

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	19WC031426
Case Name	John Abbatiello v. Morton Grove Fire Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	<i>Corrected Commission Decision</i>
Commission Decision Number	[24IWCC0191]
Number of Pages of Decision	11
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Joshua Rudolfi
Respondent Attorney	John Fassola

DATE FILED: 5/22/2024

/s/ Deborah Simpson, Commissioner
Signature

19 WC 31426
24 IWCC 191
Page 1

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse:	<input type="checkbox"/> Second Injury Fund (§8(e)18)
	<input type="checkbox"/> PTD/Fatal denied
<input checked="" type="checkbox"/> Modify: Up	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN ABBATIELLO,

Petitioner,

vs.

NO: 19 WC 31426
24 IWCC 191

MORTON GROVE FIRE DEPARTMENT,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, and the nature and extent of Petitioner's permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as specified below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The parties stipulated that Petitioner, a firefighter, sustained a work-related accident on October 18, 2019. Petitioner alleged that the accident caused a current condition of ill-being of his left knee and Respondent alleged that it did not. The Arbitrator found that it did, awarded Petitioner medical expenses in the amount of \$20,296.72, awarded Respondent credit under §8(j) in the same amount of \$20,296.72, noted prior to the hearing that Petitioner was off work for 17&1/7 weeks, was paid during that period, and Petitioner was not seeking temporary total disability benefits ("TTD"). Finally, the Arbitrator denied permanent partial disability benefits ("PPD"). The Commission agrees with the reasoning and analysis of the Arbitrator on the issues

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of causation, medical expenses, temporary total disability benefits, and credit. Accordingly, the Commission affirms and adopts those aspects of the Decision of the Arbitrator.

An MRI taken on October 28, 2019 showed oblique undersurface tear in the posterior horn of the medial meniscus extending into the body, Grade I MCL sprain or reactive edema from tear, small Baker's cyst suggestive of leak/partial rupture, mild semimembranosus bursitis, and mild bicompartamental chondromalacia. On January 21, 2020, Dr. Bowen performed left knee arthroscopy and partial medial meniscectomy for medial meniscus tear. At the Arbitration hearing, Petitioner testified he had Workers' Compensation claims in the past, including "rotator cuff, biceps on both sides," "a foraminotomy, [cervical] microdiscectomy," "cervical fusion," and "lumbar microdiscectomy." He was earning more currently than he had before the accident "with standard raises." Petitioner also testified that currently his left knee felt "great." He was working full duty and had no issues with it.

The Arbitrator denied Petitioner any PPD benefits. In so doing he gave great weight to his returning to his heavy labor job as firefighter and that he testified his knee felt great. He noted that this factor reflected the lack of permanent disability. He gave "medium" weight to his age, 49, but again noted that Petitioner felt great and therefore would not have any long-term disability from the injury. He also noted that the fact that Petitioner earned more than he did at the time of the accident, which also suggested no permanent loss, though he did not ascribe a specific weight to that factor. Finally, the Arbitrator gave great weight to evidence of disability, or lack thereof, in the medical record. He again noted Petitioner testimony about how good his leg felt, and that he returned to his prior heavy job. The Arbitrator concluded that Petitioner "experienced a recovery without any residual aftereffects."

We agree with the Arbitrator that Petitioner had a great recovery from his surgery. He was released back to work at full duty as a firefighter a month after surgery, testified his knee felt great, and testified that he had no issues working his full duty activities. However, the Arbitrator and the Commission have found that Petitioner sustained a torn meniscus caused by the work-related accident which required surgery. Despite his excellent recovery, we believe that Petitioner is entitled to some permanency award, if for no reason other than the injury, and subsequent surgery, increased the likelihood of his developing arthritis, or worsening of arthritis, in the future. That is relevant to the statutory factor of evidence of disability supported by the medical records to determine PPD.

The Commission notes that at arbitration, Respondent submitted into evidence records of the Commission establishing that between 2005 and 2019, Petitioner had four Workers' Compensation claims against Respondent which were settled for a total of \$222,411.10, representing loss of 68.5% of the person-as-a-whole. We obviously cannot give credit for prior person-as-a-whole awards. Nevertheless, we can use the prior awards to assess any additional partial permanent disability Petitioner had from the instant injury. In reviewing the entire record

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before us, the Commission finds a PPD award of 10.75 weeks representing loss of the use of 5% of the left leg is appropriate.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated October 5, 2023 is hereby modified as specified above and otherwise affirmed and adopted, which is attached hereto and made a part hereof.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of \$836.69 per week for 10.75 weeks as the work-related injuries resulted in the loss of the use of 5% of the left leg pursuant to §8(e) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner was off work for 17&1/7 weeks, was paid during that period, and Petitioner was not seeking temporary total disability benefits.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent has paid all reasonable and necessary medical expenses.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit in the amount of \$20,296.72 for paid medical expenses pursuant to §8(j) 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.

May 22, 2024

DLS/dw
O-3/6/24
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/s/ Deborah L. Simpson
Deborah L. Simpson

/s/ Stephen J. Mathis
Stephen J. Mathis

/s/ Raychel A. Wesley
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	19WC031426
Case Name	John Abbatiello v. Morton Grove Fire Department
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Francis Brady, Arbitrator

Petitioner Attorney	Joshua Rudolfi
Respondent Attorney	John Fassola

DATE FILED: 10/5/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 3, 2023 5.34%

/s/ Francis Brady, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

John Abbatiello
 Employee/Petitioner

Case 19 WC 031426

v.

Morton Grove Fire Department
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was served on each party. The matter was heard by the Honorable Francis M Brady, Arbitrator of the Commission, in the city of **Chicago**, on July 10, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES


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

FINDINGS

On October 10, 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 \$89,000; the average weekly wage was \$1,711.53.
On the date of accident, Petitioner was 49 years of age, single with 1 dependent child.
Petitioner *has* received all reasonable and necessary medical services.
Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.
Respondent is entitled to an 8j credit of \$20,296.72.
Petitioner failed to prove permanent disability.

ORDER

RESPONDENT IS LIABLE TO PETITIONER IN THE AMOUNT OF \$20, 296.72 FOR THE EXPENSE OF HIS MEDICAL CARE
RESPONDENT HAS PAID THE AMOUNT OF \$20,296.72 IN PETITIONER'S BEHALF AND IS ENTITLED TO THAT CREDIT.
RESPONDENT IS NOT LIABLE TO PETITIONER FOR ANY NATURE AND EXTENT.



OCTOBER 5, 2023

Signature of Arbitrator

STATEMENT OF FACTS

Before October 18, 2019, Petitioner, John Abbatiello, Abbatiello, had never had any issues with his left knee even though he had been a fireman for Respondent, Village of Morton Grove, “Morton Grove” since 1998 (Tr 16, 17, 27)

That day he was on duty for Morton Grove, performing the physically demanding duties of fireman without issue (Tr. 16). As he carried equipment in his right hand up some stairs, his left foot, which he had planted to support his right leg swinging up, slipped down, and landed hard on the step below. (RX 2 and 3) He felt discomfort in his left knee which he reported contemporaneously to Lieutenant O’Brien (Tr. 11, 12,13, 17, 20, 21, 22, RX 2., p2; RX \$., p 40).

Abbatiello also completed a document entitled “Employee’s Statement of Incident on October 18, 2019. (Tr. 21, RX 2)

He sought medical care on October 23, 2019, at Glen Medical Associates, “Associates”, his primary care physician where he recounted to Dr Maslo, “Maslo” that he “slipped off a stair and twisting had some knee pain . . . swelling. . . occasional popping . . . “and locking. Maslo diagnosed “(a)cute pain of left knee” and prescribed X Rays and an MRI (Tr.13 PX 2., p. 3, 6)

Abbatiello also had a “visit diagnosis” of (a)cute pain of left knee” when he presented for the x ray on October 23, 2019 (PX 3., p 8) with that test revealing no fracture but suggesting soft tissue swelling. (PX 3., p10)

The left knee MRI, performed October 28, 2019, due to “(a)cute pain of left knee) disclosed a tear of the medical meniscus (Tr. 14, PX 2., p.24)

Abbatiello returned to Associates on November 1, 2019, complaining (to Dr Kulkarni on this visit) he was unable to sleep due to his left knee pain left (PX 2 p 7) Charting shows “he was dx with knee meniscal tear to see ortho next week” (id) In the meantime, Kulkarni prescribed a “short course of pain medication. . . “(PX 2 p 9) and suggested he see an orthopedist (Tr.

On November 4, 2019, Abbatiello presented to Dr Mark Bowen, “Bowen” an orthopedist as Maslo had told him to treat with that specialty back on October 23, 2019. (Tr 14). Bowen ordered x rays which he compared to films from 10/23/19 finding “slight degenerative change in the (left) knee,” (PX 4., p 36) Bowen noted that Abbatiello was a firefighter who on 10/18/23 hurt his left knee in a “(w)orkers comp” injury when he “did a wrong step . . . (w)hile walking into a house. . . and twisted wrong.” (PX 4., p 40) His entire left knee was painful and swollen and he was having trouble sleeping and navigating stairs. (id) He reported no prior left knee injuries or surgeries (PXD 4., p 41) Bowen examined all films diagnosing chondromalacia and medical meniscus tear. He prescribed, inter alia, physical therapy, “PT” and arthroscopic surgery consisting of partial meniscectomy and debridement which would relieve symptoms of torn meniscus, but further arthritis or articular cartilage damage could not be treated and would be progressive (PX 4., p. 42, 49). In the meantime, Abbatiello could not work (PX 4., p 49, Tr 15).

He returned to Associates on December 3,2019 seeing Dr Meyer, “Meyer”, on this occasion, who noted his torn medical meniscus as well as Bowen’s prescription for surgery, which had yet to be scheduled” do to workmans comp.” (sic) (PX2., p 10). Meyer prescribed Norco for the pain Abbatiello was feeling as he awaited repair of his meniscus (PX 2., p. 13)

Meyer saw Abbatiello again on January 10, 2020, for “preoperative consultation” regarding the left leg meniscectomy scheduled for January 21, 2020, due to “trauma . . . with failed conservative therapy” (PX 2., p15)

Abbatiello’s medial meniscus tear, left knee, was arthroscopically repaired by Bowen on January 21, 2020 (PX 5., p17, Tr., 16)

When Abbatiello returned on January 30, 2020, for a post op, follow up visit, Bowen charted there was “minor swelling” but Abbatiello was “doing well with minimal complaints”. “His range of motion was nearly full. He is neurovascularly intact.” Abbatiello was “(d)oining well post op.” according to Bowen. (PX 4., p 15, 17, 18, 28)

Abbatiello presented to Bowen for the final time on March 2, 2020, doing well and recovering nicely. He had neither complaints nor troubles and was ready to go back to full duty work. Bowen discharged him to same (PX 4., 6-8, Tr 28)

Abbatiello continues to work full duty as a fireman for Morton Grove, making more money than before October 18, 2019. (Tr 18) His left knee currently feels “great”, and he makes no complaints (Tr 18, 28). He takes no prescription medication (Tr 29). All his bills connected to care and treatment regarding his left knee, \$20, 296.72, were paid by Blue Cross, his group health through Morton Grove (Tr 19,20 PX 1 p 2)

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

Within a few days of the injury, Abbatiello made a video recreating it, demonstrating not only the precise mechanics but also narrating them. (Tr. 24, 26, RX 3) There was no objection to the admission of the video (Tr 25, 29, 40). Dr Kevin Walsh, “Walsh” testified for Morton Grove under Section 12 of the Act that this “videotape certainly does not support a twisting injury to the knee.” (RX 1 p 5). Consequently Abbatiello “did not” in Walsh’s opinion “tear his meniscus with the injury described.” (RX 1 p. 5)

Is there evidence contradicting Walsh’s conclusion that a torn medial meniscus, which he agrees Abbatiello suffered, requires “twisting or torquing of the knee.”? (RX 1. P. 6). The record is devoid of any. Abbatiello offers no basis for deciding the meniscus can rupture without rotation.

To the contrary the treating physicians at Associates. and Bowen as well, all have twisting movements noted in their charts the references were injected into their recitations subjectively by Abbatiello. They don’t themselves directly offer opinions on causation, and they certainly don’t vouchsafe evaluations on whether the trauma graphically depicted in the video could have caused or aggravated Abbatiello’s meniscal tear. Conversely, Walsh glosses over any consideration of whether the tear could be degenerative in nature. If it wasn’t torque, and the joint is not badly enough deteriorated, of what provenance the tear?

There is no direct medical opinion in evidence connecting Abbatiello’s condition of ill-being and resulting care to the trauma which occurred here. Abbatiello simply didn’t offer one. But he did prove that he had not had symptoms nor undergone care for his left knee before the trauma. Neither was he disabled. All these reversals took place after it. “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 an employee’s injury” International Harvester v. Industrial Comm’n, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908, 66 Ill. Dec. 347 (1982)

While Morton Grove offered a direct medical opinion on the insufficiency of the trauma to cause the tear, that opinion is flawed for its shallow, indeed nonexistent, consideration, of the role of degeneration as an etiology. The inference is that Walsh didn't wish to bring it up; that he was, in fact, unable to opine the tear was degenerative.

Indeed, avoidance is a theme. Abbatiello avoids having his physicians view the video. Morton Grove avoids having its expert give an affirmative opinion on whether the tear is degenerative. And it avoids asking unqualified questions about what is narrated on the video. Instead of inquiring simply whether a twisting injury is described the question is posed whether one is "specifically" described. (Tr. 26) Why the qualifier?

In the end, inferences are the order of the day on the issue of causal connection. In drawing them, mind is paid to the fundamental proposition that the Illinois Workers Compensation Act, 820 ILCS 305/1 et seq. 'the Act' "is a humane law of a remedial nature whose fundamental purposes is to protect employees by providing efficient remedies and prompt and equitable compensation for their injuries" *Contreras v Industrial Comm'n (City Foods)*, 306 Ill App. 3d 1071, 715 N.E. 2d 701, 240 Ill. Dec. 14 (First Dist. 1999). Abbatiello's left foot slipped off the step abruptly, unrestrainedly, and struck hard, indeed "jamming" it "onto the porch" (RX 1; RX, 2 Tr 21). From the unrestricted downwards flight of Abbatiello left leg an inference can be drawn that the appendage twisted as the foot smacked.

The issue of causal connection is found in Abbatiello's favor,

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:

Morton Grove is liable to Abbatiello for the costs of all reasonable and necessary medical care and treatment provided to him on account of the accidental injury he sustained herein totaling \$20, 296. 72 as specified at p. 2 of PX 1. To the extent that it has already paid this amount to providers in Abbatiello's behalf (Tr. 19, 20), credit is awarded.

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 "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.

Regarding subsection (i) of §8.1b(b), neither party has submitted a permanent partial disability impairment report and/or opinion evidence. No weight is attributed to this factor.

Regarding subsection (ii) of §8.1b(b), Abbatiello was a fireman for Morton Grove when he got hurt and after recovering from his injuries herein for 17 1/7 weeks (Arb Ex 1 Para. 8, Tr.6) he returned to that job, full duty performing without complaint; to the contrary, his left knee feels "great:" (Tr. 18, 19). This factor reflects he has suffered no disability and great weight is accorded it factor.

Regarding subsection (iii) of §8.1b(b), Abbatiello was 49 years old at the time of the accident. (Arb Ex 1 Para 6) Abbatiello is not feeling any pain nor suffering restrictions so he will not be experiencing discomfort over a long life. This factor reflects he suffered no disability and medium weight is accorded it.

Regarding subsection (iv) of §8.1b(b), Abbatiello is making more now than he was before he got hurt (Tr 18). This factor reflects he suffered no disability. It militates in favor of finding no permanent loss (or any loss for that matter)

Regarding subsection (v) of §8.1b(b), Abbatiello hasn't sought care, let alone been seen, by a health care provider since March 2, 2020. At that time, he admitted to his treating surgeon he was slowly improving, he had "(n)o complaints or troubles" and he was "ready to go back to work." The surgeon, Bowen, observed Abbatiello "is doing well and **recovered** nicely . . ." (Emphasis added.) He was "doing well postop" Bowen ordered Abbatiello to "return to work without restrictions" and to "(a)dvance activity as tolerated." There is absolutely no evidence of any activity whatsoever that Abbatiello cannot tolerate. (PX 4. 6,7) Great weight is placed upon this factor.

Abbateiello presents as a subjectively and objectively fit, 49-year-old working a physically demanding job without limitation or complaint. By his own admission he suffered no functional incapacity. He has not sought medical for 3.5 years. He's not limited in any manner. 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 0 % loss of use of his left leg under the Act. (Cf Stanley v Fresh Express 19 IWC 395, LEXIS 564 (2019) worker makes excellent recovery from surgery for a torn meniscus, including return to physically demanding job , with lengthy lack of follow up care and Commission pointedly observes his "testimony of experiencing only occasional stiffness and some feeling of tenderness is all that prevents . . . (a) finding that he experienced a recovery without any residual aftereffects. Abbateiello gave no such testimony here."

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Morton Grove is liable to Abbateiello for the costs of all reasonable and necessary medical care and treatment provided to him on account of the accidental injury he sustained herein totaling \$20, 296. 72 as specified at p. 2 of PX 1. To the extent that it has already paid this amount to providers in Abbateiello's behalf (Tr. 19, 20), credit is awarded.

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	20WC016844
Case Name	Sylvia Jones (Widow of Antoine Jones, Deceased) v. Cook County Sheriff's Dept.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	<i>Corrected Decision</i>
Commission Decision Number	[24IWCC0227]
Number of Pages of Decision	19
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Frank Sommario
Respondent Attorney	Jynnifer Cotharn

DATE FILED: 5/20/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input checked="" type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SYLVIA JONES, widow of Antoine Jones (deceased),

Petitioner,

vs.

NO: 20 WC 16844
24IWCC0227

COOK COUNTY SHERIFF'S DEPARTMENT,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

This matter comes before the Commission pursuant to Respondent's Petition for Review of the May 16, 2023 Decision of the Arbitrator¹. Therein, the Arbitrator found Petitioner proved she is the surviving spouse of Decedent Antoine Jones. The Arbitrator awarded death benefits under §7, commencing May 11, 2020, and imposed §19(l) penalties of \$10,000, §19(k) penalties of \$64,170.47, and §16 attorney's fees of \$14,834.09. On its timely filed Petition for Review, Respondent identified the following issues: Decedent's marital status, Decedent's dependents, permanent disability, penalties under §19(l) and §19(k), and attorney's fees under §16.

On September 19, 2023, while the matter was pending on Review, Petitioner filed a further petition for §19(k) penalties and §16 attorney's fees. Therein, Petitioner noted Respondent's Statement of Exceptions did not advance any argument on the underlying award of death benefits, yet no death benefits had been issued to Petitioner; Petitioner alleged Respondent's refusal to institute payment of the continually accruing death benefits "despite the fact that Respondent has

¹ The Commission observes the matter was brought to trial pursuant to a Petition for Immediate Hearing Under §19(b). As the claim is for death benefits relating to a fatal injury, the Commission corrects the scrivener's error to reflect the proper classification is Petition for Immediate Hearing for Death Benefits. Given the nature of the case, there is no need to remand the matter to the Arbitrator.

not sought review of the Award of the death benefits” merited the imposition of additional penalties and attorney’s fees.

On December 14, 2023, a hearing on Petitioner’s post-Decision penalties petition was held before Commissioner Deborah Simpson, with Counsel for both parties providing argument as well as supporting documentary evidence. The petition was taken under advisement, with the Commission’s ruling to issue with the underlying Decision and Opinion on Review.

Notice having been given to all parties, the Commission, after considering all issues and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, and, additionally, denies Petitioner’s September 19, 2023 petition under §19(k) and §16. The Commission first emphasizes Respondent did in fact seek review of the underlying death benefits on its Petition for Review; Respondent’s subsequent failure to argue the issue in its Statement of Exceptions does not remove the issue from consideration on Review. The Commission further observes that during the December 14, 2023 hearing, Respondent’s Counsel made multiple affirmative statements on the record that Respondent had commenced paying death benefits:

Ms. Bates-Cotharn: Respondent also wishes to add that despite its position, which we firmly believe in, we have agreed to in good faith pay the award. For whatever reason, it’s been delayed through the comptroller, but the lump sum payment of the award is pending. And we have begun payment of the weekly benefits to opposing counsel. (December 14, 2023 Transcript, p. 8);

Ms. Bates-Cotharn: ...benefits have begun for Petitioner. He has received the first installment of the death benefits, and I can attest that the other payment is forthcoming. There has been a delay, but I have indicated to opposing counsel as he has stated that the lump sum payment is pending. (December 14, 2023 Transcript, p. 24).

Counsel is an officer of the court and the Commission accepts her attestations regarding Respondent’s issuance of death benefits as truthful. The Commission notes all practicing attorneys are bound by the Rules of Professional Conduct, including the rule requiring candor toward the tribunal: Rule 3.3 of the Illinois Rules of Professional Conduct provides, “A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.” *Ill. R. Prof. Cond. 3.3(a)(1) (eff. Jan. 1, 2010)*.

While the Commission agrees with the Arbitrator and finds Respondent failed to prove its conduct prior to the arbitration hearing was reasonable under the circumstances and therefore warranted the imposition of penalties and attorney’s fees, we do not find Respondent’s conduct while the matter pended on Review was unreasonable or vexatious. As such, we decline to impose an additional award of §19(k) penalties and §16 attorney’s fees. The September 19, 2023 penalties petition is hereby denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 16, 2023, as amended above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner death benefits of \$961.87 per week commencing on May 11, 2020 and continuing until \$500,000 or 25 years of benefits have been paid, whichever is greater, as provided in §7 of the Act. If Petitioner remarries, Respondent shall pay her a lump sum equal to two years of compensation benefits; all further rights of Petitioner shall be extinguished. Commencing on the second July 15 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 BY THE COMMISSION that Respondent pay to Petitioner §19(l) penalties in the amount of \$10,000.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §19(k) penalties in the amount of \$64,170.47.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner §16 attorney’s fees in the amount of \$14,834.09.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's September 19, 2023 penalties petition is denied.

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

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

Under §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.

May 20, 2024

RAW/mck

O: 4/10/24

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/s/ Raychel A. Wesley

/s/ Stephen J. Mathis

/s/ Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	20WC016844
Case Name	Sylvia Jones widow of Antoine Jones (deceased) v. Cook County Sheriff's Dept.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Frank Sommario
Respondent Attorney	Jynnifer Bates-Cotharn

DATE FILED: 5/16/2023

THE INTEREST RATE FOR THE WEEK OF MAY 16, 2023 4.98%

/s/ Crystal Caison, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Sylvia Jones, widow of Antoine Jones (deceased)

Employee/Petitioner

v.

Cook County Sheriff's Dept.

Employer/Respondent

Case # **20** WC **16844**

Consolidated cases: **n/a**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago**, on **November 30, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On March 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 \$75,025.60; the average weekly wage was \$1,442.80.

On the date of accident, Petitioner was 51 years of age, *married* 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 \$5,907.34 for TTD, \$0.00 for TPD, \$8,000.00 for other benefits, for a total credit of \$13,907.34.

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

ORDER

The Arbitrator finds that Petitioner has met her burden of proving that she is the surviving spouse, sole beneficiary and heir to which death benefits are payable in this claim.

The Arbitrator finds that the Respondent shall pay death benefits, commencing May 11, 2020, in the amount of \$961.87 per week to the surviving spouse, Sylvia Jones, on her behalf until \$500,000 has been paid or 25 years, whichever is greater, because the injury caused the employee's death, as provided in Section 7 of the Act.

If the surviving spouse remarries, Respondent shall pay the surviving spouse a lump sum equal to two years of compensation benefits; all further rights of the surviving spouse shall be extinguished.

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

The Arbitrator awards \$10,000 under Section 19(1) and \$64,170.47 under Section 19(k) and \$14,834.09 in attorney's fees and costs under Section 16 against Respondent, to be paid directly to Petitioner.

The parties stipulated that Respondent shall be given a credit in the amount of \$13,907.34.

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

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

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

Crystal L. Caison

Signature of Arbitrator

MAY 16, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Sylvia Jones, widow of Antoine Jones (deceased),)
)
 Petitioner,)
)
 v.)
) Case No. 20WC16844
 Cook County Sheriff's Department,)
)
)
 Respondent.)

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

At trial, the Parties stipulated that Respondent paid \$5,907.34 in TTD and \$8,000.00 in burial expenses. (AX 1). The Parties further stipulated that Respondent shall be given a credit in the amount of \$13,907.34.

Sylvia Jones, Petitioner, testified that on March 29, 2020, she was married to the decedent, Antoine Jones. (T. 27) She testified that they were married on August 14, 1999. (T. 27, PX. 3) Petitioner testified that decedent was employed with Respondent Cook County on March 29, 2020 as a Deputy Sheriff Correctional Officer. Petitioner testified that the decedent passed away on May 10, 2020. (T. 34, 50) The decedent's cause of death as listed as acute respiratory distress syndrome and Novel Corona COVID-19 virus infection. (T. 35) Petitioner testified that decedent had three children at the time of death, Pierre Jones, Darrell Jones and Tevin Jones. (T. 36-37) Decedent

also had two stepchildren, Sophia Bellamy Sheets and Jessie Bellamy, at the time of his death. (T. 36) Ms. Sheets and Mr. Bellamy are Petitioner's children. (T. 36)

Petitioner testified that decedent worked at the jail on March 23, 24, and 25 of 2020, and he worked in proximity to other co-workers and inmates at that time. (T. 45) Decedent did not feel well on March 26, 2020, and he called off sick from work. (T. 47) On March 29, 2020, he presented to Advocate Christ Medical Center, where he tested positive for COVID-19. (T. 47, PX. 12) Petitioner left the hospital on April 11, 2020. (T. 49) Petitioner was released on request and against the medical advice of the Advocate Christ Medical Center providers. (PX. 12) Petitioner returned and was re-admitted to the hospital on April 13, 2020. (T.49, PX. 12) Decedent's condition worsened, and he passed away on May 10, 2020. (T. 50-51, PX. 12)

Petitioner testified that she was paid sick time, vacation pay, COVID pay and all remaining accrued vacation and sick pay for decedent. (T. 50, PX. 7, PX. 8) She received these benefits through May 29, 2020. (T. 50)

Petitioner testified that she was not paid burial expenses on May 10, 2020. (T. 52) On July 9, 2020, Respondent requested a copy of decedent's medical records from Petitioner's attorney. (PX. 25) Respondent also advised that a prove up hearing would be required for risk management to pay benefits. (PX. 25) On July 10, 2020, Respondent requested a filed Application for Benefits and reiterated risk management's requirement for a prove up hearing. (PX. 25) On July 16, 2020, Petitioner filed an Application for Benefits on behalf of decedent. (PX. 6) On August 11, 2020, Respondent paid funeral and burial expenses totaling \$8,000.00 to Petitioner. (T. 57, PX. 11, RX. 3)

On August 24, 2020, Respondent reiterated its position that risk management required a prove up for purposes of identifying heirs and beneficiaries to which death benefits should be paid. (PX. 25) On September 18, 2020, Respondent advised Petitioner's attorney that causal connection was at issue because the records in Respondent's file revealed that decedent had left the hospital "against medical advice" before his passing, and there was a legitimate basis to request a records review to

address the causation issue. Respondent also confirmed subpoena of Petitioner's complete records in preparation for the records review. (PX. 25)

On August 25, 2020, Petitioner's attorney requested confirmation of Respondent's position regarding a prove up hearing or whether there would be any objections. (PX. 25: 223)

On September 23, 2020, Petitioner tendered 3,754 pages of medical records for Respondent to review in connection with this claim. (PX. 25)

On January 14, 2021, Respondent confirmed with Petitioner's attorney receipt of the subpoenaed records and acknowledged that the records review was pending to address the causal connection issue. (PX. 25) On March 29, 2021, counsels for the parties exchanged emails wherein Respondent confirmed that the records review report was not yet available. (PX. 25)

On May 21, 2021, Dr. John Koehler drafted a records review report to address whether COVID-19 was causally related to decedent's death. (PX. 25) Dr. Koehler opined that the decedent's cause of death was acute rectal bleeding, uncontrollable rectal bleeding and cardiovascular collapse. (PX. 25) He noted that while decedent had multiple, pre-existing medical issues, including hypertension, diabetes, obesity, hyperlipidemia, chronic renal failure, the COVID-19 infection "complicated all of those" conditions. Dr. Koehler opined that COVID-19 was the primary cause of death. (PX. 25) Dr. Koehler explained that decedent's primary cause of death was COVID-19 due to his "profound hypoxia" which is low oxygen levels in body tissues, and decedent had multi-organ system failure decompensation. (PX. 25) Dr. Koehler opined that decedent's April 11, 2020 signing out "against medical advice" was not helpful to his overall condition, but he appeared to recover and stabilize. However, he had ongoing tissue hypoxemia, anemia and ultimately GI bleed. (PX. 25)

On June 2, 2021 Respondent forwarded Dr. Koehler's report to Petitioner's attorney and agreed to pay all accrued temporary total disability benefits accrued to Petitioner through May 10, 2020, the date of Petitioner's passing. (PX. 25: 144-157) Respondent did not agree to pay death benefits

(PX. 25: 144) Respondent did not disclose or confirm its position on the accident issue. (PX. 25: 144)

On June 21, 2021, Respondent followed up with the Petitioner's attorney to request W-9 information for the decedent's estate. (PX. 25) This information was required to pay the outstanding temporary total disability benefits discussed in the June 2, 2021 letter. (PX. 25)

On July 8, 2021, Respondent renewed its request to Petitioner's attorney for the W-9 information for the decedent's estate to pay accrued TTD benefits. (PX. 25) On August 5, 2021, the Petitioner's attorney advised that he was awaiting confirmation of the Petitioner's estate EIN number to resolve the TTD issue. (PX. 25) On September 7, 2021, Respondent advised Petitioner's attorney that TTD had been issued to decedent's estate. (PX. 25) An overpayment was noted on September 9, 2021, and Respondent advised of its intent to seek credit for the overpayment. (RX. 1, PX. 25)

On July 28, 2021, Blue Cross Blue Shield (BCBS) confirmed that there was no subrogation interest for bills relating to decedent's hospitalization. (PX. 14) Petitioner also received confirmation that there are zero balances for treatment rendered after payments made by BCBS.

On August 5, 2021, Petitioner's attorney requested confirmation of whether Respondent would agree to conduct a prove up hearing, or if any or all issues would be disputed at trial. (PX. 25) Respondent did not waive its accident dispute.

This matter was set for a trial date certain on October 5, 2021. (RX. 1, RX. 2, PX. 25: 231) Respondent's attorney confirmed that the client wished to proceed with trial on all issues. Respondent was prepared to present evidence to dispute accident, and Respondent also had one witness, Michelle Bryant-Smith, who was the Director of Risk Management for the Cook County Sheriff's Office at that time. (PX. 25: 229) Ms. Bryant-Smith was scheduled to testify on the accident issue in an effort to rebut the presumption under the March 20, 2020 Executive Order. (PX. 25: 229) Respondent's attorney noted that during the course of trial preparation, the client confirmed there was a basis to legitimately dispute accident. (PX. 25: 229) Respondent was prepared to proceed to hearing. (RX. 1, RX. 2)

On October 5, 2021, Petitioner’s attorney requested a continuance of this matter. (PX. 25: 231) He advised of the stipulation sheets and requests for hearing that were tendered to Respondent with the inquiry of whether Respondent would agree to a prove up, and in the alternative, which elements of the case would be disputed at trial. (PX. 25: 231) He stated that this case “was no longer a prove up.” The Petitioner’s attorney requested a continuance to obtain a report from an expert. (RX. 25: 231) The Petitioner’s attorney moved forward with obtaining an expert opinion to address causal connection. (PX. 25: 231)

On May 12, 2022, Respondent’s attorney contacted Petitioner’s attorney with the request for an update regarding Petitioner’s readiness to proceed to hearing. (PX. 237) On May 16, 2022, he forwarded Respondent’s attorney a copy of Dr. Robert Harrison’s records review, which he stated was “consistent with [Respondent’s] Expert’s report.” (PX. 25: 235) Petitioner’s attorney requested confirmation of whether Respondent would agree to a “prove up” or if Respondent would be willing to depose Dr. Harrison. (PX. 25: 235) Respondent elected to cross examine Petitioner’s expert witness, and Respondent’s attorney advised Petitioner of its intent to cross examine Dr. Harrison. (PX. 25: 236)

On June 29, 2022, the parties conducted the evidence deposition of Dr. Robert Harrison. He testified consistently with the findings of his report; he opined that based on the “elevated risk” that correctional employees face in developing COVID-19, it is more likely than not that Petitioner was exposed to COVID at work and succumbed as a result of his exposure. (PX. 23)

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).

At arbitration, the Petitioner answered all questions asked of her and with no apparent attempt to evade the questions. Although Petitioner was visibly upset talking about the decedent, she was sincere and credible.

The Arbitrator compared the Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. Therefore, the Arbitrator finds the Petitioner to be a credible witness.

Issue I, Petitioner's marital status at the time of accident, the Arbitrator finds as follows:

The Petitioner has the burden of proving entitlement to benefits under Section 7(a) of the Act. Petitioner testified that she and decedent were married on August 14, 1999, and that decedent's date of death was May 10, 2020. (T. 34) Petitioner presented a marriage license showing her wedding date, and a death certificate for decedent. (PX. 3, PX. 5) Petitioner testified that on decedent's March 29, 2020 date of accident, she was married to decedent. (T. 27)

The Petitioner testified that on March 29, 2020, decedent did not have any dependents under the age of eighteen. (T. 35) Petitioner testified that on March 29, 2020, decedent had three adult children: Pierre Jones, Darrell Jones and Tevin Jones (T. 36-37) Petitioner also testified that on March 29, 2020, decedent had two adult stepchildren who were petitioner's biological children: Sophia Bellamy Sheets and Jessie Bellamy. (T. 36) Petitioner testified none of the five children were dependents of the decedent on March 29, 2020. (T. 37) No other evidence establishing survivorship or beneficiary status, other than the surviving spouse, Sylvia Jones, was presented by petitioner or any other individuals at the time trial.

Accordingly, the Arbitrator finds that Petitioner has met her burden of proving that she is the surviving spouse, sole beneficiary and heir to which death benefits are payable in this claim.

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

At trial, the parties stipulated to the accident arising out of and in the course of employment and that Petitioners' death was causally connected to his COVID-19 exposure. (AX 1 & PX 6).

As such, the Arbitrator finds that the Respondent shall pay death benefits, commencing May 11, 2020, in the amount of \$961.87 per week to the surviving spouse, Sylvia Jones, on her behalf until \$500,000 has been paid or 25 years, whichever is greater, because the injury caused the employee's death, as provided in Section 7 of the Act.

Issue M, whether penalties or fees should be imposed upon Respondent, the Arbitrator finds as follows:

With regards to Section 19(1), the Act reads,

In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of \$ 30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed \$ 10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.

820 ILCS 305/19(1)

Case law dictates that penalties authorized by Section 19(1) serve as a late fee and apply whenever the employer or its carrier simply fails or neglects to make payment or unreasonably delays payment "without good and just cause." McMahan v. Industrial Comm'n, 702 N.E.2d 545 at 553 (1998). If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of Section 19(1) penalties is mandatory. *Id* (emphasis added).

The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. Board of Education of the City of Chicago v. Industrial Comm'n, 442 N.E.2d 861 at 865 (1982). The employer has the burden of justifying the delay. *Id*. 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*.

As the Arbitrator finds that Respondent was unable to show an adequate justification for its delay, an award of Section 19(1) penalties is mandatory. The Arbitrator fines Respondent \$30.00 a day starting May 11, 2020. As of the date of trial, November 30, 2022, 934 days had passed. \$30.00 per day multiplied by 934 days equals \$28,020. However, Section 19(1) caps penalties at \$ 10,000.00. Therefore, the Arbitrator imposes penalties of \$ 10,000.00 under Section 19(1) against Respondent, to be paid directly to Petitioner.

Section 19(k) Penalties

The Act reads,

In cases 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. When determining whether this subsection (k) shall

apply, the Commission shall consider whether an Arbitrator has determined that the claim is not compensable or whether the employer has made payments under Section 8(j).

820 ILCS 305/19(k).

While Section 19(1) penalties apply when Respondent delays payment "without good and just cause," Section 19(k) penalties require a lack of good faith. The Commission has the discretion to impose Section 19(k) penalties where there is not only a delay in payment, but the delay was in bad faith. McMahan, 702 N.E.2d at 552 citing Smith v. Industrial Comm'n, 525 N.E.2d 81 (1988). Good faith must be assessed objectively; thus, the question is whether an employer's denial of benefits was reasonable. *Id.* The employer bears the burden of demonstrating that its denial of benefits was reasonable. Residential Carpentry, Inc. v. Workers' Compensation Comm'n, 910 N.E.2d 109 at 117 (2009).

Because Respondent's behavior was in bad faith, penalties under Section 19(k) are warranted. Per fee schedule, Respondent is liable for \$128,340.94 (133 & 3/7 weeks), 50% of \$128,340.94, is \$64,170.47. As a result, the Arbitrator fines Respondent \$64,170.47 in penalties under Section 19(k), to be paid to Petitioner directly.

Section 16 Fees

Section 16 reads,

Whenever the Commission shall find that the employer . . . or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act, or 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

Both Sections 16 and 19(k) are similar in that they require an unreasonable or vexatious delay in payment. Vulcan Materials Co. v. Industrial Comm'n, 842 N.E.2d 204 (2005). On May 21, 2021, Respondent received a records review report from Dr. John Koehler to address whether COVID-19 was causally related to decedent's death. Although the decedent had pre-existing medical issues, Dr. Koehler opined that COVID-19 was the primary cause of death. On October 5, 2021, the Respondent's attorney confirmed that the client wished to proceed with trial on all issues, as Respondent had a witness scheduled to testify on the accident issue to rebut the presumption under the March 20, 2020, Executive Order.

On August 5, 2021, when Petitioner's attorney requested confirmation of the disputed issues at trial, the Respondent did not waive its accident dispute. The uncontroverted primary cause of decedent's death was COVID-19. While the Respondent had a valid reason for requiring strict proof as to decedent's beneficiaries and a legal right to rebut the presumption under the March 20, 2020, Executive Order, contesting all issues was not reasonable. Moreover, Respondent's position in contesting all issues presented no real controversy and was merely vexatious in light of Dr. Koehler's findings in his records review report of May 21, 2021.

Based on the Arbitrator's prior findings and the record as a whole, the Arbitrator finds that Respondent was unreasonable and vexatious.

Since Respondent's delay was unreasonable and vexatious, the Arbitrator will assess attorney's fees and costs under Section 16, which are 20% of the total penalties under Section 19(1) and Section 19(k). The Arbitrator awards \$10,000 under Section 19(1) and \$64,170.47 under Section 19(k), which totals \$74,170.47. 20% of \$74,170.47 is \$14,834.09. As a result, the Arbitrator imposes \$14,834.09 in attorney's fees and costs under Section 16 against Respondent, to be paid directly to Petitioner.

Taking the record as a whole, the Arbitrator fines Respondent a total of \$89,004.56 in fees, costs, and penalties to be paid directly to Petitioner.

Issue O, Is Petitioner entitled to continued death benefits and Rate Adjustment Fund (RAF) benefits, the Arbitrator finds as follows:

Based on the Arbitrator's prior findings and the record as a whole, the Arbitrator finds that Petitioner is entitled to continued death benefits and Rate Adjustment Fund benefits as specified under issue (L) above.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison