ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC011573
Case Name	Herbert Bade v. Westbrook West Condominium
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	***Corrected Decision***
Commission Decision Number	**24IWCC0470**
Number of Pages of Decision	8
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Brent Eames
Respondent Attorney	Elaine Newquist

DATE FILED: 11/20/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HENRY BADE,

Petitioner,

vs. NO: 20 WC 011573

WESTBROOK WEST CONDOMINIUM,

Respondent.

CORRECTED DECISION AND ORDER ON REVIEW

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

This matter arises from a work-related accident sustained by Petitioner on December 18, 2018, involving a reinjury to his lower back following a slip and fall work accident that occurred on October 10, 2018. Petitioner had been employed by Respondent for 49 years as a maintenance engineer. Respondent's property extends over 26 acres consisting of 24-35 units, four parking lots and over two miles of sidewalks. As part of his duties Petitioner was responsible for snow removal and spreading salt.

Petitioner testified that on December 18, 2018, he reinjured his low back while filling a salt spreader. The salt spreader was mounted on the back of a plow truck and was about five feet above the ground. According to Petitioner's testimony he had filled the spreader with 23-24 50-lb. bags of salt when he suddenly experienced a sharp pain in his low back that caused him to drop a bag of salt. Petitioner was then unable to continue lifting the salt bags. Petitioner testified that he went to the office of Ryan Newland, Respondent's property manager on December 18,

2018, and reported the accident. Bill Bortilotti, the condominium board president was also present at the time Petitioner reported the work accident. Petitioner advised Mr. Newland that he was not able to load any more bags of salt due to back pain.

Petitioner testified that after reporting the accident Mr. Newland told him that he had plenty of time off coming and that he should take accrued time to get himself better. At that time Mr. Newland discussed the possibility of hiring an outside te contractor to perform snow removal.

At hearing Mr. Newland denied that Petitioner reported hurting his back while lifting bags of salt on December 18, 2018. According to Mr. Newland Respondent condominium association contracted with an outside vendor in 2019 to perform snow removal formerly done by Petitioner. Mr. Newland expressed the opinion that snow removal was contracted out at that time because it was a large property and a lot of work. Also, the maintenance workers were getting up in age. Mr. Newland asserted that he first became aware of Petitioner's December 18, 2018, work accident in June 2020.

Mr. Bortilotti testified that he had no memory of being present during any conversation between Petitioner and Mr. Newland when a work accident was discussed. Mr. Bortilotti had no responsibility for workers' compensation issues.

Petitioner testified at hearing that he took extended accrued time off commencing December 19, 2018, and was off work for 8 weeks. He self-treated his back pain with aspirin and Ben-Gay, but the pain persisted. He sought medical care from LaGrange Family Medical. On January 15, 2019, after complaining of low back pain Petitioner had an x-ray of the lumbar spine that revealed moderate to severe degenerative joint disease at L4-5, and degenerative joint disease at L5-S1.

On February 11, 2019, Petitioner was seen at Advocate Medical Group for complaints of low back and anterior thigh pain. He attributed the onset of symptoms to his slip and fall work accident in October 2018 and reported that his symptoms were aggravated by the lifting of 50 lb. salt bags this winter. He rated his pain at 10/10. An MRI was performed. He was referred to Gateway Pain Clinic and came under the care of Dr. Hong.

On March 6, 2019, Petitioner underwent bilateral L4-5 and L5-S1 transforaminal epidural steroid injections which were effective for a short time, but the pain returned. Dr. Hong subsequently referred Petitioner to Dr. Karahalios.

Petitioner first saw Dr. Karahalios on August 15, 2019. Dr. Karahalios ordered another lumbar MRI and administered a second epidural steroid injection which provided relief for only 3-4 days. On February 13, 2020, Dr. Karahalios recommended surgery consisting of a bilateral laminal foraminotomy at L4-5 and L5-S1. Petitioner continued working full-time until the date of surgery.

On February 19, 2020, Petitioner underwent the L4-5 laminectomy and bilateral foraminotomies at Advocate Lutheran General Hospital. Petitioner used his own accrued benefit time for the surgery and post-operative recovery. Dr. Karahalios' April 2, 2020, record reflects that Petitioner was markedly improved following surgery and he recommended physical therapy.

The clinical notes on April 30, 2020, document that Petitioner was continuing to have low back pain and difficulty standing up straight. Dr. Karahalios ordered additional physical therapy.

On May 5, 2020, Dr. Karahalios' notes document that Petitioner's wife telephoned and informed him that Petitioner's employer was requiring him to return to work on May 6, 2020, or he would lose his job. Petitioner needed a letter allowing return to work and stating restrictions. Dr. Karahalios prepared a note releasing Petitioner to light duty stating, "Herbert is able to return to work as of 5-6-20 with the following restrictions: No lifting over 10-15 pounds or overly strenuous activity."

Mr. Newland acknowledged contacting Petitioner after surgery and advising his sick time and vacation time was expiring and that he needed a physician's note to return to work. Petitioner testified that after returning to work Respondent would not honor his light duty restrictions. Petitioner was required to carry heavy items, climb ladders, and perform overhead reaching which exacerbated his lower back pain.

On May 7, 2020, Dr. Karahalios returned a call to Petitioner's wife. She reported to Dr. Karahalios that Petitioner had been having increased low back pain since resumption of work. Dr. Karahalios placed orders for a new lumbar MRI.

Petitioner sustained a third work-related accident on May 13, 2020. Petitioner testified that the basement of a building on Respondent's property flooded, and he was using a wet vac to remove the water. He carried the wet vac which contained 5-6 gallons of water 50 feet to the boiler room and lifted the device to empty it into a wash tub when he experienced a sharp pain in his back. He could then no longer lift the wet vac. He testified that the pain he experienced at that time of the May 6, 2020, incident was constant and never went away.

Petitioner testified that he spoke to Mr. Newland and to Sue, the office manager and again reported the wet vac incident. At that time Sue gave him an accident report which Petitioner completed. May 13, 2020, was the last day Petitioner worked for Respondent.

The Arbitrator found that Petitioner proved by the preponderance of the evidence that he did sustain an accident arising out of and in the course of his employment on December 18, 2018, injuring his low back while lifting a 50 lb. bag of salt. The Arbitrator determined that Petitioner's trial testimony was credible and consistent with the history of the injury that he

provided to Dr. Karahalios and Dr. Hong citing *Shell Oil v. Industrial Comm'n.* 2 Ill.2d 590, 592; 119 N.E.2d 224, 226 (1954).

The Arbitrator denied benefits in the December 18, 2018, work accident on the basis that Petitioner failed to provide Respondent with the requisite statutory notice. He found that the notice requirement was jurisdictional pursuant to Section 6 (C) of the Act. Section 6 (C) of the Act provides that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident.

Section 6(C)(2) states that "[N]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceeding on arbitration or otherwise by the employee unless the employer proves that he was unduly prejudiced in such proceeding by such defect or inaccuracy." 820 ILCS 305/6(c) (West 2004). The giving of notice under the Act is jurisdictional and a prerequisite of the right to maintain an action under the Act. However, the legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering v. Workers' Compensation Comm'n,* 870 N.E.2d 821 (2007).

The Commission having reviewed the facts and the law finds Petitioner proved by a preponderance of the evidence that he satisfied the notice requirement. The Commission finds that Petitioner's testimony concerning notice was credible. The evidence supports that Respondent did receive notice of Petitioner's December 18, 2018, work accident as evidenced by the conduct of Respondent in the days following the accident. Specifically, Respondent's agent, Mr. Newland encouraged Petitioner to take extended, accrued time off commencing the day following the accident, i.e. December 19, 2018. That unplanned leave extended for 8 weeks.

The Commission notes that it is not a usual business practice to permit unplanned leave for such an extended time to an employee except in exigent circumstances. This impresses the Commission as supportive of knowledge by Respondent that Petitioner had sustained an injury when he was lifting the salt bags.

In addition, Respondent contracted with an outside vendor to perform snow removal at the property in 2019 following Petitioner's work accident. The Commission finds that this was not mere coincidence and reflects remediation of employment activities consistent with knowledge that Petitioner had sustained a work accident while loading 50 lb. bags of salt into the salt spreader. The timing of the switch to an outside vendor further corroborates Petitioner's testimony that he complained to Mr. Newland regarding his physical inability to continue performing the salting on the condominium premises.

Respondent has not and cannot demonstrate that it was prejudiced based on its assertion that it did not receive notice until June 2020. The evidence supports that Respondent did in fact receive notice on December 18, 2018. Respondent did not maintain written policies and procedures for the reporting of work accidents. Mr. Newland did not provide an accident report form to Petitioner on December 18, 2018. It may not benefit from that failure in the presence of

the evidence of knowledge discussed above that Petitioner had indeed sustained an injury in a work-related accident.

Finally, Petitioner's testimony was that upon reporting his lower back injury to the property manager, he was encouraged to utilize his vacation time to rest up and feel better following the salting incident. Petitioner had ample opportunity to send Petitioner to one or more doctors of their choosing, but instead chose to simply encourage him to utilize personal time and get healthy. It cannot be said that Respondent was somehow prejudiced under these circumstances.

Petitioner expressed complaints of low back pain to LaGrange Family Medical on January 11, 2019, and underwent an x-ray of the lumbar spine which showed arthritis. On February 11, 2019, Petitioner consulted Advocate Medical Group and reported that he had aggravated his back pain when he was lifting 50 lb. salt bags.

Having reversed the Arbitrator's finding on notice the Commission turns now to the issue of causal connection. Petitioner was first seen by Dr. Dean Karahalios on August 15, 2019, on referral from his pain management specialist Dr. Hong.

The evidence deposition of Dr. Dean Karahalios was taken on January 28, 2022, and was entered into evidence as PX13. Dr. Karahalios testified that the lifting of bags of salt was a competent mechanism of injury to cause an aggravation of Petitioner's lumbar condition by putting stress on the spine. The structures that support the spine are less competent than they would be absent degenerative joint disease. The repetitive stressful activities caused or contributed to the condition of ill-being in Petitioner's lower back.

Dr. Karahalios performed bilateral L4-L5 laminectomies and l4-l5 bilateral laminoforaminotomies on Petitioner at Advocate Lutheran General Hospital on February 19, 2020, for his diagnosis of bilateral foraminal stenosis. Respondent's workers' compensation carrier denied coverage. Petitioner submitted his medical bills through his group health insurance. He used accrued vacation time for his post-operative recovery.

Based upon the foregoing, the clinical notes, records, sworn testimony of Dr. Karahalios, and the greater weight of the evidence support the conclusion that Petitioner's current condition of ill being is causally connected to the work accident of December 18, 2018. The Commission hereby awards temporary total disability benefits commencing February 19, 2020, through May 6, 2020, at a rate of $946.67 per week for 12 4/7 weeks for a lump sum totaling $11,900.99.

The Commission awards medical expenses including AMITA Health Adventist ($1,344.00); Suburban Radiology ($118.00); Advocate Healthcare ($19,101.00); Advocate Lutheran General ($35,711.68); Advocate Good Samaritan ($4,115.00); Integrated Imaging ($678.00); Gateway Spine & Pain Physicians ($9,142.00); Doctors of Physical Therapy

($2,527.81); and Midwest Diagnostic Pathology ($32.00) as provided in Sections 8(a) and 8.2 of the Act.

The Commission further awards temporary total disability benefits commencing February 19, 2020, to May 6, 2020, in the amount of $946.67 per week representing 12 4/7 weeks, the date of surgery through the date Petitioner was released back to work by Dr. Karahalios with light duty restrictions.

For the foregoing reasons the Commission reverses the Arbitrator's ruling on the issue of notice.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 17, 2023, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the lump sum of $11,900.99 representing 12 4/7 weeks commencing February 19, 2020, through May 6, 2020, that being the period of temporary total disability benefits at a rate of $946.67 per week.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner related unpaid medical bills in evidence including AMITA Health Adventist ($1,344.00); Suburban Radiology ($118.00); Advocate Healthcare ($19,101.00); Advocate Lutheran General ($35,711.68); Advocate Good Samaritan ($4,115.00); Integrated Imaging ($678.00); Gateway Spine & Pain Physicians ($9,142.00); Doctors of Physical Therapy ($2,527.81); and Midwest Diagnostic Pathology ($32.00) as provided in Sections 8(a) and 8.2 of the Act

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

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

Bond for removal 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.

November 20, 2024

SM/msb
o-8.7.24
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/s/ *Stephen J. Mathis*
Stephen J. Mathis

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

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