments to caregivers for a catastrophic injury can be awarded. *Zuckerman v. Rush University Medical Center*, 11 IWCC 1116 (11/9/2011), affirmed 2013 IL App (1st) 121481WC-U.

The Respondent disputed liability for the following bills:

- FHN with a date of service of 5/1/15 in the amount of $178
- FHN with a date of service of 7/17/18 in the amount of $512.31
- IDHFS related to "Maxi Aids" for rehabilitation with a date of service of 1/10/14 in the amount of $39.75
- IDHFS for medication with a date of service of 1/20/15.

The Arbitrator awards payment of the IDHFS payments marked above but does not award the FHN payments for the above-mentioned dates of service. The two FHN service dates involve treaters named Jeffrey Schleich, Robert Pierce, and Gregor Blecharz. These dates of treatment, the names of treatment, and corresponding medical records do not appear in the record. Further, these dates of service occur during a time where Petitioner was not seeking routine and active medical treatment. The IDHFS expenses listed relate to ongoing and consistent medication and rehabilitation services and are awarded. All other medical expenses, including reimbursement regarding the care given by Thea Bruce, contained in Petitioner's Exhibit 1 are awarded. All medical services awarded are to be paid

pursuant to Sections 8(a) and the Medical Fee Schedule. Respondent is entitled to a credit for medical bills already paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC034529
Case Name	Ronald Reason v. City of East Peoria
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0141
Number of Pages of Decision	16
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Patrick Jennetten
Respondent Attorney	Michael Bantz

DATE FILED: 3/27/2024

/s/Amylee Simonovich, 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 PEORIA	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ronald Reason,

Petitioner,

vs. NO: 21 WC 034529

City of East Peoria,

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 causal connection, medical expenses, prospective medical care, average weekly wage, benefit rate calculation, and temporary total disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission agrees with the Arbitrator's award of temporary total disability benefits but corrects a clerical error with regard to the number of weeks and parts thereof awarded for the February 14, 2022 through July 26, 2022 period. The Commission modifies the first sentence of the first paragraph of the Temporary Total Disability Section of the Order to read, "Respondent shall pay Petitioner temporary total disability benefits of $1,021.36/week for 23 2/7 weeks, commencing February 14, 2022, through July 26, 2022, as provided in Section 8(b) of the Act."

Additionally, the Commission agrees with the analysis and award of a temporary total disability credit to Respondent for payments made to Petitioner from February 14, 2022 through March 4, 2022, limited to the temporary total disability rate pursuant to Section 8(j)(2) of the Act. However, the Commission corrects a clerical error with regard to the weeks and parts thereof to which Respondent is entitled credit. The Commission modifies the last sentence of Issue (O) to read, "Thus, the Respondent is only entitled to credit for the TTD rate from February 14, 2022, through March 4, 2022, at the rate of $1,021.36 per week, for 2 5/7 weeks." Decision, p. 10. Accordingly, the credit awarded to Respondent for TTD in the Order shall also be modified from $2,626.35 to $2,771.97 and the total credit awarded Respondent shall be modified from $2,626.35 to $2,771.97.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 10, 2023, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner temporary total disability benefits of $1,021.36 per week for 23 2/7 weeks, representing the period of February 14, 2022 through July 26, 2022, pursuant to Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall receive a credit of $2,771.97, or $1,021.36 per week for 2 5/7 weeks, pursuant to Section 8(j)(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.

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.

March 27, 2024

O: 3/5/24
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	21WC034529
Case Name	Ronald Reason v. City of East Peoria
Consolidated Cases	22WC000368;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Patrick Jennetten
Respondent Attorney	Michael Bantz

DATE FILED: 2/10/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 7, 2023 4.75%

/s/Bradley Gillespie, Arbitrator

Signature

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

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Ronald Reason
Employee/Petitioner

Case # **21** WC **034529**

v.

Consolidated cases:

City of East Peoria
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 **Gillespie**, Arbitrator of the Commission, in the city of **Peoria**, on **July 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. [x] 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. [x] 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] Is Petitioner entitled to any prospective medical care?

L. [x] 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. [x] Other **Medical Authorization Under Section 8(a)**

FINDINGS

On the date of accident, **09/21/2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**79,666.29**; the average weekly wage was $**1,532.04**.

On the date of accident, Petitioner was **55** 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 $**2,626.35** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**2,626.35**.

Respondent is entitled to a credit of $**44,259.21** under Section 8(j) of the Act.

ORDER

Medical benefits
Respondent shall pay reasonable and necessary medical services of $4,091.34, as provided in Section 8(a) of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

Respondent shall be given a credit of $44,259.21 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.

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $1,021.36/week for 23 1/7 weeks, commencing February 14, 2022, through July 26, 2022, as provided in Section 8(b) of the Act.

Please see the attached 19(b) Decision of Arbitrator for consolidated cases 21WC034529 and 22WC000368.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Bradley D. Gillespie
Signature of Arbitrator

FEBRUARY 10, 2023

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RONALD REASON,	)	
	)	
Petitioner,	)	**Case Nos.: 21 WC 034529**
	)	**22 WC 000368**
v.	)	
	)	
CITY OF EAST PEORIA,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

FINDINGS OF FACT

Testimony of Ronald Reason

Ronald Reason testified that he is employed by the City of East Peoria and has worked full time for the City of East Peoria beginning in August of 2014. (Tr. pp. 77-8). Petitioner worked as a refuge truck driver from August of 2014 through January of 2015, then switched to the streets department from January of 2015 through July of 2019, and finally as a mechanic from July of 2019 until his injury in September of 2021. (Tr. pp. 78-9). Ronald Reason testified that he never had any problems with his shoulders while working for the City of East Peoria prior to September 21, 2021. (Tr. p. 79). Ronald Reason testified that he never had any problems performing his job duties while using his arms prior to September 21, 2021. (Tr. p. 80). Ronald Reason never had any problems with his shoulders popping, or with range of motion or movement with his shoulders, prior to September 21, 2021. (Tr. p. 80).

Ronald Reason testified that he had surgery performed on his left shoulder by Dr. Merkley sometime around 2006 or 2007 for a rotator cuff repair; he was returned to work full duty and never had any residual problems with his shoulders following his return to work. (Tr. pp. 80-1).

On September 21, 2021, Ronald Reason was working with a hose using a PM rack that was on the floor; he tripped over the hose and fell on his arm. (Tr. p. 81). He reported the fall to the other mechanic as well as his supervisor, Rick Semonski. (Tr. p. 82). An accident report was filled out and he was told to go to OSF Occupational Health for evaluation. (Tr. p. 82). Ronald Reason went to OSF Occupational Health at the request of the Respondent, and he was evaluated and placed on a 15-pound restriction. (Tr. p. 84). He worked with restrictions initially and was eventually sent for an MRI by OSF Occupational Health. (Tr. p. 84). Based upon the MRI findings, occupational health recommended an orthopedic evaluation; Petitioner requested to see Dr. Merkley at Midwest Orthopedic who had previously treated his shoulder. (Tr. p. 85).

Petitioner treated with Dr. Merkley who placed a 20-pound restriction with no work above the shoulder. (Tr. p. 86). Dr. Merkley ordered a CT of the shoulder and based upon the results Dr. Merkley recommended a shoulder replacement surgery. (Tr. p. 87). Petitioner had the surgery performed on April 22, 2022, at Unity Point Health Proctor. (Tr. p. 88).

Ronald Reason testified he had consistent and persistent left shoulder pain from September 21, 2021, through the date of his surgery on April 22, 2022. (Tr. p. 88). Petitioner is doing well following his shoulder replacement surgery and is continuing to do physical therapy. (Tr. p. 89). Petitioner testified he is hoping to return to work full duty. (Tr. p. 89).

Petitioner testified he was taken off work from his light duty position on February 14, 2022; this was done when he switched jobs from mechanic to streets department as the there was no light duty work available in the streets department. (Tr. p 90).

Petitioner testified that that the description of his job duties in the streets department by Rick Semonski was fairly accurate in terms of job duties and use of tools; with use of a jackhammer around one hour per week on average. (Tr. p. 92). Petitioner testified that he used air tools as a mechanic for the Respondent, using them on average one hour per day (Tr. pp. 94-6). The most frequent air tool used by Petitioner was the air hammer, which he held with both hands pressing it on things to use the vibration to break apart items. (Tr. pp. 96-7). Petitioner would use the air hammer frequently to break apart items such as brake rotors, wheel bearings, or anything he wanted to break or chisel off. (Tr. p. 97).

The Petitioner testified that he understood overtime to be mandatory for snow removal and it was vital for mechanics to be present during the snow removal season to maintain snow trucks and snowplows. (Tr. pp. 99-100).

Testimony of Rick Semonski

Rick Semonski testified that he is employed by the City of East Peoria as the Superintendent of Streets and Public Works. (Tr. p. 13). He has held that position for 29 years. (Tr. p. 13). He has been the supervisor over the Petitioner, Ronald Reason, the entire time Petitioner has worked for the Respondent. (Tr. p. 13). Rick Semonski testified that Petitioner worked in the streets department from January of 2015 through July of 2015, at which time Petitioner moved to work as a mechanic. (Tr. p. 14). Petitioner worked as a mechanic until a recent move back to the streets department. (Tr. p. 15). Petitioner told Rick Semonski he wanted to move back to the streets department because it was a lighter duty job. (Tr. p. 16).

Rick Semonski testified that streets department employees perform work including road repairs, shoveling asphalt, and the occasional use of a jackhammer. (Tr. pp. 17-18). Rick Semonski testified that mechanics such as Petitioner would perform service, maintenance and repairs on city vehicles including fire trucks, ambulances, police cars, public works trucks, dump trucks, and any piece of equipment associated with Public Works. (Tr. pp. 18-19). A majority of the work performed by mechanics would be work done on police vehicles, with frequent brake work done by the mechanics. (Tr. pp. 19-21). The work done by mechanics includes the frequent use of air tools such as air wrenches, air hammers, air ratchets and cut-off tools. (Tr. p. 22).

Rick Semonski testified that he believed the Petitioner to be a truthful and honest person. (Tr. p. 23). He testified that he did not remember Petitioner ever complaining of any arm or shoulder pain prior to September 21, 2021. (Tr. p. 23). He had no reason to doubt the Petitioner's claim of never having any arm or shoulder pain prior to September 21, 2021. (Tr. p. 23). From the time of hire until his injury on September 21, 2021, Rick Semonski was not aware of the Petitioner ever complaining about shoulder pain or problems or an inability to due his job due to shoulder problems. (Tr. p. 30).

Rick Semonski was aware that Petitioner claimed an injury where he tripped over a hose and fell on an outstretched arm, for which he filled out an accident report. (Tr. pp. 23-24). Rick Semonski testified that human resources instructs him to tell injured employees to go to OSF Occupational Health for evaluation. (Tr. p. 26). Rick Semonski does not give employees the option for medical care but instructs them that they need to see OSF Occupational Health when they have a work injury. (Tr. pp. 26-7). Rick Semonski instructed the Petitioner Ronald Reason to go to OSF Occupational Health. (Tr. p. 27). Rick Semonski testified that the Petitioner was taken off work starting on February 14, 2022, when he transferred to the streets department, as there was no light duty work available. (Tr. p. 28).

On the issue of wages, Rick Semonski agreed that overtime had to be worked by the department; it is doled out according to system agreed to by the union. (Tr. p. 40). Rick Semonski understood that mechanics were forced to work overtime during times of snow removal, and further that a majority of the overtime that Petitioner worked was during snow season. (Tr. pp. 41-43).

Testimony of Ted Lovestrand II

Ted Lovestrand testified that he is the mechanic foreman for the City of East Peoria. (Tr. p. 47). The Petitioner started working for him as a mechanic beginning in July of 2019. (Tr. p. 47-48). Ronald Reason never complained of shoulder pain while working as a mechanic from July of 2019 through September 21, 2021. (Tr. p. 48). Work as a mechanic involves lifting heavy objects, lifting objects shoulder height and above, and working with air tools. (Tr. pp. 49-52). The air tools used included the use of air hammers; the Petitioner himself loved using air hammers as a mechanic. (Tr. p. 53). The Petitioner used air hammers such as the one used in PX. 12, using the air hammer to removed brake rotors, wheeling bearings, or anything that might be rusted and required to be broken apart. (Tr. pp. 54-55). Ted Lovestrand testified that overtime for snow removal was dictated by a separate policy and contract signed by all three mechanics. (Tr. p. 65).

Ted Lovestrand testified that he was off work on September 21, 2021; however, he returned the next day when he was informed that Petitioner was injured when he fell over a hose and fell on his left arm. (Tr. pp. 65-6). Ted Lovestrand testified that the Petitioner is an honest person and has no reason to disagree if he testified that he never had any prior shoulder problems. (Tr. pp. 66-7).

Medical Treatment

The Petitioner presented to OSF Occupational Health on September 22, 2021, for evaluation and treatment. Dr. Batek evaluated Petitioner and took a history of injury on September 21, 2021, where Petitioner fell on an outstretched hand. Petitioner initially had pins and needs in his left hand and discomfort in the left shoulder; his hand symptoms were mostly resolved however Petitioner and continued left shoulder discomfort with limited range of motion. Petitioner indicated that he did have a prior shoulder surgery in the early 2000s but could not remember what type of procedure he had performed. Dr. Batek indicated she could not rule out rotator cuff pathology and recommended a shoulder x-ray and possibly an MRI. Dr. Batek provided restrictions in the form of 15-pound lifting restriction to waist level, no overhead use of left arm and no commercial or industrial operation of vehicles. (PX 7)

Petitioner returned to OSF Occupational Health on September 23, 2021, where he was seen by Joan Mason, APN. APN Mason noted that Petitioner had continued left shoulder pain with positive impingement signs. APN Mason ordered an MRI with follow up and continued restrictions. The MRI of the left shoulder was performed at OSF on October 18, 2021. The radiologist found no full thickness tears of the rotator cuff, postoperative changes of the biceps tenodesis, and advanced degenerative arthritis of the left glenohumeral joint. (PX 7).

The Petitioner returned to OSF Occupational Health on October 21, 2021, where he was seen again by Joan Mason, LPN. LPN Mason continued the restrictions and recommended evaluation with orthopedics based upon the MRI results. Petitioner wanted to see Dr. Merkley as his orthopedic surgeon. (PX 7).

Petitioner saw Dr. Merkley at Midwest Orthopedic on November 3, 2021. Dr. Merkley took a history of Petitioner tripping over a hose and landing on his left side. Petitioner had immediate pain in the shoulder and difficulty raising his shoulder; pain was aggravated by all movements. Dr. Merkley diagnosed left shoulder pain with severe glenohumeral arthritis as well as a left shoulder rotator cuff strain. Dr. Merkley performed a corticosteroid injection at the glenohumeral joint and placed on a 20-pound restriction and no lifting above shoulder level. Petitioner saw Brandon Gale, PA-C, with Midwest Orthopedic on December 13, 2021, where his shoulder pain continued, and a CT scan was ordered for further evaluation. Dr. Merkley went over the CT results with Petitioner on January 3, 2022, where he diagnosed continued left shoulder pain and osteoarthritis with a partial rotator cuff tear. Dr. Merkley recommended a total shoulder replacement and sought authorization for surgery from workers' compensation. (PX 8).

Petitioner was cleared for surgery by Carlos Avila on April 14, 2022. (PX 9). Dr. Merkley performed surgery on Ronald Reason at Unity Point Health on April 22, 2022. The surgery was for chronic left shoulder pain and severe glenohumeral arthritis. Dr. Merkley performed a total shoulder arthroplasty of the left shoulder. (PX 10).

Petitioner was doing well post-surgery and placed in therapy on May 4, 2022. Petitioner had physical therapy performed at Midwest Orthopedic. Dr. Merkley thought the Petitioner's implant looked stable on exam six weeks post-surgery. He was told to start light functional use as of June 1, 2022, and was continued off-work. (PX 8).

Dr. Merkley Deposition Testimony

Dr. Merkley testified that he is a board-certified orthopedic surgeon, specializing in treatment of the shoulder and knee. (PX 11, pp. 4-6). Dr. Merkley saw the Petitioner for evaluation for pain in the left arm and shoulder. (PX 11, p. 6). Dr. Merkley had a history of Petitioner injuring himself when he was working as a mechanic for Respondent and tripped on a hose, falling on his left side resulting in immediate pain int eh left shoulder. (PX 11, p. 7). The Petitioner had pain raising his shoulder, night pain and pain worsened by all movement. (PX 11, p. 7).

Dr. Merkley diagnosed the Petitioner with left shoulder pain caused severe glenohumeral joint arthritis of the left shoulder with some partial rotator cuff tearing (strain). (PX 11., p. 10). Dr. Merkley recommended continued restrictions, corticosteroid injection, and physical therapy. (PX 11, p. 10-11). He eventually ordered a CT scan of the left shoulder to better asses the bony deformity associated with the arthritis, used for when patients undergo shoulder replacement surgeries. (PX 11, p. 11). Dr. Merkley testified that Petitioner did not get any better, and ultimately recommended a shoulder replacement surgery. (PX 11, pp. 13-14).

Dr. Merkley performed a total shoulder replacement surgery upon Petitioner on April 22, 2022. (PX 11, p. 15). The surgery was a stemless anatomic total shoulder arthroplasty; the anatomic total shoulder replacement feels more normal to a patient than a reverse arthroplasty. (PX 11, p. 16). Dr. Merkley testified that with the surgery, he is hoping to return the Petition to his occupation in the streets department, but his prognosis is guarded. (PX 11, pp. 18-19). MMI is typically 4-5 months post-surgery for a shoulder replacement, with the work release dependent upon the range of motion and strength at the time of discharge. (PX 11, p. 20).

Dr. Merkley testified regarding causation and the treatment he rendered to Petitioner. Dr. Merkley took a history from that Petitioner suffered a traumatic injury on September 21, 2021, where he tripped over a hose and landed on his left side resulting in immediate shoulder pain. (PX 11, pp. 21-2). Dr. Merkley also took a history from Petitioner that following his earlier shoulder surgery, Petitioner had done well with no significant problems in the left shoulder after he was release after the earlier left shoulder surgery. (PX 11, p. 22). Dr. Merkley did not find anything on physical exam or operative findings that contradicted what Petitioner told him about his shoulder doing well after the earlier surgery. (PX 11 pp. 23-4).

Dr. Merkley testified that the Petitioner's history of injury of falling on his arm on September 21, 2021, resulting in immediate left shoulder pain that did not subside, was consistent with an injury that caused Petitioner's left shoulder arthritis to become symptomatic. (PX 11, p. 24). Dr. Merkley testified that the fall resulted in the Petitioner's left shoulder arthritis become either symptomatic or more symptomatic. (PX 11, p. 24). Dr. Merkley testified that the surgery performed upon Petitioner was based upon both radiographic findings as well symptoms of pain in the left shoulder, and that surgery would never be performed based upon x-rays alone. (PX 11, p. 25). Dr. Merkley testified that the fall suffered by Petitioner exacerbated his glenohumeral joint arthritis in the left shoulder, causing it to become symptomatic to the point that required a shoulder replacement surgery. (PX 11, pp. 25-6). Dr. Merkley testified that he could not say that Petitioner would have ever required a shoulder replacement surgery without the fall at work on September 21, 2021. (PX 11, p. 27).

Dr. Merkley also testified regarding causation between work activities and shoulder arthritis. Dr. Merkley testified that certain activities aggravate or accelerates glenohumeral arthritis such as the use of a sledgehammer, jackhammer, and the use of low frequency vibratory tools such as air hammers. (PX 11, p. 28). Dr. Merkley testified that in his practice, he sees patients with osteoarthritis of the shoulder that was influenced by occupations including mechanics, carpenters, bricklayers, mortarers, plasterers, drywallers and college and professional football players. (PX 11, pp. 28-9). Dr. Merkley testified that the Petitioner's work for Respondent in both the streets department and as a mechanic would exacerbate glenohumeral arthritis of the shoulder joint. (PX 11., p. 29-30). Dr. Merkley testified that the use of air hammers, sledgehammers and jackhammers can aggravate shoulder arthritis. (PX 11, pp. 40-2). Dr. Merkley testified that there is medical literature available about the etiology of glenohumeral arthritis and the low frequency vibratory tools. (PX 11, p. 49). Dr. Merkley testified that the use of air guns, jackhammers and sledgehammers for one hour or less per day can be a risk factor in the development of osteoarthritis of the left shoulder. (PX 11, pp. 49-50).

Dr. Li Deposition Testimony

Dr. Li testified he is a board certified orthopedic surgeon. (RX 1, p. 5). Dr. Li performed an IME on Petitioner that occurred on February 17, 2022. (RX 1, p. 7). Dr. Li reviewed the Petitioner's medical records, reviewed radiological films, took a history from the Petitioner and performed a physical examination of the Petitioner. (RX 1, pp. 7-10). Dr. Li diagnosed the Petitioner with severe osteoarthritis of the left shoulder with multiple loose bodies and a degenerative tear of the supraspinatus tendon. (RX 1, p. 10).

Dr. Li was aware of the traumatic fall Petitioner sustained at work; however, Dr. Li was of the opinion that the fall resulted in a temporary aggravation of the arthritis and not a permanent aggravation. (RX 1, pp. 10-11). Dr. Li was also aware of the claim of repetitive trauma by the Petitioner and the nature of his work. (RX 1, p. 13).

Dr. Li testified that the Petitioner had to have noticed his osteoarthritis based upon a significant loss of motion both active and passive before the traumatic accident date. (RX 1, p. 14). Dr. Li said the traumatic fall would result in pain in the arthritic shoulder, but the pain would only be temporary. (RX 1, p. 15). Dr. Li felt the Petitioner was at MMI for the traumatic fall as of the time of his evaluation. (RX 1, pp. 15-16).

Dr. Li testified on cross-examination that he did not find any evidence in the medical records that the Petitioner had problems with his shoulder prior to the September 21, 2021, date of accident. (RX 1, p. 18). Dr. Li agreed that the Petitioner's work as a mechanic involved a lot of heavy lifting, with use of his arms chest height and above. (RX 1, pp. 18-19). Dr. Li agreed that heavy lifting as a mechanic would potentially cause pain in someone who has symptomatic arthritis of the shoulder. (RX 1, pp. 19-20). Dr. Li agreed that the Respondent had not provided any evidence of Petitioner having issues with his work as a mechanic before the September 2021 date of accident. (RX 1, p. 20).

Dr. Li was not aware of any medical studies relating the sue of low frequency impact tools and the development of arthritis in the shoulder. (RX 1, pp. 22-3). Dr. Li agreed that if he reviewed these medical studies they could cause him to change his opinion. (RX 1, p. 23).

Dr. Li agreed that there can be a causal connection between trauma and an increase in arthritic symptoms in a person. (RX 1, p. 24). Dr. Li agreed that the fall described by Petitioner in this case could cause a litany of problems in a shoulder; and Petitioner had left shoulder pain because of the fall. (RX 1, pp. 25-6).

Dr. Li testified that he would "totally disagree" that the Petitioner Ron Reason would not have noticed loss of range of motion before his fall at work. (RX 1, p. 26).

Dr. Li's testified that his opinions on causation are based upon a "temporary" aggravation to the Petitioner's shoulder after the fall. (RX 1, p. 33). Dr. Li felt that the "temporary" aggravation of for a shoulder strain should resolve within three months. (RX 1, pp. 33-4). Dr. Li based his opinions upon empirical evidence for strains. (RX 1, p. 35). The basis for the "temporary" aggravation of shoulder arthritis given by Dr. Li was due to his feeling that there was no evidence of any structural change to the shoulder. (RX 1, p. 35-6). Dr. Li testified that his opinion was based upon empirical evidence as to when he generally believed that the pain should have resolved. (RX 1, p. 37). Dr. Li also testified that his opinions were based upon the Petitioner having pain and loss of range of motion in his shoulder for at least five years predating the accident date. (RX 1., p. 38).

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner had an accident that occurred on September 21, 2021, where he fell at work for Respondent when he tripped over a hose and landed on his left arm. (Tr. p. 81). This is an accident that arose out of and in the course of Petitioner's employment by Respondent.

Petitioner filed for a singular traumatic accident that occurred on September 21, 2021. (21 WC 034529). Petitioner credibly and competently testified that he was injured on September 21, 2021, when he tripped over a hose. Petitioner testified that he was not having any shoulder problems, or other issues with his shoulder in the time leading up to his traumatic fall. (Tr. pp. 80-1). Petitioner's supervisors testified that the Petitioner is truthful, and he never complained of any issues with his shoulders before the fall. (Tr. p. 23, 30, 66-7). The Arbitrator notes that Petitioner had a job that required frequent heavy lifting and use of the arms for his job as a mechanic. The Arbitrator finds Petitioner's testimony as truthful and consistent given his job duties that he was not having any problems with his left shoulder prior to September 21, 2021.

Dr. Merkley testified that Petitioner's history of injury falling on his arm on September 21, 2021, resulting in immediate left shoulder pain that did not subside, was consistent with an injury that caused Petitioner's left shoulder arthritis to become symptomatic. (PX. 11, p. 24). Dr.

Merkley testified that the fall suffered by Petitioner exacerbated his glenohumeral joint arthritis in the left shoulder, causing it to become symptomatic to the point that required a shoulder replacement surgery. (PX. 11, pp. 25-6). Dr. Merkley was unequivocal in his opinion that the fall resulted in an exacerbation of glenohumeral joint arthritis that required a shoulder replacement surgery. (PX. 11, p. 26). Absent the fall, Petitioner might never have required a shoulder replacement surgery in the opinion of Dr. Merkley. (PX. 11, p. 27).

The Arbitrator finds that Petitioner's traumatic fall onto his left arm resulted in a left shoulder injury. The Arbitrator further finds Dr. Merkley's testimony that the fall was a cause in the need for the shoulder replacement surgery he performed persuasive and consistent with the history. The Arbitrator finds that the September 21, 2021, fall was a cause in the need for the Petitioner's shoulder replacement surgery.

The Respondent's denial of the causal link between the fall and the need for shoulder replacement surgery is based upon the opinions of Dr. Li. The opinions of Dr. Li are based upon the Petitioner allegedly having problems with range of motion and noticeable issues with his arthritis before the fall (RX 1, pp. 26-7). However, there is zero evidence in the record to support Dr. Li's speculation on Petitioner's symptoms prior to the fall. To the contrary, the Petitioner competently testified that he had no problems with his shoulder prior to the fall. Further, the Respondent had two witnesses that both testified that the Petitioner is honest and would not be lying about problems with his shoulder before the fall.

Dr. Li's opinions that the shoulder replacement was not causally related to the fall are based upon facts that the Petitioner both refuted and that the Respondent failed to prove otherwise. Dr. Li's opinions on causation are based upon a "temporary" aggravation to the Petitioner's shoulder after the fall. (RX 1, p. 33). Dr. Li felt that the "temporary" aggravation of the Petitioner's shoulder condition resolved within three months of the fall. (RX 1, pp. 33-4). Dr. Li based his opinions upon "empirical" evidence of strains, not the facts in this case. (RX 1, p. 34). Dr. Li speculated that the Petitioner's shoulder symptoms somehow improved but could not provide a date when the Petitioner's shoulder pain changed from the accident-related sprain to pre-existing arthritic pain. (RX 1, pp. 35-6). The Arbitrator finds that the Dr. Li's opinions are not persuasive, as he is asking for the Commission to speculate on a date of MMI that is unsupported by the evidence.

The Petitioner also filed a repetitive trauma claim for January 3, 2022, alleging repetitive trauma and his shoulder injury. (22 WC 000368). That date of injury was based upon the date the Petitioner discussed his job activities with Dr. Merkley and its relatedness to his need for a shoulder replacement. (Tr. p. 91). Petitioner testified that he used air tools as a mechanic on average at least one hour per day, most frequently using an air hammer with both hands pressing to use the vibration to break apart items. (Tr. pp. 94-97).

Dr. Merkley testified that work activities can impact shoulder arthritis. Most importantly, Dr. Merkley testified that the top occupation he sees that influences osteoarthritis of the shoulder is that of a mechanic. (PX. 11, pp. 28-29). Dr. Merkley opined that the job activities Petitioner performed for Respondent were risk factors for the development and progression of glenohumeral arthritis of the shoulder. (PX. 11., p. 30). In Dr. Merkley's opinion, the Petitioner's use of an air

tools such as the air hammer for one hour per day is a risk factor in the development of glenohumeral joint arthritis of the shoulder. (PX 11, pp. 40-51). The Petitioner competently testified that he used air tools in his work as a mechanic for one hour or less per day in his work for Respondent as a mechanic. (Tr. pp. 94-6).

The Arbitrator finds that the Petitioner's work as a mechanic and his use of air tools is a cause in the need for his shoulder replacement surgery. The Arbitrator finds Dr. Merkley's testimony that job duties as a mechanic and the use of air tools as a cause of arthritis in the shoulders as reliable and consistent with the history. The evidence proved that the Petitioner worked as a mechanic for the Respondent, and further that his work as a mechanic included the use of air tools. The Arbitrator finds that the January 3, 2022, date of accident is an accident under the Act.

Issue (G): What were Petitioner's earnings?

The testimony establishes that the Petitioner worked overtime for the Respondent. An overwhelming amount of the overtime was incurred during snow removal season, mostly in November, January and February. (RX 6). The testimony is clear that the overtime is mandatory for employees of the City of East Peoria; who incurs the overtime is irrelevant as someone for the City has to work the overtime regardless. The question of who will work the overtime is outlined in Respondent's Exhibit 8, which shows a rotating overtime for public works employees as agreed to by the Union. (RX 8). Thus, whether or not the overtime is "agreed" overtime is irrelevant as it is forced by the City upon the employees within the department. (RX 8).

The Arbitrator finds that the Petitioner's overtime incurred was mandatory, and thus part of his average weekly wage. The Petitioner earned $79,666.29 based upon the straight-time rate for overtime incurred, and his average weekly wage is determined to be $1,532.04.

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 parties have stipulated the Respondent has paid the majority of the medical bills either through workers compensation or through a policy of healthcare insurance subject to Section 8(j) of the Act. The Petitioner has provided exhibits and testimony that he currently has out of pocket expenses, after payment by group health insurance, in the amount of $4,091.34. (PX 5). The Arbitrator finds that these medical bills were reasonably incurred due to the Petitioner's shoulder injury which has been found compensable herein; as such, the Arbitrator awards the out of pocket medical expenses in the amount of $4,091.34.

Issue (K): Is Petitioner entitled to prospective medical care?
Issue (O): Other: Medical authorization under Section 8(a)

The Petitioner is continuing to treat with Dr. Merkley for his shoulder condition. The Petitioner has not been released from care pursuant to testimony and the Petitioner's exhibits. The Petitioner is awarded prospective medical care with Dr. Merkley for the ongoing care related to

his shoulder condition and subsequent shoulder replacement surgery based upon the finding of accident and causal connection as stated previously.

<u>Issue (L)</u>: What temporary benefits are in dispute? (TTD)

The Petitioner has presented testimony and evidence that he has been off work from February 14, 2022 through the date of trial on July 26, 2022. (Tr. p. 28). The Petitioner's off work was due to his shoulder injuries which have been found compensable hereto. The Arbitrator awards the Petitioner TTD from February 14, 2022, through the trial date of July 26, 2022.

<u>Issue (O)</u>: Other: Credit for TTD Paid

The Respondent is requesting credit for money paid based upon full salary instead of credit for the TTD rate from the time Petitioner was off work from February 14, 2022, through its last payment on March 4, 2022. The Respondent is only allowed credit for the TTD rate under the plain language of Section 8(j)(2), which does not allow an employer credit for the payment of "full or partial salary" paid in lieu of TTD benefits. Thus, the Respondent is only entitled to credit for the TTD rate from February 14, 2022, through March 4, 2022, at the rate of $1,021.36 per week, for 2 4/7 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC010116
Case Name	Neil Grueninger v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0142
Number of Pages of Decision	15
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	David Galanti
Respondent Attorney	Kenton Owens

DATE FILED: 3/28/2024

/s/Amylee Simonovich, 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 MADISON	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Neil Grueninger,

Petitioner,

vs. NO: 22 WC 10116

IDOT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and temporary total disability (TTD) benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission makes certain modifications to the Arbitration Decision. In the Order section of the Arbitration Decision Form, and on pages one (1) and nine (9) of the Decision, the Arbitrator wrote "…resulting no liability for TTD…" The Commission modifies the relevant portion of the above-referenced sentences to read, "…resulting in no liability for TTD…"

The Commission also strikes the following language from page eight (8) of the Arbitration Decision:

> There was no evidence presented to show that the medical treatment unreasonable or unnecessary. The Arbitrator will presume that the medical providers used appropriate discretion in treating the Petitioner.

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 January 9, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $931.22/week for 19-3/7 weeks, commencing April 13, 2022, through August 26, 2022, as provided in Section 8(b) of the Act. The parties stipulate that Respondent owes no additional liability for the awarded period. Pursuant to stipulation of the parties, Respondent also will reinstate any sick days Petitioner used relating to this work injury, and Respondent will receive credit for the salary and nonoccupational benefits it paid.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical services listed in Petitioner's Exhibit 8, pursuant to the fee schedule, as provided in Sections 8(a) and 8.2 of the Act.

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review.

March 28, 2024

o: 3/5/24
AHS/jds
51

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

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC010116
Case Name	Neil Grueninger v. IDOT
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	David Galanti
Respondent Attorney	Kenton Owens

DATE FILED: 1/9/2023

THE INTEREST RATE FOR THE WEEK OF JANUARY 4, 2023 4.62%

/s/*Jeanne AuBuchon, Arbitrator*

Signature

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

January 9, 2023

/s/ *Michele Kowalski*

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Neil Grueninger
Employee/Petitioner
v.
IDOT
Employer/Respondent

Case # **22** WC **10116**

Consolidated cases: ______

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **8/26/22**. 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. ☐ 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, **4/11/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**72,635.09**; the average weekly wage was $**1,396.83**.

On the date of accident, Petitioner was **60** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**any paid** 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, as listed in Petitioner's Exhibit 8, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $931.22/week for 19 and 3/7 weeks, commencing April 13, 2022 through August 26, 2022, as provided in Section 8(b) of the Act. The parties stipulated that the sick days the Petitioner took regarding his injury will be reinstated and the Respondent will receive credit for that pay and for nonoccupational benefits paid, resulting no liability for TTD for the period stated above.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

JANUARY 9, 2022

PROCEDURAL HISTORY

This matter proceeded to trial on August 26, 2022, 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 his employment; 2) the causal connection between the accident and the Petitioner's back and neck conditions as they relate to whether there was an accident; 3) payment of medical bills; and 4) entitlement to temporary total disability benefits for the period of April 13, 2022, through August 26, 2022. The parties stipulated that if the Petitioner prevails in this matter, the sick days the Petitioner took regarding his injury will be reinstated and the Respondent will receive credit for that pay and for nonoccupational benefits paid, resulting no liability for TTD for the period stated above. The parties also stipulated that any medical expenses ordered to be paid will be paid directly to the providers.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 60 years old and had been employed by the Respondent as a tow truck driver in the emergency traffic patrol department. (AX1, T. 10-11) He said that when started working for the Respondent in 2019, he passed a physical exam. (T. 11) On April 11, 2022, the Petitioner was driving a tow truck with another employee and hit rough spots on the bridge expansion joints on the Poplar Street Bridge complex, causing the truck to throw him up with the seat and "hammer" him down. (T. 12, 29) He said that at the end of his shift, his neck and back were aching and the next morning he could not hardly move his lower back, had a bad headache in the back of his head and felt nausea from the pain. (T. 13-14) He said his legs were numb and tingling, with numbness down to his toes on the left and to his knee on the right. (T. 15)

The Petitioner testified that on April 15, 2022, he completed a notice of injury form that stated he injured his neck and back and had pain going down his left leg from his truck seat going up and slamming down to the frame. (T. 19-20, RX1) He identified a photo of a truck seat that he said could have been similar to the seat in the truck he was driving. (T. 21-22, RX2) He explained that the truck seat was an air ride seat that has a boot on the bottom that is supposed to hold air and cushion the ride, but he said a lot of the seats are not the best quality. (T. 26) He said that he had informed the department mechanic that the front end of the truck felt weird and there was a shake. (T. 12) He stated that he did not have problems with the other vehicles in the fleet riding roughly and said he had "written up" that truck in the past. (T. 30-31) He said he did not say there was something wrong with the seat but that something was wrong with the truck. (T. 26-27) The Petitioner testified that he wrote a ticket prior to the accident reporting that something was wrong with the truck, but he did not know the date. (T. 36-37) He did not think he reported a problem with the seat but thought he reported a problem with the front end of the truck. (T. 36-37) He said that after the accident, he spoke to someone named Sean in the department who said everything was supposed to be working. (T. 35-36) He said he told Sean to tell the mechanic to fix it. (T. 36) He said he was always told the department did not have money to fix it. (Id.) The Petitioner testified that he did not know if he wrote up the problems on the day of the accident – stating that he was in pain and just wanted to go home. (T. 37) He said he texted the mechanic the next day and informed him that the seat or the front end of the truck was "busted up" and needed to be fixed. (T. 37)

Joseph Monroe, an operations engineer for the Respondent in District 8 who oversees work units including the emergency patrol vehicle unit, testified that the vehicle the Petitioner was driving at the time of the accident was examined after the Petitioner reported the accident. (T. 40)

He said he saw the Petitioner's statement in Dr. Gornet's records that the truck he was driving had been repaired, but records showed that it was not. (T. 41) Mr. Monroe identified maintenance records for the truck that showed a recharge of the brake line and lights. (T. 42, RX4) He said fuel records showed that the truck was in service without issue since the date of the incident. (T. 43) These fuel records were not produced. Mr. Monroe said he also looked at daily reports regarding the truck from March 15, 2022, through April 1, 2022, that did not show anything wrong with the vehicle. (T. 43, RX5)

On cross-examination, Mr. Monroe stated that the daily reports to which he was testifying did not include the date of the accident nor the ten days before, although drivers are to write these reports every day at the end of their shifts. (T. 48-49) He said he did not know what happened to the daily report from the date of the accident. (T. 50) Mr. Monroe also admitted that the truck did undergo a wheel and tire repair in which the tires were replaced on April 18, 2022. (T. 52-53) He said that would have been part of fleet preventative maintenance. (T. 54)

Upon examination of the daily reports by the Arbitrator, it is noted that these reports were out of order, and there were reports for April 4-11, 2022. (RX5) On the daily report from the date of the accident, there was a notation that the flashlight was not working. (Id.) On the equipment repair detail records from a week later, on April 18, 2021, there was an entry of repair of equipment lighting, two entries for preventative maintenance, one entry for wheel/tire replacement and an entry for body repair. (RX4) There were no daily reports produced for any dates after the accident.

The equipment repair detail records showed the suspension repair on April 4, 2022. (RX4) The comments section of the report stated: "RR slack Adj. Repair horn, Check Tire, R&R shocks." (Id.) Mr. Monroe did not testify regarding this entry. The daily reports for the days prior to these repairs did not mention any issues regarding suspension or shocks. (RX4) As to the Petitioner's

claim that he reported problems prior to the accident, the April 7, 2022, daily report stated: the brakes needed adjustment because the front brakes were grabbing too hard; there was a hard clunk noise when coming to a complete stop; the tires on the front were not wearing right; the front end shook when hitting bumps on the road; and various lighting issues. (RX5) The equipment repair detail records show no repairs after this report until those made on April 18, 2022. (RX4)

The Petitioner testified that he had no neck problems prior to the accident but had prior back treatment until December 6, 2018, and had not sought treatment since. (T. 12-14) He said he was feeling okay that day before the accident. (T. 12) The Petitioner had undergone an L5-S1 fusion revision and removal of hardware on November 13, 2013, that was performed by orthopedic spine surgeon Dr. Matthew Gornet at The Orthopedic Center of St. Louis. (PX 3). He was last seen by Dr. Gornet on October 27, 2018, and complained of still being symptomatic but trying to tolerate his symptoms. (Id.) Dr. Gornet recommended conservative care and consideration for injections in the future. (Id.) The last contact Petitioner made with Dr Gornet's office was on December 6, 2018, when the Petitioner reported feeling better and wanted a trial of return-to-work full duty, as he had found a job that he believed he could perform. (Id.). Dr. Gornet released him to return to work full duty with no restrictions. (Id).

On April 13, 2022, the Petitioner saw his primary caregiver at Red Bud Health Clinic, and Physician Assistant Mary Wunderlich sent him to the emergency room. (T. 14-15, PX2) He told PA Wunderlich that he injured his back at work on April 11, 2022, due to being bounced in a truck. (PX2) At the emergency room at Red Bud Regional Hospital that day, the Petitioner gave a history of driving a truck with the roads and truck being rough. (Id.) The Petitioner complained of low back pain, a headache, a neck ache and his left leg feeling weak. (Id.) The attending physician noted that the Petitioner appeared uncomfortable. (Id). The Petitioner was diagnosed with a strain

of the lower back and pelvis and instructed to follow up with PA Wunderlich. (Id.) On April 25, 2022, PA Wunderlich noted that the Petitioner had low back pain going down his left leg with pins and needles and that he was still having neck pain. (Id.) She diagnosed an acute low back pain as well as an acute cervical sprain and referred the Petitioner to an orthopedic spine surgeon. (Id.) Petitioner was held off work. (Id.) The Petitioner underwent physical therapy at ATI Physical Therapy from May 10, 2022, through June 6, 2022, for a total of eight visits. (PX7)

The Petitioner was seen on June 9, 2022, by Dr. Gornet and complained of low back pain into both sides, more acutely on the left side, left buttock, left hip and down his left leg to his foot with weakness in his left leg and neck pain into the base of his neck with frequent headaches and bilateral trapezial pain. (PX5) He related his problems to the incident while driving a tow truck and hitting several large expansion joints on the highway causing him to come up and down very rapidly causing him to jam his head and neck. (Id.) The Petitioner noted pain progressing throughout his shift. (Id.) Dr. Gornet stated that he had last seen the Petitioner in 2018 and that he had returned to work in a new job until this current event. (Id.) Following an examination, Dr. Gornet reported new weakness with a disc injury at L-4 and L-5 left. (Id.) Dr. Gornet reported that the Petitioner was in too much pain to have an MRI at that point and referred him to Dr. Helen Blake, a pain management specialist at St. Louis Spine & Orthopedic Surgery Center, for radiofrequency ablations (RFAs – a pain control technique where radiofrequency waves are delivered to certain nerves to interrupt pain signals to the brain). (Id.) Dr. Gornet also prescribed oral steroids and physical therapy. (Id) Dr. Gornet opined that the Petitioner's symptoms were related to the accident of April 11, 2022. (Id.)

Dr. Blake performed the RFAs on July 12, 2022 and July 26, 2022. (PX6) The Petitioner underwent physical therapy at ATI Physical Therapy from June 10, 2022, through June 15, 2022, for a total of four visits.

The Petitioner testified that the ablations got him "out of a lot of pain." (T. 17) He said that before the procedures, his pain was over a 10, that he couldn't hardly walk and was hunched over. (Id.) He said his pain went down to a 3 and he still had symptoms in his legs. (Id.) He said he takes a pain pill in the morning because he still had pain in his neck and headaches at the back of his head. (T. 17-18) He said he the headaches are a constant ache and flare up when he moves his neck a certain way. (Id.)

On cross-examination, the Petitioner identified photos of himself performing tasks in his pole barn following the accident date, including using a grease gun that he estimated weighed 4 pounds, taking it out of a bag, plugging in a battery charger and pushing himself afterwards. (T. 24-25, 33-34)

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 issue here is whether the tow truck violently bounced the Petitioner on April 11, 2022, as he said it did – thus causing his back and neck symptoms. The Arbitrator finds the Petitioner to be credible. His testimony was consistent with what he told his medical providers and what he reported to the Respondent. Although the Petitioner testified that another worker rode with him that day, that worker was not called to testify.

The Respondent countered the Petitioner's contention with the daily reports and equipment repair detail reports. However, these reports were not helpful. There were instances in the reports where problems were reported regarding the truck that apparently were not addressed in the equipment repair detail reports. The records did confirm the Petitioner's testimony that he reported the truck's rough ride before the accident, in that on April 7, 2022, he reported that the front end of the truck shook when hitting bumps on the road. The equipment repair detail records show no repairs after this report until those made on April 18, 2022 – a week after the accident and three days after the Petitioner submitted his notice of injury.

Furthermore, the reports were not fully explained by Mr. Moore. The Arbitrator is left to speculate whether the repairs to the truck's suspension on April 4, 2022, made the problems with the truck's ride better or worse or whether the replacement of the wheels and tires after the accident had anything to do with the Petitioner's injury report. Mr. Moore testified that the wheel and tire replacements "would have" been part of routine maintenance. However, the records did not state that, and no mechanic testified to say it was part of routine maintenance. Lastly, there were no daily reports produced for any dates following the accident to determine if there were any other reports about the truck riding roughly.

Based on all the above, 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.

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

The Respondent disputed causation as it related to the issue of accident. (AX1) Based on the findings above, the Arbitrator finds that the Petitioner's current back and neck conditions are causally related to the work accident.

<u>Issue (J)</u>: 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).

There was no evidence presented to show that the medical treatment unreasonable or unnecessary. The Arbitrator will presume that the medical providers used appropriate discretion in treating the Petitioner. Based on this and the findings above regarding causation, the medical services listed in Petitioner's Exhibit 8 are found to be reasonable and necessary. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 8 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.

<u>Issue K</u>: 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 April 13, 2022, through August 26, 2022.

An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

The Petitioner has not been released for work by his care providers. Based on this and the findings above regarding causation, the Arbitrator finds that the Petitioner was entitled to TTD benefits from April 13, 2022, through August 26, 2022. The Respondent is entitled to a credit for any nonoccupational disability benefits paid. The parties stipulated that the sick days the Petitioner took regarding his injury will be reinstated and the Respondent will receive credit for that pay and for nonoccupational benefits paid, resulting no liability for TTD for the period stated above.

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	20WC011130
Case Name	Stephen Bresnahan v. City of Pekin
Consolidated Cases	
Proceeding Type	***Remand of the Circuit Court*** Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0143
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	John Fassola

DATE FILED: 3/28/2024

/s/Amylee Simonovich, 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 PEORIA)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stephen Bresnahan,

Petitioner,

vs. NO: 20 WC 11130

City of Pekin,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission following the remand order of Judge Paul Bauer of the Circuit Court of the Tenth Judicial Circuit overturning the July 3, 2023, Commission Decision (23 IWCC 0292) in its entirety. The Commission, after considering the remaining issues of causal connection, medical expenses, prospective medical treatment, and temporary total disability benefits, 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 on November 22, 2021, is hereby affirmed and adopted.

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

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

IT IS FURTHER ORDERED 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)(2) of the Act, Respondent is exempt from the bond 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.

March 28, 2024

d: 3/26/24
AHS/jds
51

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

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011130
Case Name	BRESNAHAN, STEPHEN v. CITY OF PEKIN
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	John Fassola

DATE FILED: 11/22/2021

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 16, 2021 0.06%

/s/Adam Hinrichs, Arbitrator

Signature

STATE OF ILLINOIS)
)
COUNTY OF PEORIA)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g)
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Stephen Bresnahan Case # **20 WC 11130**
Employee/Petitioner

v.

City of Pekin
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 **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Peoria**, on **September 20, 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. [x] 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] Is Petitioner entitled to any prospective medical care?

L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD

M. [ ] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [ ] Other

FINDINGS

On the date of accident, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, the Petitioner earned $**88,278.84**; the average weekly wage was $**1697.67**.

On the date of accident, Petitioner was **54** years of age, ***single*** with **1** child under 18.

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 $**88,278.84** for other benefits, for a total credit of $**88,278.84**.

Respondent is entitled to a credit of $**38,659.37** under Section 8(j) of the Act.

ORDER

Respondent shall pay all medical charges as set forth in Petitioner's exhibits, as provided in Sections 8(a) and 8.2 of the Act, for Petitioner's reasonable and necessary medical care. Respondent shall be given a full credit for all payments made under its group health plan pursuant to Section 8(j), totaling $38,659.37.

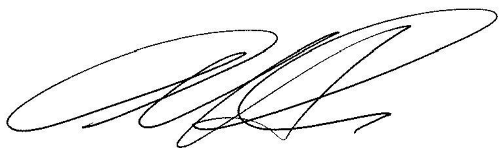
Respondent is ordered to provide and pay for Petitioner's ongoing follow up appointments with his treating cardiologist and associated prescriptions.

Respondent is ordered to pay TTD benefits from 5/4/2020 through 9/20/2021, at a rate of $1131.78/week. Respondent is entitled to a full credit under Section 8(j) for PEDA benefits paid totaling $88,278.84.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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



Signature of arbitrator

NOVEMBER 22, 2021

FINDINGS OF FACT

Petitioner testified that he is a Firefighter/Paramedic for the City of Pekin, and has been employed in that capacity since 1990. He is currently employed as a Fire Captain. (T.13-14)

Petitioner testified to his job duties while working as a Firefighter/Paramedic. Since 1990, he has been responsible for fighting fires at personal residences, commercial buildings, chemical plants, and wild fires. (T.15-16) He also responded to hazardous material situations as part of this job duties. (T.16) He testified he would have been exposed to carbon monoxide, sulfur dioxide, and cyanide. (T.18-19) He would have also been exposed to asbestos and diesel exhaust fumes in the course of his employment. (T.19-20)

Petitioner testified to the use of personal protective equipment including self-contained breathing apparatus (SCBA). He testified that when he first started his career, SCBA was not as widely used during residential firefighting, (T.17), but the use of SCBA equipment became more stringent after the early part of his career. (T.61) He also testified that he tried to be diligent about his use of SCBA equipment. (T.61) He testified that during the early part of his career, the gear would be taken off during overhaul, which involves checking for hot spots once a fire has been exhausted. (T.20-22)

Petitioner also testified that he was required to fight fires in extreme heat conditions, up to 2000 degrees Fahrenheit. (T.25-26) Likewise, he would sometimes be required to fight fires in very cold situations, and his gear could become frozen. (T.27) Petitioner testified he was exhausted after fire responses in extreme temperatures.

Petitioner testified that both fire calls and paramedic calls would come in through an alarm system. (T.27-28) The alarm would wake the firefighters out of sleep. (T.29) Responding to calls would necessarily involve stressful situations, as there is concern for your own safety, the safety of the general public, the safety of your co-workers. (T.30-31) The Petitioner testified that his job duties included being able to lift heavy weights, carry bodies, and wear 100 lbs. of gear and equipment while fighting these fires and/or reporting to medical scenes (T. 35).

The Petitioner testified that he has never been a smoker and was in good shape (T. 36). The Petitioner testified that as of May 4, 2020, he did not have any family history of heart disease or heart conditions (T. 37). The Petitioner passed all his physical exams for the Respondent on an annual basis (T. 37). The Petitioner testified that at the time of the accident, he had sleep apnea, and regularly used a CPAP machine since his diagnosis in 2015 (T. 38). The Petitioner testified that on May 4, 2020, he was not on any medications (T. 39).

Petitioner testified that on May 4, 2020, at approximately 4:00 p.m., he was headed to a property he owned to mow the grass. (T.39) He had gotten off shift approximately nine hours prior, at 7 a.m. Petitioner testified it had been a "busy" night at work, however, Petitioner did not elaborate as to what took place on his May 3 to May 4, 2020 shift. (T. 39). Petitioner testified that he had performed other physical work after leaving the fire station. (T.63-64) In the May 11, 2020, note of Dr. Fisher, Petitioner reported finishing his shift at Respondent, then going to a maintenance job, and after doing that job all day, going over to mow the yard at a property he owned. (PX. 3, p. 12/15).

Petitioner testified that at 4 p.m. on May 4, 2020, suddenly everything went black, he couldn't see, he couldn't hear, and he couldn't breathe. (T.39) The episode lasted about fifteen to twenty seconds. (T.40) He then tried to do a little bit of a yard work for about five minutes but realized something was wrong, so he drove to the hospital. (T.40)

Petitioner testified to his treatment at Unity Point Pekin Hospital. Per the medical records admitted into evidence, Petitioner was determined to have suffered a myocardial infarction. (PX4) He was seen by a cardiologist, Dr. Chaturvedula. The doctor was going to do an EKG and a stress test, but then opted to proceed directly with cardiac catherization. (T.43) The medical records reflect that cardiac catherization revealed a 99% blockage in the LAD artery. The doctor implanted stents in the artery. (PX4) Dr. Chaturvedula took Petitioner off work until June 2, 2020. (PX6, p. 651)

Petitioner was subsequently placed into a program of cardiac rehabilitation. (T.51) He remains under the care of Dr. Chaturvedula and is prescribed blood thinners. (T.52)

Petitioner testified that he has not returned to work since the date of his heart attack. (T.53) He did receive full salary through PEDA benefits for the first year he was off work, and has been taking sick and personal time since. (T.53) Petitioner testified that he believed his physical condition would not allow him to return to work. (T.53) Petitioner testified that he was not provided with a work status note indicating an inability to return to work at his last appointment with Dr. Chaturvedula. (T.64).

Petitioner did not recall that being diagnosed with abnormal or high cholesterol prior to his myocardial infarction. (T.57) The medical records from IWIRC, admitted into evidence as Respondent's Exhibit 2, reflect lab values consistent with elevated cholesterol on multiple occasions dating back to 2009. The records reflect that Petitioner had been recommended to treat the condition with medication. (RX2) Petitioner testified that he did try a prescription for high cholesterol but discontinued it due to dizziness, and subsequently lowered his cholesterol with dietary modifications. (T.58)

The Petitioner testified that at the time of the accident, he had sleep apnea and regularly used a CPAP (T. 38). In his 2016 Pekin Hospital Sleep Lab sleep study, Petitioner had a BMI of 32.0. (PX 4. p. 174). The Petitioner testified that on May 4, 2020, he was not taking any medications of any kind (T. 39).

A. **Testimony of Mr. Chris Coats**

Petitioner also called Chris Coats to testify. Mr. Coats is also a Firefighter/Paramedic with the City of Pekin. (PX9, p.5) His testimony regarding the job duties of a Firefighter/Paramedic was consistent with the testimony of the Petitioner. Like Petitioner, he agreed that paramedic responses are much more frequent than fire responses, and that the firefighters could go weeks between live fire calls. (PX9, p.21-22) Mr. Coats testified that he worked on shifts with Petitioner, and they were in the same bunk room at night to sleep. Mr. Coats was not aware Petitioner had sleep apnea and never observed the Petitioner wearing a CPAP device. (PX. 9, p. 25-26)

B. Testimony of Trent Reeise

Trent Reeise is the fire chief for the Respondent (T. 71). Chief Reeise testified that the Petitioner was an honest person (T. 72). Chief Reeise confirmed that the Petitioner is considered an employee of the Respondent. (T. 73). Chief Reeise testified that he was not aware of Petitioner requesting to come back to work or anyone at Respondent offering a job to the Petitioner (T. 74-75).

C. Dr. Chaturvedula Testimony

Dr. Chaturvedula is a board-certified internal medicine physician, specializing in cardiology, interventional cardiology, echocardiography, nuclear cardiology, and vascular interpretations. His practice focuses 100% on treating patients. (PX7, p. 6-7).

Dr. Chaturvedula testified that his treatment of the Petitioner began on May 5, 2020. He opined that Petitioner was healthy and did not have traditional risk factors such as heart disease, high blood pressure, smoking, or diabetes, however, being male, with obstructive sleep apnea, hypertension and high cholesterol were classic risk factors. (PX7, p. 8, 16, 23-24) Dr. Chaturvedula testified that Petitioner's BMI on May 28, 2020 was 29.88, so Petitioner was overweight which would mildly increase his risk.

Throughout the treating records, Petitioner makes repeated requests that it be documented that Dr. Chaturvedula asked him how long was he a smoker. There is no chart note wherein Dr. Chaturvedula discusses this, and Dr. Chaturvedula provided no testimony on this specific issue.

Dr. Chaturvedula testified that Petitioner's LAD artery was 99.9% blocked, and therefore he underwent stenting in the artery. (PX7, p.10) He diagnosed Petitioner with a non-ST elevation myocardial infarction and new onset atrial fibrillation. (PX7, p.11) He recommended cardiac rehabilitation and felt Petitioner had been progressing well as of the date of his deposition. (PX7, p.13-14)

Dr. Chaturvedula was asked about the risk of firefighting and exposure to fumes or chemicals in association with his cardiac condition. Dr. Chaturvedula said that environmental exposure could have a bearing on one's heart health. (PX7, p.16) He described factors such as a psychological and emotional stress and environmental factors as "new age risk factors." (PX7, p.17)

Dr. Chaturvedula testified that Petitioner's job duties likely have a possible impact on Petitioner's cardiac condition because of pollution, however, he stated "can I prove, I can't. Can anyone prove, no," but that it is possible it is contributing factor in this case. (PX7, p.17-18) Dr. Chaturvedula testified that he did not have enough data to comment on whether environment and pollution played a role in Petitioner's case. (PX7, p.19) Dr. Chaturvedula further testified that a person with Petitioner's risk profile who is not exposed to the environmental exposures that the Petitioner is as a firefighter, is at a lesser risk for heart disease, and environmental exposure is a "contributory factor." (PX7, p.22-23).

D. Dr. Richard Carroll Testimony

Respondent sought a record review and opinion from board-certified cardiologist, Dr. Richard Carroll.

Dr. Carroll noted that Petitioner did not have an acute cardiac event associated with his job duties as a firefighter. (RX1, p.10) He noted that Petitioner had last worked at approximately 7:00 a.m. and his symptoms began at approximately 4:00 p.m. on May 4, 2020. Therefore, the acute event did not occur at work or as a result of work activities. (RX1, p.10)

Dr. Carroll testified that Petitioner had coronary artery disease as of May 4, 2020. (RX1, p.11) Dr. Carroll was aware that Petitioner is a firefighter, and would at times be exposed to smoke, fumes and other toxins. (RX1, p.11) He testified that Petitioner did have a history of elevated cholesterol, noting that in February 2011, he had an HDL of 176, which was above recommended level of 130. (RX1, p.13-14) Dr. Carroll noted Petitioner was advised to consider medication, Niacin, to treat his cholesterol. (RX1, p.14)

Petitioner had also been diagnosed with obstructive sleep apnea with severe oxygen desaturation in 2016. (RX1, p.14-15) Dr. Carroll referenced medical literature and testified that obstructive sleep apnea does have a

causative link to coronary artery disease, explaining that sleep apnea causes pressure on the heart because of a drop in oxygen saturation. (RX1, p.15-16)

Dr. Carroll opined that Petitioner's risk factors associated with coronary heart disease were gender, hypertension, dyslipidemia, and sleep apnea (RX1, p. 13). Dr. Carroll also noted Petitioner's BMI in July 2020 was 31.52 which is considered obese. (RX1, p. 28).

Dr. Carroll testified that Petitioner's occupation as a Firefighter was not causally related to his coronary artery disease. (RX1, p.17) He testified that firefighting is a not identified as a risk factor for the development of coronary artery disease, and the literature he is aware of does not list it as a risk factor. (RX1, p.12-13, 36) He noted that Petitioner had other risk factors that are established risk factors for cardiovascular disease. (RX1, p. 34-37) He also testified that even if Petitioner had treated his cholesterol and had used a device to treat his sleep apnea, cardiovascular damage would be slowed, but what had progressed would remain. (RX1, 44-45)

E. <u>Dr. David Fletcher Exam & Report</u>

On January 13, 2021, Petitioner was seen for an exam with Dr. David Fletcher at the request of his attorney. (PX2). Dr. Fletcher is board-certified in Occupational and Preventative Medicine.

The Arbitrator notes that the history provided in Dr. Fletcher's report states that Petitioner first felt symptoms "while walking that morning after he got off work." (PX2, p.4) Dr. Fletcher's history also includes a reference to Petitioner having performed modified duty until recently, when his employer stopped accommodating him. (PX2, p.5). Petitioner's testimony contradicts these notes.

Dr. Fletcher opined that the Petitioner's work history as a firefighter is one contributing factor to the development and acceleration of coronary artery disease. Dr. Fletcher found it significant that the Petitioner has never been a smoker and does not have a past history of any prior cardiovascular diseases. (PX. 2, p. 10).

Dr. Fletcher noted that his opinions are supported by medical literature, citing the *New England Journal of Medicine*, "Firefighting and Death from Cardiovascular Cases" editorial: "Firefighters have episodic exposure to extreme levels of physical exertion, and they face occupational hazards that may add to or amplify their risk of death due to cardiovascular cases. These hazards include chemicals (carbon monoxide, fine particulate matter, and other cardiac toxins) and thermal and emotional stress. Moreover, although there has been improvement over time in respirator protection during active fire suppression, such protection may be abandoned during overhaul (the period immediately after fire suppression), when exposure to fine particulate matter (which has been shown to increase the risk of a sudden myocardial infarction) and other toxic chemicals may be particularly high" (PX 2, p. 7).

Dr. Fletcher noted that coronary artery disease among firefighters is due to a combination of personal and work-place factors. The personal factors are well known: Age, gender, family history, diabetes mellitus, hypertension, smoking, high blood cholesterol, obesity, and lack of exercise. Dr. Fletcher emphasized that cardiovascular disease is multifactorial and occupational risk factors such as firefighting, contribute to the onset and/or acceleration of cardiovascular disease. (Pet. Ex. 2, p. 7).

Dr. Fletcher noted that "cardiovascular deaths are the leading cause of death among firefighters and responsible for 45% of on-duty fatalities each year" and that "these deaths cluster around fire suppression duties" and that "death from coronary artery disease was 12 to 136 times more likely to occur during or shortly after fire suppression than non-emergency duties." (PX 2, p. 8).

In his responses to interrogatories, Dr. Fletcher noted that Dr. Chaturvedula asked Petitioner during a heart cath "how long he had smoked as his coronary arteries looked like someone who smoked." Other than Petitioner's

repeated requests that it be documented in the record, there is no record of Dr. Chaturvedula asking Petitioner this question, or making this comment.

Dr. Fletcher opined that Petitioner's coronary artery disease was causally related to his exposures and activities as a firefighter/paramedic for the Respondent. (PX2, p.9). Dr. Fletcher opined that the Petitioner is unable to return to work as a firefighter/EMT. Dr. Fletcher continues that it is his opinion that the Petitioner is unable to wear SCBA respiratory protection and unable to perform high aerobic demand firefighting. Along with the Petitioner's inability to wear PPE equipment, such as SCBA, he does not have the endurance to perform fire-fighting tasks, such as hose line operations, extensive crawling, lifting and carrying heavy objects, ventilating roofs/walls, using power or hand tools, forcible entry, rescue operations, emergency response actions, etc. under stressful conditions. Dr. Fletcher opined that the Petitioner has reached maximum medical improvement. (PX 2, p. 11).

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? and Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner testified that his symptoms related to his myocardial infarction began around 4:00 p.m. on May 4, 2020. At that time, he had finished his shift for Respondent approximately nine hours previous, had performed other physical work in the interim, and was about to mow the grass at a property he owned.

Petitioner is not alleging that his cardiac event on May 4, 2020 was directly caused by workplace activities he had performed on his preceding shift for the City of Pekin. There is no record of Petitioner having engaged in fire suppression duties during his May 3 to May 4, 2020 shift, however, Petitioner testified that it was a busy shift.

The Petitioner, as a firefighter/paramedic, is entitled to the statutory presumption of compensability in Section 6(f) of the Workers' Compensation Act. According to Section 6(f), a condition related to heart or vascular disease is rebuttably presumed to arise out of and in the course of the employee's firefighting activities and rebuttably presumed to be causally connected to the hazards or exposures of the employment. Therefore, the initial issue is whether the Respondent has rebutted the presumption of compensability set forth in Section 6(f).

The Respondent presented the record review opinion report and deposition testimony of Dr. Richard Carroll, a board-certified cardiologist. Dr. Carroll testified that he is aware of the smoke, fumes and other toxins that Petitioner is exposed to as a firefighter. Dr. Carroll opined that firefighting is not identified as an established risk factor for the development of coronary artery disease. Dr. Carroll cited to medical literature that the risks and hazards of firefighting is not listed as a known risk factor for cardiovascular disease. Moreover, Dr. Carroll testified that Petitioner had other personal risk factors for the development of coronary artery disease, including his gender, a history of elevated cholesterol, a history of obstructive sleep apnea, and slightly obese BMI.

The Arbitrator finds that the opinion of Dr. Carroll is sufficient to rebut the statutory presumption of compensability in the Illinois Workers' Compensation Act. The IL Appellate Court, in considering Section 6(f) of the Workers' Compensation Act, have noted that the presumption of compensability may be rebutted by presenting some contrary evidence to rebut the presumption. *Johnston v. Illinois Workers' Compensation Commission*, 2017 IL App (2d) 160010WC. The Respondent has produced some contrary evidence to rebut the presumption of compensability, specifically in the form of a medical opinion from a board-certified cardiologist.

Once a party has successfully rebutted a presumption, the presumption vanishes, and the parties proceed as if the presumption never existed. *Id.*, at Par. 37. Therefore, the Petitioner in the present case bears the burden of proving that his cardiovascular disease is causally related to his workplace exposures as a firefighter/paramedic.

The Petitioner was a firefighter for the Respondent over a thirty-year period. The Petitioner's job description of his work activities and exposures are undisputed. The Petitioner's job activities were confirmed by Chris Coats. These exposures included but are not limited to sleep deprivation, hot and cold thermal exposure, as well as exposure smoke, fumes toxic chemicals, and other environmental pollutants.

There is no dispute that, as a firefighter, Petitioner would have been exposed to smoke, toxins, and other environmental pollutants. Moreover, Petitioner's job is highly stressful. Whether these exposures and stressors are causally related to the Petitioner's development of cardiovascular disease is a medical question.

The Petitioner's treating cardiologist, Dr. Chaturvedula, testified via evidence deposition. Dr. Chaturvedula confirmed that the "traditional" risk factors for cardiovascular disease, include family history, age, male gender, high blood pressure, and high cholesterol. He referred to emotional stress and environmental pollution as "new age risk factors". Dr. Chaturvedula hesitated in his testimony to use the word "cause." Dr. Chaturvedula testified that Petitioner's job duties likely have a possible impact on Petitioner's cardiac condition because of pollution, however, he stated "can I prove, I can't," but that it is possible it is contributing factor in this case. (PX7, p.17-18) Dr. Chaturvedula further testified that a person with Petitioner's risk profile, a healthy individual without traditional risk factors, who is not exposed to the environmental exposures that the Petitioner is as a firefighter, is at a lesser risk for heart disease, and environmental exposure is a "contributory factor." (PX7, p.16, 22-23). Dr. Chaturvedula testified that there would be nothing visible in the angiography that would delineate whether a blockage was related to which risk factor. (PX7, p.27-28)

The Respondent presented the evidence deposition testimony of Dr. Richard Carroll. Dr. Carroll is a board-certified cardiologist. Dr. Carroll did not examine the Petitioner or take a history from him directly. He reviewed Petitioner's medical records, including the records from IWIRC which reflected a history of hyperlipidemia, but did not perform a physical exam of or take a history from the Petitioner. Dr. Carroll agreed that hyperlipidemia and obstructive sleep apnea would be a risk factors for the development of coronary artery disease. Dr. Carroll testified that firefighting exposures are not accepted in the cardiology community as a risk factor for coronary artery disease. In support of his opinion, Dr. Carroll cited a University of Illinois study which did not list firefighting as a risk for coronary artery disease.

With regard to the personal risk factors identified by Dr. Carroll, the medical records from IWIRC, contained Respondent's Exhibit No. 2, demonstrate abnormal laboratory readings for cholesterol dating back approximately 10 years, with a concurrent recommendation for medical treatment of Petitioner's cholesterol. Petitioner testified that he had tried a prescription for regulating his cholesterol, but discontinued it due to adverse side effects. Petitioner testified that regulated his cholesterol by managing his diet. Petitioner also testified that he diligently used a CPAP to treat his obstructive sleep apnea. Christopher Coats, who worked on shift with Petitioner, including sleeping in the same bunkroom, testified that he did not notice Petitioner wearing a CPAP mask. Dr. Carroll testified that, even if Petitioner had subsequently become compliant in addressing his underlying risk factors, the cardiovascular disease that had progressed would remain.

Petitioner presented the narrative report of Dr. David Fletcher. Dr. Fletcher is a board-certified occupational medicine physician who examined the Petitioner and took a history. Dr. Fletcher's opinions also relied on medical literature, citing the *New England Journal of Medicine*, "Firefighting and Death from Cardiovascular Cases" noting "firefighters have episodic exposure to extreme levels of physical exertion, and they face occupational hazards that may add to or amplify their risk of death due to cardiovascular cases. These hazards include chemicals (carbon monoxide, fine particulate matter, and other cardiac toxins) and thermal and emotional stress. (PX 2, p. 7). Dr. Fletcher found it significant that the Petitioner has never been a smoker and does not have a past history of any prior cardiovascular diseases. (PX. 2, p. 10). Given this, Dr. Fletcher opined

that Petitioner's workplace exposures were 'one contributing factor to the development and acceleration of coronary artery disease.' (PX. 2, p. 9).

The Commission decision in *Mark Folsom v. North Palos Fire Protection District*, 19 IWCC 372, is on point. In that case, Mr. Folsom suffered a myocardial infarction while off-duty. Mr. Folsom relied on the opinions of two physicians, an internal medicine specialist, Dr. Terrence Moisin, and a cardiologist, Dr. Mark Lampert. Dr. Moisin testified that Mr. Folsom's firefighting duties contributed to his coronary artery disease. Dr. Lampert's report noted that the medical literature has established a higher risk of cardiovascular events for firefighters in active duty. Dr. Lampert opined that it is possible that Mr. Folsom's service as a firefighter contributed to his disability as he did not have traditional risk factors for myocardial infarction, and was otherwise in excellent health. 2019 Ill. Wrk. Comp. LEXIS 539.

In *Mark Folsom v. North Palos Fire Protection District* the Commission reminds us of the standard set forth in *Sisbro*, that an accidental injury shall not be denied if Petitioner can show that his employment was "a causative factor" in their condition of ill-being. Petitioner is not required to demonstrate how much that causative factor contributed, or if it was the sole factor or primary factor among many factors.

Petitioner's testimony regarding the stressful and heavy nature of his job duties as well as the smoke, toxins, and environmental pollutants he was exposed to in the course and scope of his employment was credible and supported by his fellow firefighter's testimony.

Petitioner's treating cardiologist, Dr. Chaturvedula, testified that Petitioner was otherwise healthy, and did not have traditional CAD risk factors, so his job duties likely have a possible impact on Petitioner's cardiac condition because of pollution; and that it is possible it is contributing factor in this case. Moreover, Dr. Fletcher, the examining occupational medicine expert, who examined the Petitioner and relied on medical literature in formulating his opinion, opined that Petitioner's workplace exposures were a 'contributing factor to the development and acceleration of coronary artery disease.' The Arbitrator is persuaded by the opinions of Dr. Chaturvedula and Dr. Fletcher.

The Arbitrator finds that the Petitioner has met his burden that his work duties as a firefighter were a causative factor in the development of his coronary artery disease and subsequent myocardial infarction. Thus, the Arbitrator finds that the Petitioner has proven by a preponderance of the evidence that he sustained an accident arising out of and in the course of his employment by the Respondent, and his current condition is causally related to his firefighting duties.

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?

Incorporating the above, the Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary. The Arbitrator finds that Respondent has not paid all appropriate charges for these reasonable and necessary medical services. The Arbitrator orders the Respondent to pay all medical charges as set forth in Petitioner's exhibits, as provided in Sections 8(a) and 8.2 of the Act, for Petitioner's reasonable and necessary medical care.

Respondent shall be given a full credit for all payments made under its group health plan pursuant to Section 8(j).

Issue (K): Is Petitioner entitled to any prospective medical care?

Incorporating the above, the Petitioner testified and the records reflect that he is prescribed blood thinners as a direct consequence of this accident. Respondent is ordered to provide and pay for Petitioner's ongoing follow up appointments with his treating cardiologist and prescriptions for blood thinners.

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

Incorporating the above, the Petitioner's treating surgeon, Dr. Chaturvedula, does not have Petitioner on restrictions. Petitioner testified that Dr. Chaturvedula did not provide him with a work status note at his last appointment in May 2021. (T. 64). Petitioner testified he is not bringing any work status slips to the Respondent. (T. 70). Petitioner testified that Respondent is not taking him back to work because of his heart attack. (T. 68).

Chief Reeise testified that he has not contacted the Petitioner to return to work full duty. (T. 73). Chief Reeise testified he is not sure if Petitioner is allowed to return to work on blood thinners. (T. 72).

The Petitioner credibly testified that he is not being allowed to return to work by the Respondent due to his heart condition. Chief Reeise did not deny that Petitioner is being prevented from returning to work for the Respondent.

Therefore, the Arbitrator finds that the Petitioner is entitled to TTD benefits from 5/4/2020 through 9/20/2021, at a rate of $1131.78/week. Respondent is entitled to a full credit under Section 8(j) for PEDA benefits paid totaling $88,278.84.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC003308
Case Name	Fotis Markadas v. Village of Niles
Consolidated Cases	
Proceeding Type	***Remand of the Appellate Court***
Decision Type	Commission Decision
Commission Decision Number	24IWCC0144
Number of Pages of Decision	3
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Lane Allan Corday
Respondent Attorney	Daniel Egan

DATE FILED: 3/28/2024

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)		
) SS.	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
COUNTY OF COOK)	☒ 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

FOTIS MARKADAS,

Petitioner,

vs. NO: 16 WC 03308
21IWCC 0504

VILLAGE OF NILES,

Respondent.

DECISION AND OPINION ON APPELLATE COURT REMAND

This cause comes before the Commission on remand of the Appellate Court of Illinois, First District, Workers' Compensation Division, filed September 29, 2023, reversing the judgment of the circuit court, which confirmed the Commission's permanent partial disability (PPD) award and reversing the Commission's award of 24.5 weeks of PPD benefits and remanding the matter to the Commission with directions to award 21.5 weeks of PPD benefits.

Pursuant to the Appellate Court remand, the Commission's Decision and Opinion on Review in case number 21IWCC0504 posed only one issue for the Commission to address and as such the Commission's prior Decision on Review will be modified solely to address the issue as instructed by the Appellate Court as follows:

Section 8(e)(17) of the Act provides, in pertinent part, as follows:

In computing the compensation to be paid to any employee who, before the accident for which he claims compensation, had before that time sustained an injury resulting in the loss by amputation or partial loss by amputation of any member, including hand, arm, thumb or fingers, leg, foot or any toes, such loss or partial loss of any such member shall be deducted from any award made for the subsequent injury. For the permanent loss of use or the permanent partial loss of use of any such member *** for which compensation has been paid, then the loss shall be taken

into consideration and deducted from any award for the subsequent injury. 820 ILCS 305/8(e)(17) (West 2018).

When applying a credit for a prior award or settlement under this provision, it is the prior loss of use that is deducted, not the amount of weeks of compensation that was paid or is payable. Petitioner previously settled his prior claim in case No. 99 WC 48781 for 20% loss of use of the right leg. As a result of Petitioner's accident on May 4, 2015, Petitioner suffered 30% loss of use of the right leg. After deducting the prior loss as provided in Section 8(e)17 of the Act, Petitioner is entitled to a net award of 10% loss of use of the right leg, 21.5 weeks of PPD benefits.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Commission's prior Opinion and Decision of Review, case number 21IWCC0504, is modified as stated herein pursuant to the Appellate Court Order in case number 21 L 50449, all else is affirmed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $735.37 per week for a period of 21.5 weeks, as provided in §8(e)(12) of the Act, for the reason that the injuries sustained caused the 10% loss of use of the right leg for the subject matter.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to directly to the providers the sum of $4,046.43 for medical expenses under §8(a) of the Act.

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

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

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.

March 28, 2024

O 2/20/24
KAD/swj
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	17WC010143
Case Name	Diane Ziegenhorn v. Barrington Rehabilitation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0145
Number of Pages of Decision	26
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Adam Scholl
Respondent Attorney	Robert Harrington

DATE FILED: 3/29/2024

/s/Maria Portela, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DIANE ZIEGENHORN,

Petitioner,

vs. NO: 17 WC 10143

BARRINGTON REHABILITATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, and nature and extent and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's Decision as to all issues, but modifies the weights assigned to §8.1b(b)(iv) and (v) to read as follows:

With regard to criterion (iv)… The Arbitrator gives this factor ***no weight***.

With regard to criterion (v) … The Arbitrator gives this factor ***significant weight***.

Additionally, the Commission corrects the following scrivener's error:

In line 16 on page 3 of the Arbitrator's Decision, the Commission inserts the word "injury" after the word "crush".

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2022, is hereby affirmed and adopted, incorporating the modifications as set forth 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $120,029.00. 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.

March 29, 2024

MEP/dmm
O: 22024
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	17WC010143
Case Name	Diane Ziegenhorn v. Barrington Rehabilitation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Adam Scholl
Respondent Attorney	Robert Harrington

DATE FILED: 9/6/2022

THE INTEREST RATE FOR THE WEEK OF AUGUST 30, 2022 3.23%

/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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Diane Ziegenhorn
Employee/Petitioner
v.
Barrington Rehabilitation
Employer/Respondent

Case # **17** WC **10143**

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 **May 24, 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. [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. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [ ] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other ____

FINDINGS

On **September 13, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**98,132.84**; the average weekly wage was $**1,887.17**.

On the date of accident, Petitioner was **32** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay to Petitioner the reasonable and necessary medical services, as provided in Px8 and Px9, pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$775.18/week** for **150 weeks**, because the injuries sustained caused **30% 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.

SEPTEMBER 6, 2022

Signature of Arbitrator

FINDINGS OF FACT

On September 13, 2016, Petitioner was employed by Respondent as a staff physical therapist. Transcript of Evidence on Arbitration ("Tr.") at 7-8, 52. Petitioner had been employed with Respondent in that position for two years. Tr. at 8, 52. Prior to her employment with Respondent, Petitioner worked as a physical therapist at three other facilities from 2009 to 2016. Tr. at 8. Petitioner testified that her background is that of a manual therapist, and she addresses patients' needs with a hands-on approach. Tr. at 12. Petitioner is right-hand dominant. Tr. at 13, 52.

Petitioner testified that as a physical therapist, she was responsible for evaluating and treating patients. Tr. at 8. She worked in an outpatient setting, and the patients she worked with were postoperative, had musculoskeletal injuries, or had balance issues. Tr. at 9. Petitioner explained that performing an evaluation involved assessing mobility and impairment, which required manual muscle testing wherein she would provide resistance to a patient to assess their strength. Tr. at 9. She also performed passive range of motion, wherein she would support the weight of a patient's extremity through a given range of motion. Tr. at 9. Petitioner also performed joint mobilizations and manipulations, which are parallel to what a chiropractor would perform and included high-velocity thrusts. Tr. at 10. Petitioner also performed soft tissue mobilization or massage techniques. Tr. at 10. Petitioner also worked with balance patients, which included her use of a gait belt, righting the patient, or assisting the patient to the ground if unable to right them. Tr. at 11. Petitioner also performed exercise demonstrations and used her upper extremities to adjust equipment. Tr. at 11. Petitioner testified that many of the manual therapy techniques that she performed required the use of both of her hands. Tr. at 12-13.

On September 13, 2016, Petitioner also worked as a teaching assistant for the advanced orthopedic content at Rosalind Franklin University of Medicine and Science, in its Doctor of Physical Therapy program. Tr. at 16. As a teaching assistant, Petitioner would attend the lecture and lab sessions for the course and assisted with the demonstration and instruction. Tr. at 16. Petitioner taught body mechanics and manual therapy techniques to students of smaller stature. Tr. at 16. On September 13, 2016, Petitioner also worked at an outpatient physical therapy clinic that had a Pilates emphasis. Tr. at 17. In that position, Petitioner worked with Pilates principles and equipment to treat patients with musculoskeletal issues. Tr. at 17. Petitioner testified that prior to September 13, 2016, she did not have any type of physical issues concerning her left hand or left arm. Tr. at 17.

Petitioner's preexisting conditions

Petitioner testified that in January 2007, she was diagnosed with Sjogren's Syndrome, which she explained is an autoimmune disease where her body is attacking her glands and connective tissue. Tr. at 23. Petitioner testified that her presentation of this syndrome is bilateral inflammatory arthritis. Tr. at 23. Petitioner testified that the symptoms present on both sides of her body at the same time, and that it has affected her feet, ankles, knees, and shoulders. Tr. at 24. Petitioner was also diagnosed with leukocytoclastic vasculitis in January 2007. Tr. at 24. Petitioner explained that this type of vasculitis affects small and medium-sized blood vessels,

and it is an inflammatory condition that can cause pain and swelling. Tr. at 24. Petitioner has been under the care of Dr. Erin Arnold for her autoimmune conditions. Tr. at 35, 56. Petitioner testified that she is medicated and both conditions are managed and well-controlled. Tr. at 24.

Accident

On September 13, 2016, Petitioner was performing an evaluation. Tr. at 18. The patient was performing a pull assessment that required the use of a force gauge. Tr. at 18. Petitioner described the setup as there being a large metal chain around a metal post. Tr. at 18. Petitioner testified that for the assessment, she was to lift the chain up to the patient's waist-level, attach the force gauge, and then support the metal post so that it did not pull out from the wall while the patient provided a quick thrust. Tr. at 18. Petitioner instructed the patient on how to perform the assessment. Tr. at 18. She had her hand positioned on the post and was leaning into the post to support it. Tr. at 18. The patient was trying to complete the assessment, but he would let the chain go slack and it would move. Tr. at 19. After several attempts, Petitioner noticed that as the chain was moving, it slid over her hand. Tr. at 19. The patient pulled the chain, crushing Petitioner's left hand between the chain and the metal post with 126 pounds of force. Tr. at 19. Petitioner had immediate, significant pain. Tr. at 19. Petitioner excused herself, went to the staff office to compose herself, and then went back out. Tr. at 19-20. She completed the remaining portion of the assessment and dismissed the patient. Tr. at 20. After dismissing the patient, Petitioner grabbed an ice pack and sat for a bit. Tr. at 20.

Petitioner did not seek immediate medical treatment. Tr. at 20. She used ice and performed hand movements; however, those interventions did not alleviate the symptoms that she was experiencing. Tr. at 21.

Medical treatment summary[1]

On September 18, 2016, Petitioner presented at Northwest Community Hospital Immediate Care. Tr. at 21, Px3 at 9. Petitioner presented with complaints of left-hand pain status post crush injury at work on September 13, 2016. Px3 at 30. Petitioner initially complained of pain to the left first through third digits. Px3 at 12. Petitioner reported that the second and third digits were improving, but that the thumb was still painful with some swelling. Px3 at 20. X-rays were obtained and demonstrated no fracture, dislocation, or foreign body. Px3 at 21. Petitioner was assessed with a crush injury and no compartment syndrome. Px3 at 21. Petitioner was instructed to rest, ice, compress, and elevate and to take ibuprofen for the pain and swelling. Px3 at 13. Work restrictions were discussed. Px3 at 13. A thumb spica velcro splint was applied. Px3 at 22. Petitioner returned to work at Respondent with the restrictions given to her at Northwest Community Hospital Immediate Care. Tr. at 22.

On September 27, 2016, Petitioner presented to Dr. Taizoon Baxamusa at Illinois Bone and Joint Institute. Px2 at 11. Dr. Baxamusa noted that Petitioner presented with complaints of pain and discomfort in her left thumb. Px2 at 11. Petitioner reported a consistent accident history.

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[1] Respondent's Exhibit ("Rx") 6, pre-accident treatment records from Orthopedics of the Northshore, document Petitioner's treatment of Sjogren's Syndrome, rheumatoid arthritis, and leukocytoclastic vasculitis, and reflect that these conditions affected multiple joints, including Petitioner's elbows, hands, and shoulders.

Px2 at 11. Dr. Baxamusa noted that Petitioner had a history of Sjogren's Syndrome, leukocytoclastic vasculitis, and autoimmune enteropathy. Px2 at 11. He further noted that Petitioner was on multiple medications, including Plaquenil, Imuran, Celebrex, and methylprednisolone. Px2 at 11. Petitioner complained of pain over her left thumb radiating to the dorsum of the thumb IP joint over the radial sensory nerve distribution. Px2 at 11. Petitioner also reported some swelling, but no discoloration. Px2 at 11. Petitioner was using an over-the-counter thumb spica splint and was on some limited duty. Px2 at 11. On examination of Petitioner's left upper extremity, Dr. Baxamusa noted no bruising, swelling, ecchymosis, or break on the skin. Px2 at 12. No Tinel's was elicited over the radial sensory nerve. Px2 at 12. Dr. Baxamusa noted that Petitioner had discomfort at the thumb or MCP or IP joint, but had no tenderness at the A1 pulley. Px2 at 12. Dr. Baxamusa also noted that there appeared to be some hypermobility and laxity within the thumb and wrist, but there was no gross instability. Px2 at 12. Dr. Baxamusa further noted that Petitioner was grossly neurovascularly intact in the median, radial, and ulnar nerve distributions. Px2 at 12. X-rays of Petitioner's left hand were obtained and demonstrated no fracture, abnormality, or soft tissue calcifications, and the thumb was shown to be reduced with no acute fracture. Px2 at 12. Dr. Baxamusa's impressions were crush left hand with pain and possible radial sensory neuritis. Px2 at 12. Dr. Baxamusa noted that he did not see any obvious ligamentous disruption or instability. Px2 at 12. He noted that it was possible that Petitioner had a crush injury with sensory nerve irritation. Px2 at 12. Dr. Baxamusa agreed with Petitioner's use of the thumb spica splint and with some light duty restrictions. Px2 at 12, 58. He also recommended an MRI to rule out any internal derangement or occult fractures, and he noted that it was possible Petitioner may require some occupational therapy. Px2 at 12. Petitioner underwent an MRI of the left hand on October 1, 2016. Px2 at 13. The MRI was unremarkable. Px2 at 13.

Petitioner returned to Dr. Baxamusa on October 4, 2016. Px2 at 9. Dr. Baxamusa noted that the MRI was essentially normal with no abnormalities noted. Px2 at 9. Dr. Baxamusa's impressions were left wrist and hand contusions with possible radial sensory neuritis. Px2 at 9. Dr. Baxamusa noted that he could not find an identifiable neuroma or lesion in Petitioner's nerve. Px2 at 9. He noted that he thought the contusion would gradually subside. Px2 at 9-10. Dr. Baxamusa referred Petitioner to occupational therapy and placed her on a medium duty 25-pound weight restriction. Px2 at 10, 57.

Petitioner participated in occupational therapy at Barrington Rehabilitation with Paul J. Sullivan, PT, MHS, CHT, Cert. MDT. Px2 at 18-53, Px4. Petitioner participated in approximately 29 sessions from October 14, 2016 through March 29, 2017. Px2 at 18-53, Px4. Petitioner was discharged from therapy on March 29, 2017, at which time it was noted that Petitioner had reached a plateau in her documented progress for strength in her left hand and arm. Px2 at 20, Px4 at 74, 76. It was also noted that muscle weakness was still present and was significant in the left hand and arm. Px2 at 20, Px4 at 76. It was further noted that Petitioner had an increase in her symptoms of coldness, burning, and pain with daily tasks, and that Petitioner continued to present with hyperalgesia and allodynia in the left upper extremity. Px2 at 20, Px4 at 76.

On November 8, 2016, Petitioner returned to Dr. Baxamusa. Px2 at 7. Dr. Baxamusa noted that Petitioner's MRI was unremarkable with no sign of ligamentous disruption or fracture.

Px2 at 7. Petitioner reported that she felt 60% better, but still complained of pain on the radial side of the wrist, over the radial sensory nerve distribution going to the dorsum of the radial sensory nerve distribution with burning paresthesias and a pins and needles feeling. Px2 at 7. Petitioner also reported discomfort radiating into the tip of the thumb IP joint and weakness with grip and pinch. Px2 at 7. Dr. Baxamusa noted that Petitioner had a history of inflammatory arthropathy. Px2 at 7. Dr. Baxamusa's impressions were left wrist contusion and radial sensory neuritis. Px2 at 7. Dr. Baxamusa noted that Petitioner continued to complain more of parasthesias, dyesthesias, pins and needles, and burning pain in the radial sensory nerve, which was generally more a radial sensory neuritis. Px2 at 7. Dr. Baxamusa recommended Petitioner continue therapy, noting that if Petitioner did not make gains with therapy in a rapid enough condition, then a pain management consultation would be considered for additional medication such as Gabapentin and Lyrica. Px2 at 7. The 25-pound weight restriction was maintained. Px2 at 8, 56.

On November 22, 2016, Petitioner presented to Dr. Henry Kurzydlowski at Pain Care Consultants. Px5 at 13. Petitioner presented with left hand pain, which she described as sharp, throbbing, numb, and chronic. Px5 at 13. Petitioner reported that she experienced daily episodes, that her symptoms moderately limited her activities, and that her symptoms were exacerbated by hand motion. Px5 at 13. On exam, Dr. Kurzydlowski noted 5/5 strength throughout the extremity, except that Petitioner's left hand was limited by pain. Px5 at 14. Dr. Kurzydlowski also noted an atrophic left hand, allodynia in the left hand, and pain in the left hand and arm. Px5 at 15. Dr. Kurzydlowski's diagnosis was pain in the left hand and arm. Px5 at 15. Dr. Kurzydlowski prescribed Neurontin, one 100mg capsule per day, for seven days. Px5 at 15. Dr. Kurzydlowski noted that Petitioner's symptoms were secondary to a work-related injury on September 13, 2016. Px5 at 15.

Petitioner returned to Dr. Kurzydlowski on November 29, 2016. Px5 at 21. Dr. Kurzydlowski noted that Petitioner was tolerating Neurontin and that the pain persisted. Px5 at 21. Dr. Kurzydlowski's exam findings were unchanged, and he also noted a normal right radial pulse exam. Px5 at 22. Dr. Kurzydlowski's diagnosis was unchanged. Px5 at 23. Dr. Kurzydlowski increased Petitioner's Neurontin dosage to 200mg per day for 30 days. Px5 at 23. He also prescribed MetroTopicals N1 cream for daytime use. Px5 at 23.

Petitioner returned to Dr. Baxamusa on December 13, 2016. Px2 at 6. Petitioner reported that she felt discomfort and weakness and she described color changes and discolorations. Px2 at 6. Petitioner also reported that she had a history of Raynaud's, which is attributed to a cold trigger. Px2 at 6. Petitioner could not recall any trigger for her left wrist, but noticed some discoloration. Px2 at 6. Dr. Baxamusa's impressions were left wrist pain, radial sensory neuritis, and contusion. Px2 at 6. Dr. Baxamusa noted that Petitioner was on a medium duty work restriction with a 25-pound restriction that was reasonable while she participated in therapy once a week for desensitization. Px2 at 6, 55. Petitioner next saw Dr. Kurzydlowski on December 20, 2016. Px5 at 27. In addition to her left-hand pain, Petitioner presented with lower back and leg pain. Px5 at 27. His diagnosis was unchanged. Px5 at 27.

Petitioner next saw Dr. Baxamusa on February 7, 2017. Px2 at 4. Petitioner reported that her third-year student had left, which was requiring more responsibilities of Petitioner, and she

complained of pain and discomfort and of her arm going "cold." Px2 at 4. Petitioner also reported feeling loss of strength. Px2 at 4. Petitioner reported having discomfort lifting her six-pound puppy. Px2 at 4. Dr. Baxamusa's impressions were left wrist pain with radial sensory neuritis, contusion, and possible Complex Regional Pain Syndrome ("CRPS"). Px2 at 4. Dr. Baxamusa deferred a CRPS diagnosis to Petitioner's pain management physician. Px2 at 4-5. He noted that he did not find any surgically identifiable lesion on Petitioner's wrist or hand. Px2 at 4-5. Dr. Baxamusa left the 25-pound restriction in place, unless it was altered by Petitioner's pain management physician. Px2 at 4-5. He also recommended Petitioner continue with physical therapy once a week while she underwent pain management. Px2 at 5, 54. Dr. Baxamusa deferred "a little more" of Petitioner's treatment to her pain management physician. Px2 at 5.

Petitioner was also seen by Dr. Kurzydlowski on February 7, 2017. Px5 at 33. Dr. Kurzydlowski noted that a pharmacy mix-up had forced Petitioner to be off Neurontin for a few days, causing a marked increase in pain. Px5 at 33. Petitioner followed up with Dr. Kurzydlowski on March 28, 2017 and May 2, 2017, with increased pain noted with longer work hours. Px5 at 44, 51.

On May 16, 2017, Petitioner underwent an EMG/NCV with Dr. Igor Rechitsky. Px5 at 57. Petitioner had a normal electrodiagnostic study of the left upper extremity and cervical paraspinal muscles. Px5 at 59. There was no evidence of cervical radiculopathy, brachial plexopathy, or radial sensory neuropathy. Px5 at 59. Mononeuropathy multiplex could be seen. Px5 at 59. On May 23, 2017, Petitioner participated in an initial evaluation with Mary Beth Geiser, PT, at Aurora Sinai Medical Center. Px8.

Petitioner followed up with Dr. Kurzydlowski on May 25, 2017, June 27, 2017, July 25, 2017, August 29, 2017, September 20, 2017, October 8, 2017, November 29, 2017, February 28, 2018, May 9, 2018, September 13, 2018, February 21, 2019, March 19, 2019, April 23, 2019, and July 30, 2019. Px5 at 63-139. Dr. Kurzydlowski's diagnosis of left arm and hand pain continued. Px5 at 63-139. On September 20, 2017, Dr. Kurzydlowski noted that Petitioner had presented for an IME on September 19, 2017, which included manipulation of Petitioner's left upper extremity, and that Petitioner experienced an intense exacerbation of symptoms a few hours later and she could not sleep. Px5 at 83. On this date, Dr. Kurzydlowski also noted that Petitioner was planning to work at Elmhurst Hospital and required a 25-pound weight restriction. Px5 at 85, 88. On October 18, 2017, Dr. Kurzydlowski noted that Petitioner's pain was exacerbated after working with patients. Px5 at 92. On November 27, 2017, Petitioner reported worsening pain in the left upper extremity as she was working full-time as a physical therapist at Elmhurst Hospital and was having difficulty sleeping due to the pain. Px5 at 96.

On February 28, 2018, Dr. Kurzydlowski noted that Petitioner was working at Elmhurst Hospital, and that Petitioner had difficulty carrying weights greater than five to eight pounds with her left upper extremity. Px5 at 102. On May 9, 2018, Dr. Kurzydlowski noted that Petitioner's pain limited her ability to work as a physical therapist and that it was difficult for Petitioner to lift and hold a gallon of milk with her left upper extremity. Px5 at 108. On September 13, 2018, Petitioner reported that she continued to have pain and burning in the left upper extremity and had difficulty carrying objects greater than seven to eight pounds. Px5 at 113. Dr. Kurzydlowski noted that Petitioner would probably not be able to continue as a physical

therapist and would require a change in occupation. Px5 at 113. On this date, Dr. Kurzydlowski referred Petitioner to Dr. K. Dineen, a pain psychologist. Px5 at 115. On February 21, 2019, Dr. Kurzydlowski noted that Petitioner had not been able to work in her profession as a physical therapist due to severe pain while lifting anything greater than seven pounds or with any prolonged use of the left upper extremity in general. Px5 at 120. Dr. Kurzydlowski further noted that Petitioner's continuing severe pain with the use of her left upper extremity precluded her from continuing to work as a physical therapist. Px5 at 122. Petitioner was prescribed Elavil on this date. Px5 at 122. On July 30, 2019, Dr. Kurzydlowski noted that Petitioner's left-hand weakness continued with signs of muscle wasting, and that Petitioner was unable to lift and hold objects greater than seven to eight pounds. Px5 at 139. Petitioner has not seen any doctors specifically for her left hand since July 30, 2019. Tr. at 56.

After July 30, 2019, Petitioner began seeing her rheumatologist, Dr. Erin Arnold, for medication management. Tr. at 34-35; Px7. Petitioner testified that none of the medications prescribed for her injury overlapped with the medications prescribed for her autoimmune diseases. Tr. at 35; Px7. Dr. Arnold prescribes Petitioner Gabapentin 300mg. Tr. at 35; Px7 at 135, 141, 172, 273, 339.

Petitioner's post-injury employment

Petitioner did not lose any time from work following the September 13, 2016 injury. Tr. at 35, 52. Petitioner worked with the 25-pound lifting restriction given to her by Dr. Baxamusa and Dr. Kurzydlowski. Tr. at 36. Respondent accommodated Petitioner's restriction. Tr. at 53. Petitioner testified that she was able to perform the essential duties as a physical therapist, with some modifications. Tr. at 36. Petitioner explained that for lifting and passive range of motion exercises, she would use her right hand to primarily hold the weight. Tr. at 36. If a patient required an intervention or guarding that exceeded the 25-pound restriction or was something that Petitioner did not feel she could perform safely, she would ask a colleague to assist her. Tr. at 36. Petitioner testified that she could not perform certain manipulations at the hip and spine, including high velocity thrust mobilizations, and that she would ask a colleague to perform mobilizations that exceeded her weight restriction. Tr. at 38.

Petitioner testified that the more she used her left hand, the worse it felt. Tr. at 38. Her symptoms would worsen with light soft tissue work and with assisted range of motion. Tr. at 38. Her symptoms worsened over the course of the workday. Tr. at 38. Petitioner testified that her arm burned constantly, that she felt a "pins and needles" sensation, and that she had numbness. Tr. at 38. Petitioner further explained that with increased use of her left arm, her left arm felt heavy, and that she noticed stiffness in the hand. Tr. at 38. These symptoms would increase until she discontinued the use of her arm and it had time to calm down. Tr. at 39.

Petitioner worked at Respondent until September 2017, at which time she voluntarily resigned, and began working at Elmhurst Health. Tr. at 39, 53. Petitioner testified that she sought other employment at that time because she was looking to reduce her patient care time. Tr. at 40. Petitioner explained that Elmhurst Health was creating a new position of manager of rehab, and it was an opportunity for her to move into a leadership role. Tr. at 40. The new position would reduce her patient care time. Tr. at 40. Petitioner testified that shortly after her onboarding at

Elmhurst Health, the facility reorganized, and she did not receive the position. Tr. at 41. She continued her work at Elmhurst Health as a staff physical therapist with accommodations provided for her 25-pound lifting restriction. Tr. at 41, 53. Petitioner did not see patients with balance or gait deficits. Tr. at 41. Petitioner testified that she was seen by Elmhurst Occupational Health, and the 25-pound lifting restriction was imposed by Elmhurst Occupational Health. Tr. at 41-42. Petitioner testified that during her employment at Elmhurst Health, her symptoms did not improve and increased during the workday. Tr. at 42. Petitioner left Elmhurst Health in January 2019, after having a discussion with Dr. Kurzydlowski wherein he recommended that she transition to a nonclinical role. Tr. at 42-43.

Petitioner began work at The American Academy of Orthopaedic Surgeons as a senior registry analyst in January 2019. Tr. at 43, 54. The position of senior registry analyst did not require any physical work. Tr. at 43. It was essentially a desk job which required typing. Tr. at 44. Petitioner modified how she typed. Tr. at 44. At the time of arbitration, Petitioner was working in a new role at The American Academy of Orthopaedic Surgeons, overseeing program management for registries and data science. Tr. at 45, 54. In this position, Petitioner earns at least as much as she did at the time of the September 13, 2016 accident. Tr. at 54.

Current condition

After Respondent's independent medical examination ("IME"), Petitioner's medical benefits were terminated. Tr. at 33. Petitioner used her health insurance to continue treating. Tr. at 46-47. The bills and receipts contained within Px9 represent the amounts that Petitioner outlaid to cover treatment related to the injury. Tr. at 46-47.

Petitioner testified that her symptoms improved with the medications prescribed by Dr. Kurzydlowski. Tr. at 31. At the time of arbitration, Petitioner was still treating with Dr. Arnold for medication management and was taking 300mg of Gabapentin three times daily. Tr. at 31, 45. Petitioner sees Dr. Arnold every three months for a medication refill. Tr. at 46.

Petitioner testified that she has pain in her arm every day. Tr. at 48. The pain starts in her hand and travels up her arm with increased use. Tr. at 50. Petitioner explained that the more she uses her hand, the worse it feels. Tr. at 50, 51. Petitioner described experiencing numbness, tingling, and burning into her forearm below her elbow as she testified. Tr. at 50. Petitioner testified that the symptoms have reached her shoulder. Tr. at 50. The symptoms were daily when she was a clinician, but had decreased since not having to use her arm as much. Tr. at 50. Petitioner testified that if she were to vacuum at home, the symptoms would increase. Tr. at 50.

Petitioner has challenges with fine motor tasks, including turning a key, buttons, and Ziploc bags. Tr. at 48. She also experiences challenges with parenting and childcare, as she does not trust her ability to hold her child on her left side. Tr. at 48. She opts to wear her child as opposed to carry her. Tr. at 49. Petitioner has sleep disturbances related to the pain in her hand and sometimes prefers to not wear a sleeve because it irritates her left upper extremity. Tr. at 49. Petitioner testified that she was into fitness and would attend a lot of fitness classes, but she no longer does because it increases the symptoms in her hand. Tr. at 50. Petitioner testified that she

is comfortable with holding four or five pounds with her left hand. Tr. at 51. She has dropped a lot of items, including glasses, makeup palettes, and a container of Costco oatmeal. Tr. at 51.

IME by Dr. Robert Wysocki

Dr. Wysocki examined Petitioner in relation to her left arm and hand on July 26, 2017. Rx1 at 1. Dr. Wysocki reviewed medical records, as well as a job description in preparation of his report. Rx1 at 1. Petitioner reported a consistent accident history. Rx1 at 3.

Petitioner reported that her symptoms were pain primarily in the left thumb, including the tip of the thumb, both at the pulp and over the fingernail radiating back towards the IP joint. Rx1 at 3. Petitioner reported that the index and long fingers did not hurt as much as they had previously. Rx1 at 3. Petitioner reported experiencing sensations of the arm getting cold and developing a burning pain on the dorsoradial hand that radiated up the dorsoradial forearm towards the elbow. Rx1 at 3. Petitioner further reported that this pain had recently started to radiate up to the arm and behind the triceps and to the shoulder blade when it was particularly bad. Rx1 at 3. Petitioner reported that she felt like the skin was sensitive and she also experienced a pins and needles sensation in the thumb, index, and long fingers primarily dorsally. Rx1 at 3. Petitioner further reported that she did not note any substantial color change and denied previous trauma to the extremity. Rx1 at 3. Petitioner reported a history of Raynaud's Syndrome, and also reported that her symptoms felt different than that. Rx1 at 3.

On examination, Dr. Wysocki noted that he did not see any clear changes in sweat, temperature, or color pattern that would lead him to definitively conclude that a CRPS was present. Rx1 at 4. He further noted that Petitioner had a negative Tinel's, Phalen's, and median nerve compression at the carpal tunnel, aside from causing some local pain and occasional radiating up the forearm with a median nerve compression in a nonspecific distribution. Rx1 at 4. Dr. Wysocki also noted that Petitioner had more pronounced tenderness at the hand and wrist, especially at the thumb. Rx1 at 4. Radiographs were obtained and demonstrated normal bony and articular relationships without any fracture, dislocation, or significant arthritis, as well as no other additional pertinent bony pathology. Rx1 at 4. Dr. Wysocki noted that Petitioner demonstrated a 2mm ulnar-positive radiance. Rx1 at 4.

Based on his examination, Dr. Wysocki opined that Petitioner's current condition was left hand and wrist contusion. Rx1 at 4. He noted that he did not have the expertise to formulate an official diagnosis of CRPS and that he could not comment on whether Petitioner had CRPS. Rx1 at 4. Dr. Wysocki further opined that the only diagnosis he was confident in providing was that of left hand and wrist contusion, which were directly related to the September 13, 2016 accident and did not have any association with her underlying medical conditions. Rx1 at 4-5. Dr. Wysocki deferred to a pain medicine specialist for opinions concerning or related to a CRPS diagnosis. Rx1 at 4-5. Regarding the normal EMG/NCV study results, Dr. Wysocki opined that he believed that it confirmed that Petitioner did not have a compressive neuropathy of the radial nerve, median nerve, ulnar nerve, or any compression neuropathy of the spine to explain her symptoms and thus, no peripheral nerve surgical decompression was indicated. Rx1 at 5. Dr. Wysocki also opined that no further orthopedic treatment was needed for Petitioner's diagnosis of left hand and wrist contusion. Rx1 at 5. Dr. Wysocki further opined that Petitioner's treatment

to date had been reasonable and necessary and was causally related to the work injury. Rx1 at 5. He also believed that it was appropriate that Petitioner had been referred to a pain medicine specialist. Rx1 at 5.

Regarding work restrictions, Dr. Wysocki opined that from the standpoint of Petitioner's left hand and wrist contusion, he did not believe that any formal work restrictions were necessarily required to treat organic pathology of the hand. Rx1 at 5-6. Dr. Wysocki opined that Petitioner had reached maximum medical improvement ("MMI") regarding her left hand and wrist contusion. Rx1 at 6.

IME by Dr. Kenneth Candido

Dr. Candido examined Petitioner on September 19, 2017. Rx2 at 1. Dr. Candido reviewed a job description and medical records in preparation of his report. Rx2 at 2-3.

Petitioner reported a consistent accident history. Rx2 at 4. Petitioner denied having sustained any injuries to the left upper extremity prior to September 13, 2016. Rx2 at 4. Petitioner reported that the pain worsened with use of her left upper extremity. Rx2 at 6. Petitioner also reported that she felt as if her condition had worsened and that her symptoms had progressed in severity and surface area. Rx2 at 6. On examination, Dr. Candido noted no objective signs of CRPS type I or type II. Rx2 at 16. He noted mild left thumb limitation of flexion. Rx2 at 6.

Based on his examination, Dr. Candido opined that Petitioner sustained a crush injury and that there were zero signs of CRPS. Rx2 at 26. He opined that Petitioner likely had a resolving neuropathic pain condition of some of the smaller sensory nerves of the hand without residual dysfunction as, aside from some limited thumb flexion, which was a preexisting condition according to multiple physical therapy notes. Rx6 at 26-27. Petitioner's clinical examination was normal. Rx6 at 27. Dr. Candido agreed that Petitioner was healing, and the expectation was for a complete and unencumbered recovery, over time, from what was most probably a neurapraxia of some digital branches of the left hand and palm of the hand. Rx6 at 27. Dr. Candido agreed with Dr. Rechitsky, who also found that no criteria were met for a CRPS condition. Rx6 at 27.

Dr. Candido opined that Petitioner's preexisting autoimmune conditions could potentially affect Petitioner's healing from injury. Rx2 at 27. He noted that Petitioner had made progress as far as not having any residual features of the injury, aside from the left thumb limitation for complete flexion. Rx2 at 27. Dr. Candido further opined that Petitioner's condition was mild in terms of objective findings. Rx2 at 27. He also opined that Petitioner did not have CRPS, and that she did not require nerve blocks, pain medications, or pain management. Rx2 at 28. Dr. Candido found Petitioner to be at MMI for the crush injury, as there were no residual findings of sensory or motor dysfunction. Rx2 at 28. Dr. Candido further opined that Petitioner could work in her regular work capacity as it related to the work injury. Rx2 at 28. He noted that Petitioner was clearly motivated to work and that she did not have permanent or temporary restrictions to consider at that point. Rx2 at 28.

<u>Evidence deposition testimony of Dr. Henry S. Kurzydlowski</u>

Dr. Henry S. Kurzydlowski testified by way of evidence deposition on January 16, 2020. Px6. Dr. Kurzydlowski testified as to his education and credentials. Px6 at 5-7. Dr. Kurzydlowski testified that at the time of his deposition, the nature of his practice was solely pain management. Px6 at 6, 7.

Dr. Kurzydlowski testified that Petitioner was referred to him by Dr. Baxamusa for hand pain. Px6 at 8. Dr. Kurzydlowski first saw Petitioner on November 22, 2016. Px6 at 8. At that time, his diagnosis was pain in the left hand and pain in the left arm with a concern for CRPS. Px6 at 10. Dr. Kurzydlowski explained that the diagnosis of CRPS is one of exclusion, meaning that one has to make sure that there is no other treatable cause for the symptoms. Px6 at 11. His treatment recommendations at that time consisted of medication and physical therapy. Px6 at 11. Dr. Kurzydlowski prescribed Gabapentin and Neurontin. Px6 at 12. Neurontin is useful for chronic nerve pain. Px6 at 12.

Petitioner followed up with Dr. Kurzydlowski on November 29, 2016 and December 20, 2016. Px6 at 12-13. Dr. Kurzydlowski testified that at Petitioner's February 7, 2017 visit, there had been a "pharmacy mix up" and Petitioner was unable to fill the Neurontin prescription for a few days, and she had an increase in pain. Px6 at 14. Dr. Kurzydlowski testified that the marked increase in pain confirmed that the Neurontin was probably helping Petitioner. Px6 at 14. On this date, Dr. Kurzydlowski prescribed a course of physical therapy. Px6 at 14-16. On March 28, 2017, Dr. Kurzydlowski referred Petitioner to Mary Beth Geiser, a therapist specialized in CRPS. Px6 at 16-17. On May 2, 2017, Dr. Kurzydlowski added Cymbalta to Petitioner's medications. Px6 at 18.

Dr. Kurzydlowski testified that he reviewed the EMG results of Dr. Rechitsky on May 25, 2017. Px6 at 19. The EMG did not find anything, and it ruled out the possibilities of carpal tunnel, ulnar entrapment at the elbow, brachial plexopathy, and disc herniation with radiculopathy. Px6 at 19.

Dr. Kurzydlowski testified that he thought that Petitioner had rheumatoid arthritis for years. Px6 at 19. Dr. Kurzydlowski also testified that Petitioner's rheumatoid arthritis did not have a relationship to the symptoms that Petitioner was reporting to him because rheumatoid arthritis patients usually do not have CRPS. Px6 at 20. Dr. Kurzydlowski did not think that Petitioner's leukocytoclastic vasculitis would have any relationship to her hand-related symptoms. Px6 at 20. Regarding whether Petitioner's leukocytoclastic vasculitis had any relationship to the healing of her condition, Dr. Kurzydlowski testified that "I don't think you could prove that. I don't think there's that many people in the world that have had these two things together." Px6 at 20.

Petitioner's visits with Dr. Kurzydlowski on June 27, 2017, July 25, 2017, and August 29, 2017 involved medication management. Px6 at 20. Dr. Kurzydlowski testified that on September 20, 2017, Petitioner presented with hand pain. Px6 at 21. Petitioner had undergone manipulation of her left upper extremity while at an IME on September 19, 2017. Px6 at 21. Petitioner experienced intense exacerbation of her symptoms a few hours after the IME and

could not sleep. Px6 at 21. Dr. Kurzydlowski testified that people that have nerve injuries guard their extremity because they do not want to be touched and that "it doesn't take a lot to set them off." Px6 at 21. Dr. Kurzydlowski explained that the extremity has to be approached gingerly because if the person is forced to put their extremity in a position that they are not used to, it will flare up and the person will be miserable for several weeks or days. Px6 at 22.

Regarding the 25-pound weight restriction, Dr. Kurzydlowski testified that "we tried to figure out a range where she could function." Px6 at 22. Dr. Kurzydlowski together with Petitioner "figured that 25 would probably be a safe range." Px6 at 23. Dr. Kurzydlowski testified that Petitioner returned on October 18, 2017, and that Petitioner made mention of pain exacerbation after working with a patient, and that she continued with the weight restriction of 25 pounds. Px6 at 23. Dr. Kurzydlowski agreed that Petitioner continued to report symptoms while working with the 25-pound restriction. Px6 at 23. Petitioner's visits with Dr. Kurzydlowski on November 29, 2017, February 28, 2018, and May 9, 2018 involved medication management. Px6 at 23.

Dr. Kurzydlowski agreed that at this time, Petitioner's visits had extended to a two-to-three-month period versus a one-month period. Px6 at 24. He explained "that's the goal, to find some level where we can maintain her." Px6 at 24. During this time, Petitioner's Neurontin increased to 800mg a day. Px6 at 24.

At Petitioner's visit of September 13, 2018, Dr. Kurzydlowski testified that Petitioner presented with continued "pain and burning in the left upper extremity and hand carrying objects greater than seven to eight pounds and will probably not be able to continue in physical therapy and require a change in occupation." Px6 at 25. Dr. Kurzydlowski testified that Petitioner could not do her previous duties of a physical therapist. Px6 at 25. Dr. Kurzydlowski concluded that Petitioner required a change in occupation. Px6 at 25-26. On this date, Dr. Kurzydlowski referred Petitioner to a pain psychologist because patients with chronic pain experience anger, frustration, or depression. Px6 at 26-27.

Regarding Petitioner's visit on February 21, 2019, Dr. Kurzydlowski's note indicated that Petitioner had not been able to work as a physical therapist due to severe pain while lifting anything greater than seven pounds or with any prolonged use of the left upper extremity in general. Px6 at 27-28. On March 19, 2019, Dr. Kurzydlowski prescribed Elavil for Petitioner's complaints of not being able to sleep due to pain issues and increased the Neurontin to 900mg daily. Px6 at 28-30. On April 23, 2019, Petitioner reported that the Elavil was helping with her sleep issues. Px6 at 30.

Petitioner's last visit with Dr. Kurzydlowski was on July 30, 2019. Px6 at 31. Dr. Kurzydlowski's note indicated that Petitioner's left-hand weakness continued with signs of some muscle wasting, and that Petitioner was unable to lift and hold objects greater than seven to eight pounds. Px6 at 31. Dr. Kurzydlowski agreed that this was the same clinical presentation Petitioner had for "quite a period of time." Px6 at 31. Dr. Kurzydlowski testified that at the time of his deposition, he had not released Petitioner from his care. Px6 at 32.

Dr. Kurzydlowski was shown Exhibit Number 2, which he identified as a narrative report that he prepared. Px6 at 32. Dr. Kurzydlowski agreed that the opinions contained within his narrative report were based on a reasonable degree of medical and surgical certainty. Px6 at 32. Dr. Kurzydlowski agreed that Petitioner's condition stemmed from some sort of crush injury. Px6 at 38. Dr. Kurzydlowski testified that prior to the September 13, 2016 event, Petitioner did not have any problems and she had no difficulty functioning in her job as a physical therapist for years, and afterwards it became a slow downward spiral in terms of Petitioner's activities. Px6 at 33. Dr. Kurzydlowski testified that he thinks that Petitioner has a neuropathy, but that it is not full-blown CRPS. Px6 at 33, 47. Petitioner did not meet the criteria for CRPS. Px6 at 33-34. Petitioner never developed a full-blown CRPS. Px6 at 34. Dr. Kurzydlowski testified that Petitioner's neuropathy was "probably parts of the radial and medial nerve as I recall." Px6 at 34. Dr. Kurzydlowski further testified that "[w]ith nerves as a rule if it doesn't subside or literally get back to baseline after about two years it's probably what you have left is what you're going to have left." Px6 at 34. Dr. Kurzydlowski agreed that Petitioner's condition is essentially chronic. Px6 at 34-35. Dr. Kurzydlowski explained that nerves can last up to two years to heal, but "[o]nce you reach the two-year milestone, there's not a lot of recovery that will come back into play." Px6 at 35.

Dr. Kurzydlowski testified that he reviewed Dr. Candido's report. Px6 at 35, 46. Dr. Kurzydlowski explained that neurapraxia was more like an injured nerve. Px6 at 35. He testified that a classic example of neurapraxia is when you are sitting and your leg falls asleep, and that changing positions takes the pressure off the nerve and circulation comes back and it heals. Px6 at 35. Dr. Kurzydlowski explained that "[a]fter two years, you know, it's probably more than just a neurapraxia." Px6 at 35. He further explained that neurapraxia is essentially a transient phenomenon, and that the nerve is intact, and it should come back, but that he does not think that Petitioner's nerve ever did. Px6 at 36.

Regarding permanent restrictions as to Petitioner's left hand, Dr. Kurzydlowski testified that he encourages patients to move as much as possible and that he does not want them to baby it, but the breakout is what Petitioner can tolerate. Px6 at 36. When asked if there had been a threshold point that he noted that Petitioner could lift, Dr. Kurzydlowski testified that Petitioner "seems to be hovering around seven to eight pounds, which is a gallon a milk." Px6 at 37. Dr. Kurzydlowski testified that he does not believe that Petitioner is capable of working the job duties of a physical therapist because of the pain she would set off by using her hands. Px6 at 37.

On cross-examination, Dr. Kurzydlowski testified that Petitioner working with a chain, the chain being held by the patient, and the chain becoming loose in her hand and compressing across three of her fingers did not sound familiar to him. Px6 at 38. Dr. Kurzydlowski testified that whether the force was only to three fingers rather than the whole hand may or may not matter, and that the angle, velocity, and point of contact might matter. Px6 at 38. Dr. Kurzydlowski testified that he may have investigated the extent of force in Petitioner's case, but that he did not remember. Px6 at 39. He testified that at the time of his deposition, he could not comment on the velocity of the impact, or the surface area affected. Px6 at 39. He did not remember seeing any fractures involved. Px6 at 39. He did not remember whether there was any broken skin or bleeding caused by the crush injury. Px6 at 39. He did not recall any injury to the nails on the fingers that were impacted. Px6 at 39. Dr. Kurzydlowski did not know if Petitioner

had been seen at an emergency room. Px6 at 39-40. Dr. Kurzydlowski agreed that there was concern about a possible radial nerve injury at her initial exam. Px6 at 40. Dr. Kurzydlowski testified that a radial nerve injury was not a concern because it was after two years, and the radial nerve injury would have healed. Px6 at 40.

Dr. Kurzydlowski explained that neuropathy means nerve pain and Petitioner's neuropathy was probably caused by a trauma. Px6 at 40. Dr. Kurzydlowski further explained that radial nerve means it could be injured from trauma, surgery, or compression, and that there are a variety of different causes. Px6 at 40. There is a spectrum of nerve injuries. Px6 at 41. Dr. Kurzydlowski testified that Petitioner's nerve was not transected, so her condition was a little more than neurapraxia, and that Petitioner did not have total nerve destruction, so her nerve injury lies somewhere in between. Px6 at 41. Dr. Kurzydlowski testified that there was not any evidence that Petitioner had a torn or lacerated nerve. Px6 at 42. He further testified that crush injuries can produce inflammation and swelling especially in the initial phase because there is an inflammatory response. Px6 at 42. Dr. Kurzydlowski did not remember whether Petitioner had a large degree of inflammation or swelling after the injury. Px6 at 42.

Dr. Kurzydlowski agreed that crush injuries on the hand could be followed by compartment syndrome, "but if that's the case then you often end up having to do surgery, a fasciectomy." Px6 at 42. Dr. Kurzydlowski testified that Petitioner did not have compartment syndrome issues, "because then it's a danger of having gangrene in the extremity." Px6 at 43. Dr. Kurzydlowski agreed that the diagnostics, x-rays, MRIs, and EMGs were normal and testified that they did not find anything that would suggest a fracture or dislocation. Px6 at 43. Dr. Kurzydlowski testified that there is not a test to confirm the existence of neuropathy. Px6 at 43. He explained that neuropathy is a diagnosis of exclusion. Px6 at 43, 46. Dr. Kurzydlowski testified that he would need a history, physical exam, and previous studies to diagnose neuropathy. Px6 at 43. Dr. Kurzydlowski testified that he had done physical exams of Petitioner's left hand, and that the initial physical exam showed atrophy, sensory loss, and allodynia. Px6 at 44. Dr. Kurzydlowski explained that sensory loss is confirmed by touch and watching the patient's response to stimulus. Px6 at 44. Dr. Kurzydlowski agreed that pain cannot be objectively confirmed. Px6 at 44. A physical exam corroborates what the patient tells you in their history. Px6 at 44. Dr. Kurzydlowski testified that Petitioner could not fake atrophy, and that there was some muscle wasting on initial exam, which was two months after Petitioner's trauma. Px6 at 45. Regarding the purpose of a treatment plan, Dr. Kurzydlowski testified that at the time of his deposition, Petitioner's treatment plan was more of a maintenance phase. Px6 at 46.

Dr. Kurzydlowski testified that he did not know who Dr. Robert Wysocki is. Px6 at 47. Dr. Kurzydlowski testified that there was nothing to orthopedically fix. Px6 at 47. Dr. Kurzydlowski testified that Petitioner's primary problems are pain and lack of function. Px6 at 48.

Dr. Kurzydlowski testified that permanent physical restrictions varied in cases of patients with neuropathy conditions. Px6 at 50. Dr. Kurzydlowski testified that someone with a case similar to Petitioner's, "from a realistic point of view, she'll reach a limit where she can't do things because then she just accentuates the discomfort, so that's going to be the limiting effect."

Px6 at 51. Dr. Kurzydlowski testified that his opinion is that Petitioner cannot do more regular activities at work, and his opinion is based on how Petitioner presents to him, on how he has treated Petitioner, on what Petitioner can and cannot do, and on what Dr. Kurzydlowski has observed over the last months. Px6 at 51.

On redirect examination, Dr. Kurzydlowski testified that he did not think that Petitioner is a liar or that she is faking her condition. Px6 at 52. He did not detect any malingering on Petitioner's part. Px6 at 52. Dr. Kurzydlowski testified that at that time, he was not able to isolate the specific nerve that is being affected because Petitioner has such a non-dermatomal distribution that is most of the hand. Px6 at 52. On recross examination, Dr. Kurzydlowski explained that non-dermatomal means it affects the whole hand, and not a specific pattern or a particular pathway. Px6 at 53.

Evidence deposition testimony of Respondent's Section 12 Examiner, Dr. Kenneth D. Candido

Dr. Kenneth D. Candido testified by way of evidence deposition on February 18, 2020. Rx3. Dr. Candido's areas of expertise are anesthesiology and pain management, and he is board certified in pain management. Rx3 at 4-5.

Dr. Candido evaluated Petitioner on September 19, 2017 at Respondent's request. Rx3 at 5. Dr. Candido testified that Petitioner provided him with a history, wherein she reported that she had not sustained injuries to her left upper extremity before September 13, 2016, and that she sustained a crush injury to her left thumb, index, and middle fingers on September 13, 2016. Rx3 at 7. Petitioner reported a consistent accident history. Rx3 at 7. Petitioner reported that she was in pain and applied ice over the hand, which was sore, red, and throbbing. Rx3 at 7. Petitioner waited a week before seeking medical treatment. Rx3 at 7. Petitioner sought treatment at Northwest Community Healthcare Urgent Care, then saw Dr. Baxamusa, saw a physical therapist for six months, then saw Dr. Kurzydlowski, and was seeing a hand physical therapist of her choice. Rx3 at 7-8. Dr. Candido testified that at the time of his examination, Petitioner was working as a physical therapist, as a Pilates instructor, and as a teacher's assistant at Rosalind Franklin University. Rx3 at 8-9. Dr. Candido testified that at the time of his examination, Petitioner did not feel that she had improved since the incident, and that Petitioner felt that her condition had worsened and progressed in terms of severity and in the surface area that she described as painful. Rx3 at 9.

Dr. Candido testified that he found significant Petitioner's reporting that she was unable to straighten her left arm in the "Symptomology" portion of his exam. Rx3 at 9. The straightening of Petitioner's arm was triggering neuro-type symptoms of searing-type pain from the left hand to the left armpit. Rx3 at 9. Petitioner described the left arm getting cold with movement and burning pain in the left index finger and thumb, traveling through the forearm up to the biceps beneath the shoulder blade. Rx3 at 10. Petitioner described the pain as spreading, and she also described having sleep disturbances. Rx3 at 10.

Dr. Candido obtained a past medical history from Petitioner. Rx3 at 10. Dr. Candido explained that the purpose of obtaining a past medical history is to be comprehensive and to evaluate any potential factors or concomitant factors for somebody who might develop a pain

condition. Rx3 at 10. Dr. Candido testified that he believes that Petitioner's autoimmune conditions of leukocytoclastic vasculitis, autoimmune enteropathy, and Sjogren's Syndrome contributed to individuals having painful processes. Rx3 at 10-11. Dr. Candido reviewed Petitioner's diagnostic tests, including an x-ray of the left hand, an MRI of the left hand, and an EMG of the left upper extremity, which were all normal and did not identify any objective pathology that could cause or contribute to someone's description of pain or dysfunction. Rx3 at 11. Dr. Candido also obtained an active medication list and he explained that the purpose of obtaining it was to determine whether an individual has risk factors for ongoing pain and to see if they are being treated with reliable medications. Rx3 at 11. Dr. Candido testified that it was significant that Petitioner was taking Imuran, Entocort EC3, Celecoxib, Duloxetine, a steroid nasal spray, Gabapentin, turmeric, and other medications for unrelated conditions. Rx3 at 12. Dr. Candido also obtained a social history, and there was nothing of pertinence to her pain syndrome. Rx3 at 12.

Dr. Candido performed a physical examination and he testified that the significant findings were that Petitioner's vital signs were all within normal ranges. Rx3 at 13. Dr. Candido testified that the values of Petitioner's right-hand grip pressure were between 52 and 58 pounds of force, and that the values of her left-hand pressure were between 34 and 35 pounds of force, which was significant. Rx3 at 13. Dr. Candido explained that he always expects the dominant side to be up to 15% stronger than the non-dominant side, and that in Petitioner's case it was 20% to 25% stronger, which was a minor drop-off. Rx3 at 13. His upper extremity examination showed no scars, no lesions, no color changes, no deformities, no temperature changes, no sweating abnormalities, no trophic signs, no tactile allodynia, no hyperalgesia, and no objective signs of Type 1 or Type 2 CRPS. Rx3 at 13. Dr. Candido noticed a mild left thumb limitation of flexion. Rx3 at 13-14. Dr. Candido testified that otherwise, Petitioner's range of motion of her upper extremity and the sensory and motor examinations were unremarkable. Rx3 at 14.

Dr. Candido testified that his opinion was that Petitioner sustained a crush injury to the left hand, and that he noted zero signs of a CRPS. Rx3 at 14. Dr. Candido testified that his working diagnosis was that Petitioner likely had a resolving neuropathic pain condition of some of the smaller sensory nerves of the hand without residual dysfunction. Rx3 at 14-15. Dr. Candido testified that he acknowledged that a crush injury could be painful, and that he "agreed that healing, and the expectation is for complete and unencumbered recovery over time in what was most probably a neurapraxia of … some digital branches of the left hand and palm of the hand." Rx3 at 15. Dr. Candido testified that he agreed with Dr. Rechitsky, who did not find any signs of CRPS. Rx3 at 15.

Dr. Candido also testified that he expressed that leukocytoclastic vasculitis is a small vessel disorder which is characterized by inflammation of post-capillary venules in the dermis that is associated with purpura formation. Rx3 at 16. He testified that he opined that Petitioner likely had a mild form of leukocytoclastic vasculitis, as he did not see any cutaneous manifestation of it at the time of his examination, and he indicated that it could be caused by certain medications. Rx3 at 16. Dr. Candido testified that leukocytoclastic vasculitis symptoms can mimic those of neurapraxia, because leukocytoclastic vasculitis "can lead to an inflammatory condition of the small vessels and also, by proxy, because the vessels innervate, or feed neural structures, being nerve tissue, that can cause an inflammatory condition of nerves." Rx3 at 16.

Dr. Candido testified that at the time of his examination, his opinion was that Petitioner should be at MMI once her therapy was completed and no later than three months following the completion of his report and examination. Rx3 at 16. Dr. Candido did not anticipate anything preventing Petitioner from reaching full function of her left hand at the time that he evaluated her. Rx3 at 17. Dr. Candido testified that Petitioner was working three separate and distinct jobs at the time that he examined her, that he suggested that the use of physical therapy might be beneficial to restore full function of the left thumb, and that he did not expect or see any permanency of temporary restrictions, use of analgesic medication, nerve blocks, or interventional pain management treatments to consider at that time. Rx3 at 17. Dr. Candido testified that at the time of his examination, he did not believe that Petitioner required any formal or informal work restrictions. Rx3 at 17.

Dr. Candido testified that Petitioner allowed a full examination of her left upper extremity, which in conjunction with the lack of color, edema, and trophic signs rule out the possibility of CRPS. Rx3 at 18. Dr. Candido testified that at the time of his examination, he believed that Petitioner did not require any ongoing medication. Rx3 at 20. He did not identify any reason for a prescription for any medication in Petitioner's condition. Rx3 at 20. Dr. Candido did not see any reason for a lifting restriction at the time of his examination, and that based on the dynamometer and Jamar results, Petitioner was capable of using her left hand to perform a handgrip of 34 to 35 pounds, which was within reasonable expectations. Rx3 at 21. Dr. Candido further testified that he would not have expected Petitioner's condition to progress to the point that she would require an eight-pound lifting restriction or ongoing medication. Rx3 at 21.

Dr. Candido explained that there are only three things that can happen to a nerve when a nerve is injured. Rx3 at 21. First, a nerve can sustain a neurapraxia, which is a compression or stretch injury, and is a self-limiting process which is known to resolve in the vast majority of individuals within two years. Rx3 at 21. The second possible injury is an axonotmesis, which is a partial nerve injury where there has been some disrupting or tearing of nerve fibers, which is expected to heal in the vast majority of individuals over time without sequela. Rx3 at 21-22. The third possible injury is a neurotmesis, where the nerve is completely severed. Rx3 at 22. In the case of a neurotmesis, there is no movement and no feeling. Rx3 at 22. Petitioner did not have a severed nerve, because she had feeling and movement. Rx3 at 22. Dr. Candido testified that of the possibilities of what could have happened to Petitioner, more probably than not, Petitioner sustained a neurapraxia type of insult, which is the best of all possible outcomes and is a condition that improves over time. Rx3 at 22. Dr. Candido explained that if there is damage from a crush injury to a nerve, if the nerve continues to maintain the integrity of the Schwann cell membrane, the nerve will recover. Rx3 at 22-23. Recovery can be somewhat prolonged for an individual with an autoimmune disease. Rx3 at 23. Dr. Candido testified that there possibly are cases of neurapraxia that do not recover and could be a permanent condition. Rx3 at 23, 32. Dr. Candido also testified that a spinal cord stimulator is not an appropriate modality for neurapraxia, because the condition improves and resolves over time. Rx3 at 23.

On cross-examination, Dr. Candido testified that he relied on physical therapy records that predated the accident regarding Petitioner's preexisting left thumb limitation. Rx3 at 24-25. Dr. Candido agreed that overall, his conclusion was that Petitioner has a resolving condition. Rx3 at 25. Dr. Candido testified that the lack or absence of a sensory neuropathy on his

examination led him to believe, clinically, that Petitioner was in a resolution phase. Rx3 at 26. Dr. Candido testified that he saw a 10-pound improvement in Petitioner's lifting restriction. Rx3 at 26-27. Dr. Candido testified that otherwise, he did not see any other marked improvements of Petitioner's condition in his medical records review. Rx3 at 26-27.

Dr. Candido explained that the use of the term "neuropathy" is a generic term for anything that is related to dysfunction of the nerve system, and that a neurapraxia is a defined condition that occurs when a nerve is stretched or compressed. Rx3 at 28. A neurapraxia can lead to neuropathy. Rx3 at 28.

Dr. Candido testified that Petitioner was on Neurontin, or Gabapentin, and Cymbalta at the time of his examination. Rx3 at 28. He explained that Neurontin is an anti-seizure medication that was created for individuals that suffer from epilepsy. Rx3 at 28. It could be useful to slow conduction in nerves to allow nerves to heal, in the short term. Rx3 at 29. Gabapentin is not prescribed for long-term use for neurapraxia because neurapraxia is a self-limiting condition. Rx3 at 35. Gabapentin could be used long term, but not in perpetuity because the expectation is that the neurapraxia will resolve. Rx3 at 35. Dr. Candido also explained that Cymbalta blocks the uptake or re-uptake of norepinephrine and serotonin, and is useful, at the central nervous system, to effectively manage the subjective reporting of certain pain conditions. Rx3 at 29. He further explained that Cymbalta was approved in 2010 for osteoarthritis, low back pain, diabetic peripheral neuropathy, and postherpetic neuralgia. Rx3 at 29. Dr. Candido testified that he has found that Neurontin is a medication that can be beneficial to a patient with neuropathy or neurapraxia. Rx3 at 29. Dr. Candido testified that if Petitioner experienced an increase of pain without Neurontin on February 7, 2017, that would signify to him that Neurontin was providing some benefit to Petitioner at least as of February 7, 2017. Rx3 at 30.

Dr. Candido testified that the only true test to prove the existence of a neurapraxia or a neuropathy would be to conduct a microscopic analysis of a nerve. Rx3 at 30. An MRI and EMG can be useful. Rx3 at 31. Dr. Candido testified that the EMG and nerve conduction velocity study demonstrated that there was no neuropathy, according to the electromyographer's interpretation. Rx3 at 32. An EMG can provide a definitive answer as to whether a neuropathy exists. Rx3 at 32.

Dr. Candido testified that it was not his understanding that Petitioner's autoimmune conditions could cause a crush injury to worsen. Rx3 at 33. Dr. Candido explained that "autoimmune" means that the body creates an imbalance in antibodies and attacks its own tissue, and that he is not aware of a crush injury contributing to, or worsening, or being a causative factor in the term of an autoimmune disease. Rx3 at 33. When asked to what extent autoimmune diseases can hinder the healing of a nerve injury, Dr. Candido testified that they have been hypothesized to slow down the healing, but he did not know how that can be quantified or qualified. Rx3 at 33.

Dr. Candido testified that he had not seen Petitioner since his examination and agreed that he did not know how Petitioner was doing at the time of his deposition. Rx3 at 31. Dr. Candido testified that he thought Petitioner was credible and he did not think that she was malingering. Rx3 at 34. Dr. Candido testified that it was his understanding that Petitioner had

returned to work a physical therapist, and so it was not his understanding that she did not want to return to work as a physical therapist. Rx3 at 34. Dr. Candido did not note any type of atrophy or muscle wasting during his exam. Rx3 at 34. When asked if during subsequent examinations atrophy and muscle wasting were noted by a physician, Dr. Candido testified that said conditions would tell him that possibly Petitioner's autoimmune condition had worsened in the interval since he had examined her. Rx3 at 35.

CONCLUSIONS OF LAW

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

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

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). "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 finds that Petitioner established a causal connection between the accident of September 13, 2016 and her current left hand and left arm conditions of ill-being. In so finding, the Arbitrator relies on the following: (1) treatment records of Northwest Community Hospital Immediate Care, (2) treatment records of Illinois Bone and Joint, (3) treatment records of Barrington Rehabilitation, (4) treatment records and testimony of Dr. Kurzydlowski, (5) records of Advocate Health Care, and (6) Petitioner's credible denial of any pre-accident physical issues with her left hand or left arm. The Arbitrator notes that the evidence demonstrates that Petitioner was able to work full duty and without restrictions immediately prior to the work accident. The Arbitrator further notes that Petitioner provided a consistent accident history and that the evidence also demonstrates consistent complaints and continuous symptomology of the left hand and left arm following the work accident.

The Arbitrator has considered the opinions of Dr. Wysocki and Dr. Candido and finds that they do not outweigh the opinions of Dr. Baxamusa and Dr. Kurzydlowski. The Arbitrator further finds that the record supports Dr. Kurzydlowski's opinion that Petitioner has a chronic neuropathy and notes that Dr. Candido conceded that (1) a neurapraxia can lead to neuropathy and (2) that there are possibly cases of neurapraxia that do not recover and that could become a permanent condition.

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 finding regarding the issue of causal connection, the Arbitrator finds that the medical services that were provided to Petitioner, including the medical services provided to Petitioner after Dr. Candido's September 19, 2017 IME, were reasonable and necessary and that Respondent has not yet paid all appropriate charges. At arbitration, Petitioner presented the following unpaid medical bills: Out-of-pocket prescriptions ($2,615.49), Pain Care Consultants ($341.66), and Aurora Health ($743.00). As the Arbitrator has found that Petitioner's treatment was reasonable and necessary, the Arbitrator further finds that all bills, as provided in Px8 and Px9, are awarded and that Respondent is liable for payment of these bills, 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 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 gives 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 32 years of age and was employed at Respondent as a physical therapist. Following the September 13, 2016 accident, Respondent accommodated Petitioner's 25-pound restriction. Petitioner testified that she voluntarily resigned from Respondent in September 2017 and began work at Elmhurst Health. Tr. at 39, 53. Petitioner testified that she sought other employment at that time because she wanted to reduce her patient care time. Tr. at 40. Petitioner explained that a new position had been created at Elmhurst Hospital, manager of rehab, and this position would reduce Petitioner's patient care time. Elmhurst Health, however, reorganized and Petitioner did not receive the position of manager of rehab. Petitioner, instead, worked as a staff physical therapist at Elmhurst Hospital with a 25-pound restriction and she did not see patients with balance or gait deficits. On May 9, 2018, Dr. Kurzydlowski noted that Petitioner's pain limited her ability to work as a physical therapist and on September 13, 2018, Dr. Kurzydlowski noted that Petitioner would probably not be able to continue as a physical therapist and would require a change in occupation. Petitioner testified that in January 2019, after having a discussion with Dr. Kurzydlowski, she left her employment as a physical therapist at Elmhurst Hospital and began working at The American Academy of Orthopedic Surgeons as a senior registry analyst, which did not require any physical work. At the time of arbitration, Petitioner was employed in a new role at the American Academy of Orthopedic Surgeons overseeing program management for registries and data science. Tr. at 54. The Arbitrator gives these factors more weight.

With regard to criterion (iv), Petitioner testified that she earns at least as much as she did on September 13, 2016 in her current position with The American Academy of Orthopedic Surgeons. Thus, Petitioner has not demonstrated that her future earning capacity has been affected by the accident. The Arbitrator gives less weight to this factor.

With regard to criterion (v), the medical records reflect that following the September 13, 2016 accident, Petitioner's left hand and left arm symptoms have been consistent and persistent, and that Petitioner could not continue working in her profession as a physical therapist. Petitioner testified that she experiences pain in her arm every day. She testified that the pain worsens with increased use of her left hand. She has challenges with fine motor tasks, such as turning a key and with buttons and Ziploc bags. She also experiences challenges with parenting and childcare. Prior to the work accident, Petitioner participated in fitness classes, however, Petitioner no longer participates in fitness classes because doing so causes an increase in Petitioner's symptoms. The Arbitrator gives this factor its appropriate weight.

Upon consideration of the foregoing evidence and factors, the Arbitrator finds the nature and extent to be on a loss of trade award, pursuant to Section 8(d)2. Accordingly, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 30% loss of the person as a whole, or 150 weeks, pursuant to Section 8(d)2 of the Act.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR