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

24IWCC0123

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.

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)
☒ 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. ☒ 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.

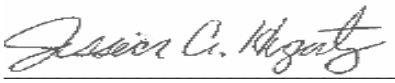
Petitioner is entitled to temporary total disability from March 9, 2012, through November 26, 2012, and from October 2, 2013, through October 28, 2013, for a total of 41 1/7's weeks. Further compensation is denied.

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.