ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC031412
Case Name	Isabella Coleman v. Kraft-Heinz Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0514
Number of Pages of Decision	10
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Erin Phillips, Sarah Lukas
Respondent Attorney	James Clune

DATE FILED: 11/1/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ISABELLA COLEMAN,

Petitioner,

vs. NO: 22 WC 31412

KRAFT HEINZ,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and nature and extent, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 26, 2023, is hereby affirmed and adopted.

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 the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $6,800.00. 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 1, 2024

/s/ *Raychel A. Wesley*

RAW/wde

O: 9/4/24

43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC031412
Case Name	Isabella Coleman v. Kraft-Heinz Company
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Sarah Lukas, Erin Phillips
Respondent Attorney	James Clune

DATE FILED: 6/26/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 21, 2023 5.17%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Isabella Coleman
Employee/Petitioner

v.

Kraft-Heinz Company
Employer/Respondent

Case # **22** WC **031412**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, on **April 25, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **August 13, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**52,728.00**; the average weekly wage was $**1,014.00**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **0** dependent children.

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

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services. Respondent stipulated it is liable for payment of Petitioner's outstanding medical expenses in the amount of $3,682.38, which were itemized and attached to the Request for Hearing at arbitration. (AX1) Respondent further stipulated it is liable for any lien that has or may be asserted by Medicaid.

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

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

ORDER

Pursuant to the stipulation of the parties, Respondent shall pay Petitioner's outstanding medical expenses in the amount of $3,682.38, which were itemized and attached to the Request for Hearing at arbitration, pursuant to Section 8(a) of the Act and the Illinois medical fee schedule. (AX1) Respondent shall further satisfy any lien that has or may be asserted by Medicaid pursuant to the stipulation of the parties.

Respondent shall pay Petitioner the sum of $**608.40**/week for a period of **5** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused permanent partial disability to the extent of **1% loss of use of Petitioner's body as a whole**.

Respondent shall pay Petitioner compensation that has accrued from 10/25/22 through 4/25/23, and shall pay the remainder of the award, if any, in weekly payments.

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

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

JUNE 26, 2023

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) **SS**
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ISABELLA COLEMAN,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 22-WC-031412
	)	
KRAFT-HEINZ COMPANY,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on April 25, 2023 on all issues. The parties stipulated that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 8/13/22. Respondent stipulated on the record that it is liable for Petitioner's outstanding medical expenses in the amount of $3,682.38 which were itemized and attached to the Request for Hearing at arbitration. (AX1) The parties further stipulated on the record that no medical expenses have been paid by Respondent's group medical plan and that Respondent is liable for payment of any lien that has or may be asserted by Medicaid.

The issues in dispute are causal connection and the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 48 years old, married, with no dependent children at the time of accident. Petitioner is employed by Respondent as a machine operator. She testified that on 8/13/22 she was on the cleanup line spraying machines, floors, and walls with hot water and chemical foam. She climbed up a ladder to use the water hose to clean soap off a window. While holding the hose it snagged on her pocket causing the hot water to spray her body, particularly her buttocks. Petitioner testified that it was immediately burning and hot.

Petitioner reported her accident, filled out an accident report, and went to the emergency room. She was diagnosed with second degree burns on her buttocks that was addressed with cream and bandages. Petitioner followed up with her primary care physician Dr. Klein on 8/23/22 who provided her with the same medication. Petitioner returned to Dr. Klein again on 10/25/22 and has not returned. Petitioner testified that she has an occasional tingling sensation in her buttocks that comes and goes. She testified that when she stands and sits continuously during

machine operation the tingling is constant. She stated that it is "still early", so she does not know if this is what she is supposed to feel as she has no comparison.

On cross-examination, Petitioner testified that when she saw Dr. Klein on 10/25/22 she told him the truth as to how she felt. She continues to be employed by Respondent as a machine operator. Petitioner testified that she obtained concurrent employment at FedEx on 11/4/22 as a forklift driver.

MEDICAL HISTORY

On 8/13/22, Petitioner presented to the emergency room at Gateway Regional Medical Center. (PX1) She reported a consistent history of accident and a burning pain in her buttocks that she rated 8/10. Blisters were noted on her right buttock, and she was diagnosed with second degree burns to her gluteal region. Petitioner was prescribed Silvadene cream and was instructed to follow up with her physician.

On 8/23/22, Petitioner was seen by her primary care physician, Dr. Klein of OSF Medical Group. (PX2) Dr. Klein noted a partial thickness burn, rectangular in shape, on Petitioner's upper left buttock measuring 3 by 5 cm, a figure 8 shaped partial thickness burn to her right upper buttock, with scabbing at the center of both burns. He assessed a partial thickness burn on both buttocks. Dr. Klein opined that Petitioner may have scarring as the burns were deep in some spots. He recommended continued use of Silvadene cream and for Petitioner to follow up in 1 to 2 weeks if the burns did not improve.

On 10/25/22, Petitioner followed up with Dr. Klein and no infection was noted. Dr. Klein noted Petitioner's burns had healed, she experienced no pain, and she had no symptoms.

CONCLUSIONS OF LAW

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

Respondent does not dispute medical causation, but rather, causation of Petitioner's current condition of ill-being based on the medical evidence. The Arbitrator finds that Petitioner's testimony was credible that she experiences occasional tingling at the second degree burn sites on her buttocks. She particularly experiences tingling with prolonged standing and sitting. Therefore, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to her work injury that occurred on 8/13/22.

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

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS

305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither party submitted an AMA impairment rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner continues to be employed by Respondent as a machine operator. There was no evidence that Petitioner's current condition of ill-being affects her ability to perform her full job duties for Respondent and her job duties for FedEx as a forklift operator. The Arbitrator places greater weight on this factor.

(iii) **Age**: Petitioner was 48 years old at the time of accident. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There was no evidence of impairment of earning capacity contained in the record. Petitioner continues to work without restrictions for Respondent and FedEx. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of the undisputed work accident, Petitioner sustained a partial thickness burn to her upper left buttock measuring 3 by 5 cm, and a figure 8 shaped partial thickness burn to her right upper buttock. Her injuries were treated with bandaging and Silvadene cream. There is no evidence that Petitioner's injuries caused her to miss time from work. The Arbitrator places some weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 1% loss of use of her body as a whole, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/25/22 through 4/25/23, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC023892
Case Name	Todd Justice v. JF Electric
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0515
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner, Raychel Wesley, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Bruce Magnuson

DATE FILED: 11/1/2024

/s/Stephen Mathis, Commissioner

Signature

DISSENT: /s/Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Todd Justice,

Petitioner,

vs. NO. 19WC023892

JF Electric,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 27, 2023, is hereby affirmed and adopted.

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

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 1, 2024

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

SM/sj
o-9.4.24
44

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

DISSENT

I disagree with the Majority's decision to affirm the Arbitrator's denial of benefits. In my view, Petitioner established by the preponderance of the credible evidence that he sustained an accidental injury on December 19, 2018, his current condition of ill-being is causally related to the work injury, and sufficient notice was provided to Respondent.

Initially, I find Petitioner to be credible. Petitioner answered questions in a straightforward manner and acknowledged the instances when he could not recall details with certainty. Petitioner explained that, on December 19, 2018, he was installing a ground grid; this involves pulling copper wire and CAD welding it into position. T. 22. Petitioner further explained the copper wire weighed 1.3 pounds per foot and had to be manually hauled into place: "You actually grab it and pull it off a reel. You usually have what's called a donkey that holds the reel up and you physically pull it off and walk out as far as you can, whatever you need for that run…Grab it with two hands, put it over your shoulder and start walking." T. 23. Respondent's witness, Trent Logue, did not challenge Petitioner's description of his work duties, and therefore Petitioner's testimony of lugging multiple lengths of wire is undisputed. Petitioner testified that over the course of his workday, he developed pain: "…as I turned sometimes I'd feel a little bit of a pinch or something but, I mean, nothing dramatic that I would stop right then and there." T. 23-24. It was not until the next day that Petitioner felt something was wrong; he testified he felt "stiffness and shooting pain in my neck and arm. As I turned more to the left I could feel more irritation." T. 24. The symptoms thereafter continued to progress and when his pain affected his ability to sleep, he contacted a chiropractor and requested the first available appointment, which was January 29, 2019. T. 25, 43. I observe Petitioner performs heavy manual labor, with its attendant aches and pains, and he specifically indicated the pain was "nothing out of the ordinary." T. 23. The reasonable inference from Petitioner's testimony is minor pain is a routine part of Petitioner's occupation, and he expected the symptoms to resolve; when his pain persisted and in fact worsened, he ultimately sought treatment. While there is no specific mention of Petitioner's work activities in the medical histories, Dr. Chu's records reflect an onset of symptoms in December 2018, which is consistent with Petitioner's testimony. PX6. Based on the above, I find Petitioner sustained an accidental injury while pulling copper wire on December 19, 2018.

I further find Petitioner's current condition of ill-being is causally related to the work accident. There is no question Petitioner had pre-existing degenerative disease in his cervical spine. It is well established, however, that an employer takes its employees as it finds them (*St. Elizabeth's Hospital v. Illinois Workers' Compensation Commission*, 371 Ill. App. 3d 882, 888 (5th Dist. 2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). Here, there is only one expert medical opinion in the record, and that is from the treating surgeon, Dr. Gordon Chu. During his deposition, Dr. Chu was presented with a hypothetical mirroring Petitioner's testimony, and Dr. Chu confirmed hauling wire is a competent mechanism of injury to aggravate the findings he observed on the imaging and intraoperatively. Dr. Chu's unrebutted causation opinion notwithstanding, I further find causal connection is supported by the chain of events. As the Appellate Court held in *Schroeder v. Illinois Workers' Compensation Commission*, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant's condition:

> That is, if a claimant is in a certain condition, an accident occurs, and following the accident, the claimant's condition has deteriorated, it is plainly inferable that the intervening accident caused the deterioration. The salient factor is not the precise previous condition; it is the resulting deterioration from whatever the previous condition had been. *Schroeder* at ¶ 26.

Here, prior to the accident, Petitioner was able to perform a physically-demanding, manual labor job without restrictions. After his December 19, 2018 accident, he developed progressively worsening symptoms; within weeks, he sought treatment and after an MRI, he was under the care of a neurosurgeon with a surgical recommendation to address significantly symptomatic cervical spine pathology. To be clear, the record is devoid of contemporaneous pre-accident neck treatment, there is no pre-accident surgical recommendation, and at no point prior to surgery did Petitioner return to his pre-accident baseline. In my view, there was a clear deterioration in Petitioner's condition after the December 19, 2018 accident.

I additionally conclude Petitioner provided sufficient notice to Respondent. Petitioner's first medical treatment was on January 29, 2019, which is 42 days after his date of accident. January 29, 2019 was a Tuesday, and the records reflect Petitioner's appointment was at 11:15 A.M. RX1. Petitioner testified he informed Logue of the appointment because he had to leave work to see D.C. Lohr. T. 26-27. Logue agreed Respondent's practice is that he should be notified when his employees miss work, though he did not recall Petitioner telling him of the appointment on January 29, 2019. T. 69-70. Again, I find Petitioner to be credible, and his testimony of informing Logue of his absence from work the morning of January 29, 2019 is consistent with the protocol described by Logue. While Petitioner could not recall whether he told Logue that he was seeing the chiropractor because of a work-related injury (T. 44), that is not dispositive. To be clear, a claim is barred only if no notice whatsoever has been given; the legislature has mandated a liberal construction on the issue of notice, so if some notice has been given, although inaccurate or defective, then the employer must show it has been unduly prejudiced. *Gano Electric Contracting. v. Industrial Commission*, 260 Ill. App. 3d 92, 96 (4th Dist. 1994). As Respondent failed to establish, or even allege, it was unduly prejudiced by the defective notice it received on January 29, 2019, I find sufficient notice was provided.

Having addressed the threshold issues, my analysis turns to Petitioner's average weekly wage; specifically, whether Petitioner's overtime hours are includable. Under *Airborne Express*, overtime "includes those hours in excess of an employee's regular weekly hours of employment that he or she is not required to work as a condition of his or her employment or which are not part of a set number of hours consistently worked each week." *Airborne Express, Inc. v. Illinois Workers' Compensation Commission*, 372 Ill. App. 3d 549, 554 (1st Dist. 2007*)* (Emphasis added). Petitioner argues his overtime hours should be included in his average weekly wage. In so doing, Petitioner claims, "The fact that Petitioner earned $35,083.48 in overtime and double time implies that hours beyond 40 per week were a basic feature of the job and were mandatory within the meaning of the Act." Petitioner's Statement of Exceptions, p. 12. I disagree.

Petitioner testified he "averaged roughly 50 hours per week" and during slow periods, "we'll knock down to 40." T. 20. Petitioner further testified overtime was mandatory. T. 21. I observe, though, Logue disagreed and testified overtime was "not required or not mandated. If guys wanted to take off, they took time off." T. 72. Given the conflicting testimony, I cannot conclude Petitioner was required to work overtime as a condition of his employment. Therefore, for Petitioner's overtime hours to be included in his average weekly wage, the evidence must show he consistently worked a set number of hours each week. It does not. My review of the wage records reveals Petitioner's gross hours per week varied widely and, significantly, there were 15 weeks in which he did not work more than 40 hours. RX2. Therefore, I find the evidence does not support a finding that Petitioner worked "a set number of hours consistently" each week. I conclude Petitioner's overtime hours are not includable in his average weekly wage. The wage statement shows Petitioner earned "Regular" wages totaling $98,288.70 while working 236 days in the 52-week period prior to his date of accident. Finding Petitioner worked 47.2 "weeks and parts thereof" (236 / 5 = 47.2), I calculate Petitioner's average weekly wage as $2,082.39 ($98,288.70 / 47.2 = $2,082.39).

Regarding the disputed benefits, I conclude Petitioner was temporarily and totally disabled from July 10, 2019 through August 19, 2019, corresponding to the date Petitioner underwent surgery through Dr. Chu's August 19, 2019 release to return to work. PX6. I would find Petitioner entitled to 5 6/7 weeks of TTD benefits at the rate of $1,388.26 per week. For medical expenses, I would award the charges detailed in Petitioner's Exhibit 10, subject to §8.2. As to permanent partial disability, Petitioner underwent a C6-7 anterior cervical discectomy and fusion as a consequence of his work accident. Considering Petitioner's age of 43, his resumption of his physically demanding pre-accident occupation, the lack of evidence of an adverse impact on his future earning capacity, and the persistent though mild complaints as documented by Dr. Chu, I conclude Petitioner sustained a 20% loss of use of the person as a whole.

For all of the above reasons, I respectfully dissent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC023892
Case Name	Todd Justice v. JF Electric
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	Bruce Magnuson

DATE FILED: 4/27/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 25, 2023 4.84%

/s/ Dennis OBrien, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

TODD JUSTICE
Employee/Petitioner

v.

JF ELECTRIC
Employer/Respondent

Case # **19** WC **023892**

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 **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Champaign**, on **February 9, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **December 19, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On the date of accident, Petitioner was **43** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**0.00** for TTD, $ **0.00** for TPD, $ **0.000** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **0.00**.

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

ORDER

Petitioner has failed to prove that he suffered an accident on December 19, 2018, which arose out of, and in the course of, his employment by Respondent

Petitioner's current condition of ill-being, a C6-7 disc herniation, is not causally related to the accident date of December 19, 2018.

The Arbitrator finds that Petitioner failed to prove that he provided timely notice of an accident to the Respondent within the time limits set out in the Act.

Based on the findings in regard to accident, causal connection and notice, all other issues are deemed moot.

Compensation is therefore denied.

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

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

APRIL 27, 2023

Signature of Arbitrator

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified that in December 2018 his job involved building substations from the ground up. Petitioner testified that he is a subtech electrician. He is a member of a union. He testified that he was employed by JF Electric on December 19, 2018. On December 18 and December 19, 2018, the Petitioner was installing ground grid. This involved pulling copper wire and performing CAD welding for installation of the grid. Petitioner stated that pulling cable involves grabbing the cable and pulling it off of a reel. He stated you grab it with two hands, put it over your shoulder and start walking.

Petitioner said that on December 19, 2018, he noticed a little ache and pain, which he described as nothing out of the ordinary. He stated that sometimes as he would turn, he would feel a little something, but nothing dramatic. He said that as the day went on, he did not realize anything was wrong, that the next day he felt something was wrong, he noted a little stiffness and shooting pain in his neck and arm.

Petitioner testified that he scheduled a chiropractic appointment as he had been to the chiropractor before and had "been popped." He consulted with Dr. Richard Lohr, first seeing him on January 29, 2019. Dr. Lohr referred him for magnetic resonance imaging scans. Petitioner testified that he told his general foreman what was going on and that he was going to the chiropractor that day. Petitioner testified that he told his general foreman he was going to the chiropractor because he was experiencing neck pain, arm pain, and shoulder pain. He did not ask his general foreman for a work injury form. When asked when he did ask for such a form, the Petitioner stated he did not have an exact date.

Petitioner testified that on February 29, 2019, after the MRI was performed, he returned to Dr. Lohr, and Dr. Lohr then sent him to Dr. Chu to schedule surgery.

Petitioner identified Petitioner's Exhibit 3 as the incident report that he filled out regarding his neck and back.

Petitioner stated that he first saw Dr. Chu on May 16, 2019, that he was initially examined by that doctor’s physician's assistant, Sally Vespa, but that he spoke with Dr. Chu at the end of the visit. Petitioner testified that Dr. Chu recommended that he undergo surgery. Petitioner said he underwent the pre-operative physical with his primary care physician and then underwent surgery with Dr. Chu on July 10, 2019, spending the night in the hospital. Petitioner said he followed up with Dr. Chu on August 19, 2019, telling him he was doing a lot of walking, was mowing and was doing a little weed eating, but he was not straining himself. Petitioner testified that Dr. Chu recommended physical therapy. Instead, Petitioner stated he was ready to go back to work and asked the doctor to release him. Petitioner testified he followed up with Dr. Chu on October 10, 2019, at which time he was doing all right, though still suffering from some stiffness and pain. He testified that he noticed a shooting sharp pain that would go down to his fingertips, although mainly in the right arm.

Petitioner testified that he last saw Dr. Chu on December 23, 2019, and he felt pretty decent about the impact of the surgery at that time, that the surgery had relieved a lot of the pressure. He said Dr. Chu released him from care at that time.

Petitioner testified at Arbitration that he is felt he was about 80% to 85% recovered, he still had some neck pain, and he constantly rolled his neck to adjust. He also complained of some trouble being comfortable while driving. He testified that he no longer had the pain traveling down his arms or fingers. He only had the neck pain. Petitioner testified that he previously had back and neck pains. He testified that now he still has some neck pain which is not constant, but it is present daily.

On cross-examination, Petitioner testified that in December 2018 he was installing ground grids for J.F. Electric at the Ruby Switch Yard. Petitioner stated that he was working as a foreman at that time. He testified his position was called foreman subtech. The Petitioner testified that as a foreman he would report to the general foreman in the company hierarchy. That general foreman was Trent Logue in December 2018.

Petitioner testified that while working as a foreman, he served as a front-line supervisor to his crew. Petitioner stated that part of his role as foreman was dealing with safety issues as they arose, including having his crew report to him any on-the-job injuries they sustained while working for Respondent. Petitioner agreed that as a foreman he was familiar with the requirements and the process for reporting claims of on-the-job injuries. He said that when an on-the-job injury was reported, an incident investigation report was to be completed and submitted to the company. He said this process would have been part of his training and instruction before he became a foreman.

Petitioner testified that in January of 2019 he was still working as a foreman for Respondent. When asked whether he had reported the neck condition to Mr. Logue in December 2018, Petitioner stated that he was not sure. He could not recall what he specifically said to Mr. Logue at that time. Petitioner admitted he had not completed an incident investigation report in December 2018 regarding his own claim.

Petitioner was asked whether he had spoken with Trent Logue regarding this injury on January 29, 2019, and Petitioner said he did not know what he said at that time, that he did not know if he said he hurt his neck and was going to the chiropractor. Petitioner said he had not completed or submitted an incident investigation report to the Respondent on January 29, 2019.

Petitioner testified he continued to work his regular job with JF Electric throughout January and February 2019.

Petitioner noted he completed Petitioner's Exhibit 3 on the date written on the report, that he had written May 26, 2019 on it, that it was in his handwriting, and that Petitioner Exhibit 3 was the only incident report he completed and submitted. He said that as a foreman he was aware incident investigation reports were to be completed, so he knew how to find them, and that he knew that he was to go to his general foreman and ask for an incident investigation report. Petitioner said did not recall when he submitted the completed report to his general foreman, Trent Logue.

Petitioner said he consulted with the chiropractor on only two occasions. When asked about his failing to describe any injury occurring on the job when he met with the chiropractor, Petitioner testified that he believed that he had, that he assumed the reports were inaccurate if they did not include that information.

Petitioner stated that his first consulted with Dr. Gordon Chu was on May 16, 2019, and that he told Dr. Chu about his alleged onset of neck symptoms at work. Petitioner said Dr. Chu's records would also be inaccurate if they did not include that history, and that if Dr. Chu had testified at his deposition that he did not record Petitioner reporting any on-the-job injuries, then Dr. Chu had testified inaccurately.

Petitioner testified that following his release from the hospital, his first visit with Dr. Chu would have been on August 19, 2019, and that he had performed weed eating and lawn mowing prior to that visit. He also testified he returned to work as an electrician after August 19, 2019.

Petitioner agreed that when he saw Dr. Chu on October 10, 2019, he told the doctor that he had been back to work and was happy with the surgery results. Petitioner testified that he last saw Dr. Chu on December 23, 2019, and on that date he was released from the doctor's care. Petitioner testified that he had not seen Dr. Chu for any follow up since that visit of December 23, 2019. Petitioner testified he was currently employed as an electrician and was still working out of his union hall.

Trent Logue

Trent Logue, Petitioner's general foreman, was called as a witness by Respondent. Mr. Logue testified that he was familiar with the Petitioner in this case as he had worked for him at J.F. Electric between 2016 and 2019, working on the construction of electrical substations. Mr. Logue testified that Petitioner held the role as foreman during some of his time working with Respondent.

Mr. Logue testified that Petitioner, as a foreman, would have been instructed regarding the company's requirements concerning the reporting of on-the-job injuries and would be familiar with the process. Respondent's policy is that on-the-job injuries are to be reported when they happen, with the reports going to either the foreman or the general foreman. Mr. Logue testified that Petitioner reported directly to him in the company hierarchy.

Mr. Logue testified that he was Petitioner's general foreman in December 2018, and that Petitioner did not report any having suffered any injury while working for Respondent during December 2018. Mr. Logue said he was still the Petitioner's general foreman in January 2019. Mr. Logue testified that he had listened to Petitioner's testimony regarding the discussions of January 29, 2019, and said Petitioner's testimony was not accurate, that Petitioner did not advise him of a work-related injury until March 29, 2019. Mr. Logue testified that if Petitioner had reported to him on January 29, 2019, that he injured himself on December 19, 2018, while installing ground grid, he would have had him fill out an incident report at that time.

Mr. Logue testified that Petitioner first approached him with comments regarding his physical condition on March 26, 2019, when Petitioner handed him a piece of paper and said it was an MRI. Mr. Logue asked him what it was and why he was giving it to him, and Petitioner said it was just to keep him in the loop, as a chiropractor wants him to go for treatments four days a week. Mr. Logue testified that this conversation took place at the Ruby substation job site. He noted that Petitioner did not make any specific claim to him during the March 26, 2019 conversation that he had injured himself while working for Respondent.

Mr. Logue testified that he had a subsequent conversation with the Petitioner on March 29, 2019. The initial reason for that conversation was that Mr. Logue was informing the Petitioner that he was moving him back into the journeyman's role from the foreman's role and was sending him to another location. He was being

relocated from the Ruby substation to the South Bloomington substation. He said Petitioner's initial response to him was, "You're the boss, okay." He testified Petitioner then asked him about his neck and back, and Mr. Logue said he asked Petitioner, "What about it?" Petitioner asked if Respondent would be paying for it. Mr. Logue then testified that he asked Petitioner whether he was claiming Worker's Compensation. He stated that he told Petitioner he needed to fill out an incident report. He got one out of his truck and gave it to him. The incident report form was given to the Petitioner by Mr. Logue on March 29, 2019. It was returned to him via email on April 5, 2019.

Mr. Logue testified that during the March 29, 2019 conversation with Petitioner, he did not relate any specific details regarding how he claimed to have sustained injury at work for the Respondent. Mr. Logue testified he did not find out exactly what Petitioner was claiming until he received the email from Petitioner on April 5, 2019.

Mr. Logue reviewed Petitioner's Exhibit 3, which is a copy of the J. F. Electric incident investigation report. Mr. Logue testified that this is the report form all workers are given to complete if they claim to have sustained on-the-job injury. When looking at the report, he noted that Petitioner listed his incident date as December 19. The report date was listed as March 26, 2019.

Mr. Logue testified that if Petitioner had reported an injury to him on December 19, 2018, he would have given him an incident investigation report to complete. He further testified that if Petitioner had reported an injury to him on January 29, 2019, he would also have given him an incident investigation report to complete.

Mr. Logue testified that Petitioner continued to work for J.F. Electric as a journeyman until June 2019,at which time there was a reduction in force. He said Petitioner would have then returned to his union hall for reassignment.

Upon cross-examination, Mr. Logue was asked about Respondent's Exhibit 2, which is wage information, and Mr. Logue testified that he was not familiar with the document. He testified that Petitioner would have notified him if he was to take time off of work for some reason. He testified that if Petitioner had taken time off of work to go to a doctor's appointment, he was supposed to have been told. Mr. Logue testified that he had no recollection of Petitioner reporting a doctor visit from December 19, 2018. He testified that he supervised around 24 people. He also testified that Petitioner did not report a work incident to him any other time other than shown on the injury report.

Mr. Logue was questioned about the wage information and the notations of overtime, and Mr. Logue said employees work overtime depending on the workload at the time, that working overtime can be normal, but working overtime is not required, not mandatory. He testified that if the workers want to take time off, they take time off.

MEDICAL EVIDENCE

Petitioner was seen approximately eight weeks prior to this alleged accident, on October 22, 2018, by his primary care physician, Dr. Bilyeu. At that time he made low back and left leg complaints, but no neck complaints. Dr. Bilyeu prescribed anti-inflammatory medication and muscle relaxant medication for arthritis and narrowing of the neural foramina at L4-5 and L5-S1. (PX 4 p.20)

Petitioner was seen by Dr. Lohr, a chiropractor, on January 29, 2019. According to the intake, Petitioner's history included slipping disc in neck and nerve in left hip. He was listed as complaining of low back pain and neck pain. The intake form contains no history of accident and no reference to work-related injury. Dr. Lohr's office sent the Petitioner for diagnostic imaging. (RX 1, p.6,7)

Petitioner underwent MRI imaging of both the cervical and lumbar spines on February 21, 2019. According to the radiologist, the cervical MRI revealed osteophytic changes and foraminal narrowing at C6-7, C3-4, C4-5 and C5-6, as well as a right paracentral diffused disc protrusion with mild to moderate deformity of the thecal sac with mild effacement of bilateral exiting nerve roots at C6-7. The lumbar MRI also showed degenerative changes, principally at L4-5 and L5-S1. (PX 5, p.1-4)

Petitioner again saw Dr. Lohr on February 28, 2019. Dr. Lohr noted Petitioner was 43 years old and was complaining of lower back pain, lateral thigh and medial knee pain on the left side, telling that physician the symptoms had come on gradually. He complained of intermittent aching discomfort in the right trapezius muscles. This record does not include any history of a work-related accident. Dr. Lohr assessed Petitioner with lumbar intervertebral disc syndrome, sciatica, cervical brachial syndrome, associated brachial neuralgia, spinal stenosis mild, degenerative disc disease lumbar, and degenerative disc disease cervical. The doctor recommended chiropractic treatments of three to four times per week, noting that if Petitioner did not respond to this conservative care, he would refer him out to a specialist. This record from Disc Centers of America notes that this was a free consultation and that Petitioner never returned for follow up after February 28, 2019. (RX 1, p.1-3)

Petitioner saw Dr. Chu's Physician Assistant (PA), Ms. Vespa, on May 16, 2019, at HSHS Neurosurgery, for neck complaints. At that time he complained of shooting pains down his left shoulder, across his chest, and down that left arm into his fingertips. He said he had right arm symptoms as well. He noted that he had initially sought out chiropractic intervention as he had seen a chiropractor intermittently over the past 10 years. He noted that he had recently changed chiropractors and the new chiropractor referred him for an MRI. He said he had tried muscle relaxants and anti-inflammatory medication. This history of injury contains no reference to any incidents or accidents occurring at work. (PX 6, p.9)

A CT scan of the cervical spine was performed on June 4, 2019, and was interpreted as showing mild multilevel degenerative changes in the cervical spine. (PX 4, p.25; PX 8, p.29-31)

Dr. Chu examined Petitioner and reviewed the diagnostic imaging on May 16, 2019. His assessments included radiculopathy in the cervical region and spinal stenosis of the cervical region. He discussed Petitioner's options with him, including epidural steroid injections, physical therapy or an anterior cervical discectomy with fusion across the C6-7 inner space. Petitioner opted to undergo surgery. (PX 6, p.9-13)

Petitioner had a pre-surgical examination by his primary care physician, Dr. Alan Bilyeu, on June 18, 2019, and was cleared for surgery. The records from the pre-surgical evaluation contain no reference to any work-related accidents or incidents. (PX 4 p.16-19)

Petitioner surgery on July 10, 2019, by Dr. Chu. The operative findings included a C6-7 disc herniation, and an anterior cervical discectomy and fusion at C6-7 was performed. The operative report indicates that there was excellent neural decompression confirmed. Petitioner remained hospitalized overnight, and the next day,

July 11, 2019, the progress note indicated that there were no issues overnight and the pain was well controlled. The pre-op of symptoms of tingling in the hands had resolved. There were no neurological deficits. (PX 9, p.40,41)

Petitioner saw Dr. Bilyeu on August 8, 2019, and x-rays were taken. Petitioner questioned whether the fusion was healing and said he still had some tingling in the left arm which would come and go, but that it was not constant, as it had been previously. The radiologist that day noted the fusion showed no evidence of complication. Dr. Bilyeu noted Petitioner had good range of motion of the neck. (PX 4, p.6,14)

Petitioner was seen by Dr. Chu on August 19, 2019, and was doing well, noting that the pain in the left arm and neck had improved. Petitioner told the doctor that he did not feel like he needed physical therapy but would instead prefer to return back to work. Dr. Chu told him that he should ease himself back into work and not go 100% the first day. Petitioner noted that he understood. Petitioner advised the doctor that his pain was improved and was normal in the neck and left arm. He felt he was doing quite well, only having some occasional and tolerable muscle spasms and pain in the left arm. Petitioner was allowed to return to work as an electrician. (PX 6, p.2-4)

Petitioner was seen by Dr. Chu on October 10, 2019, and advised him that while he still had occasional pain down his left arm, it did not last longer than five minutes, and it principally occurred while driving. He advised the doctor that he had returned to work without much issue, and he was happy with his surgical results. (PX 7, p.1)

When seen for the last time by Dr. Chu on December 23, 2019, it was again noted that Petitioner was doing well, with very little left arm pain, stating that overall he was very pleased with his surgery. Dr. Chu released the Petitioner from care at that time. (PX 7, p.5)

Petitioner was seen by Dr. Bilyeu on December 28, 2020 and advised that physician that he had occasional pain in his neck by was not taking anything for it. Dr. Bilyeu suggested he take over-the-counter medication such as Advil or Aleve. (PX 4, p.9)

DEPOSITION TESTIMONY OF DR. GORDON CHU

Dr. Chu testified as a witness for Petitioner via deposition of December 16, 2022. Dr. Chu testified he was a neurosurgeon certified by the Royal College of Canada of Surgeons and Physicians. he first encountered Petitioner on May 16, 2019. He was seen by both himself and the physician's assistant, Sally Vespa. He testified that according to his notes, Petitioner reported that in December he had started getting shooting pain down his shoulders, across his chest, down his left arm and into his fingertips, as well as some numbness, with similar symptoms into the right arm. (PX 1, p.5,7; PX 2)

Dr. Chu testified that he reviewed an MRI which he felt showed a disc issue at C6-7 where there was protrusion of the disc causing some pinching of nerves as well as the spinal cord. Dr. Chu said he felt it was appropriate to move to surgery at that point because Petitioner had seen the chiropractor which wasn't helping that much and, based upon his MRI review, he felt that there may have been signal changes in the spinal cord at

the C6-7 level which could indicate some early injury to the spinal cord. He said after reviewing his various options, Petitioner opted to have surgery. (PX 1, p.8-10)

Dr. Chu said he performed surgery on July 10, 2019. He noted that he performed a C6-7 disc herniation surgery where he basically removed the disc and put in a little cage into the disc space in order that the space would fuse with the bones above and below. Dr. Chu said there was excellent neuro decompression following surgery. He said Petitioner stayed overnight and was seen the next day, at which time he told the doctor that the tingling in his hands had improved and he did not have much pain. (PX 1 p.10-12)

Dr. Chu said he re-evaluated Petitioner on August 19, 2019, at which point Petitioner was doing well, saying his pain was improving, wanting to return to work. Dr. Chu said he told Petitioner to take it easy and ease his way back in. When asked whether there were any serious effects from the surgery, the doctor stated that there were not. Dr. Chu noted a little bit of spasm in the left arm, but he did not have any concerns. (PX 1, p.12,13)

Dr. Chu testified he saw Petitioner in October of 2019, he was doing well and his issues were relatively minimal. Petitioner told him his left arm was still a little bit painful occasionally, but it did not last long, and was mostly when he was driving. Dr. Chu said Petitioner had been back to work by that time and seemed happy with the results of the surgery. (PX 1, p.13)

Dr. Chu said he last saw Petitioner on December 23, 2019, and Petitioner was doing well, and was overall pleased with the surgery. The doctor testified he released him from his care at that point. (PX 1, p.13,14)

Petitioner's counsel posed a hypothetical question to Dr. Chu, asking him to assume that Petitioner was working as an electrician and in December had an onset of pain where he was hauling copper wire and pulling heavy wire. Dr. Chu said he believed that sort of activity could have caused or aggravated what he saw on the MRI and/or during surgery. (PX 1, p.16,17)

On cross-examination, Dr. Chu said he had not seen Petitioner prior to May 18, 2019, had not spoken with Dr. Lohr, the chiropractor, and had not reviewed the case with him. He said at the time of the initial evaluation, Petitioner's complaints were in his upper body, that Petitioner made no complaints regarding his legs or lower back at that time.

Dr. Chu testified that the outpatient consultation note of May 16, 2019, was taken down by PA Vespa. He testified that he verified it when he met with the Petitioner himself. Dr. Chu agreed that his May 16, 2019 note contains no mention of any injury or accident taking place while Petitioner was at work. He testified that there was no mention in that note that Petitioner was pulling heavy copper wire in December 2018. He testified that the note mentions that Petitioner had started having issues in December, but there was no specific accident or injury noted in his May 16, 2019 office note. (PX 1, p.18,19)

The doctor testified that of all the notes he reviewed, he did not see anywhere where Petitioner said this was a work-related injury. The doctor stated that at least he could not find anything. The doctor agreed that it was more than likely that if Petitioner had reported a work injury or incident at any of the visits, it would have been recorded in his notes. (PX 1, p.19,20)

Dr. Chu stated that when he looked at the hospital record history and the notes, it did not seem to indicate that Petitioner reported to him that his problems were from a work injury. He also agreed that the summary of his operative report and discharge summary did not include any history regarding on the onset of symptoms as reportedly taking place at work. (PX 1, p.23,24)

Dr. Chu said that at the August 18, 2019 visit, Petitioner reported he was doing well and had been weeding and mowing his lawn without issue, and that at that visit Petitioner requested to return to work rather than undergo physical therapy. Dr. Chu agreed with Petitioner's request and allowed him to resume his work with the instruction that he ease his way back in. (PX 1, p.26)

Dr. Chu agreed that Petitioner's recovery went well. He noted that some people need a little bit of extra time, but in this case, Petitioner did well. Dr. Chu testified that when Petitioner returned on October 10, 2019, he reported that he had been back to work as an electrician without much issue, and he remained happy with the surgical results. (PX 1, p.26-28)

Dr. Chu testified he last saw Petitioner on December 23, 2019, nearly three years prior to the date of his deposition. He had not re-evaluated Petitioner since that date. He fully released him from care at that time and declared him at maximum medical improvement. Dr. Chu further testified that none of his three post-operative visits contained any mention by Petitioner that he sustained injury or accident while on the job in December 2018 or at any other time. The doctor testified that based on the notes he was reviewing, he believed Petitioner never mentioned a work accident. (PX 1, p.29,30)

On re-direct examination Dr. Chu agreed that PA Vespa's notes for Petitioner's initial visit did state that Petitioner indicated his pain started in December. He said the MRI findings were consistent with an aggravation which could have happened in December, as were his surgical findings. (PX 1, p.30,31)

ARBITRATOR CREDIBILITY ASSESSMENT

While Petitioner answered all questions asked by both attorneys without any effort to avoid answering, his testimony in regard to telling Mr. Logue what was happening on the date he first saw his chiropractor in January was recanted on cross-examination when he repeatedly said he could not remember what he told Mr. Logue. Mr. Logue testified that Petitioner's testimony about telling him of being injured in January of 2019 was not accurate, that Petitioner did not tell him anything about a work injury until March 29, 2019. Petitioner's statements that his medical providers' records and testimony were inaccurate as they did not contain histories he said he gave to all of them is not believable. Petitioner also was aware of Respondent's rules in regard to filling out accident reports on the date the accident occurred, stating that as a foreman he himself had the obligation to see to it that such forms were filled out by others pursuant to that rule. In regard to the alleged accident, statements to Mr. Logue and histories given to medical providers, The Arbitrator finds that Petitioner was not a credible witness.

Mr. Logue and Dr. Chu both answered all questions asked of them and did not appear to evade any of those questions. The Arbitrator finds that both Mr. Logue and Dr. Chu are credible witnesses.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on December 19, 2018, and whether Petitioner's current condition of ill-being is causally related to the alleged accident of December 19, 2018, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessments, above, are incorporated herein.

While Petitioner testified to doing his normal, physical laboring efforts, pulling wire, her further testified, in response to the question whether he had noticed anything particular happening to him on December 19, 2018, that he had "just a little ache and pain, nothing out of the ordinary."

The medical evidence in the record fails to support Petitioner's claim that he sustained a work-related injury or accident occurring on December 19, 2018. Petitioner initially consulted with Dr. Richard Lohr, a chiropractor. Dr. Lohr's patient intake form from January 29, 2019 contains no history from Petitioner that he sustained a work-related accident or injury. The intake form includes no details regarding pulling copper wire or welding ground grid. There is no record that the onset of symptoms occurred on December 19, 2018. Dr. Lohr's patient information form, completed by the Petitioner on January 29, 2019, requests a date and time of accident, if that is applicable. Petitioner did not enter any information on that line of the form.

Dr. Lohr evaluated Petitioner for treatment on February 28, 2019. His office note contains a section to record the history of the condition to be treated. The history as recorded states, "We have a 43-year-old, right-handed white male complaining of lower back pain, lateral thigh, medial knee on the left side. The patient states that the symptoms came on gradually." This history again reflects that Petitioner did not relate to Dr. Lohr details regarding an injury or accident occurring at work on December 19, 2018, or on any other date, that they instead had simply come on gradually. The records for that visit are devoid of any history being given relating to a work onset of symptoms.

Petitioner then did not seek medical treatment until May 16, 2019, when he consulted with Dr. Chu, whose recorded history states, "Todd is 43-year-old gentleman who was referred by Dr. Lohr, D.C., for complaints of neck pain. In December, he started getting shooting pain down his shoulders, across his chest, and down his left arm into his fingertips. He describes the pain as a combination of numbness as well as pain. He also gets the same symptom into his right arm. His symptoms are usually worse with activity, especially extending his arms, and better with lying down." Again, there is no record that this described onset of symptoms occurred at work on December 19, 2018, or on any other date. These contemporaneous medical records are silent regarding any work-related onset.

The July 10, 2019 hospital records for the admission for surgery make no mention of a work accident or of the pain coming on as a result of work, instead noting Petitioner, "had pain in the right arm for several months. MRI shows herniated disc."

Dr. Chu's post-operative records are also devoid of any mention of a work-related injury.

The medical records of Dr. Bilyeu, Petitioner's primary care physician, also contain no record of a work-related injury.

Dr. Chu in his deposition stated that his records were devoid of any mention of a work-related accident or of these symptoms being caused by or aggravated by Petitioner's work. The Arbitrator also has reviewed the deposition testimony of Dr. Gordon Chu. Dr. Chu confirmed that Petitioner did not provide a history of work relatedness to him during his time of treatment, specifically noting that his May 16, 2019 note contains no mention of any injury or accident taking place while Petitioner was at work and that there was no mention in the initial treatment note of Petitioner pulling heavy copper wire in December 2018. Dr. Chu said that after reviewing Petitioner's entire chart, he did not see anything indicating Petitioner said he had a work-related injury.

Dr. Chu said that if a work-related injury had been reported to him or to his physician's assistant at any of these visits, it was more than likely they would have recorded the information. Dr. Chu testified that, "Based on the notes I've been looking at, I don't believe he mentioned a work accident."

The Arbitrator finds that Petitioner has failed to prove that he suffered an accident on December 19, 2018, which arose out of, and in the course of, his employment by Respondent.

The Arbitrator further finds that Petitioner's current condition of ill-being, a C6-7 disc herniation, is not causally related to the accident date of December 19, 2018. These findings are based upon the evidence summarized above.

In support of the Arbitrator's decision relating to whether Petitioner provided timely notice to Respondent, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessments, above, are incorporated herein.

Petitioner claims that he sustained injury arising out of, and in the course of, his employment on December 19, 2018. If this is accurate, the 45 day period within which he was required under the Workers' Compensation Act to give notice to his employer of his having suffered such an accident, would have run on February 2, 2019.

Petitioner's testimony concerning his reporting of this claimed injury was vague on direct examination and on cross-examination he stated he did not know what he told his supervisor. The initial investigation report was not completed until March 29, 2019. Trent Logue, Petitioner's supervisor, clearly establishes that Petitioner made no mention of claiming a work-related injury until March 29, 2019. Petitioner's Exhibit 3, a copy of the employer's injury investigation report, establishes Petitioner did not report allegations of injury within 45 days of December 19, 2018.

Petitioner testified that he was familiar with the Respondent's process for reporting injury, as he was required to enforce it in his work as a foreman. Petitioner admitted he knew the process and how to obtain the injury investigation report form for completion. He did not complete this form until the end of March 2019.

Mr. Logue testified that Petitioner was a foreman, and he had been instructed regarding the accident reporting requirement and familiar with the company's requirements concerning reporting and the use of the injury investigation report.

Petitioner did not make a report of this alleged accident until March 29, 2019, after he was reassigned from his role as a foreman to a journeyman. The timing of this report raises additional questions as to the credibility of the reporting.

The Arbitrator finds that Petitioner failed to prove that he provided timely notice of an accident to the Respondent within the time limits set out in the Act.

Based on the findings in regard to accident, causal connection and notice, all other issues are deemed moot.

Compensation is therefore denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	09WC007134
Case Name	Anita Ferguson v. University of Illinois
Consolidated Cases	11WC005445; 11WC005446; 11WC005699;
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	24IWCC0516
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Timothy Steil

DATE FILED: 11/4/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANITA FERGUSON,

Petitioner,

vs. No: 09 WC 7134

UNIVERSITY OF ILLINOIS,

Respondent.

DECISION ON PETITION PURSUANT TO §§19(h)/8(a)

This matter comes before the Commission on Petitioner's Petition for Relief Pursuant to Sections 19(h)/8(a) of the Act. A hearing was held in Champaign on September 7, 2023 before Commissioner Simonovich. The parties were represented by counsel and a record was taken. Prior to hearing testimony, Petitioner's lawyer noted that previously, Arbitrator Lindsey heard the matters, found accident, found causation, and found average weekly wage in 09 WC 7134 and 11 WC 5699 and awarded Petitioner permanent partial disability ("PPD") benefits representing loss of 17.5% of the left hand and 20% of the right hand. In 11WC 5445 and in 11 WC 5446 she found for Respondent. On Review, in 09 WC 7134, the Commission modified the award to increase the PPD award to loss of 20% of the left hand and 25% of the right hand. The Commission affirmed and adopted the other Decisions of the Arbitrator.

Findings of Fact – Testimony

Petitioner testified that she started working at the College of Aces in mid-2000, "until she had a hand injury in July of 2008 where [she was] off work for multiple surgical procedures." Thereafter, she made several attempts to return to work but left her employment in 2013 because she did not believe her employer was honoring her work restrictions. Her doctor "finally wrote [her] off because [she] wasn't able to do" her job. Petitioner was shown RX9, a notice of injury. The document indicated she was having problems with her right hand, wrist, thumb and index finger from repetitive motion. Her recommendation to prevent the problem was "follow current restrictions in place/one hour per type of hand task daily." Petitioner left the Respondent's employment in 2013. Her understanding was that it had nothing to do with her disability retirement, but rather whether she was coming in every day.

Petitioner testified that on February 13, 2009, she had left CTS release and removal of existing hardware. On June 2, 2009 she had right CTS release with ulnar fat pad rotation flap. She returned to work on July 6, 2009, continued to have problems, and on August 21, 2009 she was given restrictions of no pushing/pulling more than 15 pounds and she had physical therapy. On January 11, 2010, she had an injection in the 1st dorsal compartment of the right wrist and was released to activities as tolerated.

On July 19, 2010, her doctor advised her to refrain from flipping through records with her right hand for two weeks and thereafter to limit the activity to two hours a day, preferably spread out through the day. She had her first FCE on May 5, 2011. While she worked for Respondent, Petitioner worked in a union and her title was office support specialist.

Her claim was adjudicated in November of 2012. Thereafter, she returned to work until 2013, when she was taken off work by her PCP, Dr. Schaap. She told him that she had right pain due to increased work demands and pressure to perform. He ordered an FCE and referred her to a hand specialist. After the FCE, she was placed on restrictions of 10 pounds lifting with only occasional lifting of 15 pounds. She saw Dr. Sobeski on April 10, 2013, at which time he took her off work.

On March 10, 2014, she saw Dr. Jung for neurosurgical consultation. She had a cervical MRI and ESIs at C7-T1. Dr. Jung determined that the injections had not worked. She returned to Dr. Sobeski, who placed her on permanent restrictions as outline in the FCE. She was restricted to working 2.64 hours a day with 30 minutes at a time with her hands and 10-15 pounds lifting "per side." She saw Dr. Sobeski again two years later on October 24, 2016, at which time she told him her condition was the same or worse. Dr. Sobeski retained the restrictions. Similarly, he retained the restrictions when she saw him on July 13, 2018; the restrictions have not been modified since.

Petitioner was on disability at the U of I. She was evaluated periodically to determine whether her disability continued and she was sent to Dr. Keller by SURS. She saw him in August of 2018. Although she was put on disability by SURS, she searched for jobs within her restrictions. She identified PX13 as jobs she applied for. PX14 was a rejection letter. PX15 is her job search log. She did not get any of the jobs for which she applied.

Petitioner testified she did not receive any vocational assistance. Petitioner identified PX19 as photos she made of "massive files, massive shredding, more boxes of files," "the financials [she] did, more boxes of files." Her hands worsened trying to perform her job. She had increased numbness/tingling/pain. Petitioner also testified that she moved to be closer to her daughter so her family can help with things. She cannot scrub, clean deeply, she had problems with her shower and had handrails put in. She cannot drive for more than 30, 35 minutes before she has to shake her hands out. She used to host all the holiday parties, but no more. She no longer volunteered at the food pantry that she did for 20 years and cannot do as much with her grandchildren, all because of her hands. Eventually, she stopped looking for employment and retired from U of I on March 29, 2022. She retired because she could be on disability only for a certain period of time and could not work anyway. If she could work she would.

On cross examination, Petitioner testified she still took care of her three grandchildren "a couple of hours maybe." She would not disagree that she reported that her three grandchildren were sleeping over and she had to clean the house before the visit. Petitioner agreed that in her testimony at the original arbitration, she testified that in November she was working with permanent restrictions of one-hour work per hand task, 20-pound restriction on her left hand, and 15-pound restriction on her right hand. She also testified that her right hand would swell/hurt, with numbness/tingling radiating up her arm to her shoulder. She likes to help her grandchildren; she cooks them a simple meal, and "they actually do the dishes."

Petitioner agreed that she stated off-the-record that her grandchildren were self-sufficient. She also testified that she had difficulty sleeping, tossed and turned, and had to shake her right hand. She also had trouble buttoning/hooking, opening jars, using mixers, lifting heavy things out of the oven, writing for more than 30 minutes, collating, stuffing, flipping, sorting, mousing, and typing for long periods of time. It appears that Petitioner had the same job at the time of arbitration that she did from November 20, 2012 through February of 2013.

Apparently, Petitioner saw her PCP on December 27, 2012 for respiratory issues and back pain and on January 10, 2013 she saw Dr. Greely for persistent cough. She agreed that in neither of those visits she reported any hand complaints; but that was not why she saw them. Petitioner would not disagree that in around February 15, 2013 she informed Respondent of issues regarding her hands and her work. She agreed that on February 14, 2013, she discussed her work and her alleged hand pain with Dr. Sobeski and that he told her there was nothing medically that could be done for her.

Petitioner agreed that her FCE in 2011 was after she had treatment including surgeries and physical therapy ("PT"). However when she had the FCE in 2013, she had not had PT. She asked Dr. Schaap to order an FCE in 2013 and later to have her work restrictions revised based on the FCE. She did not recall seeing Dr. Li. She denied contacting Dr. Sobeski's office requesting that he take her off work on March 29, 2013; she thought she told him she could not do her job.

Petitioner agreed that she was responsible for some of the housework at her home. She agreed that Respondent never terminated her from employment. She did not recall doing a job search in the past three years. Petitioner agreed that she prepared PX15, which is a 7-page spreadsheet that she prepared using a keyboard/mouse. It spans February of 2014 through February of 2016. She has not looked for job since 2016. Petitioner agreed that she had Hypertension, but no longer took blood pressure medication and hadn't in years. She has hypothyroidism because her thyroid was removed due to cancer. In addition, she had a fall which resulted in a lumbar fracture.

On redirect examination, Petitioner testified that to her knowledge her blood pressure never affected her hands. She received an injection in her neck which showed that her hand condition was not associated with a cervical condition. She often has groceries delivered because it may be too heavy.

Petitioner was read treatment notes from September 17, 2019, which sounded accurate to her. In it, she reported she had to clean most of Friday because her grandchildren were coming over, she overdid it, and that "by Friday night she was in bed and unable to move most of the weekend." She told Dr. Sobeski that she could no longer do her job because it required too much hand movement and her hands were getting worse. She asked for another FCE because the first did not deal much with her hands and was not really related to her job activities. The second FCE was on March 14, 2013, at which time she was still working. Her grandchildren were 5, 8, and 10.

Findings of Fact – Medical Records

On April 10, 2013, Petitioner presented to Dr. Sobeski, who's current diagnoses were fused left wrist, bilateral CTS, and right sided de Quervain's tenosynovitis. His prognosis for her was poor. Petitioner reported she could not perform her job and Dr. Sobeski did not believe there was anything medically he could do to improve her condition. He recommended "that she be held off work permanently."

On August 28, 2013, Petitioner presented to Dr. Li for a second opinion about treatment options. She reported pain with numbness/tingling since 2008. She had multiple surgeries for CTS and De Quervain's without much relief. She rated her pain at 6/10. Dr. Li concluded that "the pain was to (*sic*) generalized to formulate a treatment plan."

On October 21, 2013, Petitioner returned to Dr. Sobeski to have her disability papers filled out. Dr. Sobeski noted that her conditions "were stable and they really had not changed at all since" the last visit. He "would continue with restrictions per the FCE."

On March 10, 2014, Petitioner presented to Dr. Jung, on referral from Dr. Sobeski, for evaluation of pain in the hands/wrists/right arm. She had a lot of issues with her hands and wrists since 1993. She had several procedures. After his examination, Dr. Jung diagnosed bilateral hand/wrist pain and cervical degenerative disc disease ("DDD"). He concluded there was nothing he could do directly for her hand/wrist pain, but thought the majority of the discomfort may be coming from her cervical spine. He ordered an MRI.

Three weeks later, Petitioner returned after the MRI. Dr. Jung now diagnosed cervical DDD, severe cervical foraminal/spinal stenosis, and bilateral hand/wrist pain. He wanted to refer her to their neuro spine specialist to see if a cervical ESI was indicated.

On June 3, 2014, Petitioner presented to Dr. Olivero, in the Spine Institute, for evaluation or hand pain that had been going on for some time. An MRI showed severe arthritis, mild central spinal stenosis, and moderate foraminal stenosis at multiple levels. He didn't know how much of the symptoms were coming from the neck and from her residual CTS. Because of the multilevel DDD, surgery was not recommended. Dr. Olivero recommended PT for the neck. On June 25, 2014 and August, 5, 2014, Dr. Jung administered interlaminar ESIs at C7-T1 for cervical DDD, severe foraminal/spinal stenosis, and bilateral hand/wrist pain.

On September 2, 2014, Petitioner returned reporting the injections did not help much, with no improvement other than a little better neck ROM. She did not want to take pain medication. There was nothing Dr. Jung could do for her in regards to pain management. He would not recommended chiropractic treatment because of the severe spinal cord stenosis. He advised her to go back to the Spine Institute for another surgical consideration.

On October 23, 2014, Petitioner returned to Dr. Sobeski. Petitioner's clinical examination was "unchanged from previous years." He noted that "she has had an FCE and [he] would make those restrictions permanent. Currently, they recommend working 2.64 hours per day with 30 minutes at a time. She has 10-15 pound weight restriction per side as well." It looks like Dr. Sobeski released her from treatment *prn*.

On July 13, 2018, Petitioner returned for "issues of disability," which Dr. Sobeski did not get involved with. He reiterated the restrictions required her to "perform a variety of these [hand] tasks for 30 minutes at a time, now [apparently "not"] to exceed 2.64 hours in an eight-hour day." She gave him something regarding a position of clerk at the U of I, which she felt she could not do with her restrictions.

On September 9, 2019, Petitioner presented to PA Husmann, at Carle Clinic with back pain with some spasming. She stated her three young grandchildren were spending the night and she cleaned most of Friday. By Friday night she was in bed and unable to move for most of the weekend. Because of her history with a compression fracture, Ms. Husmann ordered x-rays, prescribed muscle relaxers, and sent her to the pain management doctor.

On September 30, 2019, Petitioner returned to Dr. Jung for lower back pain, which was "bothering her a lot more." Dr. Jung diagnosed lumbar DDD/radiculitis, chronic neck pain, and cervical DDD. He ordered a lumbar MRI in preparation for an ESI. On December 12, 2019, Dr. Jung administered a right-sided interlaminar ESI at L4-4 for lumbar DDD/radiculitis, chronic neck pain, and cervical DDD.

Findings of Fact – FCEs/Job Search

Petitioner submitted into evidence a document she prepared dated September 11, 2014. It appears to show that Petitioner applied for 31 jobs with the Champaign-Ford County School District. It also shows that the last salary she earned in April of 2013 was $20.57 an hour. Petitioner also submitted a spreadsheet she prepared consisting of 13 pages spanning February 29, 2014 through February 5, 2016. It includes 212 entries apparently of applications and/or inquiries with many submitted to some entities at the same time

An FCE was performed on May, 5, 2011. The therapist noted that Petitioner gave maximum effort in all testing. She reported bilateral wrist pain with much of the testing. Petitioner functioned at the light-to-medium physical demand level ("PDL"). The therapist could not fully address her ability to return to work because she did not have a job description. She recommended that Petitioner could safely work full time if she was limited to rarely lifting 30 pounds floor to waist/front carry and 15 lifting pounds waist-to-crown. She could frequently carry up to 10 pounds on the right/left, but 5 pounds front carry/waist-to-floor/waist-to-crown.

Another FCE was performed on March 14, 2013. Petitioner reported she worked full-time and a good portion of her job consisted of computer work (mostly mousing), printing/collating/filing/carrying documents/materials. She developed symptoms in her right thumb, traveling up to the shoulder, after doing any specific task for more than an hour. She also reported pain in her neck/forearm/wrist rated between 5-7/10. She was able to lift 15 lbs waist to floor rarely, 10 lbs occasionally, and 0 lbs frequently. After testing Petitioner reported 8/10 pain in her right shoulder/forearm/wrist.

The therapist, believed Petitioner could return to work full-time at her current job with the following recommendations:

> Petitioner "can perform a task using her hands including typing/mousing, sorting papers/flipping papers/using staple remover for up to 30 minutes at one time. It is recommended she wear her right wrist brace consistently. Following the 30 minutes of a hand task, she is to perform another activity not to include typing/mousing, sorting papers/flipping papers/using staple remover. She can perform a variety of tasks for 30 minutes at a time not to exceed 2.64 hours in an 8-hour work day."

Findings of Fact – Depositions

Dr. Sobeski testified by deposition on January 14, 2016, after being called by Petitioner. He was a board-certified orthopedic surgeon with a subspecialty in hand surgery. He last saw Petitioner on October 23, 2014. When he saw her on April 10, 2013, she had dealt with problems at work for about five years. Her current diagnoses were bilateral CTS, bilateral tendonitis, and left wrist arthrodesis (Petitioner is left-handed). She reported she could not perform her job and had at least two FCEs. He thought her prognosis was poor and there was really nothing medically he could do for her. He recommended that "she be kept off work permanently." When she returned on October 21, 2013 her condition had not changed and he again filled out her disability paperwork.

She returned to Dr. Sobeski a year later on October 23, 2014. He placed her on permanent restrictions as outlined in the FCE. She was restricted to working 2.64 hours a day with 30 minutes at a time with her hands and 10-15 pounds lifting per side. Dr. Sobeski based his opinions on whether Petitioner can work or that she needed work restrictions on the FCE results.

Dr. Sobeski noted that Petitioner's capacity to lift from waist to floor in the 2011 FCE was 30 pounds maximum, 20 pounds occasionally, and 5 pounds frequently. In the 2013 FCE, her lifting capacity was 15 pounds maximum, 10 pounds occasionally, and 0 pounds frequently. In the waist to crown category her ability to lift 15 pounds maximum and 10 pounds s occasionally were the same in the 2011 and 2013 FCEs. However the frequent lifting capacity went from 5 lbs in 2011 to 0 lbs in 2013. Range of Motion ("ROM") of the wrist went from 68 degrees in 2011 to 60 degrees in 2013.

Dr. Sobeski's current diagnoses were fused left wrist, bilateral CTS, and right sided de Quervain's tenosynovitis. Dr. Sobeski refused to opine that Petitioner's work activities caused any of her conditions of ill-being. However, there appeared to be a material increase in her disability based on the two FCEs. He believed Petitioner's diagnoses in 2013 and 2014 were continuation of the diagnoses he treated her for in 2008 through 2011.

On cross examination, Dr. Sobeski testified he believed the FCEs were performed by the same therapist. As far as he knew, her employer was honoring her restrictions from the 2011 FCE. Her capability could fluctuate from day to day, so the variances could be meaningless. He noted that the difference in wrist ROM "probably doesn't make a whole lot of difference." He noted that her diminished lifting capacity could reflect a lot of things, such as issues with her neck, knees, back, *etc*. He thought she had seen somebody for her spine. He noted in 2011 that her complaint could be coming from her neck. If she was seeking treatment or having injections, that could possibly affect the numbers in the 2013 FCE.

Dr. Sobeski testified that at the October 22, 2013 visit her condition was basically stable since the previous time he saw her. Her conditions appeared stable or unchanged since 2011. He did not recall whether she was diagnosed with hypothyroidism. He did not recall whether Petitioner had work conditioning before the 2013 FCE, but that would be "a pretty common" practice." There was a slight difference downward, and there were probably many explanations for that. Other than the waist to floor numbers, the other differences were small and would not be evidence of a significant change.

On redirect examination, Dr. Sobeski reiterated that his diagnoses remained the same from 2011 to 2013. He did not identify any cervical pathology that needed surgery. He believed Petitioner's complaints of pain arose from her hands. He read from the Arbitrator's decision about Petitioner's job duties and noted that in his previous deposition, he opined that her job activities could have aggravated her condition. That was still his opinion. On re-cross examination, Dr. Sobeski testified he was not a spine specialist and he would defer to a spine specialist regarding diagnoses of the spine/neck. He based his opinions on Petitioner's job activities before the matter was arbitrated.

Dr. Sobeski again testified by deposition on September 23, 2019 after being called by Respondent. He testified he treated Petitioner for conditions of her hands/wrists bilaterally since 2008. He was to assume that the Commission had already found that her conditions were caused by her work activities. Upon review of his previous testimony, Dr. Sobeski agreed that he testified that when he saw Petitioner on April 11, 2013, October 22, 2013, and October 23, 2014 that he did not provide her any treatment. He identified notes from October 24, 2016 at which time Petitioner presented to have her restrictions evaluated. No treatment was provided nor treatment plan created at that visit. His clinical examination was unchanged from his previous examination. After his examination, Dr. Sobeski recommended no change in her restrictions.

He saw her again on July 13, 2018 "for issues with disability." He explained to her that he typically did not get involved with that issue. He discussed with her that she could perform tasks "using her hands including typing, mousing," "sorting/flipping," paper for up to 30 minutes at a time, "as opposed to slipping papers and using a staple remover." It was also recommended

that she wear a splint on her right hand consistently. Petitioner wanted him to include that she was given the position of information clerk and she did not feel she could do that with the restrictions she had. She also wanted him to correct "slipping" to "flipping" and that she got information from the internet and from the U of I. He issued his addendum report at her request.

Dr. Sobeski did not believe he examined her wrist on July 13, 2018. He last saw Petitioner on October 17, 2018 when she came in with disability paperwork. He gave the paperwork to an assistant and advised Petitioner to come back if she had any problems on a *prn* basis. He did not believe he examined her on that date, he did not provide/recommend any treatment on that date. He did not believe that Petitioner contacted his office regarding her work restrictions prior to their visit on October 24, 2016.

Dr. Sobeski was familiar with Samantha Bales and he would have no reason to believe she would include inaccurate information on the office phone log. In her entry dated July 24, 2018, she noted that Petitioner stated she needed "Dr. Sobeski to refer to the April 10th, 2013 note and reiterate that her conditions have not changed and she cannot work." Similarly, he knew Konnor Williford who indicated in a phone log entry: "He states nothing has changed since the April 10th, 2013 date. He states he is not going to say that she cannot work." Dr. Sobeski had no reason to question that entry. Dr. Sobeski continued to believe that Petitioner could work under the restrictions pursuant to the FCE. He was not willing to take her off work totally. He thought Petitioner's conditions were stable for several years and nothing has changed.

On cross examination, Dr. Sobeski testified he did not believe the results of the FCE taken after arbitration represented a worsening of her condition. He reiterated that determining a patient's level of disability is not part of the treatment he provides, but he does get involved in their ability, or lack thereof, to perform specific work functions. For that he relies on FCEs which are the only objective standard they have. He would base his restrictions on the most recent FCE. On October 24, 2016, Petitioner reported her condition was "really unchanged" and "if anything her symptoms are worse." He thought that was of medical significance.

On redirect examination, Dr. Sobeski testified that typically patients go through work conditioning before an FCE. If a person had no treatment for two years, that could affect a second FCE. He still agreed that the difference in the FCE results could be based on deconditioning. He did not believe that the lack of treatment invalidated the second FCE. He did not remember whether the second FCE was ordered at Petitioner's request.

Dr. Carroll testified by deposition on February 29, 2016 that he is a board-certified orthopedic surgeon. He has an added qualification in hand surgery, in which he specializes. IMEs comprise about 8% of his practice and about 70% of which are done on behalf of employers.

He performed an IME on Petitioner on January 19, 2015, reviewed medical records, and issued a report. In the examination, Petitioner presented with tenosynovitis related to a wrist fusion, CTS, and de Quervain's. On examination, Petitioner showed "some residual" from CTS. She worked for Respondent from 1998 to April of 2013. He thought that a portion of her complaints still related to the injuries in 2008, though some of it could also be related to the

"fairly significant changes" seen in the MRI of her cervical spine. He thought Petitioner was able to work with a restriction of 15-20 pounds lifting with no repetitive forceful gripping/bending/torquing with the hand. The FCE from 2011 played a role in his recommendation.

Dr. Carroll believed he saw reference to an FCE in 2013, but he was not sure whether he had it in the chart. He thought they were similar in the types of activities she could perform. He then agreed that Petitioner probably could lift more in 2011 than she "could now." Though she may have had a little more weakness, "the hand function looked the same." He did not know how that variance would affect Petitioner's job performance. Lifting involves parts of the body other than the upper extremities. Dr. Carroll opined that Petitioner was at MMI related to her upper extremities on October 21, 2013, the day she stopped seeing doctors for those complaints. If he knew that Dr. Sobeski had not treated her upper extremities since November 2, 2010, that would bring the MMI date much earlier.

On cross examination, Dr. Carroll agreed that the 2013 FCE had her lifting less weight than she did in 2011. That variance could possibly be related to her hands. She had some residual sensitivity on Tinel testing. He agreed that Petitioner's pain and numbness could be attributable to a CTS condition. She was not working when he saw her. Dr. Carroll agreed that it appeared that Petitioner's condition was permanent, she had residuals of CTS, and he recommended work restrictions. He believed Petitioner could do a job in which she had to twist her wrists to flip through papers. Dr. Carroll agreed he was not a spine specialist. He thought it was possible, but not likely, that "the origin of her complaints are at the forearm or wrist area." He agreed that no treating doctor had yet recommended cervical surgery. Dr. Carroll recommended another spine specialist for further evaluation.

Dr. Carroll agreed that Dr. Olivero noted only mild cervical stenosis, but Dr. Carroll saw significant changes in C5-6 and C6-7. Even though Dr. Olivero opined that surgery would not likely be beneficial, Dr. Carroll believed she should get a second opinion. When the restrictions imposed in March of 2013 were read to Dr. Carroll, he testified they appeared reasonable.

On redirect examination, Dr. Carroll testified deconditioning could play a factor in Petitioner's reduced function in 2011 and 2013. He thought Petitioner should restrict her activities but not her hours. Hypothyroidism can have an impact on subjective complaints of hands/wrists. On re-cross, Dr. Carroll agreed that hypothyroidism could possibly not affect Petitioner's hands.

Dr. Keller testified by deposition on February 8, 2022 that he was a board-certified orthopedic surgeon. He examined Petitioner on or about September 14, 2018 for evaluation of her upper extremities and cervical/lumbar spine. Petitioner reported she had a total of eight surgeries and she continued to have numbness/tingling/weakness in both hands and was taking Neurontin for nerve pain. Dr. Keller diagnosed multilevel cervical DDD with moderate-to-severe spinal stenosis, history of two right CTS release surgeries/three left CTS surgeries, history of left/right de Quervain's release surgeries, and history of left wrist fusion surgery.

Dr. Keller agreed that when he writes a report, it is "for the purpose of giving [his] complete opinion as to the medical condition of an individual." In making his assessments, Dr. Keller uses medical records and vocational reports. Dr. Keller concluded that Petitioner's complaints were consistent with his examination and the medical records, she had significant limitations, the work restrictions imposed were medically necessary, and with these restrictions it was unlikely that she can hold a normal job.

On cross examination, Dr. Keller agreed that he did his report for Prudential, but he was unaware that it on behalf of SURS. He believed IMEs account for 5%, or less, of his practice. He was not asked for the IME by either of the parties' lawyer or Respondent. He agreed that he was not a voc rehab expert and did not provide Petitioner with any such services. In his assessment, he included Petitioner's arthritis, cervical spine/lumbar spine, as well as her upper extremities. Dr. Keller is an orthopedic surgeon and often addresses work restrictions for patients. He knows Dr. Fletcher, who refers patients to him. When there is an occupational health doctor involve, such as Dr. Fletcher, he defers the imposition of restrictions on that doctor.

Dr. Keller was not certain when Petitioner's cervical condition began. He did not believe he received any records about treatment of her cervical or lumbar spine prior to 2013. He does not dictate his findings in front of the examinee; he does it after the fact. He agreed that although he noted that Dr. Sobeski took her off work permanently, he later released her to restricted work.

Dr. Keller did not recall receiving any deposition transcripts. He also did not believe he reviewed an IME report from Dr. Carroll, a voc rehab report from Mr. Morgan, or his deposition. Petitioner complained about her lumbar spine and her cervical spine as well as her upper extremities. Although Petitioner had two FCEs, he only got the second. Petitioner reported that that FCE indicated she could not perform her activities at work. He read from the March 18, 2013 FCE in which the therapist opined that Petitioner could perform her job if accommodations were made. That does not seem to be consistent with the report Petitioner gave him. His examination appeared to be negative for bilateral CTS and de Quervain's. It appeared that those conditions had resolved. She had slight-to-moderate limitations in cervical ROM as well as DDD with moderate-to-severe spinal stenosis. He also diagnosed multilevel lumbar DDD with severe spondylolisthesis at L3-4.

Dr. Keller was asked if a patient has an FCE and then two years later had another FCE without any treatment, which would be more reliable. He answered that if the patient was inactive in the interim, "there's a chance that they could be deconditioned, and, therefore, may not do as well in that" FCE. He agreed that the likelihood of Petitioner's ability to find a job was outside of his expertise. He wrote that he found no symptom magnification, but he did not do any distraction testing.

Mr. Gustafson testified by deposition on March 26, 2019 that he was a certified rehabilitation counselor practicing in the field for 44 years. He met Petitioner once in 2016, had medical records provided by her lawyer, the FCEs/restrictions relative to her employment, and the first deposition of Dr. Sobeski.

Petitioner completed some hours of undergraduate programming at the Pacific School of Theology from 1976 to 1984, returned to Illinois and completed 30 hours at Parkland CC in office management/office careers. She had been employed as a factory worker, in cleaning, as a receptionist, and in 1998 began working for Respondent as an office assistant.

After 2008, she was off work, attempted to return to work multiple times but failed, and was finally terminated in 2013. Her return to work failed because she was not able to use her arm for extended periods and she had pain and poor productivity. Petitioner had not worked since 2013. Mr. Gustafson had to conclude that she was unable to perform any of the clerical work, and nothing else was being offered to her.

Mr. Gustafson reviewed the 2013 FCE which provided certain work restrictions. The restrictions were consistent with his conversation with Petitioner and the opinion of Dr. Sobeski. Petitioner reported to Mr. Gustafson that she had constant pain in her hands bilaterally, which appeared to be consistent with the medical records. She could work with her hands for a maximum of 30 minutes before she needed to rest. She had trouble driving due to vibration in the steering wheel. Her ability to perform housework "very intermittent." All Petitioner's subjective reports were consistent with the FCE.

In his experience, the type of upper extremity issues as Petitioner had "lend themselves more to certain types of service activity that, that emphasizes less use of the upper extremity and also at night." For example, she could work as a night security guard where she did not have to carry a gun or have "any type of interaction with her hands that required her to hold somebody." When you "put it all together," her job prospects were very limited and "you don't really have a very stable job market."

Mr. Gustafson again testified that he often makes opinions based on his interpretation of medical records *etc*. On the issue of Petitioner finding part-time employment, Mr. Gustafson opined that "there was nothing clear to [him] that would suggest [Petitioner] would succeed even in a part-time job situation." She may be more suited to a position with limited hours of work a day, rather than something like two full days a week. He thought it "quite unlikely" Petitioner could earn more than $10 an hour.

In discussing another vocational assessment, Mr. Gustafson testified that a job as a membership solicitor was mentioned. In that job the person tries to sell memberships to gyms *etc*. While that may be reasonable from a physical standpoint, Petitioner has no sales background, so there is no way to know whether she would be successful in meeting sales quotas. The classification of surveillance system monitor technically no longer exists, but it would involve security using surveillance. Again, these are predominantly retail establishments where enforcement may become an issue, though a job as night-watch person might be feasible. A person in a job like receptionist/information is expected to be busy so you might be "doing some other clerical activity" when you aren't engaged in your primary function. She could possibly work as a case aid, an assistant to social workers, but she did not believe she had the educational credentials to get such a job and that job would require writing/computer data entry. Mr. Gustafson did not believe any of the job categories in other report were feasible on a full-time basis.

Mr. Gustafson testified that when you have two FCEs, you always use the most recent one because it has the most recent/relevant information. Employers are always concerned with an employee's endurance and productivity.

On cross examination, Mr. Gustafson testified Petitioner reported driving on average twice a week, generally to Champaign. Champaign is between five and 10 miles from Petitioner's home. She was also doing some housework for her mother, and volunteer work for her church. He was not sure what that all entailed. He advised Petitioner on job searches and what types of jobs to apply for, but he did not contact potential employers on her behalf. It appears that he did more work for Petitioner's firm "than anybody." He thought his reference to her options being "very few" to mean that her possibility of finding employment was 5%. He agreed that the examination was on June 2, 2016 but his report was dated March 19, 2017; he was not sure the reason for that delay.

When he saw Petitioner, she was out of work for about three years. He believed she looked for employment during that period. He thought she tried to get alternate employment with Respondent, but was unsure whether she sought work from other potential employers. Mr. Gustafson did not perform a labor market survey. Regarding her attempts to return to work, Petitioner reported to him that she took frequent breaks and had relatively poor productivity due to pain and weakness in her upper extremity. Her "productivity suffered to the point where *** [Respondent] opted not to retain her." He did not review the FCE from May 5, 2011. Any differences in the FCE would be irrelevant to him; he only wanted the most recent medical information. He did not recall any discrepancies between the FCE results and Petitioner's subjective statements.

On redirect examination, Mr. Gustafson testified it wasn't a problem that he wrote the report several months after the examination; besides his recollection, he also had his notes. Knowing of Petitioner's visits to her mother at an assisted living facility and doing shopping errands for her, would not change his vocational opinions. Similarly, volunteering co-leading a team in a food pantry for no more than 2 hours would not affect his opinion, assuming her job was mainly paperwork and coordination. Volunteer work is different because you aren't concerned about your productivity. When asked about the recommendations in a hypothetical question, Mr. Gustafson answered that the FCEs, are both "saying the same thing – intermittent use of the hands." On re-cross examination, Mr. Gustafson testified while he believed Petitioner's condition was not medically unusual, it was vocationally unusual because you have to put it in the context of job performance.

Mr. Morgan testified by deposition on February 11, 2020 that he was a certified rehabilitation counselor and has been for 26 years. He saw Petitioner twice in December of 2017. Petitioner had two FCEs, which Mr. Morgan reviewed. He based his opinions and recommendations on the more recent FCE in 2013. He also saw the restrictions Dr. Sobeski testified to in his deposition.

Petitioner told him about doing volunteer work for about 2&1/2 hours, "greeting people and just explaining the activities that were going on there." She also reported running errands for her mother at an assisted living facility. In discussing general capabilities, Petitioner advised

him that she had to alternate between sitting/standing due to a tailbone fracture 20 years previously. She also mentioned her "spine" in that context. She also told him she was limited in bending forward, lifting over 10-15 pounds, raking, vacuuming, and driving more than 30 minutes. Petitioner was "educated" with about 102 hours of college.

Petitioner was conversant in numerous computer programs, which would be viewed as positive by prospective employers. She sent him a resume. Petitioner told him she was looking for employment. She stated she used a spreadsheet, which Mr. Morgan had not seen. She did not send him any information on her job search. He advised her not to volunteer information about her disability on her employment applications. Mr. Morgan went over the findings of his assessment. Petitioner was skeptical about finding employment, did not appear motivated to look for employment, and expected she would not be successful in any job.

Mr. Morgan opined that a reasonably stable job market existed for Petitioner based on her education, her work history, and his experience. Mr. Morgan had reviewed Mr. Gustafson's report before meeting with Petitioner, but did not believe he specifically referenced it in his report. He noted that the salary ranges in Mr. Gustafson's report were dated; they were higher now as the minimum wage increased. He believed Petitioner could be employed on a full-time basis and could earn between $11 and $20 an hour.

On cross examination, Mr. Morgan agreed that in his report, Dr. Carroll found no evidence of symptom magnification or malingering. He also found the restrictions outlined in the 2011 FCE to still be reasonable. He did not believe that an information clerk necessarily had to stay seated in their chair for their entire shift, but could stand as well. He agreed that Petitioner reported that she was able to do less volunteering than she had previously and was not sure she could manage the paperwork at the food pantry when they switched to computers. Mr. Morgan did not believe he was able to give an opinion on which FCE more accurately portrayed Petitioner capabilities.

Conclusions of Law

Petitioner argues she sustained her burden of proving that her disability had increased since the original arbitration hearing on 2012. She stresses the 2013 FCE shows Petitioner's condition had worsened and her disability regarding her lifting ability and grip strength had increased. In addition, Dr. Carroll testified that Petitioner's condition had gotten a little worse and her function had changed. Petitioner also cites her unrebutted testimony about her worsened condition while working, she reported this to Dr. Sobeski who ordered the repeat FCE. Finally, Petitioner cites the testimony of Dr. Keller who opined that Petitioner was PTD and that the likelihood of her "holding and securing a full-time position does not exist.

Additionally, Petitioner argues that under the current circumstances, Petitioner is permanently and totally disabled ("PTD") based on the odd-lot theory of permanent disability. She argues she showed a diligent, though unsuccessful, job search, her age (65), her limited work experience, and her permanent restrictions which resulted in a conclusion that there were no job available. Finally, Petitioner also argues that the opinions of certified voc rehab counselor, Mr. Gustafson is more persuasive than those of certified voc rehab counselor, Mr. Morgan.

Petitioner wants to be declared PTD from April 10, 2013 when Dr. Sobeski took her off work permanently.

Respondent argues Petitioner did not sustain her burden of proving her condition had materially increased since the Commission decision became final. It stresses that Petitioner did not show any treatment for her condition for at least five years prior to the 19(h) petition being heard. Respondent also argues that if Petitioner's condition had materially changed, Dr. Sobeski and Dr. Li would have established a treatment plan, which they did not do. It also suggests that if anything the later 2013 FCE would more accurately portray her disability at the time of arbitration because it was temporarily closer to the day of arbitration than the 2011 FCE. Respondent also stresses that Petitioner's primary provider, Dr. Sobeski repeatedly testified that Petitioner's condition had not changed during the times he saw her, that he never actually treated her from 2013 to 2018. Finally, Respondent posits that Petitioner's conduct from arbitration in 2012 to the current 19(h) hearing was "solely for the purpose of an illicit secondary gain."

The Commission finds Petitioner, as the moving party, had the burden of proving entitlement to relief under §§8(a)/19(b) of the Act, and she did not. The Commission bases that conclusion primarily on Dr. Sobeski's testimony that his diagnoses and clinical examinations had not changed throughout his treatment of Petitioner, it is unclear what the difference in FCE results actually means in terms of functionality/ability to be employed, and whatever decline in her functionality seems to be related more to non-work related conditions to her spine that any material change in her work-related conditions of her upper extremities.

Regarding the second FCE, the Commission interprets the restriction was for 2.64 hours per day of hand activity and not 2.64 hours of work per day totally. In this regard, the Commission notes that the therapist indicated that she was restricted to 2.64 hours of [hand] activity in "an 8-hour work day" certainly implying an 8-hour shift. That interpretation reduces her level of disability based on the findings in that FCE.

In addition, while Dr. Sobeski testified that the later FCE represented a deterioration of her condition, he also noted that it could be caused by various factors. For example, Dr. Sobeski noted, her reduced lifting capacity in the second FCE could be related to other conditions of ill-being other than the work-related injuries to her hands/wrists such as her lumbar and cervical spines, or simply through deconditioning/lack of treatment in the interim. Finally, much of her other impairments, such as inability to stand/walk for extended periods, are related to her spine condition and not her upper extremity condition.

The Commission does not find the testimony of Dr. Keller, the vocational rehabilitation witnesses, or the job search exhibits Petitioner's submitted to be very persuasive. First, regarding Dr. Keller, he took into account Petitioner's non-work related conditions into consideration in assessing her condition and ability to be employed. Regarding the vocational rehabilitation counselors and the job search data, the opinions of the counselor and Petitioner's job search are only relevant after Petitioner has sustained her burden of proving significant change in her condition, which the Commission finds she did not.

Petitioner does not argue the issue in her brief, but because her motion includes §8(a), she is inherently seeking medical expenses incurred since arbitration. Respondent asks the Commission to deny any award of medical because Petitioner has not met her burden of proving she suffered a materially increased disability. In addition, it argues that none of the doctors rendered any treatment in the visits after arbitration and that those visits were not done for "medical purposes" but rather they were done for "legal purposes." We agree with Respondent that Petitioner did not receive any treatment for her work-related conditions after arbitration. Rather, she was seeking modification of her restrictions, anticipating litigation, and/or receiving treatment for non-work related conditions. Therefore, the Commission denies the award of post-arbitration medical expenses.

THEREFORE IT IS ORDERED BY THE COMMISSION that Petitioner's Petition for Relief Pursuant to Sections 19(h)/8(a) of the Act is hereby denied.

November 4, 2024

DLS/dw
D-9/4/24
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC005445
Case Name	Anita Ferguson v. University of Illinois
Consolidated Cases	09WC007134; 11WC005446; 11WC005699;
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	24IWCC0517
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Timothy Steil

DATE FILED: 11/4/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANITA FERGUSON,

Petitioner,

vs. No: 11 WC 5445

UNIVERSITY OF ILLINOIS,

Respondent.

DECISION ON PETITION PURSUANT TO §§19(h)/8(a)

This matter comes before the Commission on Petitioner's Petition for Relief Pursuant to Sections 19(h)/8(a) of the Act. A hearing was held in Champaign on September 7, 2023 before Commissioner Simonovich. The parties were represented by counsel and a record was taken. Prior to hearing testimony, Petitioner's lawyer noted that previously, Arbitrator Lindsey heard the matters, found accident, found causation, and found average weekly wage in 09 WC 7134 and 11 WC 5699 and awarded Petitioner permanent partial disability ("PPD") benefits representing loss of 17.5% of the left hand and 20% of the right hand. In 11WC 5445 and in 11 WC 5446 she found for Respondent. On Review, in 09 WC 7134, the Commission modified the award to increase the PPD award to loss of 20% of the left hand and 25% of the right hand. The Commission affirmed and adopted the other Decisions of the Arbitrator.

Findings of Fact – Testimony

Petitioner testified that she started working at the College of Aces in mid-2000, "until she had a hand injury in July of 2008 where [she was] off work for multiple surgical procedures." Thereafter, she made several attempts to return to work but left her employment in 2013 because she did not believe her employer was honoring her work restrictions. Her doctor "finally wrote [her] off because [she] wasn't able to do" her job. Petitioner was shown RX9, a notice of injury. The document indicated she was having problems with her right hand, wrist, thumb and index finger from repetitive motion. Her recommendation to prevent the problem was "follow current restrictions in place/one hour per type of hand task daily." Petitioner left the Respondent's employment in 2013. Her understanding was that it had nothing to do with her disability retirement, but rather whether she was coming in every day.

Petitioner testified that on February 13, 2009, she had left CTS release and removal of existing hardware. On June 2, 2009 she had right CTS release with ulnar fat pad rotation flap. She returned to work on July 6, 2009, continued to have problems, and on August 21, 2009 she was given restrictions of no pushing/pulling more than 15 pounds and she had physical therapy. On January 11, 2010, she had an injection in the 1st dorsal compartment of the right wrist and was released to activities as tolerated.

On July 19, 2010, her doctor advised her to refrain from flipping through records with her right hand for two weeks and thereafter to limit the activity to two hours a day, preferably spread out through the day. She had her first FCE on May 5, 2011. While she worked for Respondent, Petitioner worked in a union and her title was office support specialist.

Her claim was adjudicated in November of 2012. Thereafter, she returned to work until 2013, when she was taken off work by her PCP, Dr. Schaap. She told him that she had right pain due to increased work demands and pressure to perform. He ordered an FCE and referred her to a hand specialist. After the FCE, she was placed on restrictions of 10 pounds lifting with only occasional lifting of 15 pounds. She saw Dr. Sobeski on April 10, 2013, at which time he took her off work.

On March 10, 2014, she saw Dr. Jung for neurosurgical consultation. She had a cervical MRI and ESIs at C7-T1. Dr. Jung determined that the injections had not worked. She returned to Dr. Sobeski, who placed her on permanent restrictions as outline in the FCE. She was restricted to working 2.64 hours a day with 30 minutes at a time with her hands and 10-15 pounds lifting "per side." She saw Dr. Sobeski again two years later on October 24, 2016, at which time she told him her condition was the same or worse. Dr. Sobeski retained the restrictions. Similarly, he retained the restrictions when she saw him on July 13, 2018; the restrictions have not been modified since.

Petitioner was on disability at the U of I. She was evaluated periodically to determine whether her disability continued and she was sent to Dr. Keller by SURS. She saw him in August of 2018. Although she was put on disability by SURS, she searched for jobs within her restrictions. She identified PX13 as jobs she applied for. PX14 was a rejection letter. PX15 is her job search log. She did not get any of the jobs for which she applied.

Petitioner testified she did not receive any vocational assistance. Petitioner identified PX19 as photos she made of "massive files, massive shredding, more boxes of files," "the financials [she] did, more boxes of files." Her hands worsened trying to perform her job. She had increased numbness/tingling/pain. Petitioner also testified that she moved to be closer to her daughter so her family can help with things. She cannot scrub, clean deeply, she had problems with her shower and had handrails put in. She cannot drive for more than 30, 35 minutes before she has to shake her hands out. She used to host all the holiday parties, but no more. She no longer volunteered at the food pantry that she did for 20 years and cannot do as much with her grandchildren, all because of her hands. Eventually, she stopped looking for employment and retired from U of I on March 29, 2022. She retired because she could be on disability only for a certain period of time and could not work anyway. If she could work she would.

On cross examination, Petitioner testified she still took care of her three grandchildren "a couple of hours maybe." She would not disagree that she reported that her three grandchildren were sleeping over and she had to clean the house before the visit. Petitioner agreed that in her testimony at the original arbitration, she testified that in November she was working with permanent restrictions of one-hour work per hand task, 20-pound restriction on her left hand, and 15-pound restriction on her right hand. She also testified that her right hand would swell/hurt, with numbness/tingling radiating up her arm to her shoulder. She likes to help her grandchildren; she cooks them a simple meal, and "they actually do the dishes."

Petitioner agreed that she stated off-the-record that her grandchildren were self-sufficient. She also testified that she had difficulty sleeping, tossed and turned, and had to shake her right hand. She also had trouble buttoning/hooking, opening jars, using mixers, lifting heavy things out of the oven, writing for more than 30 minutes, collating, stuffing, flipping, sorting, mousing, and typing for long periods of time. It appears that Petitioner had the same job at the time of arbitration that she did from November 20, 2012 through February of 2013.

Apparently, Petitioner saw her PCP on December 27, 2012 for respiratory issues and back pain and on January 10, 2013 she saw Dr. Greely for persistent cough. She agreed that in neither of those visits she reported any hand complaints; but that was not why she saw them. Petitioner would not disagree that in around February 15, 2013 she informed Respondent of issues regarding her hands and her work. She agreed that on February 14, 2013, she discussed her work and her alleged hand pain with Dr. Sobeski and that he told her there was nothing medically that could be done for her.

Petitioner agreed that her FCE in 2011 was after she had treatment including surgeries and physical therapy ("PT"). However when she had the FCE in 2013, she had not had PT. She asked Dr. Schaap to order an FCE in 2013 and later to have her work restrictions revised based on the FCE. She did not recall seeing Dr. Li. She denied contacting Dr. Sobeski's office requesting that he take her off work on March 29, 2013; she thought she told him she could not do her job.

Petitioner agreed that she was responsible for some of the housework at her home. She agreed that Respondent never terminated her from employment. She did not recall doing a job search in the past three years. Petitioner agreed that she prepared PX15, which is a 7-page spreadsheet that she prepared using a keyboard/mouse. It spans February of 2014 through February of 2016. She has not looked for job since 2016. Petitioner agreed that she had Hypertension, but no longer took blood pressure medication and hadn't in years. She has hypothyroidism because her thyroid was removed due to cancer. In addition, she had a fall which resulted in a lumbar fracture.

On redirect examination, Petitioner testified that to her knowledge her blood pressure never affected her hands. She received an injection in her neck which showed that her hand condition was not associated with a cervical condition. She often has groceries delivered because it may be too heavy.

Petitioner was read treatment notes from September 17, 2019, which sounded accurate to her. In it, she reported she had to clean most of Friday because her grandchildren were coming over, she overdid it, and that "by Friday night she was in bed and unable to move most of the weekend." She told Dr. Sobeski that she could no longer do her job because it required too much hand movement and her hands were getting worse. She asked for another FCE because the first did not deal much with her hands and was not really related to her job activities. The second FCE was on March 14, 2013, at which time she was still working. Her grandchildren were 5, 8, and 10.

Findings of Fact – Medical Records

On April 10, 2013, Petitioner presented to Dr. Sobeski, who's current diagnoses were fused left wrist, bilateral CTS, and right sided de Quervain's tenosynovitis. His prognosis for her was poor. Petitioner reported she could not perform her job and Dr. Sobeski did not believe there was anything medically he could do to improve her condition. He recommended "that she be held off work permanently."

On August 28, 2013, Petitioner presented to Dr. Li for a second opinion about treatment options. She reported pain with numbness/tingling since 2008. She had multiple surgeries for CTS and De Quervain's without much relief. She rated her pain at 6/10. Dr. Li concluded that "the pain was to (*sic*) generalized to formulate a treatment plan."

On October 21, 2013, Petitioner returned to Dr. Sobeski to have her disability papers filled out. Dr. Sobeski noted that her conditions "were stable and they really had not changed at all since" the last visit. He "would continue with restrictions per the FCE."

On March 10, 2014, Petitioner presented to Dr. Jung, on referral from Dr. Sobeski, for evaluation of pain in the hands/wrists/right arm. She had a lot of issues with her hands and wrists since 1993. She had several procedures. After his examination, Dr. Jung diagnosed bilateral hand/wrist pain and cervical degenerative disc disease ("DDD"). He concluded there was nothing he could do directly for her hand/wrist pain, but thought the majority of the discomfort may be coming from her cervical spine. He ordered an MRI.

Three weeks later, Petitioner returned after the MRI. Dr. Jung now diagnosed cervical DDD, severe cervical foraminal/spinal stenosis, and bilateral hand/wrist pain. He wanted to refer her to their neuro spine specialist to see if a cervical ESI was indicated.

On June 3, 2014, Petitioner presented to Dr. Olivero, in the Spine Institute, for evaluation or hand pain that had been going on for some time. An MRI showed severe arthritis, mild central spinal stenosis, and moderate foraminal stenosis at multiple levels. He didn't know how much of the symptoms were coming from the neck and from her residual CTS. Because of the multilevel DDD, surgery was not recommended. Dr. Olivero recommended PT for the neck. On June 25, 2014 and August, 5, 2014, Dr. Jung administered interlaminar ESIs at C7-T1 for cervical DDD, severe foraminal/spinal stenosis, and bilateral hand/wrist pain.

On September 2, 2014, Petitioner returned reporting the injections did not help much, with no improvement other than a little better neck ROM. She did not want to take pain medication. There was nothing Dr. Jung could do for her in regards to pain management. He would not recommended chiropractic treatment because of the severe spinal cord stenosis. He advised her to go back to the Spine Institute for another surgical consideration.

On October 23, 2014, Petitioner returned to Dr. Sobeski. Petitioner's clinical examination was "unchanged from previous years." He noted that "she has had an FCE and [he] would make those restrictions permanent. Currently, they recommend working 2.64 hours per day with 30 minutes at a time. She has 10-15 pound weight restriction per side as well." It looks like Dr. Sobeski released her from treatment *prn*.

On July 13, 2018, Petitioner returned for "issues of disability," which Dr. Sobeski did not get involved with. He reiterated the restrictions required her to "perform a variety of these [hand] tasks for 30 minutes at a time, now [apparently "not"] to exceed 2.64 hours in an eight-hour day." She gave him something regarding a position of clerk at the U of I, which she felt she could not do with her restrictions.

On September 9, 2019, Petitioner presented to PA Husmann, at Carle Clinic with back pain with some spasming. She stated her three young grandchildren were spending the night and she cleaned most of Friday. By Friday night she was in bed and unable to move for most of the weekend. Because of her history with a compression fracture, Ms. Husmann ordered x-rays, prescribed muscle relaxers, and sent her to the pain management doctor.

On September 30, 2019, Petitioner returned to Dr. Jung for lower back pain, which was "bothering her a lot more." Dr. Jung diagnosed lumbar DDD/radiculitis, chronic neck pain, and cervical DDD. He ordered a lumbar MRI in preparation for an ESI. On December 12, 2019, Dr. Jung administered a right-sided interlaminar ESI at L4-4 for lumbar DDD/radiculitis, chronic neck pain, and cervical DDD.

Findings of Fact – FCEs/Job Search

Petitioner submitted into evidence a document she prepared dated September 11, 2014. It appears to show that Petitioner applied for 31 jobs with the Champaign-Ford County School District. It also shows that the last salary she earned in April of 2013 was $20.57 an hour. Petitioner also submitted a spreadsheet she prepared consisting of 13 pages spanning February 29, 2014 through February 5, 2016. It includes 212 entries apparently of applications and/or inquiries with many submitted to some entities at the same time

An FCE was performed on May, 5, 2011. The therapist noted that Petitioner gave maximum effort in all testing. She reported bilateral wrist pain with much of the testing. Petitioner functioned at the light-to-medium physical demand level ("PDL"). The therapist could not fully address her ability to return to work because she did not have a job description. She recommended that Petitioner could safely work full time if she was limited to rarely lifting 30 pounds floor to waist/front carry and 15 lifting pounds waist-to-crown. She could frequently carry up to 10 pounds on the right/left, but 5 pounds front carry/waist-to-floor/waist-to-crown.

Another FCE was performed on March 14, 2013. Petitioner reported she worked full-time and a good portion of her job consisted of computer work (mostly mousing), printing/collating/filing/carrying documents/materials. She developed symptoms in her right thumb, traveling up to the shoulder, after doing any specific task for more than an hour. She also reported pain in her neck/forearm/wrist rated between 5-7/10. She was able to lift 15 lbs waist to floor rarely, 10 lbs occasionally, and 0 lbs frequently. After testing Petitioner reported 8/10 pain in her right shoulder/forearm/wrist.

The therapist, believed Petitioner could return to work full-time at her current job with the following recommendations:

> Petitioner "can perform a task using her hands including typing/mousing, sorting papers/flipping papers/using staple remover for up to 30 minutes at one time. It is recommended she wear her right wrist brace consistently. Following the 30 minutes of a hand task, she is to perform another activity not to include typing/mousing, sorting papers/flipping papers/using staple remover. She can perform a variety of tasks for 30 minutes at a time not to exceed 2.64 hours in an 8-hour work day."

Findings of Fact – Depositions

Dr. Sobeski testified by deposition on January 14, 2016, after being called by Petitioner. He was a board-certified orthopedic surgeon with a subspecialty in hand surgery. He last saw Petitioner on October 23, 2014. When he saw her on April 10, 2013, she had dealt with problems at work for about five years. Her current diagnoses were bilateral CTS, bilateral tendonitis, and left wrist arthrodesis (Petitioner is left-handed). She reported she could not perform her job and had at least two FCEs. He thought her prognosis was poor and there was really nothing medically he could do for her. He recommended that "she be kept off work permanently." When she returned on October 21, 2013 her condition had not changed and he again filled out her disability paperwork.

She returned to Dr. Sobeski a year later on October 23, 2014. He placed her on permanent restrictions as outlined in the FCE. She was restricted to working 2.64 hours a day with 30 minutes at a time with her hands and 10-15 pounds lifting per side. Dr. Sobeski based his opinions on whether Petitioner can work or that she needed work restrictions on the FCE results.

Dr. Sobeski noted that Petitioner's capacity to lift from waist to floor in the 2011 FCE was 30 pounds maximum, 20 pounds occasionally, and 5 pounds frequently. In the 2013 FCE, her lifting capacity was 15 pounds maximum, 10 pounds occasionally, and 0 pounds frequently. In the waist to crown category her ability to lift 15 pounds maximum and 10 pounds s occasionally were the same in the 2011 and 2013 FCEs. However the frequent lifting capacity went from 5 lbs in 2011 to 0 lbs in 2013. Range of Motion ("ROM") of the wrist went from 68 degrees in 2011 to 60 degrees in 2013.

Dr. Sobeski's current diagnoses were fused left wrist, bilateral CTS, and right sided de Quervain's tenosynovitis. Dr. Sobeski refused to opine that Petitioner's work activities caused any of her conditions of ill-being. However, there appeared to be a material increase in her disability based on the two FCEs. He believed Petitioner's diagnoses in 2013 and 2014 were continuation of the diagnoses he treated her for in 2008 through 2011.

On cross examination, Dr. Sobeski testified he believed the FCEs were performed by the same therapist. As far as he knew, her employer was honoring her restrictions from the 2011 FCE. Her capability could fluctuate from day to day, so the variances could be meaningless. He noted that the difference in wrist ROM "probably doesn't make a whole lot of difference." He noted that her diminished lifting capacity could reflect a lot of things, such as issues with her neck, knees, back, *etc*. He thought she had seen somebody for her spine. He noted in 2011 that her complaint could be coming from her neck. If she was seeking treatment or having injections, that could possibly affect the numbers in the 2013 FCE.

Dr. Sobeski testified that at the October 22, 2013 visit her condition was basically stable since the previous time he saw her. Her conditions appeared stable or unchanged since 2011. He did not recall whether she was diagnosed with hypothyroidism. He did not recall whether Petitioner had work conditioning before the 2013 FCE, but that would be "a pretty common" practice." There was a slight difference downward, and there were probably many explanations for that. Other than the waist to floor numbers, the other differences were small and would not be evidence of a significant change.

On redirect examination, Dr. Sobeski reiterated that his diagnoses remained the same from 2011 to 2013. He did not identify any cervical pathology that needed surgery. He believed Petitioner's complaints of pain arose from her hands. He read from the Arbitrator's decision about Petitioner's job duties and noted that in his previous deposition, he opined that her job activities could have aggravated her condition. That was still his opinion. On re-cross examination, Dr. Sobeski testified he was not a spine specialist and he would defer to a spine specialist regarding diagnoses of the spine/neck. He based his opinions on Petitioner's job activities before the matter was arbitrated.

Dr. Sobeski again testified by deposition on September 23, 2019 after being called by Respondent. He testified he treated Petitioner for conditions of her hands/wrists bilaterally since 2008. He was to assume that the Commission had already found that her conditions were caused by her work activities. Upon review of his previous testimony, Dr. Sobeski agreed that he testified that when he saw Petitioner on April 11, 2013, October 22, 2013, and October 23, 2014 that he did not provide her any treatment. He identified notes from October 24, 2016 at which time Petitioner presented to have her restrictions evaluated. No treatment was provided nor treatment plan created at that visit. His clinical examination was unchanged from his previous examination. After his examination, Dr. Sobeski recommended no change in her restrictions.

He saw her again on July 13, 2018 "for issues with disability." He explained to her that he typically did not get involved with that issue. He discussed with her that she could perform tasks "using her hands including typing, mousing," "sorting/flipping," paper for up to 30 minutes at a time, "as opposed to slipping papers and using a staple remover." It was also recommended

that she wear a splint on her right hand consistently. Petitioner wanted him to include that she was given the position of information clerk and she did not feel she could do that with the restrictions she had. She also wanted him to correct "slipping" to "flipping" and that she got information from the internet and from the U of I. He issued his addendum report at her request.

Dr. Sobeski did not believe he examined her wrist on July 13, 2018. He last saw Petitioner on October 17, 2018 when she came in with disability paperwork. He gave the paperwork to an assistant and advised Petitioner to come back if she had any problems on a *prn* basis. He did not believe he examined her on that date, he did not provide/recommend any treatment on that date. He did not believe that Petitioner contacted his office regarding her work restrictions prior to their visit on October 24, 2016.

Dr. Sobeski was familiar with Samantha Bales and he would have no reason to believe she would include inaccurate information on the office phone log. In her entry dated July 24, 2018, she noted that Petitioner stated she needed "Dr. Sobeski to refer to the April 10th, 2013 note and reiterate that her conditions have not changed and she cannot work." Similarly, he knew Konnor Williford who indicated in a phone log entry: "He states nothing has changed since the April 10th, 2013 date. He states he is not going to say that she cannot work." Dr. Sobeski had no reason to question that entry. Dr. Sobeski continued to believe that Petitioner could work under the restrictions pursuant to the FCE. He was not willing to take her off work totally. He thought Petitioner's conditions were stable for several years and nothing has changed.

On cross examination, Dr. Sobeski testified he did not believe the results of the FCE taken after arbitration represented a worsening of her condition. He reiterated that determining a patient's level of disability is not part of the treatment he provides, but he does get involved in their ability, or lack thereof, to perform specific work functions. For that he relies on FCEs which are the only objective standard they have. He would base his restrictions on the most recent FCE. On October 24, 2016, Petitioner reported her condition was "really unchanged" and "if anything her symptoms are worse." He thought that was of medical significance.

On redirect examination, Dr. Sobeski testified that typically patients go through work conditioning before an FCE. If a person had no treatment for two years, that could affect a second FCE. He still agreed that the difference in the FCE results could be based on deconditioning. He did not believe that the lack of treatment invalidated the second FCE. He did not remember whether the second FCE was ordered at Petitioner's request.

Dr. Carroll testified by deposition on February 29, 2016 that he is a board-certified orthopedic surgeon. He has an added qualification in hand surgery, in which he specializes. IMEs comprise about 8% of his practice and about 70% of which are done on behalf of employers.

He performed an IME on Petitioner on January 19, 2015, reviewed medical records, and issued a report. In the examination, Petitioner presented with tenosynovitis related to a wrist fusion, CTS, and de Quervain's. On examination, Petitioner showed "some residual" from CTS. She worked for Respondent from 1998 to April of 2013. He thought that a portion of her complaints still related to the injuries in 2008, though some of it could also be related to the

"fairly significant changes" seen in the MRI of her cervical spine. He thought Petitioner was able to work with a restriction of 15-20 pounds lifting with no repetitive forceful gripping/bending/torquing with the hand. The FCE from 2011 played a role in his recommendation.

Dr. Carroll believed he saw reference to an FCE in 2013, but he was not sure whether he had it in the chart. He thought they were similar in the types of activities she could perform. He then agreed that Petitioner probably could lift more in 2011 than she "could now." Though she may have had a little more weakness, "the hand function looked the same." He did not know how that variance would affect Petitioner's job performance. Lifting involves parts of the body other than the upper extremities. Dr. Carroll opined that Petitioner was at MMI related to her upper extremities on October 21, 2013, the day she stopped seeing doctors for those complaints. If he knew that Dr. Sobeski had not treated her upper extremities since November 2, 2010, that would bring the MMI date much earlier.

On cross examination, Dr. Carroll agreed that the 2013 FCE had her lifting less weight than she did in 2011. That variance could possibly be related to her hands. She had some residual sensitivity on Tinel testing. He agreed that Petitioner's pain and numbness could be attributable to a CTS condition. She was not working when he saw her. Dr. Carroll agreed that it appeared that Petitioner's condition was permanent, she had residuals of CTS, and he recommended work restrictions. He believed Petitioner could do a job in which she had to twist her wrists to flip through papers. Dr. Carroll agreed he was not a spine specialist. He thought it was possible, but not likely, that "the origin of her complaints are at the forearm or wrist area." He agreed that no treating doctor had yet recommended cervical surgery. Dr. Carroll recommended another spine specialist for further evaluation.

Dr. Carroll agreed that Dr. Olivero noted only mild cervical stenosis, but Dr. Carroll saw significant changes in C5-6 and C6-7. Even though Dr. Olivero opined that surgery would not likely be beneficial, Dr. Carroll believed she should get a second opinion. When the restrictions imposed in March of 2013 were read to Dr. Carroll, he testified they appeared reasonable.

On redirect examination, Dr. Carroll testified deconditioning could play a factor in Petitioner's reduced function in 2011 and 2013. He thought Petitioner should restrict her activities but not her hours. Hypothyroidism can have an impact on subjective complaints of hands/wrists. On re-cross, Dr. Carroll agreed that hypothyroidism could possibly not affect Petitioner's hands.

Dr. Keller testified by deposition on February 8, 2022 that he was a board-certified orthopedic surgeon. He examined Petitioner on or about September 14, 2018 for evaluation of her upper extremities and cervical/lumbar spine. Petitioner reported she had a total of eight surgeries and she continued to have numbness/tingling/weakness in both hands and was taking Neurontin for nerve pain. Dr. Keller diagnosed multilevel cervical DDD with moderate-to-severe spinal stenosis, history of two right CTS release surgeries/three left CTS surgeries, history of left/right de Quervain's release surgeries, and history of left wrist fusion surgery.

Dr. Keller agreed that when he writes a report, it is "for the purpose of giving [his] complete opinion as to the medical condition of an individual." In making his assessments, Dr. Keller uses medical records and vocational reports. Dr. Keller concluded that Petitioner's complaints were consistent with his examination and the medical records, she had significant limitations, the work restrictions imposed were medically necessary, and with these restrictions it was unlikely that she can hold a normal job.

On cross examination, Dr. Keller agreed that he did his report for Prudential, but he was unaware that it on behalf of SURS. He believed IMEs account for 5%, or less, of his practice. He was not asked for the IME by either of the parties' lawyer or Respondent. He agreed that he was not a voc rehab expert and did not provide Petitioner with any such services. In his assessment, he included Petitioner's arthritis, cervical spine/lumbar spine, as well as her upper extremities. Dr. Keller is an orthopedic surgeon and often addresses work restrictions for patients. He knows Dr. Fletcher, who refers patients to him. When there is an occupational health doctor involve, such as Dr. Fletcher, he defers the imposition of restrictions on that doctor.

Dr. Keller was not certain when Petitioner's cervical condition began. He did not believe he received any records about treatment of her cervical or lumbar spine prior to 2013. He does not dictate his findings in front of the examinee; he does it after the fact. He agreed that although he noted that Dr. Sobeski took her off work permanently, he later released her to restricted work.

Dr. Keller did not recall receiving any deposition transcripts. He also did not believe he reviewed an IME report from Dr. Carroll, a voc rehab report from Mr. Morgan, or his deposition. Petitioner complained about her lumbar spine and her cervical spine as well as her upper extremities. Although Petitioner had two FCEs, he only got the second. Petitioner reported that that FCE indicated she could not perform her activities at work. He read from the March 18, 2013 FCE in which the therapist opined that Petitioner could perform her job if accommodations were made. That does not seem to be consistent with the report Petitioner gave him. His examination appeared to be negative for bilateral CTS and de Quervain's. It appeared that those conditions had resolved. She had slight-to-moderate limitations in cervical ROM as well as DDD with moderate-to-severe spinal stenosis. He also diagnosed multilevel lumbar DDD with severe spondylolisthesis at L3-4.

Dr. Keller was asked if a patient has an FCE and then two years later had another FCE without any treatment, which would be more reliable. He answered that if the patient was inactive in the interim, "there's a chance that they could be deconditioned, and, therefore, may not do as well in that" FCE. He agreed that the likelihood of Petitioner's ability to find a job was outside of his expertise. He wrote that he found no symptom magnification, but he did not do any distraction testing.

Mr. Gustafson testified by deposition on March 26, 2019 that he was a certified rehabilitation counselor practicing in the field for 44 years. He met Petitioner once in 2016, had medical records provided by her lawyer, the FCEs/restrictions relative to her employment, and the first deposition of Dr. Sobeski.

Petitioner completed some hours of undergraduate programming at the Pacific School of Theology from 1976 to 1984, returned to Illinois and completed 30 hours at Parkland CC in office management/office careers. She had been employed as a factory worker, in cleaning, as a receptionist, and in 1998 began working for Respondent as an office assistant.

After 2008, she was off work, attempted to return to work multiple times but failed, and was finally terminated in 2013. Her return to work failed because she was not able to use her arm for extended periods and she had pain and poor productivity. Petitioner had not worked since 2013. Mr. Gustafson had to conclude that she was unable to perform any of the clerical work, and nothing else was being offered to her.

Mr. Gustafson reviewed the 2013 FCE which provided certain work restrictions. The restrictions were consistent with his conversation with Petitioner and the opinion of Dr. Sobeski. Petitioner reported to Mr. Gustafson that she had constant pain in her hands bilaterally, which appeared to be consistent with the medical records. She could work with her hands for a maximum of 30 minutes before she needed to rest. She had trouble driving due to vibration in the steering wheel. Her ability to perform housework "very intermittent." All Petitioner's subjective reports were consistent with the FCE.

In his experience, the type of upper extremity issues as Petitioner had "lend themselves more to certain types of service activity that, that emphasizes less use of the upper extremity and also at night." For example, she could work as a night security guard where she did not have to carry a gun or have "any type of interaction with her hands that required her to hold somebody." When you "put it all together," her job prospects were very limited and "you don't really have a very stable job market."

Mr. Gustafson again testified that he often makes opinions based on his interpretation of medical records *etc*. On the issue of Petitioner finding part-time employment, Mr. Gustafson opined that "there was nothing clear to [him] that would suggest [Petitioner] would succeed even in a part-time job situation." She may be more suited to a position with limited hours of work a day, rather than something like two full days a week. He thought it "quite unlikely" Petitioner could earn more than $10 an hour.

In discussing another vocational assessment, Mr. Gustafson testified that a job as a membership solicitor was mentioned. In that job the person tries to sell memberships to gyms *etc*. While that may be reasonable from a physical standpoint, Petitioner has no sales background, so there is no way to know whether she would be successful in meeting sales quotas. The classification of surveillance system monitor technically no longer exists, but it would involve security using surveillance. Again, these are predominantly retail establishments where enforcement may become an issue, though a job as night-watch person might be feasible. A person in a job like receptionist/information is expected to be busy so you might be "doing some other clerical activity" when you aren't engaged in your primary function. She could possibly work as a case aid, an assistant to social workers, but she did not believe she had the educational credentials to get such a job and that job would require writing/computer data entry. Mr. Gustafson did not believe any of the job categories in other report were feasible on a full-time basis.

Mr. Gustafson testified that when you have two FCEs, you always use the most recent one because it has the most recent/relevant information. Employers are always concerned with an employee's endurance and productivity.

On cross examination, Mr. Gustafson testified Petitioner reported driving on average twice a week, generally to Champaign. Champaign is between five and 10 miles from Petitioner's home. She was also doing some housework for her mother, and volunteer work for her church. He was not sure what that all entailed. He advised Petitioner on job searches and what types of jobs to apply for, but he did not contact potential employers on her behalf. It appears that he did more work for Petitioner's firm "than anybody." He thought his reference to her options being "very few" to mean that her possibility of finding employment was 5%. He agreed that the examination was on June 2, 2016 but his report was dated March 19, 2017; he was not sure the reason for that delay.

When he saw Petitioner, she was out of work for about three years. He believed she looked for employment during that period. He thought she tried to get alternate employment with Respondent, but was unsure whether she sought work from other potential employers. Mr. Gustafson did not perform a labor market survey. Regarding her attempts to return to work, Petitioner reported to him that she took frequent breaks and had relatively poor productivity due to pain and weakness in her upper extremity. Her "productivity suffered to the point where *** [Respondent] opted not to retain her." He did not review the FCE from May 5, 2011. Any differences in the FCE would be irrelevant to him; he only wanted the most recent medical information. He did not recall any discrepancies between the FCE results and Petitioner's subjective statements.

On redirect examination, Mr. Gustafson testified it wasn't a problem that he wrote the report several months after the examination; besides his recollection, he also had his notes. Knowing of Petitioner's visits to her mother at an assisted living facility and doing shopping errands for her, would not change his vocational opinions. Similarly, volunteering co-leading a team in a food pantry for no more than 2 hours would not affect his opinion, assuming her job was mainly paperwork and coordination. Volunteer work is different because you aren't concerned about your productivity. When asked about the recommendations in a hypothetical question, Mr. Gustafson answered that the FCEs, are both "saying the same thing – intermittent use of the hands." On re-cross examination, Mr. Gustafson testified while he believed Petitioner's condition was not medically unusual, it was vocationally unusual because you have to put it in the context of job performance.

Mr. Morgan testified by deposition on February 11, 2020 that he was a certified rehabilitation counselor and has been for 26 years. He saw Petitioner twice in December of 2017. Petitioner had two FCEs, which Mr. Morgan reviewed. He based his opinions and recommendations on the more recent FCE in 2013. He also saw the restrictions Dr. Sobeski testified to in his deposition.

Petitioner told him about doing volunteer work for about 2&1/2 hours, "greeting people and just explaining the activities that were going on there." She also reported running errands for her mother at an assisted living facility. In discussing general capabilities, Petitioner advised

him that she had to alternate between sitting/standing due to a tailbone fracture 20 years previously. She also mentioned her "spine" in that context. She also told him she was limited in bending forward, lifting over 10-15 pounds, raking, vacuuming, and driving more than 30 minutes. Petitioner was "educated" with about 102 hours of college.

Petitioner was conversant in numerous computer programs, which would be viewed as positive by prospective employers. She sent him a resume. Petitioner told him she was looking for employment. She stated she used a spreadsheet, which Mr. Morgan had not seen. She did not send him any information on her job search. He advised her not to volunteer information about her disability on her employment applications. Mr. Morgan went over the findings of his assessment. Petitioner was skeptical about finding employment, did not appear motivated to look for employment, and expected she would not be successful in any job.

Mr. Morgan opined that a reasonably stable job market existed for Petitioner based on her education, her work history, and his experience. Mr. Morgan had reviewed Mr. Gustafson's report before meeting with Petitioner, but did not believe he specifically referenced it in his report. He noted that the salary ranges in Mr. Gustafson's report were dated; they were higher now as the minimum wage increased. He believed Petitioner could be employed on a full-time basis and could earn between $11 and $20 an hour.

On cross examination, Mr. Morgan agreed that in his report, Dr. Carroll found no evidence of symptom magnification or malingering. He also found the restrictions outlined in the 2011 FCE to still be reasonable. He did not believe that an information clerk necessarily had to stay seated in their chair for their entire shift, but could stand as well. He agreed that Petitioner reported that she was able to do less volunteering than she had previously and was not sure she could manage the paperwork at the food pantry when they switched to computers. Mr. Morgan did not believe he was able to give an opinion on which FCE more accurately portrayed Petitioner capabilities.

Conclusions of Law

Petitioner argues she sustained her burden of proving that her disability had increased since the original arbitration hearing on 2012. She stresses the 2013 FCE shows Petitioner's condition had worsened and her disability regarding her lifting ability and grip strength had increased. In addition, Dr. Carroll testified that Petitioner's condition had gotten a little worse and her function had changed. Petitioner also cites her unrebutted testimony about her worsened condition while working, she reported this to Dr. Sobeski who ordered the repeat FCE. Finally, Petitioner cites the testimony of Dr. Keller who opined that Petitioner was PTD and that the likelihood of her "holding and securing a full-time position does not exist.

Additionally, Petitioner argues that under the current circumstances, Petitioner is permanently and totally disabled ("PTD") based on the odd-lot theory of permanent disability. She argues she showed a diligent, though unsuccessful, job search, her age (65), her limited work experience, and her permanent restrictions which resulted in a conclusion that there were no job available. Finally, Petitioner also argues that the opinions of certified voc rehab counselor, Mr. Gustafson is more persuasive than those of certified voc rehab counselor, Mr. Morgan.

Petitioner wants to be declared PTD from April 10, 2013 when Dr. Sobeski took her off work permanently.

Respondent argues Petitioner did not sustain her burden of proving her condition had materially increased since the Commission decision became final. It stresses that Petitioner did not show any treatment for her condition for at least five years prior to the 19(h) petition being heard. Respondent also argues that if Petitioner's condition had materially changed, Dr. Sobeski and Dr. Li would have established a treatment plan, which they did not do. It also suggests that if anything the later 2013 FCE would more accurately portray her disability at the time of arbitration because it was temporarily closer to the day of arbitration than the 2011 FCE. Respondent also stresses that Petitioner's primary provider, Dr. Sobeski repeatedly testified that Petitioner's condition had not changed during the times he saw her, that he never actually treated her from 2013 to 2018. Finally, Respondent posits that Petitioner's conduct from arbitration in 2012 to the current 19(h) hearing was "solely for the purpose of an illicit secondary gain."

The Commission finds Petitioner, as the moving party, had the burden of proving entitlement to relief under §§8(a)/19(b) of the Act, and she did not. The Commission bases that conclusion primarily on Dr. Sobeski's testimony that his diagnoses and clinical examinations had not changed throughout his treatment of Petitioner, it is unclear what the difference in FCE results actually means in terms of functionality/ability to be employed, and whatever decline in her functionality seems to be related more to non-work related conditions to her spine that any material change in her work-related conditions of her upper extremities.

Regarding the second FCE, the Commission interprets the restriction was for 2.64 hours per day of hand activity and not 2.64 hours of work per day totally. In this regard, the Commission notes that the therapist indicated that she was restricted to 2.64 hours of [hand] activity in "an 8-hour work day" certainly implying an 8-hour shift. That interpretation reduces her level of disability based on the findings in that FCE.

In addition, while Dr. Sobeski testified that the later FCE represented a deterioration of her condition, he also noted that it could be caused by various factors. For example, Dr. Sobeski noted, her reduced lifting capacity in the second FCE could be related to other conditions of ill-being other than the work-related injuries to her hands/wrists such as her lumbar and cervical spines, or simply through deconditioning/lack of treatment in the interim. Finally, much of her other impairments, such as inability to stand/walk for extended periods, are related to her spine condition and not her upper extremity condition.

The Commission does not find the testimony of Dr. Keller, the vocational rehabilitation witnesses, or the job search exhibits Petitioner's submitted to be very persuasive. First, regarding Dr. Keller, he took into account Petitioner's non-work related conditions into consideration in assessing her condition and ability to be employed. Regarding the vocational rehabilitation counselors and the job search data, the opinions of the counselor and Petitioner's job search are only relevant after Petitioner has sustained her burden of proving significant change in her condition, which the Commission finds she did not.

Petitioner does not argue the issue in her brief, but because her motion includes §8(a), she is inherently seeking medical expenses incurred since arbitration. Respondent asks the Commission to deny any award of medical because Petitioner has not met her burden of proving she suffered a materially increased disability. In addition, it argues that none of the doctors rendered any treatment in the visits after arbitration and that those visits were not done for "medical purposes" but rather they were done for "legal purposes." We agree with Respondent that Petitioner did not receive any treatment for her work-related conditions after arbitration. Rather, she was seeking modification of her restrictions, anticipating litigation, and/or receiving treatment for non-work related conditions. Therefore, the Commission denies the award of post-arbitration medical expenses.

THEREFORE IT IS ORDERED BY THE COMMISSION that Petitioner's Petition for Relief Pursuant to Sections 19(h)/8(a) of the Act is hereby denied.

November 4, 2024

DLS/dw
D-9/4/24
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC005446
Case Name	Anita Ferguson v. University of Illinois
Consolidated Cases	09WC007134; 11WC005445; 11WC005699;
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	24IWCC0518
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Timothy Steil

DATE FILED: 11/4/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANITA FERGUSON,

Petitioner,

vs. No: 11 WC 5446

UNIVERSITY OF ILLINOIS,

Respondent.

DECISION ON PETITION PURSUANT TO §§19(h)/8(a)

This matter comes before the Commission on Petitioner's Petition for Relief Pursuant to Sections 19(h)/8(a) of the Act. A hearing was held in Champaign on September 7, 2023 before Commissioner Simonovich. The parties were represented by counsel and a record was taken. Prior to hearing testimony, Petitioner's lawyer noted that previously, Arbitrator Lindsey heard the matters, found accident, found causation, and found average weekly wage in 09 WC 7134 and 11 WC 5699 and awarded Petitioner permanent partial disability ("PPD") benefits representing loss of 17.5% of the left hand and 20% of the right hand. In 11WC 5445 and in 11 WC 5446 she found for Respondent. On Review, in 09 WC 7134, the Commission modified the award to increase the PPD award to loss of 20% of the left hand and 25% of the right hand. The Commission affirmed and adopted the other Decisions of the Arbitrator.

Findings of Fact – Testimony

Petitioner testified that she started working at the College of Aces in mid-2000, "until she had a hand injury in July of 2008 where [she was] off work for multiple surgical procedures." Thereafter, she made several attempts to return to work but left her employment in 2013 because she did not believe her employer was honoring her work restrictions. Her doctor "finally wrote [her] off because [she] wasn't able to do" her job. Petitioner was shown RX9, a notice of injury. The document indicated she was having problems with her right hand, wrist, thumb and index finger from repetitive motion. Her recommendation to prevent the problem was "follow current restrictions in place/one hour per type of hand task daily." Petitioner left the Respondent's employment in 2013. Her understanding was that it had nothing to do with her disability retirement, but rather whether she was coming in every day.

Petitioner testified that on February 13, 2009, she had left CTS release and removal of existing hardware. On June 2, 2009 she had right CTS release with ulnar fat pad rotation flap. She returned to work on July 6, 2009, continued to have problems, and on August 21, 2009 she was given restrictions of no pushing/pulling more than 15 pounds and she had physical therapy. On January 11, 2010, she had an injection in the 1st dorsal compartment of the right wrist and was released to activities as tolerated.

On July 19, 2010, her doctor advised her to refrain from flipping through records with her right hand for two weeks and thereafter to limit the activity to two hours a day, preferably spread out through the day. She had her first FCE on May 5, 2011. While she worked for Respondent, Petitioner worked in a union and her title was office support specialist.

Her claim was adjudicated in November of 2012. Thereafter, she returned to work until 2013, when she was taken off work by her PCP, Dr. Schaap. She told him that she had right pain due to increased work demands and pressure to perform. He ordered an FCE and referred her to a hand specialist. After the FCE, she was placed on restrictions of 10 pounds lifting with only occasional lifting of 15 pounds. She saw Dr. Sobeski on April 10, 2013, at which time he took her off work.

On March 10, 2014, she saw Dr. Jung for neurosurgical consultation. She had a cervical MRI and ESIs at C7-T1. Dr. Jung determined that the injections had not worked. She returned to Dr. Sobeski, who placed her on permanent restrictions as outline in the FCE. She was restricted to working 2.64 hours a day with 30 minutes at a time with her hands and 10-15 pounds lifting "per side." She saw Dr. Sobeski again two years later on October 24, 2016, at which time she told him her condition was the same or worse. Dr. Sobeski retained the restrictions. Similarly, he retained the restrictions when she saw him on July 13, 2018; the restrictions have not been modified since.

Petitioner was on disability at the U of I. She was evaluated periodically to determine whether her disability continued and she was sent to Dr. Keller by SURS. She saw him in August of 2018. Although she was put on disability by SURS, she searched for jobs within her restrictions. She identified PX13 as jobs she applied for. PX14 was a rejection letter. PX15 is her job search log. She did not get any of the jobs for which she applied.

Petitioner testified she did not receive any vocational assistance. Petitioner identified PX19 as photos she made of "massive files, massive shredding, more boxes of files," "the financials [she] did, more boxes of files." Her hands worsened trying to perform her job. She had increased numbness/tingling/pain. Petitioner also testified that she moved to be closer to her daughter so her family can help with things. She cannot scrub, clean deeply, she had problems with her shower and had handrails put in. She cannot drive for more than 30, 35 minutes before she has to shake her hands out. She used to host all the holiday parties, but no more. She no longer volunteered at the food pantry that she did for 20 years and cannot do as much with her grandchildren, all because of her hands. Eventually, she stopped looking for employment and retired from U of I on March 29, 2022. She retired because she could be on disability only for a certain period of time and could not work anyway. If she could work she would.

On cross examination, Petitioner testified she still took care of her three grandchildren "a couple of hours maybe." She would not disagree that she reported that her three grandchildren were sleeping over and she had to clean the house before the visit. Petitioner agreed that in her testimony at the original arbitration, she testified that in November she was working with permanent restrictions of one-hour work per hand task, 20-pound restriction on her left hand, and 15-pound restriction on her right hand. She also testified that her right hand would swell/hurt, with numbness/tingling radiating up her arm to her shoulder. She likes to help her grandchildren; she cooks them a simple meal, and "they actually do the dishes."

Petitioner agreed that she stated off-the-record that her grandchildren were self-sufficient. She also testified that she had difficulty sleeping, tossed and turned, and had to shake her right hand. She also had trouble buttoning/hooking, opening jars, using mixers, lifting heavy things out of the oven, writing for more than 30 minutes, collating, stuffing, flipping, sorting, mousing, and typing for long periods of time. It appears that Petitioner had the same job at the time of arbitration that she did from November 20, 2012 through February of 2013.

Apparently, Petitioner saw her PCP on December 27, 2012 for respiratory issues and back pain and on January 10, 2013 she saw Dr. Greely for persistent cough. She agreed that in neither of those visits she reported any hand complaints; but that was not why she saw them. Petitioner would not disagree that in around February 15, 2013 she informed Respondent of issues regarding her hands and her work. She agreed that on February 14, 2013, she discussed her work and her alleged hand pain with Dr. Sobeski and that he told her there was nothing medically that could be done for her.

Petitioner agreed that her FCE in 2011 was after she had treatment including surgeries and physical therapy ("PT"). However when she had the FCE in 2013, she had not had PT. She asked Dr. Schaap to order an FCE in 2013 and later to have her work restrictions revised based on the FCE. She did not recall seeing Dr. Li. She denied contacting Dr. Sobeski's office requesting that he take her off work on March 29, 2013; she thought she told him she could not do her job.

Petitioner agreed that she was responsible for some of the housework at her home. She agreed that Respondent never terminated her from employment. She did not recall doing a job search in the past three years. Petitioner agreed that she prepared PX15, which is a 7-page spreadsheet that she prepared using a keyboard/mouse. It spans February of 2014 through February of 2016. She has not looked for job since 2016. Petitioner agreed that she had Hypertension, but no longer took blood pressure medication and hadn't in years. She has hypothyroidism because her thyroid was removed due to cancer. In addition, she had a fall which resulted in a lumbar fracture.

On redirect examination, Petitioner testified that to her knowledge her blood pressure never affected her hands. She received an injection in her neck which showed that her hand condition was not associated with a cervical condition. She often has groceries delivered because it may be too heavy.

Petitioner was read treatment notes from September 17, 2019, which sounded accurate to her. In it, she reported she had to clean most of Friday because her grandchildren were coming over, she overdid it, and that "by Friday night she was in bed and unable to move most of the weekend." She told Dr. Sobeski that she could no longer do her job because it required too much hand movement and her hands were getting worse. She asked for another FCE because the first did not deal much with her hands and was not really related to her job activities. The second FCE was on March 14, 2013, at which time she was still working. Her grandchildren were 5, 8, and 10.

Findings of Fact – Medical Records

On April 10, 2013, Petitioner presented to Dr. Sobeski, who's current diagnoses were fused left wrist, bilateral CTS, and right sided de Quervain's tenosynovitis. His prognosis for her was poor. Petitioner reported she could not perform her job and Dr. Sobeski did not believe there was anything medically he could do to improve her condition. He recommended "that she be held off work permanently."

On August 28, 2013, Petitioner presented to Dr. Li for a second opinion about treatment options. She reported pain with numbness/tingling since 2008. She had multiple surgeries for CTS and De Quervain's without much relief. She rated her pain at 6/10. Dr. Li concluded that "the pain was to (*sic*) generalized to formulate a treatment plan."

On October 21, 2013, Petitioner returned to Dr. Sobeski to have her disability papers filled out. Dr. Sobeski noted that her conditions "were stable and they really had not changed at all since" the last visit. He "would continue with restrictions per the FCE."

On March 10, 2014, Petitioner presented to Dr. Jung, on referral from Dr. Sobeski, for evaluation of pain in the hands/wrists/right arm. She had a lot of issues with her hands and wrists since 1993. She had several procedures. After his examination, Dr. Jung diagnosed bilateral hand/wrist pain and cervical degenerative disc disease ("DDD"). He concluded there was nothing he could do directly for her hand/wrist pain, but thought the majority of the discomfort may be coming from her cervical spine. He ordered an MRI.

Three weeks later, Petitioner returned after the MRI. Dr. Jung now diagnosed cervical DDD, severe cervical foraminal/spinal stenosis, and bilateral hand/wrist pain. He wanted to refer her to their neuro spine specialist to see if a cervical ESI was indicated.

On June 3, 2014, Petitioner presented to Dr. Olivero, in the Spine Institute, for evaluation or hand pain that had been going on for some time. An MRI showed severe arthritis, mild central spinal stenosis, and moderate foraminal stenosis at multiple levels. He didn't know how much of the symptoms were coming from the neck and from her residual CTS. Because of the multilevel DDD, surgery was not recommended. Dr. Olivero recommended PT for the neck. On June 25, 2014 and August, 5, 2014, Dr. Jung administered interlaminar ESIs at C7-T1 for cervical DDD, severe foraminal/spinal stenosis, and bilateral hand/wrist pain.

On September 2, 2014, Petitioner returned reporting the injections did not help much, with no improvement other than a little better neck ROM. She did not want to take pain medication. There was nothing Dr. Jung could do for her in regards to pain management. He would not recommended chiropractic treatment because of the severe spinal cord stenosis. He advised her to go back to the Spine Institute for another surgical consideration.

On October 23, 2014, Petitioner returned to Dr. Sobeski. Petitioner's clinical examination was "unchanged from previous years." He noted that "she has had an FCE and [he] would make those restrictions permanent. Currently, they recommend working 2.64 hours per day with 30 minutes at a time. She has 10-15 pound weight restriction per side as well." It looks like Dr. Sobeski released her from treatment *prn*.

On July 13, 2018, Petitioner returned for "issues of disability," which Dr. Sobeski did not get involved with. He reiterated the restrictions required her to "perform a variety of these [hand] tasks for 30 minutes at a time, now [apparently "not"] to exceed 2.64 hours in an eight-hour day." She gave him something regarding a position of clerk at the U of I, which she felt she could not do with her restrictions.

On September 9, 2019, Petitioner presented to PA Husmann, at Carle Clinic with back pain with some spasming. She stated her three young grandchildren were spending the night and she cleaned most of Friday. By Friday night she was in bed and unable to move for most of the weekend. Because of her history with a compression fracture, Ms. Husmann ordered x-rays, prescribed muscle relaxers, and sent her to the pain management doctor.

On September 30, 2019, Petitioner returned to Dr. Jung for lower back pain, which was "bothering her a lot more." Dr. Jung diagnosed lumbar DDD/radiculitis, chronic neck pain, and cervical DDD. He ordered a lumbar MRI in preparation for an ESI. On December 12, 2019, Dr. Jung administered a right-sided interlaminar ESI at L4-4 for lumbar DDD/radiculitis, chronic neck pain, and cervical DDD.

Findings of Fact – FCEs/Job Search

Petitioner submitted into evidence a document she prepared dated September 11, 2014. It appears to show that Petitioner applied for 31 jobs with the Champaign-Ford County School District. It also shows that the last salary she earned in April of 2013 was $20.57 an hour. Petitioner also submitted a spreadsheet she prepared consisting of 13 pages spanning February 29, 2014 through February 5, 2016. It includes 212 entries apparently of applications and/or inquiries with many submitted to some entities at the same time

An FCE was performed on May, 5, 2011. The therapist noted that Petitioner gave maximum effort in all testing. She reported bilateral wrist pain with much of the testing. Petitioner functioned at the light-to-medium physical demand level ("PDL"). The therapist could not fully address her ability to return to work because she did not have a job description. She recommended that Petitioner could safely work full time if she was limited to rarely lifting 30 pounds floor to waist/front carry and 15 lifting pounds waist-to-crown. She could frequently carry up to 10 pounds on the right/left, but 5 pounds front carry/waist-to-floor/waist-to-crown.

Another FCE was performed on March 14, 2013. Petitioner reported she worked full-time and a good portion of her job consisted of computer work (mostly mousing), printing/collating/filing/carrying documents/materials. She developed symptoms in her right thumb, traveling up to the shoulder, after doing any specific task for more than an hour. She also reported pain in her neck/forearm/wrist rated between 5-7/10. She was able to lift 15 lbs waist to floor rarely, 10 lbs occasionally, and 0 lbs frequently. After testing Petitioner reported 8/10 pain in her right shoulder/forearm/wrist.

The therapist, believed Petitioner could return to work full-time at her current job with the following recommendations:

> Petitioner "can perform a task using her hands including typing/mousing, sorting papers/flipping papers/using staple remover for up to 30 minutes at one time. It is recommended she wear her right wrist brace consistently. Following the 30 minutes of a hand task, she is to perform another activity not to include typing/mousing, sorting papers/flipping papers/using staple remover. She can perform a variety of tasks for 30 minutes at a time not to exceed 2.64 hours in an 8-hour work day."

Findings of Fact – Depositions

Dr. Sobeski testified by deposition on January 14, 2016, after being called by Petitioner. He was a board-certified orthopedic surgeon with a subspecialty in hand surgery. He last saw Petitioner on October 23, 2014. When he saw her on April 10, 2013, she had dealt with problems at work for about five years. Her current diagnoses were bilateral CTS, bilateral tendonitis, and left wrist arthrodesis (Petitioner is left-handed). She reported she could not perform her job and had at least two FCEs. He thought her prognosis was poor and there was really nothing medically he could do for her. He recommended that "she be kept off work permanently." When she returned on October 21, 2013 her condition had not changed and he again filled out her disability paperwork.

She returned to Dr. Sobeski a year later on October 23, 2014. He placed her on permanent restrictions as outlined in the FCE. She was restricted to working 2.64 hours a day with 30 minutes at a time with her hands and 10-15 pounds lifting per side. Dr. Sobeski based his opinions on whether Petitioner can work or that she needed work restrictions on the FCE results.

Dr. Sobeski noted that Petitioner's capacity to lift from waist to floor in the 2011 FCE was 30 pounds maximum, 20 pounds occasionally, and 5 pounds frequently. In the 2013 FCE, her lifting capacity was 15 pounds maximum, 10 pounds occasionally, and 0 pounds frequently. In the waist to crown category her ability to lift 15 pounds maximum and 10 pounds s occasionally were the same in the 2011 and 2013 FCEs. However the frequent lifting capacity went from 5 lbs in 2011 to 0 lbs in 2013. Range of Motion ("ROM") of the wrist went from 68 degrees in 2011 to 60 degrees in 2013.

Dr. Sobeski's current diagnoses were fused left wrist, bilateral CTS, and right sided de Quervain's tenosynovitis. Dr. Sobeski refused to opine that Petitioner's work activities caused any of her conditions of ill-being. However, there appeared to be a material increase in her disability based on the two FCEs. He believed Petitioner's diagnoses in 2013 and 2014 were continuation of the diagnoses he treated her for in 2008 through 2011.

On cross examination, Dr. Sobeski testified he believed the FCEs were performed by the same therapist. As far as he knew, her employer was honoring her restrictions from the 2011 FCE. Her capability could fluctuate from day to day, so the variances could be meaningless. He noted that the difference in wrist ROM "probably doesn't make a whole lot of difference." He noted that her diminished lifting capacity could reflect a lot of things, such as issues with her neck, knees, back, *etc*. He thought she had seen somebody for her spine. He noted in 2011 that her complaint could be coming from her neck. If she was seeking treatment or having injections, that could possibly affect the numbers in the 2013 FCE.

Dr. Sobeski testified that at the October 22, 2013 visit her condition was basically stable since the previous time he saw her. Her conditions appeared stable or unchanged since 2011. He did not recall whether she was diagnosed with hypothyroidism. He did not recall whether Petitioner had work conditioning before the 2013 FCE, but that would be "a pretty common" practice." There was a slight difference downward, and there were probably many explanations for that. Other than the waist to floor numbers, the other differences were small and would not be evidence of a significant change.

On redirect examination, Dr. Sobeski reiterated that his diagnoses remained the same from 2011 to 2013. He did not identify any cervical pathology that needed surgery. He believed Petitioner's complaints of pain arose from her hands. He read from the Arbitrator's decision about Petitioner's job duties and noted that in his previous deposition, he opined that her job activities could have aggravated her condition. That was still his opinion. On re-cross examination, Dr. Sobeski testified he was not a spine specialist and he would defer to a spine specialist regarding diagnoses of the spine/neck. He based his opinions on Petitioner's job activities before the matter was arbitrated.

Dr. Sobeski again testified by deposition on September 23, 2019 after being called by Respondent. He testified he treated Petitioner for conditions of her hands/wrists bilaterally since 2008. He was to assume that the Commission had already found that her conditions were caused by her work activities. Upon review of his previous testimony, Dr. Sobeski agreed that he testified that when he saw Petitioner on April 11, 2013, October 22, 2013, and October 23, 2014 that he did not provide her any treatment. He identified notes from October 24, 2016 at which time Petitioner presented to have her restrictions evaluated. No treatment was provided nor treatment plan created at that visit. His clinical examination was unchanged from his previous examination. After his examination, Dr. Sobeski recommended no change in her restrictions.

He saw her again on July 13, 2018 "for issues with disability." He explained to her that he typically did not get involved with that issue. He discussed with her that she could perform tasks "using her hands including typing, mousing," "sorting/flipping," paper for up to 30 minutes at a time, "as opposed to slipping papers and using a staple remover." It was also recommended

that she wear a splint on her right hand consistently. Petitioner wanted him to include that she was given the position of information clerk and she did not feel she could do that with the restrictions she had. She also wanted him to correct "slipping" to "flipping" and that she got information from the internet and from the U of I. He issued his addendum report at her request.

Dr. Sobeski did not believe he examined her wrist on July 13, 2018. He last saw Petitioner on October 17, 2018 when she came in with disability paperwork. He gave the paperwork to an assistant and advised Petitioner to come back if she had any problems on a *prn* basis. He did not believe he examined her on that date, he did not provide/recommend any treatment on that date. He did not believe that Petitioner contacted his office regarding her work restrictions prior to their visit on October 24, 2016.

Dr. Sobeski was familiar with Samantha Bales and he would have no reason to believe she would include inaccurate information on the office phone log. In her entry dated July 24, 2018, she noted that Petitioner stated she needed "Dr. Sobeski to refer to the April 10th, 2013 note and reiterate that her conditions have not changed and she cannot work." Similarly, he knew Konnor Williford who indicated in a phone log entry: "He states nothing has changed since the April 10th, 2013 date. He states he is not going to say that she cannot work." Dr. Sobeski had no reason to question that entry. Dr. Sobeski continued to believe that Petitioner could work under the restrictions pursuant to the FCE. He was not willing to take her off work totally. He thought Petitioner's conditions were stable for several years and nothing has changed.

On cross examination, Dr. Sobeski testified he did not believe the results of the FCE taken after arbitration represented a worsening of her condition. He reiterated that determining a patient's level of disability is not part of the treatment he provides, but he does get involved in their ability, or lack thereof, to perform specific work functions. For that he relies on FCEs which are the only objective standard they have. He would base his restrictions on the most recent FCE. On October 24, 2016, Petitioner reported her condition was "really unchanged" and "if anything her symptoms are worse." He thought that was of medical significance.

On redirect examination, Dr. Sobeski testified that typically patients go through work conditioning before an FCE. If a person had no treatment for two years, that could affect a second FCE. He still agreed that the difference in the FCE results could be based on deconditioning. He did not believe that the lack of treatment invalidated the second FCE. He did not remember whether the second FCE was ordered at Petitioner's request.

Dr. Carroll testified by deposition on February 29, 2016 that he is a board-certified orthopedic surgeon. He has an added qualification in hand surgery, in which he specializes. IMEs comprise about 8% of his practice and about 70% of which are done on behalf of employers.

He performed an IME on Petitioner on January 19, 2015, reviewed medical records, and issued a report. In the examination, Petitioner presented with tenosynovitis related to a wrist fusion, CTS, and de Quervain's. On examination, Petitioner showed "some residual" from CTS. She worked for Respondent from 1998 to April of 2013. He thought that a portion of her complaints still related to the injuries in 2008, though some of it could also be related to the

"fairly significant changes" seen in the MRI of her cervical spine. He thought Petitioner was able to work with a restriction of 15-20 pounds lifting with no repetitive forceful gripping/bending/torquing with the hand. The FCE from 2011 played a role in his recommendation.

Dr. Carroll believed he saw reference to an FCE in 2013, but he was not sure whether he had it in the chart. He thought they were similar in the types of activities she could perform. He then agreed that Petitioner probably could lift more in 2011 than she "could now." Though she may have had a little more weakness, "the hand function looked the same." He did not know how that variance would affect Petitioner's job performance. Lifting involves parts of the body other than the upper extremities. Dr. Carroll opined that Petitioner was at MMI related to her upper extremities on October 21, 2013, the day she stopped seeing doctors for those complaints. If he knew that Dr. Sobeski had not treated her upper extremities since November 2, 2010, that would bring the MMI date much earlier.

On cross examination, Dr. Carroll agreed that the 2013 FCE had her lifting less weight than she did in 2011. That variance could possibly be related to her hands. She had some residual sensitivity on Tinel testing. He agreed that Petitioner's pain and numbness could be attributable to a CTS condition. She was not working when he saw her. Dr. Carroll agreed that it appeared that Petitioner's condition was permanent, she had residuals of CTS, and he recommended work restrictions. He believed Petitioner could do a job in which she had to twist her wrists to flip through papers. Dr. Carroll agreed he was not a spine specialist. He thought it was possible, but not likely, that "the origin of her complaints are at the forearm or wrist area." He agreed that no treating doctor had yet recommended cervical surgery. Dr. Carroll recommended another spine specialist for further evaluation.

Dr. Carroll agreed that Dr. Olivero noted only mild cervical stenosis, but Dr. Carroll saw significant changes in C5-6 and C6-7. Even though Dr. Olivero opined that surgery would not likely be beneficial, Dr. Carroll believed she should get a second opinion. When the restrictions imposed in March of 2013 were read to Dr. Carroll, he testified they appeared reasonable.

On redirect examination, Dr. Carroll testified deconditioning could play a factor in Petitioner's reduced function in 2011 and 2013. He thought Petitioner should restrict her activities but not her hours. Hypothyroidism can have an impact on subjective complaints of hands/wrists. On re-cross, Dr. Carroll agreed that hypothyroidism could possibly not affect Petitioner's hands.

Dr. Keller testified by deposition on February 8, 2022 that he was a board-certified orthopedic surgeon. He examined Petitioner on or about September 14, 2018 for evaluation of her upper extremities and cervical/lumbar spine. Petitioner reported she had a total of eight surgeries and she continued to have numbness/tingling/weakness in both hands and was taking Neurontin for nerve pain. Dr. Keller diagnosed multilevel cervical DDD with moderate-to-severe spinal stenosis, history of two right CTS release surgeries/three left CTS surgeries, history of left/right de Quervain's release surgeries, and history of left wrist fusion surgery.

Dr. Keller agreed that when he writes a report, it is "for the purpose of giving [his] complete opinion as to the medical condition of an individual." In making his assessments, Dr. Keller uses medical records and vocational reports. Dr. Keller concluded that Petitioner's complaints were consistent with his examination and the medical records, she had significant limitations, the work restrictions imposed were medically necessary, and with these restrictions it was unlikely that she can hold a normal job.

On cross examination, Dr. Keller agreed that he did his report for Prudential, but he was unaware that it on behalf of SURS. He believed IMEs account for 5%, or less, of his practice. He was not asked for the IME by either of the parties' lawyer or Respondent. He agreed that he was not a voc rehab expert and did not provide Petitioner with any such services. In his assessment, he included Petitioner's arthritis, cervical spine/lumbar spine, as well as her upper extremities. Dr. Keller is an orthopedic surgeon and often addresses work restrictions for patients. He knows Dr. Fletcher, who refers patients to him. When there is an occupational health doctor involve, such as Dr. Fletcher, he defers the imposition of restrictions on that doctor.

Dr. Keller was not certain when Petitioner's cervical condition began. He did not believe he received any records about treatment of her cervical or lumbar spine prior to 2013. He does not dictate his findings in front of the examinee; he does it after the fact. He agreed that although he noted that Dr. Sobeski took her off work permanently, he later released her to restricted work.

Dr. Keller did not recall receiving any deposition transcripts. He also did not believe he reviewed an IME report from Dr. Carroll, a voc rehab report from Mr. Morgan, or his deposition. Petitioner complained about her lumbar spine and her cervical spine as well as her upper extremities. Although Petitioner had two FCEs, he only got the second. Petitioner reported that that FCE indicated she could not perform her activities at work. He read from the March 18, 2013 FCE in which the therapist opined that Petitioner could perform her job if accommodations were made. That does not seem to be consistent with the report Petitioner gave him. His examination appeared to be negative for bilateral CTS and de Quervain's. It appeared that those conditions had resolved. She had slight-to-moderate limitations in cervical ROM as well as DDD with moderate-to-severe spinal stenosis. He also diagnosed multilevel lumbar DDD with severe spondylolisthesis at L3-4.

Dr. Keller was asked if a patient has an FCE and then two years later had another FCE without any treatment, which would be more reliable. He answered that if the patient was inactive in the interim, "there's a chance that they could be deconditioned, and, therefore, may not do as well in that" FCE. He agreed that the likelihood of Petitioner's ability to find a job was outside of his expertise. He wrote that he found no symptom magnification, but he did not do any distraction testing.

Mr. Gustafson testified by deposition on March 26, 2019 that he was a certified rehabilitation counselor practicing in the field for 44 years. He met Petitioner once in 2016, had medical records provided by her lawyer, the FCEs/restrictions relative to her employment, and the first deposition of Dr. Sobeski.

Petitioner completed some hours of undergraduate programming at the Pacific School of Theology from 1976 to 1984, returned to Illinois and completed 30 hours at Parkland CC in office management/office careers. She had been employed as a factory worker, in cleaning, as a receptionist, and in 1998 began working for Respondent as an office assistant.

After 2008, she was off work, attempted to return to work multiple times but failed, and was finally terminated in 2013. Her return to work failed because she was not able to use her arm for extended periods and she had pain and poor productivity. Petitioner had not worked since 2013. Mr. Gustafson had to conclude that she was unable to perform any of the clerical work, and nothing else was being offered to her.

Mr. Gustafson reviewed the 2013 FCE which provided certain work restrictions. The restrictions were consistent with his conversation with Petitioner and the opinion of Dr. Sobeski. Petitioner reported to Mr. Gustafson that she had constant pain in her hands bilaterally, which appeared to be consistent with the medical records. She could work with her hands for a maximum of 30 minutes before she needed to rest. She had trouble driving due to vibration in the steering wheel. Her ability to perform housework "very intermittent." All Petitioner's subjective reports were consistent with the FCE.

In his experience, the type of upper extremity issues as Petitioner had "lend themselves more to certain types of service activity that, that emphasizes less use of the upper extremity and also at night." For example, she could work as a night security guard where she did not have to carry a gun or have "any type of interaction with her hands that required her to hold somebody." When you "put it all together," her job prospects were very limited and "you don't really have a very stable job market."

Mr. Gustafson again testified that he often makes opinions based on his interpretation of medical records *etc*. On the issue of Petitioner finding part-time employment, Mr. Gustafson opined that "there was nothing clear to [him] that would suggest [Petitioner] would succeed even in a part-time job situation." She may be more suited to a position with limited hours of work a day, rather than something like two full days a week. He thought it "quite unlikely" Petitioner could earn more than $10 an hour.

In discussing another vocational assessment, Mr. Gustafson testified that a job as a membership solicitor was mentioned. In that job the person tries to sell memberships to gyms *etc*. While that may be reasonable from a physical standpoint, Petitioner has no sales background, so there is no way to know whether she would be successful in meeting sales quotas. The classification of surveillance system monitor technically no longer exists, but it would involve security using surveillance. Again, these are predominantly retail establishments where enforcement may become an issue, though a job as night-watch person might be feasible. A person in a job like receptionist/information is expected to be busy so you might be "doing some other clerical activity" when you aren't engaged in your primary function. She could possibly work as a case aid, an assistant to social workers, but she did not believe she had the educational credentials to get such a job and that job would require writing/computer data entry. Mr. Gustafson did not believe any of the job categories in other report were feasible on a full-time basis.

Mr. Gustafson testified that when you have two FCEs, you always use the most recent one because it has the most recent/relevant information. Employers are always concerned with an employee's endurance and productivity.

On cross examination, Mr. Gustafson testified Petitioner reported driving on average twice a week, generally to Champaign. Champaign is between five and 10 miles from Petitioner's home. She was also doing some housework for her mother, and volunteer work for her church. He was not sure what that all entailed. He advised Petitioner on job searches and what types of jobs to apply for, but he did not contact potential employers on her behalf. It appears that he did more work for Petitioner's firm "than anybody." He thought his reference to her options being "very few" to mean that her possibility of finding employment was 5%. He agreed that the examination was on June 2, 2016 but his report was dated March 19, 2017; he was not sure the reason for that delay.

When he saw Petitioner, she was out of work for about three years. He believed she looked for employment during that period. He thought she tried to get alternate employment with Respondent, but was unsure whether she sought work from other potential employers. Mr. Gustafson did not perform a labor market survey. Regarding her attempts to return to work, Petitioner reported to him that she took frequent breaks and had relatively poor productivity due to pain and weakness in her upper extremity. Her "productivity suffered to the point where *** [Respondent] opted not to retain her." He did not review the FCE from May 5, 2011. Any differences in the FCE would be irrelevant to him; he only wanted the most recent medical information. He did not recall any discrepancies between the FCE results and Petitioner's subjective statements.

On redirect examination, Mr. Gustafson testified it wasn't a problem that he wrote the report several months after the examination; besides his recollection, he also had his notes. Knowing of Petitioner's visits to her mother at an assisted living facility and doing shopping errands for her, would not change his vocational opinions. Similarly, volunteering co-leading a team in a food pantry for no more than 2 hours would not affect his opinion, assuming her job was mainly paperwork and coordination. Volunteer work is different because you aren't concerned about your productivity. When asked about the recommendations in a hypothetical question, Mr. Gustafson answered that the FCEs, are both "saying the same thing – intermittent use of the hands." On re-cross examination, Mr. Gustafson testified while he believed Petitioner's condition was not medically unusual, it was vocationally unusual because you have to put it in the context of job performance.

Mr. Morgan testified by deposition on February 11, 2020 that he was a certified rehabilitation counselor and has been for 26 years. He saw Petitioner twice in December of 2017. Petitioner had two FCEs, which Mr. Morgan reviewed. He based his opinions and recommendations on the more recent FCE in 2013. He also saw the restrictions Dr. Sobeski testified to in his deposition.

Petitioner told him about doing volunteer work for about 2&1/2 hours, "greeting people and just explaining the activities that were going on there." She also reported running errands for her mother at an assisted living facility. In discussing general capabilities, Petitioner advised

him that she had to alternate between sitting/standing due to a tailbone fracture 20 years previously. She also mentioned her "spine" in that context. She also told him she was limited in bending forward, lifting over 10-15 pounds, raking, vacuuming, and driving more than 30 minutes. Petitioner was "educated" with about 102 hours of college.

Petitioner was conversant in numerous computer programs, which would be viewed as positive by prospective employers. She sent him a resume. Petitioner told him she was looking for employment. She stated she used a spreadsheet, which Mr. Morgan had not seen. She did not send him any information on her job search. He advised her not to volunteer information about her disability on her employment applications. Mr. Morgan went over the findings of his assessment. Petitioner was skeptical about finding employment, did not appear motivated to look for employment, and expected she would not be successful in any job.

Mr. Morgan opined that a reasonably stable job market existed for Petitioner based on her education, her work history, and his experience. Mr. Morgan had reviewed Mr. Gustafson's report before meeting with Petitioner, but did not believe he specifically referenced it in his report. He noted that the salary ranges in Mr. Gustafson's report were dated; they were higher now as the minimum wage increased. He believed Petitioner could be employed on a full-time basis and could earn between $11 and $20 an hour.

On cross examination, Mr. Morgan agreed that in his report, Dr. Carroll found no evidence of symptom magnification or malingering. He also found the restrictions outlined in the 2011 FCE to still be reasonable. He did not believe that an information clerk necessarily had to stay seated in their chair for their entire shift, but could stand as well. He agreed that Petitioner reported that she was able to do less volunteering than she had previously and was not sure she could manage the paperwork at the food pantry when they switched to computers. Mr. Morgan did not believe he was able to give an opinion on which FCE more accurately portrayed Petitioner capabilities.

Conclusions of Law

Petitioner argues she sustained her burden of proving that her disability had increased since the original arbitration hearing on 2012. She stresses the 2013 FCE shows Petitioner's condition had worsened and her disability regarding her lifting ability and grip strength had increased. In addition, Dr. Carroll testified that Petitioner's condition had gotten a little worse and her function had changed. Petitioner also cites her unrebutted testimony about her worsened condition while working, she reported this to Dr. Sobeski who ordered the repeat FCE. Finally, Petitioner cites the testimony of Dr. Keller who opined that Petitioner was PTD and that the likelihood of her "holding and securing a full-time position does not exist.

Additionally, Petitioner argues that under the current circumstances, Petitioner is permanently and totally disabled ("PTD") based on the odd-lot theory of permanent disability. She argues she showed a diligent, though unsuccessful, job search, her age (65), her limited work experience, and her permanent restrictions which resulted in a conclusion that there were no job available. Finally, Petitioner also argues that the opinions of certified voc rehab counselor, Mr. Gustafson is more persuasive than those of certified voc rehab counselor, Mr. Morgan.

Petitioner wants to be declared PTD from April 10, 2013 when Dr. Sobeski took her off work permanently.

Respondent argues Petitioner did not sustain her burden of proving her condition had materially increased since the Commission decision became final. It stresses that Petitioner did not show any treatment for her condition for at least five years prior to the 19(h) petition being heard. Respondent also argues that if Petitioner's condition had materially changed, Dr. Sobeski and Dr. Li would have established a treatment plan, which they did not do. It also suggests that if anything the later 2013 FCE would more accurately portray her disability at the time of arbitration because it was temporarily closer to the day of arbitration than the 2011 FCE. Respondent also stresses that Petitioner's primary provider, Dr. Sobeski repeatedly testified that Petitioner's condition had not changed during the times he saw her, that he never actually treated her from 2013 to 2018. Finally, Respondent posits that Petitioner's conduct from arbitration in 2012 to the current 19(h) hearing was "solely for the purpose of an illicit secondary gain."

The Commission finds Petitioner, as the moving party, had the burden of proving entitlement to relief under §§8(a)/19(b) of the Act, and she did not. The Commission bases that conclusion primarily on Dr. Sobeski's testimony that his diagnoses and clinical examinations had not changed throughout his treatment of Petitioner, it is unclear what the difference in FCE results actually means in terms of functionality/ability to be employed, and whatever decline in her functionality seems to be related more to non-work related conditions to her spine that any material change in her work-related conditions of her upper extremities.

Regarding the second FCE, the Commission interprets the restriction was for 2.64 hours per day of hand activity and not 2.64 hours of work per day totally. In this regard, the Commission notes that the therapist indicated that she was restricted to 2.64 hours of [hand] activity in "an 8-hour work day" certainly implying an 8-hour shift. That interpretation reduces her level of disability based on the findings in that FCE.

In addition, while Dr. Sobeski testified that the later FCE represented a deterioration of her condition, he also noted that it could be caused by various factors. For example, Dr. Sobeski noted, her reduced lifting capacity in the second FCE could be related to other conditions of ill-being other than the work-related injuries to her hands/wrists such as her lumbar and cervical spines, or simply through deconditioning/lack of treatment in the interim. Finally, much of her other impairments, such as inability to stand/walk for extended periods, are related to her spine condition and not her upper extremity condition.

The Commission does not find the testimony of Dr. Keller, the vocational rehabilitation witnesses, or the job search exhibits Petitioner's submitted to be very persuasive. First, regarding Dr. Keller, he took into account Petitioner's non-work related conditions into consideration in assessing her condition and ability to be employed. Regarding the vocational rehabilitation counselors and the job search data, the opinions of the counselor and Petitioner's job search are only relevant after Petitioner has sustained her burden of proving significant change in her condition, which the Commission finds she did not.

Petitioner does not argue the issue in her brief, but because her motion includes §8(a), she is inherently seeking medical expenses incurred since arbitration. Respondent asks the Commission to deny any award of medical because Petitioner has not met her burden of proving she suffered a materially increased disability. In addition, it argues that none of the doctors rendered any treatment in the visits after arbitration and that those visits were not done for "medical purposes" but rather they were done for "legal purposes." We agree with Respondent that Petitioner did not receive any treatment for her work-related conditions after arbitration. Rather, she was seeking modification of her restrictions, anticipating litigation, and/or receiving treatment for non-work related conditions. Therefore, the Commission denies the award of post-arbitration medical expenses.

THEREFORE IT IS ORDERED BY THE COMMISSION that Petitioner's Petition for Relief Pursuant to Sections 19(h)/8(a) of the Act is hereby denied.

November 4, 2024

DLS/dw
D-9/4/24
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC005699
Case Name	Anita Ferguson v. University of Illinois
Consolidated Cases	09WC007134; 11WC005445; 11WC005446;
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	24IWCC0519
Number of Pages of Decision	16
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Timothy Steil

DATE FILED: 11/4/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANITA FERGUSON,

Petitioner,

vs. No: 11 WC 5699

UNIVERSITY OF ILLINOIS,

Respondent.

DECISION ON PETITION PURSUANT TO §§19(h)/8(a)

This matter comes before the Commission on Petitioner's Petition for Relief Pursuant to Sections 19(h)/8(a) of the Act. A hearing was held in Champaign on September 7, 2023 before Commissioner Simonovich. The parties were represented by counsel and a record was taken. Prior to hearing testimony, Petitioner's lawyer noted that previously, Arbitrator Lindsey heard the matters, found accident, found causation, and found average weekly wage in 09 WC 7134 and 11 WC 5699 and awarded Petitioner permanent partial disability ("PPD") benefits representing loss of 17.5% of the left hand and 20% of the right hand. In 11WC 5445 and in 11 WC 5446 she found for Respondent. On Review, in 09 WC 7134, the Commission modified the award to increase the PPD award to loss of 20% of the left hand and 25% of the right hand. The Commission affirmed and adopted the other Decisions of the Arbitrator.

Findings of Fact – Testimony

Petitioner testified that she started working at the College of Aces in mid-2000, "until she had a hand injury in July of 2008 where [she was] off work for multiple surgical procedures." Thereafter, she made several attempts to return to work but left her employment in 2013 because she did not believe her employer was honoring her work restrictions. Her doctor "finally wrote [her] off because [she] wasn't able to do" her job. Petitioner was shown RX9, a notice of injury. The document indicated she was having problems with her right hand, wrist, thumb and index finger from repetitive motion. Her recommendation to prevent the problem was "follow current restrictions in place/one hour per type of hand task daily." Petitioner left the Respondent's employment in 2013. Her understanding was that it had nothing to do with her disability retirement, but rather whether she was coming in every day.

Petitioner testified that on February 13, 2009, she had left CTS release and removal of existing hardware. On June 2, 2009 she had right CTS release with ulnar fat pad rotation flap. She returned to work on July 6, 2009, continued to have problems, and on August 21, 2009 she was given restrictions of no pushing/pulling more than 15 pounds and she had physical therapy. On January 11, 2010, she had an injection in the 1st dorsal compartment of the right wrist and was released to activities as tolerated.

On July 19, 2010, her doctor advised her to refrain from flipping through records with her right hand for two weeks and thereafter to limit the activity to two hours a day, preferably spread out through the day. She had her first FCE on May 5, 2011. While she worked for Respondent, Petitioner worked in a union and her title was office support specialist.

Her claim was adjudicated in November of 2012. Thereafter, she returned to work until 2013, when she was taken off work by her PCP, Dr. Schaap. She told him that she had right pain due to increased work demands and pressure to perform. He ordered an FCE and referred her to a hand specialist. After the FCE, she was placed on restrictions of 10 pounds lifting with only occasional lifting of 15 pounds. She saw Dr. Sobeski on April 10, 2013, at which time he took her off work.

On March 10, 2014, she saw Dr. Jung for neurosurgical consultation. She had a cervical MRI and ESIs at C7-T1. Dr. Jung determined that the injections had not worked. She returned to Dr. Sobeski, who placed her on permanent restrictions as outline in the FCE. She was restricted to working 2.64 hours a day with 30 minutes at a time with her hands and 10-15 pounds lifting "per side." She saw Dr. Sobeski again two years later on October 24, 2016, at which time she told him her condition was the same or worse. Dr. Sobeski retained the restrictions. Similarly, he retained the restrictions when she saw him on July 13, 2018; the restrictions have not been modified since.

Petitioner was on disability at the U of I. She was evaluated periodically to determine whether her disability continued and she was sent to Dr. Keller by SURS. She saw him in August of 2018. Although she was put on disability by SURS, she searched for jobs within her restrictions. She identified PX13 as jobs she applied for. PX14 was a rejection letter. PX15 is her job search log. She did not get any of the jobs for which she applied.

Petitioner testified she did not receive any vocational assistance. Petitioner identified PX19 as photos she made of "massive files, massive shredding, more boxes of files," "the financials [she] did, more boxes of files." Her hands worsened trying to perform her job. She had increased numbness/tingling/pain. Petitioner also testified that she moved to be closer to her daughter so her family can help with things. She cannot scrub, clean deeply, she had problems with her shower and had handrails put in. She cannot drive for more than 30, 35 minutes before she has to shake her hands out. She used to host all the holiday parties, but no more. She no longer volunteered at the food pantry that she did for 20 years and cannot do as much with her grandchildren, all because of her hands. Eventually, she stopped looking for employment and retired from U of I on March 29, 2022. She retired because she could be on disability only for a certain period of time and could not work anyway. If she could work she would.

On cross examination, Petitioner testified she still took care of her three grandchildren "a couple of hours maybe." She would not disagree that she reported that her three grandchildren were sleeping over and she had to clean the house before the visit. Petitioner agreed that in her testimony at the original arbitration, she testified that in November she was working with permanent restrictions of one-hour work per hand task, 20-pound restriction on her left hand, and 15-pound restriction on her right hand. She also testified that her right hand would swell/hurt, with numbness/tingling radiating up her arm to her shoulder. She likes to help her grandchildren; she cooks them a simple meal, and "they actually do the dishes."

Petitioner agreed that she stated off-the-record that her grandchildren were self-sufficient. She also testified that she had difficulty sleeping, tossed and turned, and had to shake her right hand. She also had trouble buttoning/hooking, opening jars, using mixers, lifting heavy things out of the oven, writing for more than 30 minutes, collating, stuffing, flipping, sorting, mousing, and typing for long periods of time. It appears that Petitioner had the same job at the time of arbitration that she did from November 20, 2012 through February of 2013.

Apparently, Petitioner saw her PCP on December 27, 2012 for respiratory issues and back pain and on January 10, 2013 she saw Dr. Greely for persistent cough. She agreed that in neither of those visits she reported any hand complaints; but that was not why she saw them. Petitioner would not disagree that in around February 15, 2013 she informed Respondent of issues regarding her hands and her work. She agreed that on February 14, 2013, she discussed her work and her alleged hand pain with Dr. Sobeski and that he told her there was nothing medically that could be done for her.

Petitioner agreed that her FCE in 2011 was after she had treatment including surgeries and physical therapy ("PT"). However when she had the FCE in 2013, she had not had PT. She asked Dr. Schaap to order an FCE in 2013 and later to have her work restrictions revised based on the FCE. She did not recall seeing Dr. Li. She denied contacting Dr. Sobeski's office requesting that he take her off work on March 29, 2013; she thought she told him she could not do her job.

Petitioner agreed that she was responsible for some of the housework at her home. She agreed that Respondent never terminated her from employment. She did not recall doing a job search in the past three years. Petitioner agreed that she prepared PX15, which is a 7-page spreadsheet that she prepared using a keyboard/mouse. It spans February of 2014 through February of 2016. She has not looked for job since 2016. Petitioner agreed that she had Hypertension, but no longer took blood pressure medication and hadn't in years. She has hypothyroidism because her thyroid was removed due to cancer. In addition, she had a fall which resulted in a lumbar fracture.

On redirect examination, Petitioner testified that to her knowledge her blood pressure never affected her hands. She received an injection in her neck which showed that her hand condition was not associated with a cervical condition. She often has groceries delivered because it may be too heavy.

Petitioner was read treatment notes from September 17, 2019, which sounded accurate to her. In it, she reported she had to clean most of Friday because her grandchildren were coming over, she overdid it, and that "by Friday night she was in bed and unable to move most of the weekend." She told Dr. Sobeski that she could no longer do her job because it required too much hand movement and her hands were getting worse. She asked for another FCE because the first did not deal much with her hands and was not really related to her job activities. The second FCE was on March 14, 2013, at which time she was still working. Her grandchildren were 5, 8, and 10.

Findings of Fact – Medical Records

On April 10, 2013, Petitioner presented to Dr. Sobeski, who's current diagnoses were fused left wrist, bilateral CTS, and right sided de Quervain's tenosynovitis. His prognosis for her was poor. Petitioner reported she could not perform her job and Dr. Sobeski did not believe there was anything medically he could do to improve her condition. He recommended "that she be held off work permanently."

On August 28, 2013, Petitioner presented to Dr. Li for a second opinion about treatment options. She reported pain with numbness/tingling since 2008. She had multiple surgeries for CTS and De Quervain's without much relief. She rated her pain at 6/10. Dr. Li concluded that "the pain was to (*sic*) generalized to formulate a treatment plan."

On October 21, 2013, Petitioner returned to Dr. Sobeski to have her disability papers filled out. Dr. Sobeski noted that her conditions "were stable and they really had not changed at all since" the last visit. He "would continue with restrictions per the FCE."

On March 10, 2014, Petitioner presented to Dr. Jung, on referral from Dr. Sobeski, for evaluation of pain in the hands/wrists/right arm. She had a lot of issues with her hands and wrists since 1993. She had several procedures. After his examination, Dr. Jung diagnosed bilateral hand/wrist pain and cervical degenerative disc disease ("DDD"). He concluded there was nothing he could do directly for her hand/wrist pain, but thought the majority of the discomfort may be coming from her cervical spine. He ordered an MRI.

Three weeks later, Petitioner returned after the MRI. Dr. Jung now diagnosed cervical DDD, severe cervical foraminal/spinal stenosis, and bilateral hand/wrist pain. He wanted to refer her to their neuro spine specialist to see if a cervical ESI was indicated.

On June 3, 2014, Petitioner presented to Dr. Olivero, in the Spine Institute, for evaluation or hand pain that had been going on for some time. An MRI showed severe arthritis, mild central spinal stenosis, and moderate foraminal stenosis at multiple levels. He didn't know how much of the symptoms were coming from the neck and from her residual CTS. Because of the multilevel DDD, surgery was not recommended. Dr. Olivero recommended PT for the neck. On June 25, 2014 and August, 5, 2014, Dr. Jung administered interlaminar ESIs at C7-T1 for cervical DDD, severe foraminal/spinal stenosis, and bilateral hand/wrist pain.

On September 2, 2014, Petitioner returned reporting the injections did not help much, with no improvement other than a little better neck ROM. She did not want to take pain medication. There was nothing Dr. Jung could do for her in regards to pain management. He would not recommended chiropractic treatment because of the severe spinal cord stenosis. He advised her to go back to the Spine Institute for another surgical consideration.

On October 23, 2014, Petitioner returned to Dr. Sobeski. Petitioner's clinical examination was "unchanged from previous years." He noted that "she has had an FCE and [he] would make those restrictions permanent. Currently, they recommend working 2.64 hours per day with 30 minutes at a time. She has 10-15 pound weight restriction per side as well." It looks like Dr. Sobeski released her from treatment *prn*.

On July 13, 2018, Petitioner returned for "issues of disability," which Dr. Sobeski did not get involved with. He reiterated the restrictions required her to "perform a variety of these [hand] tasks for 30 minutes at a time, now [apparently "not"] to exceed 2.64 hours in an eight-hour day." She gave him something regarding a position of clerk at the U of I, which she felt she could not do with her restrictions.

On September 9, 2019, Petitioner presented to PA Husmann, at Carle Clinic with back pain with some spasming. She stated her three young grandchildren were spending the night and she cleaned most of Friday. By Friday night she was in bed and unable to move for most of the weekend. Because of her history with a compression fracture, Ms. Husmann ordered x-rays, prescribed muscle relaxers, and sent her to the pain management doctor.

On September 30, 2019, Petitioner returned to Dr. Jung for lower back pain, which was "bothering her a lot more." Dr. Jung diagnosed lumbar DDD/radiculitis, chronic neck pain, and cervical DDD. He ordered a lumbar MRI in preparation for an ESI. On December 12, 2019, Dr. Jung administered a right-sided interlaminar ESI at L4-4 for lumbar DDD/radiculitis, chronic neck pain, and cervical DDD.

Findings of Fact – FCEs/Job Search

Petitioner submitted into evidence a document she prepared dated September 11, 2014. It appears to show that Petitioner applied for 31 jobs with the Champaign-Ford County School District. It also shows that the last salary she earned in April of 2013 was $20.57 an hour. Petitioner also submitted a spreadsheet she prepared consisting of 13 pages spanning February 29, 2014 through February 5, 2016. It includes 212 entries apparently of applications and/or inquiries with many submitted to some entities at the same time

An FCE was performed on May, 5, 2011. The therapist noted that Petitioner gave maximum effort in all testing. She reported bilateral wrist pain with much of the testing. Petitioner functioned at the light-to-medium physical demand level ("PDL"). The therapist could not fully address her ability to return to work because she did not have a job description. She recommended that Petitioner could safely work full time if she was limited to rarely lifting 30 pounds floor to waist/front carry and 15 lifting pounds waist-to-crown. She could frequently carry up to 10 pounds on the right/left, but 5 pounds front carry/waist-to-floor/waist-to-crown.

Another FCE was performed on March 14, 2013. Petitioner reported she worked full-time and a good portion of her job consisted of computer work (mostly mousing), printing/collating/filing/carrying documents/materials. She developed symptoms in her right thumb, traveling up to the shoulder, after doing any specific task for more than an hour. She also reported pain in her neck/forearm/wrist rated between 5-7/10. She was able to lift 15 lbs waist to floor rarely, 10 lbs occasionally, and 0 lbs frequently. After testing Petitioner reported 8/10 pain in her right shoulder/forearm/wrist.

The therapist, believed Petitioner could return to work full-time at her current job with the following recommendations:

> Petitioner "can perform a task using her hands including typing/mousing, sorting papers/flipping papers/using staple remover for up to 30 minutes at one time. It is recommended she wear her right wrist brace consistently. Following the 30 minutes of a hand task, she is to perform another activity not to include typing/mousing, sorting papers/flipping papers/using staple remover. She can perform a variety of tasks for 30 minutes at a time not to exceed 2.64 hours in an 8-hour work day."

Findings of Fact – Depositions

Dr. Sobeski testified by deposition on January 14, 2016, after being called by Petitioner. He was a board-certified orthopedic surgeon with a subspecialty in hand surgery. He last saw Petitioner on October 23, 2014. When he saw her on April 10, 2013, she had dealt with problems at work for about five years. Her current diagnoses were bilateral CTS, bilateral tendonitis, and left wrist arthrodesis (Petitioner is left-handed). She reported she could not perform her job and had at least two FCEs. He thought her prognosis was poor and there was really nothing medically he could do for her. He recommended that "she be kept off work permanently." When she returned on October 21, 2013 her condition had not changed and he again filled out her disability paperwork.

She returned to Dr. Sobeski a year later on October 23, 2014. He placed her on permanent restrictions as outlined in the FCE. She was restricted to working 2.64 hours a day with 30 minutes at a time with her hands and 10-15 pounds lifting per side. Dr. Sobeski based his opinions on whether Petitioner can work or that she needed work restrictions on the FCE results.

Dr. Sobeski noted that Petitioner's capacity to lift from waist to floor in the 2011 FCE was 30 pounds maximum, 20 pounds occasionally, and 5 pounds frequently. In the 2013 FCE, her lifting capacity was 15 pounds maximum, 10 pounds occasionally, and 0 pounds frequently. In the waist to crown category her ability to lift 15 pounds maximum and 10 pounds s occasionally were the same in the 2011 and 2013 FCEs. However the frequent lifting capacity went from 5 lbs in 2011 to 0 lbs in 2013. Range of Motion ("ROM") of the wrist went from 68 degrees in 2011 to 60 degrees in 2013.

Dr. Sobeski's current diagnoses were fused left wrist, bilateral CTS, and right sided de Quervain's tenosynovitis. Dr. Sobeski refused to opine that Petitioner's work activities caused any of her conditions of ill-being. However, there appeared to be a material increase in her disability based on the two FCEs. He believed Petitioner's diagnoses in 2013 and 2014 were continuation of the diagnoses he treated her for in 2008 through 2011.

On cross examination, Dr. Sobeski testified he believed the FCEs were performed by the same therapist. As far as he knew, her employer was honoring her restrictions from the 2011 FCE. Her capability could fluctuate from day to day, so the variances could be meaningless. He noted that the difference in wrist ROM "probably doesn't make a whole lot of difference." He noted that her diminished lifting capacity could reflect a lot of things, such as issues with her neck, knees, back, *etc*. He thought she had seen somebody for her spine. He noted in 2011 that her complaint could be coming from her neck. If she was seeking treatment or having injections, that could possibly affect the numbers in the 2013 FCE.

Dr. Sobeski testified that at the October 22, 2013 visit her condition was basically stable since the previous time he saw her. Her conditions appeared stable or unchanged since 2011. He did not recall whether she was diagnosed with hypothyroidism. He did not recall whether Petitioner had work conditioning before the 2013 FCE, but that would be "a pretty common" practice." There was a slight difference downward, and there were probably many explanations for that. Other than the waist to floor numbers, the other differences were small and would not be evidence of a significant change.

On redirect examination, Dr. Sobeski reiterated that his diagnoses remained the same from 2011 to 2013. He did not identify any cervical pathology that needed surgery. He believed Petitioner's complaints of pain arose from her hands. He read from the Arbitrator's decision about Petitioner's job duties and noted that in his previous deposition, he opined that her job activities could have aggravated her condition. That was still his opinion. On re-cross examination, Dr. Sobeski testified he was not a spine specialist and he would defer to a spine specialist regarding diagnoses of the spine/neck. He based his opinions on Petitioner's job activities before the matter was arbitrated.

Dr. Sobeski again testified by deposition on September 23, 2019 after being called by Respondent. He testified he treated Petitioner for conditions of her hands/wrists bilaterally since 2008. He was to assume that the Commission had already found that her conditions were caused by her work activities. Upon review of his previous testimony, Dr. Sobeski agreed that he testified that when he saw Petitioner on April 11, 2013, October 22, 2013, and October 23, 2014 that he did not provide her any treatment. He identified notes from October 24, 2016 at which time Petitioner presented to have her restrictions evaluated. No treatment was provided nor treatment plan created at that visit. His clinical examination was unchanged from his previous examination. After his examination, Dr. Sobeski recommended no change in her restrictions.

He saw her again on July 13, 2018 "for issues with disability." He explained to her that he typically did not get involved with that issue. He discussed with her that she could perform tasks "using her hands including typing, mousing," "sorting/flipping," paper for up to 30 minutes at a time, "as opposed to slipping papers and using a staple remover." It was also recommended

that she wear a splint on her right hand consistently. Petitioner wanted him to include that she was given the position of information clerk and she did not feel she could do that with the restrictions she had. She also wanted him to correct "slipping" to "flipping" and that she got information from the internet and from the U of I. He issued his addendum report at her request.

Dr. Sobeski did not believe he examined her wrist on July 13, 2018. He last saw Petitioner on October 17, 2018 when she came in with disability paperwork. He gave the paperwork to an assistant and advised Petitioner to come back if she had any problems on a *prn* basis. He did not believe he examined her on that date, he did not provide/recommend any treatment on that date. He did not believe that Petitioner contacted his office regarding her work restrictions prior to their visit on October 24, 2016.

Dr. Sobeski was familiar with Samantha Bales and he would have no reason to believe she would include inaccurate information on the office phone log. In her entry dated July 24, 2018, she noted that Petitioner stated she needed "Dr. Sobeski to refer to the April 10th, 2013 note and reiterate that her conditions have not changed and she cannot work." Similarly, he knew Konnor Williford who indicated in a phone log entry: "He states nothing has changed since the April 10th, 2013 date. He states he is not going to say that she cannot work." Dr. Sobeski had no reason to question that entry. Dr. Sobeski continued to believe that Petitioner could work under the restrictions pursuant to the FCE. He was not willing to take her off work totally. He thought Petitioner's conditions were stable for several years and nothing has changed.

On cross examination, Dr. Sobeski testified he did not believe the results of the FCE taken after arbitration represented a worsening of her condition. He reiterated that determining a patient's level of disability is not part of the treatment he provides, but he does get involved in their ability, or lack thereof, to perform specific work functions. For that he relies on FCEs which are the only objective standard they have. He would base his restrictions on the most recent FCE. On October 24, 2016, Petitioner reported her condition was "really unchanged" and "if anything her symptoms are worse." He thought that was of medical significance.

On redirect examination, Dr. Sobeski testified that typically patients go through work conditioning before an FCE. If a person had no treatment for two years, that could affect a second FCE. He still agreed that the difference in the FCE results could be based on deconditioning. He did not believe that the lack of treatment invalidated the second FCE. He did not remember whether the second FCE was ordered at Petitioner's request.

Dr. Carroll testified by deposition on February 29, 2016 that he is a board-certified orthopedic surgeon. He has an added qualification in hand surgery, in which he specializes. IMEs comprise about 8% of his practice and about 70% of which are done on behalf of employers.

He performed an IME on Petitioner on January 19, 2015, reviewed medical records, and issued a report. In the examination, Petitioner presented with tenosynovitis related to a wrist fusion, CTS, and de Quervain's. On examination, Petitioner showed "some residual" from CTS. She worked for Respondent from 1998 to April of 2013. He thought that a portion of her complaints still related to the injuries in 2008, though some of it could also be related to the

"fairly significant changes" seen in the MRI of her cervical spine. He thought Petitioner was able to work with a restriction of 15-20 pounds lifting with no repetitive forceful gripping/bending/torquing with the hand. The FCE from 2011 played a role in his recommendation.

Dr. Carroll believed he saw reference to an FCE in 2013, but he was not sure whether he had it in the chart. He thought they were similar in the types of activities she could perform. He then agreed that Petitioner probably could lift more in 2011 than she "could now." Though she may have had a little more weakness, "the hand function looked the same." He did not know how that variance would affect Petitioner's job performance. Lifting involves parts of the body other than the upper extremities. Dr. Carroll opined that Petitioner was at MMI related to her upper extremities on October 21, 2013, the day she stopped seeing doctors for those complaints. If he knew that Dr. Sobeski had not treated her upper extremities since November 2, 2010, that would bring the MMI date much earlier.

On cross examination, Dr. Carroll agreed that the 2013 FCE had her lifting less weight than she did in 2011. That variance could possibly be related to her hands. She had some residual sensitivity on Tinel testing. He agreed that Petitioner's pain and numbness could be attributable to a CTS condition. She was not working when he saw her. Dr. Carroll agreed that it appeared that Petitioner's condition was permanent, she had residuals of CTS, and he recommended work restrictions. He believed Petitioner could do a job in which she had to twist her wrists to flip through papers. Dr. Carroll agreed he was not a spine specialist. He thought it was possible, but not likely, that "the origin of her complaints are at the forearm or wrist area." He agreed that no treating doctor had yet recommended cervical surgery. Dr. Carroll recommended another spine specialist for further evaluation.

Dr. Carroll agreed that Dr. Olivero noted only mild cervical stenosis, but Dr. Carroll saw significant changes in C5-6 and C6-7. Even though Dr. Olivero opined that surgery would not likely be beneficial, Dr. Carroll believed she should get a second opinion. When the restrictions imposed in March of 2013 were read to Dr. Carroll, he testified they appeared reasonable.

On redirect examination, Dr. Carroll testified deconditioning could play a factor in Petitioner's reduced function in 2011 and 2013. He thought Petitioner should restrict her activities but not her hours. Hypothyroidism can have an impact on subjective complaints of hands/wrists. On re-cross, Dr. Carroll agreed that hypothyroidism could possibly not affect Petitioner's hands.

Dr. Keller testified by deposition on February 8, 2022 that he was a board-certified orthopedic surgeon. He examined Petitioner on or about September 14, 2018 for evaluation of her upper extremities and cervical/lumbar spine. Petitioner reported she had a total of eight surgeries and she continued to have numbness/tingling/weakness in both hands and was taking Neurontin for nerve pain. Dr. Keller diagnosed multilevel cervical DDD with moderate-to-severe spinal stenosis, history of two right CTS release surgeries/three left CTS surgeries, history of left/right de Quervain's release surgeries, and history of left wrist fusion surgery.

Dr. Keller agreed that when he writes a report, it is "for the purpose of giving [his] complete opinion as to the medical condition of an individual." In making his assessments, Dr. Keller uses medical records and vocational reports. Dr. Keller concluded that Petitioner's complaints were consistent with his examination and the medical records, she had significant limitations, the work restrictions imposed were medically necessary, and with these restrictions it was unlikely that she can hold a normal job.

On cross examination, Dr. Keller agreed that he did his report for Prudential, but he was unaware that it on behalf of SURS. He believed IMEs account for 5%, or less, of his practice. He was not asked for the IME by either of the parties' lawyer or Respondent. He agreed that he was not a voc rehab expert and did not provide Petitioner with any such services. In his assessment, he included Petitioner's arthritis, cervical spine/lumbar spine, as well as her upper extremities. Dr. Keller is an orthopedic surgeon and often addresses work restrictions for patients. He knows Dr. Fletcher, who refers patients to him. When there is an occupational health doctor involve, such as Dr. Fletcher, he defers the imposition of restrictions on that doctor.

Dr. Keller was not certain when Petitioner's cervical condition began. He did not believe he received any records about treatment of her cervical or lumbar spine prior to 2013. He does not dictate his findings in front of the examinee; he does it after the fact. He agreed that although he noted that Dr. Sobeski took her off work permanently, he later released her to restricted work.

Dr. Keller did not recall receiving any deposition transcripts. He also did not believe he reviewed an IME report from Dr. Carroll, a voc rehab report from Mr. Morgan, or his deposition. Petitioner complained about her lumbar spine and her cervical spine as well as her upper extremities. Although Petitioner had two FCEs, he only got the second. Petitioner reported that that FCE indicated she could not perform her activities at work. He read from the March 18, 2013 FCE in which the therapist opined that Petitioner could perform her job if accommodations were made. That does not seem to be consistent with the report Petitioner gave him. His examination appeared to be negative for bilateral CTS and de Quervain's. It appeared that those conditions had resolved. She had slight-to-moderate limitations in cervical ROM as well as DDD with moderate-to-severe spinal stenosis. He also diagnosed multilevel lumbar DDD with severe spondylolisthesis at L3-4.

Dr. Keller was asked if a patient has an FCE and then two years later had another FCE without any treatment, which would be more reliable. He answered that if the patient was inactive in the interim, "there's a chance that they could be deconditioned, and, therefore, may not do as well in that" FCE. He agreed that the likelihood of Petitioner's ability to find a job was outside of his expertise. He wrote that he found no symptom magnification, but he did not do any distraction testing.

Mr. Gustafson testified by deposition on March 26, 2019 that he was a certified rehabilitation counselor practicing in the field for 44 years. He met Petitioner once in 2016, had medical records provided by her lawyer, the FCEs/restrictions relative to her employment, and the first deposition of Dr. Sobeski.

Petitioner completed some hours of undergraduate programming at the Pacific School of Theology from 1976 to 1984, returned to Illinois and completed 30 hours at Parkland CC in office management/office careers. She had been employed as a factory worker, in cleaning, as a receptionist, and in 1998 began working for Respondent as an office assistant.

After 2008, she was off work, attempted to return to work multiple times but failed, and was finally terminated in 2013. Her return to work failed because she was not able to use her arm for extended periods and she had pain and poor productivity. Petitioner had not worked since 2013. Mr. Gustafson had to conclude that she was unable to perform any of the clerical work, and nothing else was being offered to her.

Mr. Gustafson reviewed the 2013 FCE which provided certain work restrictions. The restrictions were consistent with his conversation with Petitioner and the opinion of Dr. Sobeski. Petitioner reported to Mr. Gustafson that she had constant pain in her hands bilaterally, which appeared to be consistent with the medical records. She could work with her hands for a maximum of 30 minutes before she needed to rest. She had trouble driving due to vibration in the steering wheel. Her ability to perform housework "very intermittent." All Petitioner's subjective reports were consistent with the FCE.

In his experience, the type of upper extremity issues as Petitioner had "lend themselves more to certain types of service activity that, that emphasizes less use of the upper extremity and also at night." For example, she could work as a night security guard where she did not have to carry a gun or have "any type of interaction with her hands that required her to hold somebody." When you "put it all together," her job prospects were very limited and "you don't really have a very stable job market."

Mr. Gustafson again testified that he often makes opinions based on his interpretation of medical records *etc*. On the issue of Petitioner finding part-time employment, Mr. Gustafson opined that "there was nothing clear to [him] that would suggest [Petitioner] would succeed even in a part-time job situation." She may be more suited to a position with limited hours of work a day, rather than something like two full days a week. He thought it "quite unlikely" Petitioner could earn more than $10 an hour.

In discussing another vocational assessment, Mr. Gustafson testified that a job as a membership solicitor was mentioned. In that job the person tries to sell memberships to gyms *etc*. While that may be reasonable from a physical standpoint, Petitioner has no sales background, so there is no way to know whether she would be successful in meeting sales quotas. The classification of surveillance system monitor technically no longer exists, but it would involve security using surveillance. Again, these are predominantly retail establishments where enforcement may become an issue, though a job as night-watch person might be feasible. A person in a job like receptionist/information is expected to be busy so you might be "doing some other clerical activity" when you aren't engaged in your primary function. She could possibly work as a case aid, an assistant to social workers, but she did not believe she had the educational credentials to get such a job and that job would require writing/computer data entry. Mr. Gustafson did not believe any of the job categories in other report were feasible on a full-time basis.

Mr. Gustafson testified that when you have two FCEs, you always use the most recent one because it has the most recent/relevant information. Employers are always concerned with an employee's endurance and productivity.

On cross examination, Mr. Gustafson testified Petitioner reported driving on average twice a week, generally to Champaign. Champaign is between five and 10 miles from Petitioner's home. She was also doing some housework for her mother, and volunteer work for her church. He was not sure what that all entailed. He advised Petitioner on job searches and what types of jobs to apply for, but he did not contact potential employers on her behalf. It appears that he did more work for Petitioner's firm "than anybody." He thought his reference to her options being "very few" to mean that her possibility of finding employment was 5%. He agreed that the examination was on June 2, 2016 but his report was dated March 19, 2017; he was not sure the reason for that delay.

When he saw Petitioner, she was out of work for about three years. He believed she looked for employment during that period. He thought she tried to get alternate employment with Respondent, but was unsure whether she sought work from other potential employers. Mr. Gustafson did not perform a labor market survey. Regarding her attempts to return to work, Petitioner reported to him that she took frequent breaks and had relatively poor productivity due to pain and weakness in her upper extremity. Her "productivity suffered to the point where *** [Respondent] opted not to retain her." He did not review the FCE from May 5, 2011. Any differences in the FCE would be irrelevant to him; he only wanted the most recent medical information. He did not recall any discrepancies between the FCE results and Petitioner's subjective statements.

On redirect examination, Mr. Gustafson testified it wasn't a problem that he wrote the report several months after the examination; besides his recollection, he also had his notes. Knowing of Petitioner's visits to her mother at an assisted living facility and doing shopping errands for her, would not change his vocational opinions. Similarly, volunteering co-leading a team in a food pantry for no more than 2 hours would not affect his opinion, assuming her job was mainly paperwork and coordination. Volunteer work is different because you aren't concerned about your productivity. When asked about the recommendations in a hypothetical question, Mr. Gustafson answered that the FCEs, are both "saying the same thing – intermittent use of the hands." On re-cross examination, Mr. Gustafson testified while he believed Petitioner's condition was not medically unusual, it was vocationally unusual because you have to put it in the context of job performance.

Mr. Morgan testified by deposition on February 11, 2020 that he was a certified rehabilitation counselor and has been for 26 years. He saw Petitioner twice in December of 2017. Petitioner had two FCEs, which Mr. Morgan reviewed. He based his opinions and recommendations on the more recent FCE in 2013. He also saw the restrictions Dr. Sobeski testified to in his deposition.

Petitioner told him about doing volunteer work for about 2&1/2 hours, "greeting people and just explaining the activities that were going on there." She also reported running errands for her mother at an assisted living facility. In discussing general capabilities, Petitioner advised

him that she had to alternate between sitting/standing due to a tailbone fracture 20 years previously. She also mentioned her "spine" in that context. She also told him she was limited in bending forward, lifting over 10-15 pounds, raking, vacuuming, and driving more than 30 minutes. Petitioner was "educated" with about 102 hours of college.

Petitioner was conversant in numerous computer programs, which would be viewed as positive by prospective employers. She sent him a resume. Petitioner told him she was looking for employment. She stated she used a spreadsheet, which Mr. Morgan had not seen. She did not send him any information on her job search. He advised her not to volunteer information about her disability on her employment applications. Mr. Morgan went over the findings of his assessment. Petitioner was skeptical about finding employment, did not appear motivated to look for employment, and expected she would not be successful in any job.

Mr. Morgan opined that a reasonably stable job market existed for Petitioner based on her education, her work history, and his experience. Mr. Morgan had reviewed Mr. Gustafson's report before meeting with Petitioner, but did not believe he specifically referenced it in his report. He noted that the salary ranges in Mr. Gustafson's report were dated; they were higher now as the minimum wage increased. He believed Petitioner could be employed on a full-time basis and could earn between $11 and $20 an hour.

On cross examination, Mr. Morgan agreed that in his report, Dr. Carroll found no evidence of symptom magnification or malingering. He also found the restrictions outlined in the 2011 FCE to still be reasonable. He did not believe that an information clerk necessarily had to stay seated in their chair for their entire shift, but could stand as well. He agreed that Petitioner reported that she was able to do less volunteering than she had previously and was not sure she could manage the paperwork at the food pantry when they switched to computers. Mr. Morgan did not believe he was able to give an opinion on which FCE more accurately portrayed Petitioner capabilities.

Conclusions of Law

Petitioner argues she sustained her burden of proving that her disability had increased since the original arbitration hearing on 2012. She stresses the 2013 FCE shows Petitioner's condition had worsened and her disability regarding her lifting ability and grip strength had increased. In addition, Dr. Carroll testified that Petitioner's condition had gotten a little worse and her function had changed. Petitioner also cites her unrebutted testimony about her worsened condition while working, she reported this to Dr. Sobeski who ordered the repeat FCE. Finally, Petitioner cites the testimony of Dr. Keller who opined that Petitioner was PTD and that the likelihood of her "holding and securing a full-time position does not exist.

Additionally, Petitioner argues that under the current circumstances, Petitioner is permanently and totally disabled ("PTD") based on the odd-lot theory of permanent disability. She argues she showed a diligent, though unsuccessful, job search, her age (65), her limited work experience, and her permanent restrictions which resulted in a conclusion that there were no job available. Finally, Petitioner also argues that the opinions of certified voc rehab counselor, Mr. Gustafson is more persuasive than those of certified voc rehab counselor, Mr. Morgan.

Petitioner wants to be declared PTD from April 10, 2013 when Dr. Sobeski took her off work permanently.

Respondent argues Petitioner did not sustain her burden of proving her condition had materially increased since the Commission decision became final. It stresses that Petitioner did not show any treatment for her condition for at least five years prior to the 19(h) petition being heard. Respondent also argues that if Petitioner's condition had materially changed, Dr. Sobeski and Dr. Li would have established a treatment plan, which they did not do. It also suggests that if anything the later 2013 FCE would more accurately portray her disability at the time of arbitration because it was temporarily closer to the day of arbitration than the 2011 FCE. Respondent also stresses that Petitioner's primary provider, Dr. Sobeski repeatedly testified that Petitioner's condition had not changed during the times he saw her, that he never actually treated her from 2013 to 2018. Finally, Respondent posits that Petitioner's conduct from arbitration in 2012 to the current 19(h) hearing was "solely for the purpose of an illicit secondary gain."

The Commission finds Petitioner, as the moving party, had the burden of proving entitlement to relief under §§8(a)/19(b) of the Act, and she did not. The Commission bases that conclusion primarily on Dr. Sobeski's testimony that his diagnoses and clinical examinations had not changed throughout his treatment of Petitioner, it is unclear what the difference in FCE results actually means in terms of functionality/ability to be employed, and whatever decline in her functionality seems to be related more to non-work related conditions to her spine that any material change in her work-related conditions of her upper extremities.

Regarding the second FCE, the Commission interprets the restriction was for 2.64 hours per day of hand activity and not 2.64 hours of work per day totally. In this regard, the Commission notes that the therapist indicated that she was restricted to 2.64 hours of [hand] activity in "an 8-hour work day" certainly implying an 8-hour shift. That interpretation reduces her level of disability based on the findings in that FCE.

In addition, while Dr. Sobeski testified that the later FCE represented a deterioration of her condition, he also noted that it could be caused by various factors. For example, Dr. Sobeski noted, her reduced lifting capacity in the second FCE could be related to other conditions of ill-being other than the work-related injuries to her hands/wrists such as her lumbar and cervical spines, or simply through deconditioning/lack of treatment in the interim. Finally, much of her other impairments, such as inability to stand/walk for extended periods, are related to her spine condition and not her upper extremity condition.

The Commission does not find the testimony of Dr. Keller, the vocational rehabilitation witnesses, or the job search exhibits Petitioner's submitted to be very persuasive. First, regarding Dr. Keller, he took into account Petitioner's non-work related conditions into consideration in assessing her condition and ability to be employed. Regarding the vocational rehabilitation counselors and the job search data, the opinions of the counselor and Petitioner's job search are only relevant after Petitioner has sustained her burden of proving significant change in her condition, which the Commission finds she did not.

Petitioner does not argue the issue in her brief, but because her motion includes §8(a), she is inherently seeking medical expenses incurred since arbitration. Respondent asks the Commission to deny any award of medical because Petitioner has not met her burden of proving she suffered a materially increased disability. In addition, it argues that none of the doctors rendered any treatment in the visits after arbitration and that those visits were not done for "medical purposes" but rather they were done for "legal purposes." We agree with Respondent that Petitioner did not receive any treatment for her work-related conditions after arbitration. Rather, she was seeking modification of her restrictions, anticipating litigation, and/or receiving treatment for non-work related conditions. Therefore, the Commission denies the award of post-arbitration medical expenses.

THEREFORE IT IS ORDERED BY THE COMMISSION that Petitioner's Petition for Relief Pursuant to Sections 19(h)/8(a) of the Act is hereby denied.

November 4, 2024

DLS/dw
D-9/4/24
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC001155
Case Name	Sandy Taylor v. Prairie Farms Dairy
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0520
Number of Pages of Decision	16
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Matthew Terry

DATE FILED: 11/6/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sandy Taylor,

Petitioner,

vs. NO: 22 WC 001155

Prairie Farms Dairy,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 25, 2023 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $37,000.00. 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 6, 2024

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/s/ *Maria E. Portela*
Maria E. Portela
/s/ *Amylee H. Simonovich*
Amylee H. Simonovich
/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC001155
Case Name	Sandy Taylor v. Prairie Farms Dairy
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Matthew Terry

DATE FILED: 9/25/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 19, 2023 5.30%

/s/Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

SANDY TAYLOR
Employee/Petitioner

Case # **22-WC-001155**

v.

Consolidated cases:

PRAIRIE FARMS DAIRY
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of Mt. Vernon, on **7/27/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/20/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**63,471.72**; the average weekly wage was $**1,220.61**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**19,048.18** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**19,048.18**.

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

ORDER

Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 5, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent stipulated to liability for medical expenses of Greater Missouri Imaging and Open MRI.

Respondent shall pay Petitioner temporary total disability benefits of $**813.74**/week for **21-2/7** weeks, commencing 12/21/21 through 5/18/22, as provided in Section 8(b) of the Act. Respondent shall receive a credit of $19,048.18 in temporary total disability benefits paid, resulting in an overpayment of TTD benefits of $1,731.79, which shall be credited toward permanent partial disability benefits awarded herein.

Respondent shall pay Petitioner permanent partial disability benefits of $**732.37**/week for **37.5** weeks because the injury sustained caused **7.5%** loss of use of his body as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 5/18/22 through 7/27/23, and shall pay the remainder of the award, if any, in weekly payments.

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

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

SEPTEMBER 25, 2023

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

SANDY TAYLOR,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 22-WC-001155
	)	
PRAIRIE FARMS DAIRY,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on July 27, 2023 on all issues. On 1/13/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to his head, neck, back, ribs, and shoulder as a result of stepping down an area with a missing step and fell on 12/20/21. (AX2)

Respondent stipulated to liability for medical expenses of Greater Missouri Imaging and Open MRI. Respondent disputed liability for Dr. Brunkhorst's outstanding medical bill. The parties stipulated that Respondent shall receive credit for any and all medical bills paid through its group medical plan, if any, under Section 8(j) of the Act. The parties further stipulated that Respondent shall receive credit of $19,048.18 in temporary total disability benefits paid.

The issues in dispute are causal connection, medical expenses, temporary total disability benefits from 2/21/22 through 5/19/22, the nature and extent of Petitioner's injuries, and whether there was an overpayment of temporary total disability benefits.

TESTIMONY

Petitioner was 35 years old, single, with no dependent children at the time of accident. Petitioner was hired by Respondent on 7/11/11 and was a Blow Mold Operator on the date of accident. On 12/20/21, Petitioner attempted to enter the regrind room to check a machine when he stepped down and the stairs were not there. He fell one and a half to two feet down to the concrete floor. He had his right arm out in front of him and fell onto his right side. He got up and had pain in his right side and shoulder and had difficulty breathing.

Petitioner reported the accident to his supervisor and went to the emergency room. He began his shift on 12/20/21 at 10:00 p.m. and was checked in to the hospital at approximately 5:00 a.m. on 12/21/21. Petitioner complained of pain in his neck, thoracic spine, and ribs. He was

diagnosed with a rib fracture and placed off work. Petitioner returned to the emergency room two days later with increased pain in his arms, shoulder, and neck and he had difficulty breathing. Petitioner followed up with Dr. Brunkhorst who ordered MRIs of his neck and right shoulder. He was referred to Dr. Matthew Ruyle who injected his shoulder that provided some relief. He continued treating with Dr. Brunkhorst for electric stimulation, stretching, massage, and physical therapy.

Petitioner testified that Dr. Brunkhorst released him to light duty work on 4/25/22. He provided the work slip to Respondent's plant manager, but his restrictions were not accommodated and he remained off work. Dr. Brunkhorst placed him off work again on 5/9/22 and released him to full duty work on 6/9/22. Petitioner testified that when he was released to full duty work, he thought his shoulder and rib had improved to the point he could perform his full job duties.

Petitioner testified that he told Dr. Cantrell on 4/6/22 the problems he was still experiencing, including stiffness and pain in his right shoulder, lateral chest wall, and pain rolling onto his right side due to his shoulder and rib injuries. He told Dr. Cantrell that his pain was 8/10 at that time. He stated that Dr. Cantrell did not give him a return to work slip or tell him that he could return to work in any capacity. He understood that he was still off work after seeing Dr. Cantrell as Dr. Brunkhorst had him off work. Petitioner did not learn that Dr. Cantrell returned him to work until his attorney told him in early May 2022. Petitioner testified that he was still treating with Dr. Brunkhorst for issues with his shoulder, chest, and ribs at that time. He did not believe he could perform his work duties until Dr. Brunkhorst released him on 6/9/22.

Petitioner testified that he was rearended in a motor vehicle accident in April 2014. He went to the emergency room with symptoms in his neck and back. His symptoms completely resolved, and he did not receive additional treatment. In September 2015, Petitioner sustained a work injury to his right shoulder when a cooler door came down onto his shoulder. He underwent x-rays in the emergency room. He returned to the emergency room three days later to obtain a work slip and received not further treatment and no lasting symptoms in his shoulder. Petitioner could not recall an emergency room visit in 2016 involving his low back due to repetitive lifting at work. He did not have any symptoms in his neck, shoulder, or chest as a result of that accident.

Petitioner testified that his neck is still stiff, and he feels like he needs to rotate and pop his neck. His neck symptoms increase at night, and he moves often to get comfortable. He uses a massage machine. His symptoms are exclusively on his right side. Petitioner has minimal pain in his dominant right arm at rest. He has sharp and achy pain with lifting more than 30 pounds overhead and he uses his left arm to bear most of the weight. He has difficulty lifting away from his side. His shoulder pain wakes him every night. His fractured rib is still painful at rest, and he has a sharp pain when he twists or bends. Petitioner is not able to lay on his right side due to his shoulder and rib symptoms. He takes Tylenol, Lidocaine patches three times per week, and Melatonin every night. If he does not take Melatonin he cannot sleep due to shoulder pain. He cannot get comfortable without putting pillows on his side.

Petitioner testified that he returned to work for Respondent as a Filler Operator earning the same rate of pay. He stated that his current position is a little less physically demanding. He unjams and stacks cases and climbs up and down steps to a machine. He testified that he has to squeeze under an alpine that causes pain in his shoulder and rib. He works full time but at a slower pace and is cautious to prevent reinjury. He has pain in his right side and shoulder with weed eating and holding a drill at a certain angle. He continues to perform home exercises that help improve his symptoms.

On cross-examination, Petitioner testified that when he returned to work he continued working in the blow mold position. He moved to a filler operator position sometime after August 2022 which he worked for a couple of months. He bid on his current filler operator position in February 2023 which is described in RX8. Petitioner testified he did not recall telling Dr. Cantrell he did not have any prior neck or right shoulder issues. Petitioner has not sought treatment since he returned to work.

Petitioner clarified that Dr. Brunkhort placed him off work from 5/9/22 through 6/9/22. He returned to Dr. Brunkhorst on 5/18/22 and requested to return to work because his worker's compensation benefits were terminated. He continued to be in pain and treated with Dr. Brunkhorst after 5/18/22. He testified that he uses his dominant right arm less since the accident.

Toya Sarpy testified on behalf of Respondent. Ms. Sarpy is the Regional Environmental Health and Safety Specialist and HR for employee relations. She is familiar with the job duties of all three of Petitioner's positions and stated there was not a lot of difference in physicality. She agreed she has not performed any of the job duties herself, but she is aware of the job requirements as an environmental health and safety specialist. She has not witnessed Petitioner perform his job duties to know if he has difficulty performing his job. She stated Petitioner is not a complainer and has not notified her of any job performance issues. Ms. Sarpy testified that if employees had any issues with job performance, they would notify her.

MEDICAL HISTORY

Medical records that pre-dated Petitioner's work accident were admitted into evidence. (PX3) On 4/28/14, Petitioner presented to Belleville Memorial Hospital following a motor vehicle accident. Cervical spine x-rays showed no acute vertebral body fractures or subluxation. Petitioner was diagnosed with a cervical strain and advised to avoid strenuous activity and follow-up with his primary doctor. On 9/14/15, Petitioner presented to Memorial Hospital complaining of right shoulder pain after a cooler door fell off its hinges and struck him in the right shoulder. X-rays were normal and Petitioner was diagnosed with a shoulder contusion/strain. On 12/5/16, Petitioner presented to Memorial Hospital with right-sided low back pain due to repetitive lifting at work. The records indicate Petitioner had no ongoing problems associated with his right shoulder, neck, or chest.

On 12/21/21, Petitioner presented to Belleville Memorial Hospital and reported multiple complaints due to a fall at work that evening wherein he hit his right side and fell onto his back and posterior head on the floor. He complained of pain in his right side, neck, mid back, rib, and right shoulder. X-rays of his right shoulder were normal. X-rays of his cervical spine revealed

persistent clinical concern for acute cervical spine fracture. A CT scan was recommended. Petitioner was diagnosed with a closed fracture of the right rib, contusion of the right shoulder, and neck strain. He was released to work on 12/27/21. (PX3)

Petitioner returned to Belleville Memorial Hospital on 12/23/21 and reported right rib pain that was not improving with pain medication. He was administered Norco and instructed to follow up with his primary care doctor. (PX3)

On 12/27/21, Petitioner was examined by chiropractor Dr. Daniel Brunkhorst. (PX1) He reported attempting to go down steps at work that were normally in place to get from one area to the other and the steps were missing. He fell and landed on his right side without bracing his fall. Petitioner had immediate pain in his cervical spine and right shoulder. Following evaluation, Dr. Brunkhorst diagnosed cervical disc displacement with radiculopathy, cervical sprain, thoracic sprain, right shoulder sprain, and myalgia. Dr. Brunkhorst recommended a cervical and right shoulder MRI. He prescribed a TENS unit and recommended manipulation and electric stimulation 2 to 3 times per week for 6 weeks. Petitioner was placed off work through 1/17/22. (PX1)

On 1/14/22, Petitioner underwent a right shoulder MRI that revealed subacromial subdeltoid bursitis with no rotator cuff tendon tear. The MRI of the cervical spine showed mild degenerative disc disease at C3-7 with mild osteoarthritis at C3-4 without evidence of disc herniation, stenosis, or neural foraminal stenosis. (PX2)

Petitioner continued to undergo cervical traction, electric stimulation, myofascial releases, manipulation, and therapeutic exercises by Dr. Brunkhorst. Dr. Brunkhorst continued Petitioner off work and referred Petitioner to Dr. Ruyle for a right shoulder injection. (PX1)

On 2/17/22, Petitioner was evaluated by Dr. Matthew Ruyle. Petitioner denied pain in his chest, low back, and neck, and denied weakness in the upper extremity beyond the shoulder. Dr. Ruyle assessed right shoulder pain with subdeltoid bursitis and probable mild glenohumeral arthrosis visible on the MRI. Petitioner had no neurologic abnormalities and positive tenderness in the deltoid with palpation. Dr. Ruyle administered a right shoulder subacromial and glenohumeral joint injection. He noted that if Petitioner failed to improve, he would consider a right deltoid trigger point injection. (PX4)

Petitioner continued to treat with Dr. Brunkhorst through April 2022 who continued him off work. Dr. Brunkhorst noted Petitioner continued to experience mild spasms of the bilateral cervical spine, right thoracic spine, right trapezius, right subscapularis, and right supraspinatus and infraspinatus region. (PX1)

On 4/6/22, Petitioner was examined by Dr. Russell Cantrell pursuant to Section 12 of the Act. (RX1) Dr. Cantrell is a board-certified physiatrist. His report states that Petitioner denied any prior history of pain or injury to his cervical spine, right shoulder, or right side. Examination revealed normal active range of motion of Petitioner's cervical spine in all planes without pain in the neck, shoulder, or upper extremities. Petitioner denied tenderness to palpation in his cervical spine and demonstrated full range of motion of his bilateral shoulders. Petitioner reported mild

soreness in his right superior shoulder at 90 degrees of abduction and right anterior shoulder pain at 90 degrees of forward flexion. He had a mildly positive O'Brien's test and a negative drop-arm test in the right shoulder. He had normal strength with testing of his bilateral supraspinatus and bilateral shoulders into external rotation, normal strength with bilateral elbow flexion and extension, and anterior shoulder pain with resisted elbow flexion on the right. He had a symmetric reduction moderately present in bilateral shoulder internal rotation without pain.

Dr. Cantrell reviewed Petitioner's medical records and agreed with the x-ray findings. He reviewed the cervical and right shoulder MRIs and did not see any evidence of acute cervical disc herniations or acute bony pathology. Dr. Cantrell noted a minimal amount of fluid in Petitioner's subacromial bursa. He diagnosed a right shoulder contusion, cervical strain, right 10th rib fracture, and thoracic strain. Dr. Cantrell found no indication for further treatment of the right shoulder based on his examination and Petitioner's lack of improvement from the shoulder injection. Dr. Cantrell opined that Petitioner did not require further treatment related to the accident because Petitioner denied pain in his neck, back, and chest to Dr. Ruyle on 2/17/22. Dr. Cantrell opined Petitioner reached MMI on 2/21/22 and could return to work without limitations. He opined that the diagnostic studies, therapeutic injections, and Dr. Brunkhorst's treatment through 2/21/22 was appropriate and related to the work accident.

On 4/25/22, Dr. Brunkhorst noted some improvement and allowed Petitioner to return to work with a 25-pound lifting restriction and no climbing stairs or ladders through 5/9/22. On 4/29/22, Respondent's counsel authored a letter to Petitioner's counsel stating Respondent could not accommodate Petitioner's restrictions. (RX6) Petitioner was offered full duty work pursuant to Dr. Cantrell's opinion that he could return to work without restrictions.

Dr. Brunkhorst placed Petitioner back off work on 5/9/22 and recommended continued treatment 2 to 3 times per week for six weeks. The last medical record entered into evidence of Dr. Brunkhorst was dated 5/18/22 at which time he noted Petitioner continued to have intermittent right shoulder pain and stiffness. Petitioner reported increased symptoms with lifting, pushing, and pulling with his right arm. Examination revealed active trigger points of the right cervical spine and right trapezius. Dr. Brunkhorst continued to diagnose cervical disc displacement, cervical sprain, thoracic sprain, and ligament disorder. He opined that Petitioner's current condition was fully or in part causally related to the work trauma based on his prior history, examination, clinical findings, and diagnostics. He further opined that Petitioner would possibly have acute exacerbations of his symptoms. He released Petitioner at MMI and ordered him to return as needed.

On 6/20/22, Dr. Cantrell authored a supplemental report after reviewing additional records from Dr. Brunkhorst and opined that his opinion had not changed.

CONCLUSIONS OF LAW

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

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events

showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

When a pre-existing condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the pre-existing [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Comp. Comm'n*, 371 Ill. App. 3d 882, 888, 864 N.E.2d 266, 272 (2007). Accidental injury need only be a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 673 (2003) (emphasis added). Even when a pre-existing condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 797 N.E.2d 665 (2003). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 359 Ill. App. 3d 582, 834 N.E.2d 583 (2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Industrial Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671, 672 (1982). The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill. 2d 234, 362 N.E.2d 339 (1977).

Respondent does not dispute Petitioner sustained injuries that arose out of and in the course of his employment with Respondent on 12/20/21 when he fell one and a half to two feet onto a concrete floor.

Petitioner presented to the emergency room within hours of the work accident with pain in his right side, neck, mid back, right rib, and right shoulder. He reported striking his right side and falling onto his back and posterior head on a concrete floor. X-rays of his cervical spine revealed a possible acute fracture, and a CT scan was recommended. Petitioner was diagnosed with a closed fracture of the right 10th rib, contusion of the right shoulder, and neck strain. He returned to the hospital two days later with persistent right rib pain and Norco was prescribed.

Petitioner underwent treatment with Dr. Brunkhorst from 12/27/21 through 5/18/22, including cervical traction, electric stimulation, myofascial releases, manipulation, therapeutic exercises, and a TENS unit. Dr. Brunkhorst noted that when Petitioner attempted to descend steps that were not there he fell and landed on his right side without bracing his fall. Dr. Brunkhorst diagnosed cervical disc displacement with radiculopathy, cervical sprain, thoracic sprain, right shoulder sprain, and myalgia.

A right shoulder MRI revealed subacromial subdeltoid bursitis with no rotator cuff tendon tear. A cervical spine MRI revealed mild degenerative disc disease at C3-7 with mild osteoarthritis at C3-4 without evidence of disc herniation, stenosis, or neural foraminal stenosis.

Petitioner underwent a right shoulder subacromial and glenohumeral joint injection by Dr. Ruyle. Dr. Ruyle diagnosed right shoulder pain with subdeltoid bursitis with tenderness, and probable mild glenohumeral arthrosis visible on the MRI.

Dr. Brunkhorst released Petitioner at MMI without restriction on 5/18/22. He noted Petitioner continued to have intermittent right shoulder pain and stiffness that increased with lifting, pushing, and pulling with his right arm. Dr. Brunkhorst noted active trigger points of the right cervical spine and right trapezius. He opined that Petitioner's current condition was fully or in part causally related to the work trauma based on his prior history, examination, clinical findings, and diagnostics. He further opined that Petitioner would possibly have acute exacerbations of his symptoms and ordered him to return on an as-needed basis. Although Petitioner testified that he continued to treat with Dr. Brunkhorst after 5/18/22, there were no medical records entered into evidence to support further treatment.

Petitioner had minimal issues with his neck, back, and right shoulder prior to the work accident. In 2014, cervical spine x-rays were normal following a motor vehicle accident. In 2015, right shoulder x-rays were normal and he was diagnosed with a shoulder strain. In 2016, Petitioner reported right-sided low back pain due to repetitive lifting at work. There is no evidence that Petitioner received any medical treatment for his neck, back, or right shoulder following the emergency room visits. Petitioner testified that his symptoms completely resolved after each incident, and he did not seek treatment.

Dr. Cantrell agreed that Petitioner sustained a right shoulder contusion, cervical strain, right 10th rib fracture, and thoracic strain as a result of the work accident. He opined that the diagnostic studies, therapeutic injections, and Dr. Brunkhorst's treatment through 2/21/22 was appropriate and related to the work accident.

Based on the evidence as a whole, the Arbitrator finds that Petitioner's current conditions of ill-being in his cervical spine, right shoulder, and right 10th rib are causally connected to the work accident that occurred on 12/20/21.

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

Petitioner testified that Dr. Brunkhorst's medical care helped to reduce his symptoms and eventually allowed him to return to his full work activities. Dr. Brunkhorst noted ongoing problems in Petitioner's shoulder and neck that necessitated medical care until he released Petitioner on 5/18/22.

Dr. Cantrell opined that the diagnostic studies, therapeutic injections, and Dr. Brunkhorst's treatment through 2/21/22 was appropriate and related to the work accident.

Petitioner testified that he continued to undergo conservative treatment with Dr. Brunkhorst through 5/18/22 as it was improving his symptoms and he was able to return to work without restrictions. Dr. Cantrell did not perform an examination of Petitioner until 4/6/22 and his report was not forwarded to Petitioner's counsel until 4/22/22, a few weeks prior to Dr. Brunkhorst releasing Petitioner from care. The Arbitrator finds that Petitioner's medical treatment was reasonable, necessary, and causally connected to the work accident.

Respondent shall therefore pay the medical expenses contained in Petitioner's Group Exhibit 5, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent stipulated to liability for medical expenses of Greater Missouri Imaging and Open MRI. Respondent shall receive credit for any and all medical bills paid through its group medical plan, if any, under Section 8(j) of the Act, pursuant to the stipulation of the parties.

Issue (K): What temporary benefits are in dispute? (TTD)
Issue (O): Whether there was an overpayment of temporary total disability benefits.

Petitioner claims entitlement to temporary total disability benefits from 12/21/21 through 5/19/22. Respondent admits to liability for TTD benefits from 12/20/21 through 2/20/22 and disputes liability for TTD benefits from 2/21/22 through 5/19/22 based on Dr. Cantrell's opinion that Petitioner reached MMI on 2/21/22.

Petitioner testified that he continued to be symptomatic and treated with Dr. Brunkhorst until he was released on 5/18/22. Dr. Cantrell did not perform an examination of Petitioner until 4/6/22 and his report was not forwarded to Petitioner's counsel until 4/22/22. On 4/25/22, Dr. Brunkhorst noted some improvement and allowed Petitioner to return to work with a 25-pound lifting restriction. Respondent confirmed in a letter dated 4/29/22 that it could not accommodate Petitioner's restrictions. Petitioner remained off work until he was released without restrictions on 5/18/22.

The Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period 12/21/21 through 5/18/22, representing 21-2/7th weeks, at the rate of $813.74/week, pursuant to Section 8(b) of the Act. Respondent shall receive a credit of $19,048.18 in temporary total disability benefits paid, pursuant to the stipulation of the parties, resulting in an overpayment of TTD benefits of $1,731.79, which shall be credited toward permanent partial disability benefits awarded herein.

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

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

(i) **Level of Impairment**: Neither party submitted an AMA impairment rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner was released to full duty work without restrictions. He continues to be employed by Respondent as a Filler Operator, which he described as less physically demanding than his position at the time of the accident. Petitioner bid on the Filler Operator position as part of a plant-wide bid and not due to his work-related injuries. Petitioner testified that he works full-time, but at a slower pace and is more cautious to prevent reinjury. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 35 years of age at the time of accident. He is a younger individual and must live and work with his disability for an extended period of time. Pursuant to *Jones v. Southwest Airlines*, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact that Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. Petitioner was released to full duty work without restrictions. He testified that he returned to work earning the same pay he earned at the time of the accident. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of the accident, Petitioner sustained a closed fracture of the right 10th rib and sprains of his cervical and thoracic spines and right shoulder. He underwent conservative treatment, including medication, chiropractic and physical therapy, and a right trigger point injection. Despite improvement in his symptoms, Petitioner continues to have right-sided pain and stiffness in his neck that increases at night and makes it difficult to get comfortable. He has sharp and achy pain in his right shoulder with lifting more than 30 pounds overhead. He uses his left, nondominant arm to bear most of the weight and has difficulty lifting away from his side. Petitioner has pain at the site of his rib fracture when he twists and turns. Petitioner is not able to lay on his right side due to his shoulder and rib symptoms. He takes Tylenol, Lidocaine patches three times per week, and Melatonin every night. He continues to work full duty without restrictions. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 7.5% loss of his body as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 5/18/22 through 7/27/23, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC027728
Case Name	Scherina Seaton v. Loretto Hospital
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0521
Number of Pages of Decision	24
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Scott Goldstein
Respondent Attorney	James Clune

DATE FILED: 11/6/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Scherina Seaton,

Petitioner,

vs. NO: 21 WC 27728

Loretto Hospital,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses and temporary disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 13, 2024, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

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

November 6, 2024

o: 10/9/24
DLS/rm
046

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC027728
Case Name	Scherina Seaton v. Loretto Hospital
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Scott Goldstein
Respondent Attorney	James Clune

DATE FILED: 3/13/2024

/s/Ana Vazquez, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 12, 2024 5.10%

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Scherina Seaton
Employee/Petitioner

v.

Loretto Hospital
Employer/Respondent

Case # **21** WC **027728**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Ana Vazquez**, Arbitrator of the Commission, in the city of **Chicago**, on **December 4, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 23, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**120,855.80**; the average weekly wage was $**2,324.15**.

On the date of accident, Petitioner was **51** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**91,841.99** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**91,841.99**.

ORDER

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she did sustain an accidental injury to her cervical spine that arose out of and in the course of her employment by Respondent on September 23, 2021.

The Arbitrator finds that the motor vehicle accident of June 27, 2022 did not break the causal chain between the September 23, 2021 work-related cervical spine and left shoulder injuries and Petitioner's current cervical spine and left shoulder conditions of ill-being.

The Arbitrator finds that the motor vehicle accident of September 18, 2023 did not break the causal chain between the September 23, 2021 work-related cervical spine and left shoulder injuries and Petitioner's current cervical spine and left shoulder conditions of ill-being.

Respondent shall pay for the reasonable and necessary medical services, as provided in Px1, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses.

Respondent shall authorize and is liable for the prospective medical treatment plans recommended by Dr. Ashraf Darwish and Dr. Ronak Patel, including a (1) C5-6 and C6-7 anterior cervical discectomy and fusion and (2) left shoulder manipulation under anesthesia, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$1,549.43/week** for **114 4/7 weeks**, commencing **September 24, 2021** through **December 4, 2023**, the date of arbitration, as provided in Section 8(b) of the Act. Per the Parties' stipulation, Respondent is entitled to a credit in the amount of **$91,841.99** for TTD paid to Petitioner by Respondent. Ax1 at No. 9.

Per the Parties' stipulation, Petitioner will give Respondent a credit for any medical bills paid by the group medical carrier for Respondent and a credit for any group disability payments paid by Respondent or paid by a group carrier on behalf of Respondent provided that (1) Respondent can provide documentation of the payments to the Petitioner's attorney and (2) Respondent will hold Petitioner harmless for the credited amounts pursuant to the provisions of Section 8(j) of the Act. Ax2. By further agreement of the Parties, the terms of this stipulation are contingent on a final decision of the Workers' Compensation Commission that the medical

treatment and disability payments to or on behalf of Petitioner after June 27, 2022 were and are related to Petitioner's work accident of September 23, 2021. Ax2.

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.

Ana Vazquez

Signature of Arbitrator

March 13, 2024

PROCEDURAL HISTORY

This matter proceeded to arbitration on December 4, 2023 before Arbitrator Ana Vazquez in Chicago, Illinois pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act ("the Act"). The issues in dispute include (1) accident, (2) causal connection, (3) unpaid medical bills, (4) prospective medical treatment, and (5) temporary total disability ("TTD") benefits. Arbitrator's Exhibit ("Ax") 1. Regarding its dispute as to accident, Respondent agrees that Petitioner sustained an accidental injury to her left shoulder on September 23, 2021. Transcript of Proceedings on Arbitration ("Tr.") at 7-8. Respondent, however, disputes that Petitioner sustained an accidental injury to her cervical spine on September 23, 2021. Tr. at 7-8. After proofs were closed, the Parties stipulated that Petitioner will give Respondent a credit for any medical bills paid by the group medical carrier for Respondent and a credit for any group disability payments paid by Respondent or paid by a group carrier on behalf of Respondent provided that (1) Respondent can provide documentation of the payments to the Petitioner's attorney and (2) Respondent will hold Petitioner harmless for the credited amounts pursuant to the provisions of Section 8(j) of the Act. Ax2. The Parties further stipulated that the terms of this stipulation are contingent on a final decision of the Workers' Compensation Commission that the medical treatment and disability payments to or on behalf of Petitioner after June 27, 2022 were and are related to Petitioner's work accident of September 23, 2021. Ax2. The Arbitrator considers the Agreed Stipulation a part of the record, and it is admitted as Ax2. All other issues are stipulated. Ax1.

FINDINGS OF FACT

Petitioner was employed as a nurse, working in the Intensive Care Unit ("ICU"), at Respondent on September 23, 2021. Tr. at 11, 12.

Prior Accidents/Injuries

Petitioner testified that she had a prior workers' compensation claim for a February 5, 2019 work injury that involved her left knee. Tr. at 38. Petitioner received a settlement for that claim. Tr. at 38.

Petitioner testified that she was involved in a motor vehicle accident on November 13, 2020. Tr. at 34. Petitioner testified that she did not receive a substantial amount of medical treatment following the accident. Tr. at 35. Petitioner testified that she went to the Emergency Room at the University of Chicago, had an MRI done, and did a little bit of physical therapy after the November 13, 2020 motor vehicle accident. Tr. at 35, 49. Petitioner testified that Dr. Robert Fink released her from care on February 5, 2021. Tr. at 35. Petitioner testified that at the time that she was released from Dr. Fink's care, "I was fine. I think I was, yes." Tr. at 36. Petitioner did not miss any time from work due to the November 2020 motor vehicle accident. Tr. at 36. Petitioner testified that she was fine during the period between when she was released from Dr. Fink's care and the accident of September 23, 2021. Tr. at 36. Petitioner testified that during that period, she was a healthy nurse and was lifting 200 and 300-pound patients. Tr. at 36. Petitioner testified that she did not have ongoing symptoms at the time of the September 23, 2021 accident. Tr. at 38. On cross examination, Petitioner testified that she was not sure what body part the MRI was on and thought it was on multiple body parts. Tr. at 49.

Accident

Petitioner testified that on September 23, 2021, a patient kicked her in the chest. Tr. at 13. Petitioner testified that she fell back onto the wall behind her and that her back, her upper shoulders, neck area, and maybe her leg impacted the wall. Tr. at 14-15. Petitioner then testified that the parts of her body impacted were her chest, her arm, and her neck area. Tr. at 15-16. When asked whether it was one kick or multiple kicks, Petitioner responded that it was multiple kicks. Tr. at 16. Petitioner testified that she felt pain after the back of her body

struck the wall and that she mainly felt pain in her chest area. Tr. at 16, 63. Petitioner was able to complete her shift and sought medical care after the incident. Tr. at 16.

On cross examination, Petitioner testified that she did not fall to the floor. Tr. at 50. Petitioner testified that her shoulder, her back, and her head went back into the wall. Tr. at 50.

Medical Records Summary

On September 27, 2021, Petitioner presented at WellNow Urgent Care and was seen by Amber Vladika, NP for evaluation of the left upper chest and shoulder pain. Px2. Petitioner reported a consistent accident history and that she had tenderness and pain with moving the left upper shoulder. Petitioner denied chest pain, shortness of breath, difficulty breathing, numbness, weakness, or tingling. X-rays were obtained and revealed no acute fracture or dislocation. Petitioner's diagnosis was contusion of left front wall of thorax. Petitioner was given instructions on rice therapy and over-the-counter medications for pain management and was instructed to follow up with her primary care provider. The possibility of a missed occult fracture and need for repeat imaging if pain persisted after 2 weeks was discussed with Petitioner.

Petitioner was seen by William Hayduk, PA-C at Midwest Anesthesia & Pain Specialists ("MAPS") on September 28, 2021. Px10 at 21-24. At registration, Petitioner reported chest and shoulder pain with pain traveling to her left arm and upper neck. Px10 at 8. Petitioner also circled "sharp" and "tingling" in response to "Pain Quality." Px10 at 8. Petitioner reported a consistent accident history. Petitioner reported that use of her left arm made her pain worse. Petitioner was assessed with chest pain. A CT scan of Petitioner's chest was ordered to evaluate for pain, and physical therapy was recommended. Petitioner was kept off work.

Petitioner underwent a chest CT scan on October 1, 2021, which demonstrated (1) right paratracheal and bilateral hilar adenopathy, raising concern for sarcoidosis, lymphoma, or benign reactive nodules and (2) significant respiratory motion, no pulmonary parenchymal disease identified. Px10 at 120-123.

Petitioner again saw PA-C Hayduk at MAPS on October 12, 2021, at which time Petitioner reported feeling a little bit better. Px10 at 25-28. Petitioner still had some pain, which she described as sharp. Petitioner had trouble sleeping at night and lifting her left arm due to pain. PA-C Hayduk reviewed Petitioner's chest CT scan. Petitioner's diagnosis was chest pain. It was recommended that Petitioner continue with physical therapy and use of lidocaine patches and prescribed medications. A CT scan of the left clavicle was ordered. Petitioner was allowed to return to work with the restriction of no use of the left arm beginning October 18, 2021. Px10 at 31.

On October 26, 2021, Petitioner underwent a CT scan of the left upper extremity, which demonstrated (1) no acute osseous abnormality and (2) mild left sternoclavicular joint degenerative changes. Px10 at 128-129, 138-139.

On November 9, 2021, Petitioner saw Dr. Adarsh Shukla at MAPS. Px10 at 33-36. Dr. Shukla noted that the CT scan of the left clavicle was negative for fractures or dislocation. Petitioner reported some improvement in her pain. Dr. Shukla noted that Petitioner had functional improvement in her left shoulder per physical therapy notes, but still required some cues. Dr. Shukla noted that Petitioner's employer would not accommodate the recommended restrictions. Dr. Shukla's diagnoses were chest pain and left shoulder pain. Dr. Shukla recommended cyclobenzaprine for muscle pain and tightness and that Petitioner continue with physical therapy and use of previously prescribed medications. Petitioner's work restriction was maintained. Px10 at 39.

Petitioner attended 14 sessions of physical therapy at Premier Therapy, LLC between October 4, 2021 and November 9, 2021. Px11.

Petitioner returned to MAPS on November 22, 2021 and was seen by David Gilbert, PA-C. Px10 at 40-43. Petitioner continued to attend physical therapy with minimal pain relief. Petitioner continued to have pain in the left shoulder, clavicle, and chest. Petitioner's diagnoses were unchanged. A left shoulder MRI was ordered. Petitioner was instructed to continue use of lidocaine patches and prescribed medications, including cyclobenzaprine and meloxicam. Petitioner's work restriction was maintained. Px10 at 47. Petitioner followed up with PA-C Gilbert on December 6, 2022. Px10 at 48-50. Her diagnoses were unchanged. Petitioner was referred to an orthopedic surgeon for evaluation of the left shoulder. Petitioner's work restriction was maintained. Px10 at 54.

On November 30, 2021, Petitioner underwent a left shoulder MRI, which revealed (1) intermediate grade incomplete, partial-thickness bursal surface tear at the junction of the supraspinatus and infraspinatus tendons extending through 50% of the tendon thickness and approximately 1 cm in the AP dimension superimposed on moderate background tendinopathy and peritendonitis and associated mild-to-moderate subacromial-subdeltoid bursitis, (2) incomplete, irregular undersurface fraying of the superior labrum extending from anterior to posterior suspicious for type 1 SLAP tearing, and (3) mild glenohumeral joint effusion. Px10 at 140-141, 150-151.

Petitioner presented at Elite Orthopedics & Sports Medicine on December 7, 2021 and was seen by Dr. Chandrasekhar Sompalli for left shoulder pain. Px9 at 5-8. Petitioner reported a consistent accident history. Petitioner described the pain as severe, sharp, and pulling. Petitioner reported that the pain radiated up towards her neck and down to her elbow. Dr. Sompalli noted that Petitioner had weakness and instability. Petitioner reported that the physical therapy she had been attending for eight weeks had worsened the pain. Dr. Sompalli noted that Petitioner was having difficulty with daily activities. Dr. Sompalli reviewed the left shoulder MRI of November 30, 2021. Dr. Sompalli's diagnoses were left shoulder pain, incomplete rotator cuff tear, and left shoulder bursitis. Dr. Sompalli administered an injection into the left subacromial joint. Dr. Sompalli recommended a left shoulder arthroscopy, rotator cuff repair, SAD, and debridement. Petitioner was kept off work.

Petitioner again saw PA-C Gilbert at MAPS on January 6, 2022. Px10 at 55-59. Petitioner reported that she had an injection in her shoulder that did not help her pain. Petitioner's diagnoses were unchanged. Petitioner was instructed to follow up with the orthopedic surgeon for pending left shoulder surgery and continue use of lidocaine patches and previously prescribed medication. Petitioner was instructed to discontinue use of cyclobenzaprine and meloxicam. Petitioner was kept off work. Px10 at 60-61.

Petitioner returned to Dr. Sompalli on January 7, 2022, and at that time, Petitioner complained of continued pain and headaches and inability to sleep caused by pain. Px9 at 9-12. Petitioner reported that the injection from the previous visit worked for about a week. Dr. Sompalli's diagnoses and surgical recommendation were unchanged. Petitioner was allowed to return to work on January 10, 2022 with the restriction of no use of the left arm. Px9 at 13-14.

On February 1, 2022, Petitioner followed up with PA-C Hayduk at MAPS and reported that her left shoulder pain was terrible, that she had been experiencing a lot of neck pain on the left side, and that she had initially reported neck pain but had never treated. Px10 at 62-66. Petitioner also continued to express tingling and numbness down the left upper extremity. Petitioner also reported having migraine headaches. PA-C Hayduk confirmed that Petitioner reported neck pain on her registration paperwork. Petitioner's diagnoses were chest pain, left shoulder pain, cervicalgia, and cervical radiculopathy. An MRI of the cervical spine was ordered to evaluate for soft tissue injury. A left upper extremity NCV/EMG was recommended to evaluate for radiculopathy/neuropathy. Petitioner was instructed to discontinue use of lidocaine patches, metro cream,

cyclobenzaprine, and meloxicam. Petitioner was prescribed Tylenol 3. Petitioner was kept off work. Px10 at 67, 70.

On February 9, 2022, Petitioner underwent a (1) left shoulder arthroscopy and arthroscopic rotator cuff repair, (2) arthroscopic subacromial decompression with release of the coracoacromial ligament and partial acromioplasty, (3) extensive debridement of the glenohumeral joint and subacromial space taking greater than 30 minutes due to the type 1 SLAP tear, the adhesions, and the bursitis, and (4) arthroscopic distal 1 cm of the clavicle resection. Px9 at 15-17. Petitioner's postoperative diagnoses were (1) full-thickness supraspinatus tendon tear, (2) AC joint arthritis, (3) adhesions, (4) bursitis, and (5) type 1 SLAP tear. Petitioner followed up with Dr. Sompalli on February 17, 2022. Px9 at 18-20. Physical therapy was ordered, and Petitioner was kept off work. Px9 at 21-23.

On February 22, 2022, Petitioner was seen by James Pedraza, FNP-BC FPA at MAPS via telehealth. Px10 at 72-76. Petitioner reported that she was experiencing left shoulder pain. Petitioner also continued to report neck pain, which increased since the shoulder surgery. Petitioner's diagnoses were unchanged. A cervical MRI was again ordered. Petitioner was kept off work. Px10 at 77, 79.

Petitioner followed up with Dr. Sompalli on March 17, 2022, at which time additional physical therapy was ordered and Petitioner was kept off work. Px9 at 24-30.

Petitioner followed up with PA-C Gilbert at MAPS on March 22, 2022 for continued neck and left shoulder pain. Px10 at 80-84. A cervical MRI was again ordered. Petitioner was kept off work. Px10 at 85, 87.

Petitioner underwent an NCV and EMG on March 25, 2022. Px9 at 32-34, Px10 at 89-91. It was an abnormal study, with electrodiagnostic evidence of a left C6-7 radiculopathy without active denervation. There was no evidence of a brachial plexopathy or polyneuropathy of the left upper extremity.

On March 31, 2022, Petitioner underwent an MRI of the cervical spine which demonstrated (1) C6-7 broad-based central posterior disc protrusion extending into the right foraminal zone measuring 3 mm AP with resultant effacement slight flattening of the ventral cord contributing to no more than mild central canal stenosis, mild right foraminal encroachment, and patent left neural foramen and (2) C5-6 broad-based central posterior disc protrusion measuring 3 mm AP with resultant effacement and slight flattening of the ventral cord creating mild central canal stenosis, associated small central posterior annular fissure, and patent neural foramina. Px10 at 142-143. A shallow broad-based central posterior disc displacement measuring 2 mm AP with resultant mild effacement of the ventral sac was also seen at C3-4 and C4-5, with no significant central canal or neural foraminal stenosis. Px10 at 142.

Petitioner followed up with Mary-Cate Devitt, NP-C at MAPS on April 8, 2022. Px10 at 94-98. Petitioner's neck and left shoulder complaints continued, and Petitioner continued with numbness and tingling down the left upper extremity to the left hand. A C6-7 cervical epidural steroid injection was recommended. Petitioner was kept off work. Px10 at 99, 101.

Petitioner returned to Dr. Sompalli on April 15, 2022. Px9 at 35-38. Dr. Sompalli noted that Petitioner reported that her pain had become so bad that she went to get an MRI done, the MRI showed a pinched a nerve, and that she was being treated by Dr. Dixon for neck pain. Petitioner also reported that her pain had been aggravated by physical therapy. A lidocaine injection was administered by Dr. Sompalli. Dr. Sompalli ordered additional physical therapy and an MRI arthrogram of the left shoulder and prescribed a Medrol dose pack. Px9 at 41-43. Petitioner was kept off work. Px9 at 39-40.

Petitioner underwent an MRI arthrogram of the left shoulder on April 27, 2022, which demonstrated (1) surgical changes of prior rotator cuff repair, (2) tendinopathy with undersurface partial thickness tearing of the supraspinatus tendon without full-thickness rotator cuff tear, and (3) supraspinatus tendinopathy without tear. Px9 at 44-45, Px10 at 146-149.

On April 28, 2022, Petitioner was seen by Dr. Bernard Rerri at Chicago Pain and Orthopedic Institute. Px3, Px10 at 144-145. Dr. Rerri noted a consistent accident history and that Petitioner "felt stunned the first day, and by the next day noticed bruising in her chest wall, and has since had trouble with neck pain, left shoulder pain, and numbness in her left arm." Dr. Rerri noted that Petitioner had had frequent falls with headaches. Regarding Petitioner's left shoulder, Dr. Rerri noted that Petitioner continued to be held back by stiffness and pain in her left shoulder, neck pain, and left arm pain and numbness to her fingers with weakness in her left arm. Dr. Rerri also noted that Petitioner's cervical MRI showed C3-4, C4-5, C5-6, and C6-7 multiple small disk protrusions, which explained Petitioner's radiculopathy, but did not adequately explain the weakness observed in her left arm. Dr. Rerri's diagnoses were rotator cuff tear of the left shoulder, cervical radiculopathy, and rule out brachial neuritis or complex regional pain syndrome ("CRPS"). Dr. Rerri recommended that Petitioner follow up with Dr. Sompalli for her left shoulder rotator cuff repair. Dr. Rerri referred Petitioner to pain management for cervical epidural steroid injections to try to control her neck and left arm pain.

On May 6, 2022, Petitioner reported to PA-C Gilbert at MAPS that she had some pain relief following the shoulder injection. Px10 at 102-106. Petitioner was kept off work. Px10 at 107-108.

Petitioner saw Dr. Ashraf Darwish at Illinois Bone and Joint Institute ("IBJI") on May 13, 2022 for evaluation of the cervical spine. Px7 at 1-5. On exam of the cervical spine, tenderness to palpation over the left periscapular pain and left paraspinal muscles was noted. Cervical extension was 15 with pain and cervical flexion was 25 with pain. X-rays of the cervical spine were obtained and per Dr. Darwish's interpretation, revealed loss of normal cervical lordosis, forward projection of the cervical spine, and moderate loss of disc height at C5-6. Dr. Darwish noted that the cervical MRI of March 31, 2022 revealed C5-6 central disc protrusion with flattening of the ventral cord causing mild central canal narrowing and C6-7 posterior disc protrusion with effacement of the ventral cord causing mild central mild right foraminal narrowing. Dr. Darwish's assessments were neck pain, cervical radiculopathy, and degeneration of cervical intervertebral disc. Dr. Darwish noted that Petitioner had been involved in a work-related injury to the cervical spine in September 2021 and that she had not had any formal treatment for her cervical spine. Dr. Darwish recommended a course of physical therapy to improve range of motion of the spine, reduce pain, and increase strength. Petitioner was referred to pain management as Dr. Darwish recommended a left C5-6 and C6-7 epidural steroid injection.

Petitioner was seen by Dr. Farooq A. Khan at Modern Pain Consultants on May 13, 2022. Px6 at 5-9. Dr. Khan reviewed the cervical MRI of November 30, 2020. Dr. Khan's assessments were (1) work related injury, (2) left rotator cuff injury, (3) postoperative pain of the left rotator cuff, (4) cervical radicular pain, (5) cervical disc displacement at C5-6, C6-7, (6) annular tear of the cervical disc at C5-6, and (7) myofascial pain of the left shoulder and upper extremity. Dr. Khan noted that Petitioner was a strong candidate for a series of one to three cervical epidural steroid injections given failure of more conservative treatment. Dr. Khan noted that at that time, it was unclear what percentage of pain was originating from a cervical radicular pattern and what percentage of pain was coming from a postoperative/rotator cuff injury pattern. Dr. Khan further noted that performing the injections would help elucidate the issue by analyzing the percentage of pain Petitioner obtained after treating the cervical pathology. Dr. Khan also noted that surgical intervention may be recommended or necessary in the future to alleviate or treat Petitioner's condition, especially if conservative measures failed or the condition continued to progress or worsen.

Petitioner also followed up with Dr. Sompalli on May 13, 2022. Px9 at 46-49. Petitioner reported that the subacromial injection given to her at the last visit helped for two weeks and that the Medrol dose pack did not help. Dr. Sompalli administered a lidocaine injection into the left shoulder glenohumeral space. Dr. Sompalli noted that the numbness in Petitioner' fingers was due to her neck radiculopathy. Petitioner was kept off work. Px9 at 50-51.

Petitioner underwent a cervical epidural steroid injection at C6-7 on May 19, 2022. Px6 at 10-12. On June 3 2022, Petitioner reported an initial 80% improvement in her cervical axial pain and an initial 60% improvement in her left upper extremity radiating pain following the injection. Px6 at 13-16. Dr. Khan's impressions were (1) cervicalgia and (2) encounter for examination and observation following work accident. Petitioner was prescribed one-month trials of meloxicam, cyclobenzaprine, laxacin, and pregabalin. Dr. Khan noted that a repeat injection would be performed for diagnostic and therapeutic purposes to differentiate postoperative pain and rotator cuff issues from cervical radicular issues. Petitioner was kept off work.

Petitioner returned to PA-C Gilbert at MAPS on June 3, 2022, at which time she reported that the neck injection had provided good relief of pain for about a week and that the pain returned to where it was previously. Px10 at 109-113. Petitioner was kept off work. Px10 at 114-155.

On June 10, 2022, Petitioner continued to complain of left shoulder pain to Dr. Sompalli. Px9 at 52-55. Petitioner reported that she continued to experience numbness and tingling in her left thumb, index, and middle fingers. Petitioner reported that the shoulder injection given to her at the last visit helped for a few days. Dr. Sompalli noted that Petitioner had completed physical therapy without improvement. Dr. Sompalli administered another cortisone injection into the subacromial space of the left shoulder. Dr. Sompalli noted that this would be the last injection administered. Dr. Sompalli again noted that the numbness in Petitioner's left thumb, index, and middle fingers was due to her neck radiculopathy. Dr. Sompalli noted that Petitioner was to continue treatment with a neurologist for her neck. Dr. Sompalli ordered an H-wave and Spinal Q to help with Petitioner's severe pain and posture. Petitioner was kept off work. Px9 at 56-57.

Petitioner attended 39 sessions of physical therapy at Premier Therapy, LLC between February 28, 2022 and June 16, 2022. Px11.

Petitioner was involved in a motor vehicle accident on June 27, 2022. Tr. at 26-27, 54. Petitioner went to Advocate Christ Hospital after the motor vehicle accident. Tr. at 27, 54. Petitioner testified that she had an increase in her symptoms after the motor vehicle accident. Tr. at 27. Petitioner testified that her symptoms returned to baseline. Tr. at 27. On cross examination, Petitioner testified that she did not recall what unit she was in at Advocate Christ Hospital when asked if she was in the ICU. Tr. at 54. Petitioner testified that she had fractures in her thoracic spine and sternum. Tr. at 54-55. Petitioner was at Advocate Christ Hospital for five days and received follow-up treatment. Tr. at 55. Petitioner then testified that she did not have follow up treatment, had only x-rays afterwards, and could not do physical therapy. Tr. at 56. Records from Advocate Christ Hospital were not offered.

Petitioner returned to Dr. Darwish on July 14, 2022, at which time Petitioner reported temporary relief following the May 19, 2022 injection. Px7 at 6-9. Petitioner reported that she was throwing up and felt dizzy after the injection. Dr. Darwish noted that Petitioner was involved in a motor vehicle accident on June 22, 2022 and that Petitioner was treating with a spine trauma physician from Christ Hospital. Petitioner reported an increase in her pain and symptoms since the accident and had started to experience pain on the right side of her neck and weakness with numbness and tingling in her bilateral upper extremities. Petitioner also reported an onset of thoracic and lower back pain that radiated into the left lower extremity. On exam of the cervical spine, tenderness to palpation over the left periscapular pain and bilateral paraspinal muscles was noted. Cervical

extension at five with pain and cervical flexion at 15 with pain were noted. Dr. Darwish's assessments were neck pain, cervical radiculopathy, and degeneration of cervical intervertebral disc. Dr. Darwish noted that Petitioner was involved in a work-related accident in September 2021 and that he did not believe that Petitioner was a surgical candidate from that injury. Dr. Darwish also noted that Petitioner was involved in a motor vehicle accident in June 2022, that Petitioner was seeing a neurosurgeon at Christ Hospital for treatment, and that he recommended Petitioner follow up with the neurosurgeon for her continued complaints. Dr. Darwish also recommended that Petitioner follow up with pain management for continued treatment, noting that a follow up with him was not needed.

Petitioner returned to Dr. Sompalli on July 22, 2022. Px9 at 58-60. Petitioner reported that the last shoulder injection given to her helped for a few days. Petitioner reported that she was involved in a motor vehicle accident on June 27, 2022, in which she sustained a fractured sternum, fractured spine, and injured her left leg. Dr. Sompalli noted that the motor vehicle accident was going to slow down Petitioner's treatment. Petitioner was kept off work. Px9 at 61-62.

Petitioner underwent a second cervical epidural steroid injection at C6-7 on July 29, 2022. Px6 at 17-21. Petitioner testified that she had moderate pain relief after the second neck injection, but the pain returned. Tr. at 28. On August 31, 2022, Petitioner reported 80% immediate pain relief and 50% sustained pain relief for two to three weeks after the July 29, 2022 injection, followed by aggravation of pain intensity. Px6 at 22-26. Dr. Khan noted that Petitioner reported a similar response to the first injection and that after both injections, pain relief was reported to be short term. Dr. Khan noted that at that time, Petitioner's chief complaint was neck pain, which she described as a constant aching, sharp pain with radiation to the bilateral extremities, right greater than left. Petitioner reported that the pain had become worse one to two weeks prior and had not improved with conservative measures. Dr. Khan noted that Petitioner had been in a motor vehicle in June and had sustained multiple fractures. Dr. Khan's impressions were (1) cervicalgia, (2) cervical radiculopathy, and (3) encounter for examination and observation following work accident. A third cervical epidural steroid injection was recommended. Petitioner was kept off work.

Petitioner next saw Dr. Sompalli on September 2, 2022, at which time Petitioner continued to complain of left shoulder pain and numbness in her left thumb, index, and middle fingers. Px9 at 63-65. Dr. Sompalli noted that Petitioner had left shoulder pain with a component of neck radiculopathy, and that Petitioner was improving. Dr. Sompalli again noted that Petitioner's treatment would be delayed because of the motor vehicle accident. Dr. Sompalli ordered another MRI arthrogram. Petitioner was kept off work. Px9 at 66-67.

Petitioner underwent an MRI arthrogram on September 12, 2022, which revealed postsurgical changes of prior rotator cuff repair, without evidence of full-thickness, retracted tear. Px9 at 69-70. Overall, the findings appeared similar to the prior study. Petitioner followed up with Dr. Sompalli on September 15, 2022. Px9 at 71-73. Her complaints were unchanged. Dr. Sompalli noted that Petitioner had a normal left shoulder MRI. Dr. Sompalli again noted that Petitioner had left shoulder pain with a component of neck radiculopathy. Dr. Sompalli also noted that there was no problem with Petitioner's left shoulder and that the problem was coming from Petitioner's neck. Dr. Sompalli ordered additional physical therapy and recommended that Petitioner continue treatment with Dr. Darwish for neck pain and radiculopathy. Dr. Sompalli also recommended that Petitioner continue with present pain medications. Petitioner was kept off work until she followed up with Dr. Darwish. Petitioner was discharged by Dr. Sompalli for her left shoulder. Petitioner testified that the shoulder injections temporarily helped her symptoms, but the pain returned, and she had little relief of symptoms in her left shoulder. Tr. at 23.

Petitioner returned to Dr. Khan on September 28, 2022. Px6 at 27-30. Dr. Khan noted that after the second injection of July 29, 2022, Petitioner reported 20% sustained pain relief with limited shoulder movement.

Petitioner reported that she was using her right upper extremity more often which led to right upper extremity pain. Dr. Khan's impression was cervicalgia. Dr. Khan noted that Petitioner's third injection was still pending. Petitioner was referred to an orthopedic surgeon for evaluation and management of cervicalgia and cervical radiculopathy. Petitioner was kept off work.

Petitioner returned to IBJI on September 29, 2022 and was seen by Daniel Jonas, PA. Px7 at 10-13. Petitioner reported increasing headaches, central left neck pain radiating down the entire left upper extremity, and numbness and tingling of the fingers of her left hand. Petitioner reported increasingly dropping objects and feeling weak with grip strength of the left hand. On exam of the cervical spine, tenderness to palpation over the left periscapular pain and bilateral paraspinal muscles was noted. Cervical extension at five with pain and cervical flexion at 15 with pain were noted. Petitioner was assessed with cervicalgia, cervical radiculopathy, neck pain, and degeneration of cervical intervertebral disc. A C5-6 and C6-7 anterior cervical discectomy and fusion was recommended, as well as continued treatment with Dr. Khan for continued injections and pain management.

On October 26, 2022, Petitioner was seen by Dawn Gonzalez, NP at Modern Pain Consultants. Px6 at 31-34. Petitioner's diagnoses were (1) cervical radiculopathy, (2) neck pain, and (3) cervicalgia. A third cervical epidural steroid injection continued to be recommended, and physical therapy was recommended as well.

Petitioner next saw Dr. Darwish on November 10, 2022, at which time Petitioner reported increasing headaches, central left neck pain radiating down the entire left upper extremity, and numbness and tingling of the fingers of the left hand. Px7 at 16-19. On examination of the cervical spine, tenderness to palpation over the left periscapular and bilateral paraspinal muscles was noted, as well as extension at five with pain and flexion at 10 with pain. Dr. Darwish's assessments were cervicalgia, cervical radiculopathy, neck pain, and degeneration of cervical intervertebral disc. Dr. Darwish noted that Petitioner had a two-level cervical herniated disc that was causing her neck and radicular symptoms. Dr. Darwish continued to recommend a C5-6 and C6-7 anterior cervical discectomy and fusion, as well as continued treatment with pain management.

Petitioner returned to Dr. Darwish on January 12, 2023 with complaints of dizziness, confusion, numbness and tingling in the left hand, and pain throughout the right arm. Px7 at 20-23. Dr. Darwish's assessments were cervical radiculopathy, neck pain, and cervical intervertebral disc protrusion. Dr. Darwish continued to recommend surgical intervention.

Petitioner attended 32 sessions of physical therapy at Premier Therapy, LLC between September 26, 2022 and February 22, 2023. Px11.

On March 9, 2023, Petitioner reported pain radiating down the left upper extremity and through the head, causing a migraine-like pain. Px7 at 24-28. Dr. Darwish's assessments were left shoulder pain, cervical radiculopathy, neck pain, and cervicalgia. Dr. Darwish referred Petitioner to Dr. Ronak Patel for her left shoulder and continued to recommend a C5-6 and C6-7 anterior cervical discectomy and fusion with use of allograft bone.

Petitioner was seen by Dr. Ronak Patel at IBJI on March 23, 2023 for evaluation of left shoulder pain. Px5. Dr. Patel noted a consistent accident history. Petitioner complained of sharp, dull, burning, aching pain about the anterior of the shoulder. Petitioner reported night pain, proximal radiation, distal radiation to the hand and fingers, numbness and tingling, pain with overhead activity, and catching. On exam of the cervical spine, tenderness to palpation at the left paraspinal was noted. On exam of the left shoulder tenderness to palpation at the AC joint and bicipital groove was noted, with exam limited secondary to pain. X-rays of the left shoulder were obtained and demonstrated no fracture and an anchor in the greater tuberosity. Dr. Patel noted that MRI

images of the left shoulder were pending, but that the report indicated an overall intact tendon repair. Dr. Patel's assessments were (1) left shoulder pain, (2) cervical radiculopathy, and (3) postoperative left shoulder arthrofibrosis. Dr. Patel noted that it was likely that Petitioner presented with post-operative arthrofibrosis and cervical spine etiology and that it was also likely that Petitioner was having referred left shoulder pain due to the neck pain. Dr. Patel noted that he agreed with the neck etiology confirmed by Dr. Darwish and that Petitioner needed surgical intervention. Dr. Patel deferred neck treatment to Dr. Darwish. Regarding the left shoulder, Dr. Patel recommended an exam and manipulation under anesthesia be performed concurrently with Dr. Darwish's surgery to avoid additional anesthesia. Petitioner was kept off work.

Petitioner again saw Dr. Darwish on May 4, 2023, at which time Dr. Darwish continued to recommend a C5-6 and C6-7 anterior cervical discectomy and fusion due to a work-related injury. Px7 at 29-33.

Current Condition

Petitioner testified that she wants to undergo the neck surgery recommended by Dr. Darwish. Tr. at 29-30, 31. Petitioner testified that she has tingling and numbness in her left arm and that she cannot straighten her left arm. Tr. at 30. Petitioner testified that at the time of arbitration, she was under the care of Dr. Patel for her shoulder. Tr. at 32. Petitioner testified that at the time of arbitration, her left shoulder felt painful. Tr. at 33. Petitioner testified that her left arm tingles, and burns "[u]p and down my arm through my neck[,]" that her head hurts and that she has migraines, that her arm is weak, and that she over-uses her right arm. Tr. at 34.

On cross examination, when asked when she got to the point where she could not straighten her left arm, Petitioner testified, "After, I think before my surgery from Dr. Sompalli." Tr. at 58. Petitioner testified that when she tries to straighten out her left arm, she has a lot of pain up to her neck and head and light-headedness. Tr. at 58. On cross examination, Petitioner testified that she could not straighten out her arm prior to surgery and that her arm did not get better after surgery. Tr. at 58-59.

Petitioner was also involved in a motor vehicle accident on September 18, 2023. Tr. at 40. Petitioner testified that there were no injuries from that accident. Tr. at 40. Petitioner did not go to the hospital after that motor vehicle accident and did not receive any medical care for that motor vehicle accident. Tr. at 41. Petitioner agreed that the accident was best described as a "fender bender." Tr. at 41. Petitioner testified that the September 18, 2023 motor vehicle accident did not impact her physical condition. Tr. at 41.

On cross examination, Petitioner testified that she did not receive group medical benefits from a program associated with Respondent. Tr. at 59. Petitioner testified that she had group medical coverage with Respondent. Tr. at 59. Petitioner testified that Respondent paid a part of the premium and that she paid a part of the premium of the disability and group medical. Tr. at 59-60. Petitioner testified that at the time of arbitration, she was still receiving monthly group disability payments in the amount of $5,800.00. Tr. at 60. Petitioner also testified that she received TTD benefits from Respondent. Tr. at 61-62. Petitioner testified that she thought the TTD benefits payments stopped after she saw Dr. Coleman or when she had the car accident in June 2020, then testified that she remembered that she received money at a different rate after the June 2022 car accident. Tr. at 62.

Testimony of Dr. Ashraf Darwish[1]

Dr. Ashraf Darwish testified by way of evidence deposition taken on September 20, 2023. Px8. Dr. Darwish testified as to his education and credentials as an orthopedic spine surgeon. Px8 at 5-8.

[1] Dr. Darwish prepared a Narrative Report, which was offered as Px4. Px4 was admitted without objection.

Dr. Darwish first saw Petitioner on May 13, 2022. Px8 at 10. Dr. Darwish testified that his diagnosis was neck pain, cervical radiculopathy, and degeneration of cervical intervertebral discs and that he recommended conservative management in the form of physical therapy and cervical epidural steroid injections. Px8 at 14-15. Dr. Darwish testified that he next saw Petitioner on July 14, 2022, and that he was aware that Petitioner had been involved in a motor vehicle accident on June 22, 2022. Px8 at 15. Dr. Darwish testified that his diagnoses on July 14, 2022 were the same as his May 13, 2022 diagnoses. Px8 at 15-16. Dr. Darwish testified that on July 14, 2022, he did not believe that Petitioner was any better than the last time he had seen her. Px8 at 16. Dr. Darwish testified that he continued to recommend conservative management at that time. Px8 at 16-17. Dr. Darwish next saw Petitioner on September 29, 2022, his diagnoses were the same, and at that point, he recommended an anterior cervical discectomy and fusion. Px8 at 18-20. Dr. Darwish testified that he recommended an anterior cervical discectomy and fusion because Petitioner had nerve root irritation and nerve irritation from disc protrusions at two levels, C5-6 and C6-7. Px8 at 21. Dr. Darwish testified that Petitioner did not get any better with conservative management and his recommendation was to permanently remove the compression off the nerve and to permanently remove what was irritating the nerves and causing the symptoms. Px8 at 21-22.

Dr. Darwish testified that Petitioner has age-related degenerative disc disease in her cervical spine and that the injury she sustained on September 23, 2021 caused an aggravation of her condition to the point where she required physical therapy, injections, and the need for surgery. Px8 at 24-25. Dr. Darwish testified that the need for the cervical fusion surgery is causally related to the September 23, 2021 work injury. Px8 at 25.

Dr. Darwish testified that Petitioner had neck pain and upper extremity symptoms following the November 30, 2020 motor vehicle accident, which improved with conservative management, and that Petitioner was back at baseline prior to the work injury on September 23, 2021. Px8 at 25-26. Regarding the June 2022 motor vehicle accident, Dr. Darwish testified that "…with that accident, she did have a further aggravation of her condition when I look at my notes after the accident; the first note after the accident. But after that, she goes back to really where she was at - - at my initial evaluation of [Petitioner] in May '22." Px8 at 27.

Dr. Darwish testified that he reviewed Dr. Matthew Colman's Independent Medical Evaluation ("IME") of November 22, 2022. Px8 at 28. Dr. Darwish testified that he agreed with Dr. Colman that Petitioner was a candidate for surgery and that he disagreed regarding what caused the need for surgery. Px8 at 29. Dr. Darwish testified that he believed that the injury that Petitioner sustained at work aggravated Petitioner's condition to the point where she needed physical therapy, injections, and surgery. Px8 at 29-30.

Dr. Darwish testified that he has kept Petitioner in an off-work status pending surgical authorization. Px8 at 31.

On cross examination, Dr. Darwish testified that he did not remember whether he reviewed Petitioner's November 30, 2020 cervical MRI film and testified that he could not say whether the cervical pathology observed on MRI images was different between November 30, 2022 and March 21, 2022. Px8 at 32-33. Dr. Darwish testified that he believes that after the June 2022 motor vehicle accident, Petitioner was at Christ Hospital for treatment, that she saw a neurosurgeon along with probably the trauma surgery, and that she was in the trauma unit which is considered intensive care. Px8 at 34. Dr. Darwish testified that he believed that Petitioner returned to baseline after the 2020 motor vehicle accident, then had an injury at work that aggravated her condition, then had another motor vehicle accident which he believes temporarily aggravated her condition. Px8 at 35. Dr. Darwish testified that in September 2022, Petitioner was complaining of the same symptoms that she described to him on the initial visit in May 2022. Px8 at 35. Dr. Darwish testified that he was not aware of any MRI or CT scan taken after the June 2022 motor vehicle accident. Px8 at 39.

IME Report and AMA Impairment Rating by Dr. Brian J. Cole

Dr. Brian J. Cole prepared an IME Report dated September 25, 2023. Respondent's Exhibit ("Rx") 4. Dr. Cole summarized the records he reviewed in preparation of his IME. Rx4 at 111-116.

Dr. Cole opined that based on his review of medical records, fact pattern provided, and history and physical exam, he did not find that Petitioner has a primary left shoulder problem. Rx4 at 118, 119. Dr. Cole did not recommend any further left shoulder treatment. Rx4 at 118, 119. Dr. Cole recommended that Petitioner focus on the neck and pain management. Rx4 at 118. Dr. Cole noted that there was an obvious significant psychiatric/psychosomatic component to Petitioner's condition. Rx4 at 118. Dr. Cole noted that he was essentially unable to examine Petitioner. Rx4 at 118. Dr. Cole opined that Petitioner was at MMI as it related to the left shoulder and that the treatment rendered to date for the left shoulder had been reasonable, necessary, and related to the injury. Rx4 118, 119, 120. Dr. Cole further opined that based on the fact pattern provided and the medical records, he did not see that there was any alteration in the chain of causation as a result of the motor vehicle accident. Rx4 at 119. Dr. Cole opined that from a left shoulder standpoint, Petitioner did not warrant restrictions and could return to work full duty. Rx4 at 119, 120.

Dr. Cole provided an impairment rating of 11% for the upper extremity and a final whole person impairment of 7%, which corresponds with an upper extremity impairment of 11%. Rx5.

Testimony of Respondent's Section 12 Examiner, Dr. Matthew Colman

Dr. Matthew Colman testified by way of evidence deposition taken on November 21, 2023. Rx1. Dr. Colman testified as to his education and credentials as an orthopedic spine surgeon. Rx1 at 6-7, 9-10. Dr. Colman prepared a report dated November 22, 2022. Rx1 at 10. Dr. Coleman reviewed medical records prior to his exam. Rx1 at 11-12.

Dr. Colman testified that Petitioner had shoulder complaints and that it did not necessarily cause him to wonder why Petitioner was seeing him for a spine problem and that "[t]here is a lot of crossover between neck and shoulder pathology; so it's very common." Rx1 at 14. Dr. Colman testified that Petitioner did not have any history of cervical spine pathology before the September 23, 2021 work incident based on the records he saw. Rx1 at 14. Dr. Colman testified that he was aware that there was a pre-injury MRI performed. Rx1 at 15. Dr. Colman testified that an EMG does not play a routine role in evaluating spinal radiculopathy because there are many false negatives. Rx1 at 16. Dr. Colman testified that Petitioner's EMG report indicated a left C6 and C7 radiculopathy without active nerve denervation. Rx1 at 16. Dr. Colman testified that he does not routinely use EMG and that he relies on a correlation between the patient's subjective symptoms and dermatomal pain pattern and MRI. Rx1 at 16. Regarding the cervical spine MRIs, Dr. Colman testified that there was not any significant interval change overall in the appearance of the MRI in comparison to 2020. Rx1 at 16. Dr. Colman testified that the main findings were overall minor disc bulges that are generally degenerative in appearance and had not changed since November 30, 2020. Rx1 at 16-17.

Regarding the prescription for surgery, Dr. Colman testified, "Yeah. And, I mean, that's appropriate. We – generally, we're not recommending surgery for anyone unless they've got a – some sort of emergency situation going on. We most find surgeons tend to prescribe conservative care; you know, obtain appropriate diagnostics and provide conservative care prior to recommending surgery." Rx1 at 17.

Dr. Colman testified that it was not true that Petitioner had no neck pain or never complained of neck pain before the June 2022 car accident, and that there were some complaints of neck pain and upper extremity pain after the work incident. Rx1 at 18. Dr. Colman testified that comparing the mechanism of the work injury to the

mechanism of the car accident, the car accident was more significant and that Petitioner seemed to have clinically declined thereafter. Rx1 at 18. Dr. Colman testified "…if I had to choose one being more significant and affecting her neck, I would say I have a clearer preference for the car accident." Rx1 at 18-19. Dr. Colman testified that Petitioner had a fractured sternum and broke her T2 and T3 vertebrae of the thoracic spine as a result of the car accident. Rx1 at 19. Regarding whether it was medically possible that one could fracture those two vertebrae without impacting the cervical spine, Dr. Colman testified that he thinks that the sternal fracture and thoracic spine fractures indicate an incredible amount of energy and severity of the accident. Rx1 at 19. Dr. Colman testified that he would agree that the car accident seems like a much more likely mechanism to cause an acceleration of Petitioner's underlying degenerative neck disease than any prior event. Rx1 at 19-20.

Dr. Colman testified that the cause of Petitioner's cervical pathology was degenerative disc disease, which was accelerated by the car accident. Rx1 at 21. Dr. Colman testified that Petitioner's MRI does not reflect an acute fracture, acute disc herniation, acute dislocation, or any other acute structural injury. Rx1 at 22. Dr. Colman testified that Petitioner's MRI is a typical MRI of someone with degenerative disc disease. Rx1 at 22. Dr. Colman testified that there was not any indication that an acute structural injury occurred on September 23, 2021, as the 2020 MRI compared to the 2022 MRI did not show any interval change. Rx1 at 22. Dr. Colman testified that he did not find the mechanism of injury to be sufficient to cause a significant structure cervical injury and the time course of complaints did not make sense for the cervical condition to have been caused by the September 23, 2021 accident. Rx1 at 23. Dr. Colman testified that although there were some early vague complaints of neck pain, there was not consistent cervical radiculopathy complaints until months later. Rx1 at 23. Dr. Colman testified that the last factor he considered in causality and diagnosis was the injury of the car accident where Petitioner had multiple fractures and very likely accelerated her cervical condition. Rx1 at 23. Dr. Colman agreed that the C5-6 and C6-7 levels are the most significant radiographic levels and correlate most with Petitioner's symptoms and so, he agrees with anterior surgery at those levels regardless of causation. Rx1 at 23.

On cross examination, Dr. Colman testified that he thinks it is possible that the September 23, 2021 mechanism of injury could be significant, but that he did not think that it was significant enough to cause a neck injury in this case. Rx1 at 25. Dr. Colman testified that the first indication of true radicular pain was in Petitioner's February 2022 visit with William Hayduk, PA-C. Rx1 at 27. Dr. Colman testified that it was possible that a patient can have an injury and the symptoms start out not as severe but get worse over time with no intervening accident, and the symptoms naturally or organically worsen over time. Rx1 at 28. Dr. Colman agreed that there is a significant amount of crossover in the patient population with people that have shoulder injuries and neck injuries and vice versa. Rx1 at 28. Dr. Colman explained that patients with intrinsic shoulder pathology usually have deep, achy shoulder pain with a lot of referred pain down the arm to the elbow and can have some chest wall referred pain, periscapular pain, and a lot of muscle reaction to the actual shoulder injury. Rx1 at 28. Dr. Colman testified that some of these symptoms can be mimicked by cervical radiculopathy. Rx1 at 28-29. Dr. Colman testified that it was possible for someone to complain of primarily shoulder pain and be diagnosed with a cervical injury after a clinical exam. Rx1 at 29-30. Dr. Colman testified that cervical radicular symptoms were documented for Petitioner in the period between the September 23, 2021 accident and the subsequent motor vehicle accident. Rx1 at 30-31. Dr. Colman testified that the cervical injection was an appropriate treatment for Petitioner's cervical spine condition and that he thinks that patients with degenerative cervical stenosis and radiculopathy do well with cervical epidural steroid injections. Rx1 at 31. Dr. Colman testified that a very good or subtotal response to an injection is a treatment for the actual radiculopathy and that it is also a diagnostic maneuver that increases confidence in the presence of neurologic compression and degenerative disease that surgery potentially could be a permanent fix for the symptoms. Rx1 at 32. Dr. Colman testified that conservative-based treatments alleviated Petitioner's symptoms but not in a durable way, and that she would be a person that he would speak to about surgery given the failure of that conservative treatment and the progression of her symptoms. Rx1 at 34. Dr. Colman testified that Petitioner's cervical symptoms started at

some point distantly after the work injury and to some extent before the motor vehicle accident. Rx1 at 34-35. Dr. Colman testified that he was not aware of any surgical discussion before the motor vehicle accident. Rx1 at 35. Dr. Colman testified that he believed that Petitioner was working in a full duty capacity as a nurse up until the September 23, 2021 work injury. Rx1 at 36. Dr. Colman is not aware of any documented pain in Petitioner's cervical spine in the weeks prior to the September 23, 2021 work accident. Rx1 at 36. Dr. Colman testified that Petitioner's pain on exam was out of proportion with what he would expect based on the objective imaging. Rx1 at 37. Dr. Colman testified that he would have expected Petitioner to complain of neck pain initially, and that he would have expected Petitioner to complain of consistent radiating radicular arm pain, which was not reflected in the medical records. Rx1 at 38.

On redirect examination, Dr. Colman testified that Petitioner's complaints are worse than the MRIs appeared, and there was no interval change in the 2020 and 2022 MRIs. Rx1 at 42. Dr. Colman testified that he would consider Petitioner's pathology as low-grade disease where it is not severe. Rx1 at 42.

CONCLUSIONS OF LAW

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

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

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

In the case at hand, the Arbitrator observed Petitioner's conduct and behavior during the hearing and finds her to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

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

The Arbitrator initially notes that Respondent stipulated that on September 23, 2021, Petitioner sustained an accidental injury to her left shoulder that arose out of and in the course of her employment with Respondent. Respondent, however, disputes that on September 23, 2021, Petitioner sustained an accidental injury to her cervical spine that arose out of and in the course of her employment with Respondent.

Having considered all the evidence, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she did sustain an accidental injury to her cervical spine that arose out of and in the course of her employment by Respondent on September 23, 2021. In support of her findings, the Arbitrator relies on Petitioner's credible testimony that (1) on September 23, 2021, she was employed as a nurse in the ICU at Respondent, (2) on September 23, 2021, a patient kicked her in the chest, and she fell back into the wall behind her, and (3) her back, upper shoulders, neck, and head impacted the wall. The Arbitrator also relies on the

treatment records in evidence, which corroborate Petitioner's testimony.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her ensuing injuries. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 203 (2003). A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Id.* at 205. Even if the claimant had a preexisting degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that her employment was also a causative factor. *Id.* Thus, a claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating her preexisting condition. *Id.* "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Commission*, 93 Ill. 2d 59 (1982).

"Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *Dunteman v. Ill. Workers' Compensation Commission*, 2016 IL App (4th) 150543WC, ¶42 (2016) quoting *National Freight Industries v. Ill. Workers' Compensation Commission*, 2013 IL App (5th) 120043WC, ¶26, 993 N.E. 2d 473, 373 Ill. Dec. 167 (2013). Under an independent intervening cause analysis, compensability for an ultimate injury or disability is based on a finding that the claimant's condition was caused by an event that would not have occurred "but for" the original injury. *Id.* "For an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition." *Id*. at ¶43 quoting *Global Products v. Workers' Compensation Commission*, 392 Ill. App. 3d 408, 411 (2009). As long as there is a "but for" relationship between the work-related injury and subsequent condition of ill-being, the employer remains liable. *Id*. at ¶44 citing *Global Products,* 392 Ill. App. 3d at 412.

Having considered all the evidence, the Arbitrator finds that Petitioner's current cervical spine and left shoulder conditions of ill-being are causally related to the September 23, 2021 injury. The Arbitrator relies on the following in support of her findings: (1) the medical records of WellNow Urgent Care, (2) the medical records of Midwest Anesthesia & Pain Specialists, (3) the medical records of Elite Orthopedics & Sports Medicine, (4) the records of Modern Pain Consultants, (5) the records of Illinois Bone and Joint Institute, and (6) the fact that none of the records in evidence reflect that Petitioner was actively treating for a cervical spine condition or left shoulder condition immediately prior to September 23, 2021. The Arbitrator acknowledges that Petitioner was involved in a motor vehicle accident in November 2020, however, the records in evidence do not reflect that Petitioner was actively treating for any condition related to the November 2020 motor vehicle accident at the time of the September 23, 2021 injury. Further, Petitioner credibly testified that (1) she did not miss any time from work due to the November 2020 motor vehicle accident, (2) that Dr. Robert Fink released her from care on February 5, 2021, and (3) that she did not have any ongoing symptoms at the time of the September 23, 2021 injury. Overall, the record demonstrates (1) that Petitioner was in condition of good health immediately prior to September 23, 2021, (2) that Petitioner was able to work full duty and without restrictions immediately prior to the work accident, and (3) consistent complaints and continuous symptomology of the cervical spine and left shoulder following the September 23, 2021 injury.

Regarding Petitioner's cervical spine condition, the Arbitrator has considered the opinions of Dr. Colman and finds that the opinions of Dr. Colman do not outweigh the opinions of Dr. Darwish. The record demonstrates that Petitioner reported cervical symptoms on September 28, 2021, December 7, 2021, and again on February 1,

2022, at which time she also reported that her cervical symptoms had not been treated. Petitioner then reported an increase in cervical symptoms following the February 9, 2022 left shoulder surgery. Petitioner's cervical symptoms have been consistent and continuous, such that the record supports that Petitioner's cervical degenerative disc disease was rendered symptomatic following the September 23, 2021 injury. The Arbitrator notes that Dr. Colman conceded that there is crossover between neck and shoulder pathology and injuries, that shoulder symptoms and cervical radiculopathy can mimic each other, that Petitioner did not have any history of cervical spine pathology before the September 23, 2021 injury based on the records that he saw, and that there were documented reports of neck pain and cervical radicular symptoms following the September 23, 2021 injury and prior to the June 27, 2022 motor vehicle accident. Rx1 at 14, 18, 30-31, 34-35.

The Arbitrator further finds that the June 27, 2022 motor vehicle accident did not break the causal chain between the September 23, 2021 work-related cervical spine injury and her current cervical spine condition of ill-being. The Arbitrator notes that Petitioner had not returned to work and was actively treating for her cervical spine and left shoulder at the time of the June 27, 2022 motor vehicle accident. The Arbitrator notes that Petitioner had been recommended a series of one to three cervical epidural injections and had undergone one cervical epidural steroid injection prior to the June 27, 2022 motor vehicle accident. Further, on May 13, 2022, Dr. Khan noted that surgical intervention may be recommended or necessary in the future to alleviate or treat Petitioner's condition, especially if conservative measures failed or the condition progressed or worsened. Petitioner reported temporary improvement in cervical axial pain and left upper extremity radiating pain after the first cervical injection, and a second injection was recommended.

The Arbitrator further notes that Petitioner returned to Dr. Darwish after the June 27, 2022 motor vehicle accident. Dr. Darwish testified that his diagnoses on July 14, 2022 were the same as his May 13, 2022 diagnoses and that on July 14, 2022, he did not believe that Petitioner was any better than the last time he had seen her and that he continued to recommend conservative management. Petitioner underwent a second epidural steroid injection at C6-7 on July 29, 2022, with short term pain relief. Dr. Khan subsequently recommended a third epidural steroid injection and that Petitioner follow up with Dr. Darwish. Petitioner followed up with Dr. Darwish on September 29, 2022. Dr. Darwish testified that he made a surgical recommendation in September 2022 because Petitioner did not get any better with conservative management. Dr. Darwish also testified that in September 2022, Petitioner was complaining of the same symptoms she described to him on her initial visit in May 2022. The Arbitrator finds that overall, the record supports the opinions of Dr. Darwish, including that the injury Petitioner sustained on September 23, 2021 caused an aggravation of Petitioner's age-related degenerative disc disease in her cervical spine to the point where she required physical therapy, injections, and the need for surgery and that the June 27, 2022 motor vehicle accident temporarily aggravated her cervical spine and that Petitioner's cervical condition returned to "baseline" after her July 14, 2022 visit. "That other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant." *Vogel v. Ill. Workers' Compensation Commission*, 354 Ill. App. 3d 780, 786 (2nd Dist. 2005). The courts have consistently recognized that when the claimant's condition is weakened by a work-related accident, a subsequent accident that aggravates the condition does not break the causal chain. *Id.* at 787. There is no medical evidence that the June 27, 2022 motor vehicle accident changed the nature of Petitioner's cervical condition other than to temporarily aggravate it and Petitioner's September 23, 2021 work injury remains a causative factor in her current cervical spine condition of ill-being.

Regarding Petitioner's left shoulder condition, the Arbitrator initially notes that Petitioner's left arm was held at a 90-degree angle at the elbow while testifying. The Arbitrator has considered the opinions of Dr. Cole and finds them less persuasive than those of Dr. Patel. The Arbitrator notes that the record demonstrates that while Petitioner was discharged by Dr. Sompalli for the left shoulder in September 2022, Petitioner's left shoulder symptoms have persisted. The Arbitrator further notes that when Petitioner saw Dr. Patel on March 23, 2023, she reported a new symptom of "catching," demonstrating that the condition of Petitioner's left shoulder has worsened since she last saw Dr. Sompalli.

Additionally, there is no medical evidence in the record that the June 27, 2022 motor vehicle accident changed the nature of Petitioner's left shoulder condition. The Arbitrator notes that Dr. Cole conceded that there was not any alteration in the chain of causation as a result of the motor vehicle accident. Accordingly, the Arbitrator finds that the June 27, 2022 motor vehicle accident did not break the causal chain between the September 23, 2021 work-related left shoulder injury and her current left shoulder condition of ill-being.

Lastly, the Arbitrator notes that there is no medical evidence that the nature of Petitioner's cervical spine and left shoulder conditions changed following the September 18, 2023 motor vehicle accident. Petitioner credibly testified that she required no medical treatment following the September 18, 2023 motor vehicle accident, that the accident did not affect her physical condition, and that the accident was minor in nature. Petitioner's testimony is unrebutted. Accordingly, the Arbitrator further finds that the motor vehicle accident of September 18, 2023 did not break the causal chain between the September 23, 2021 work-related cervical spine and left shoulder injuries and Petitioner's current cervical spine and left shoulder conditions of ill-being.

Having considered all the evidence, the Arbitrator finds (1) that Petitioner's current cervical spine and left shoulder conditions of ill-being are causally related to the September 23, 2021 work injury and (2) that the motor vehicle accidents of June 27, 2022 and September 18, 2023 did not break the causal chain between the September 23, 2021 work-related cervical spine and left shoulder injuries and Petitioner's current cervical spine and left shoulder conditions of ill-being.

In resolving the issue of causal connection, the Arbitrator further finds that Petitioner is not at maximum medical improvement ("MMI") for her cervical spine and left shoulder conditions of ill-being.

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

Consistent with the Arbitrator's prior findings regarding the issues of accident and causal connection, the Arbitrator finds that Petitioner's medical treatment has been reasonable and necessary, and that Respondent has not yet paid all appropriate charges. As the Arbitrator has found that Petitioner's treatment has been reasonable and necessary, the Arbitrator further finds that all bills, as provided in Px1, are awarded and that Respondent is liable for payment of these bills, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payments made towards the awarded outstanding expenses.

Per the Parties' stipulation, Petitioner will give Respondent a credit for any medical bills paid by the group medical carrier for Respondent and a credit for any group disability payments paid by Respondent or paid by a group carrier on behalf of Respondent provided that (1) Respondent can provide documentation of the payments to the Petitioner's attorney and (2) Respondent will hold Petitioner harmless for the credited amounts pursuant to the provisions of Section 8(j) of the Act. Ax2. By further agreement of the Parties, the terms of this stipulation are contingent on a final decision of the Workers' Compensation Commission that the medical treatment and disability payments to or on behalf of Petitioner after June 27, 2022 were and are related to Petitioner's work accident of September 23, 2021. Ax2.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to prospective medical care as recommended by Dr. Darwish and Dr. Patel. As of September 29, 2022, Dr. Darwish has continuously recommended that Petitioner undergo a C5-6 and C6-7 anterior cervical discectomy and fusion. The Arbitrator notes that Dr. Colman agreed that Petitioner has failed conservative treatment and that the

recommended surgical procedure is appropriate. As of March 23, 2023, Dr. Patel has recommended a left shoulder manipulation under anesthesia to be performed concurrently with the cervical procedure to avoid additional anesthesia. Accordingly, the Arbitrator finds that Petitioner is entitled to a (1) C5-6 and C6-7 anterior cervical discectomy and fusion and (2) left shoulder manipulation under anesthesia, which are contemplated as compensable treatment under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.

Issue L, whether Petitioner is entitled to temporary total disability, the Arbitrator finds as follows:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to TTD benefits. Petitioner was taken off work on September 28, 2021. Petitioner was then released to return to work on October 18, 2021 with the restriction of no use of the left arm. Petitioner was then taken off work on December 7, 2021, but again released to return to work with the restriction of no use of the left arm on January 10, 2022. There is no evidence that Respondent ever accommodated Petitioner's restriction of no use of the left arm. Petitioner was again taken off work on February 1, 2022, and continued to be in an off-work status at the time of arbitration.[2] Accordingly, the Arbitrator finds that Petitioner is entitled to TTD benefits from September 24, 2021 through December 4, 2023, the date of arbitration.

Per the Parties' stipulation, Respondent is entitled to a credit in the amount of $91,841.99 for TTD paid to Petitioner.

By further stipulation of the Parties, Petitioner will give Respondent a credit for any medical bills paid by the group medical carrier for Respondent and a credit for any group disability payments paid by Respondent or paid by a group carrier on behalf of Respondent provided that (1) Respondent can provide documentation of the payments to the Petitioner's attorney and (2) Respondent will hold Petitioner harmless for the credited amounts pursuant to the provisions of Section 8(j) of the Act. Ax2. By further agreement of the Parties, the terms of this stipulation are contingent on a final decision of the Workers' Compensation Commission that the medical treatment and disability payments to or on behalf of Petitioner after June 27, 2022 were and are related to Petitioner's work accident of September 23, 2021. Ax2.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

March 13, 2024

[2] Dr. Darwish testified that he has kept Petitioner in an off-work status pending surgical authorization and Dr. Patel's March 23, 2023 record reflects an off-work status.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022913
Case Name	Rachel Werner v. State of Illinois - Alton Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0522
Number of Pages of Decision	23
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Caitlin Fiello

DATE FILED: 11/6/2024

/s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RACHEL WERNER,

Petitioner,

vs. NO: 21 WC 022913

STATE OF ILLINOIS/ALTON MENTAL HEALTH,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, TTD, reasonableness and necessity of medical treatment, and prospective medical treatment, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n, 78 Ill.2d 327 (1980).*

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 13, 2024, is hereby affirmed and adopted.

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

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

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. 820 ILCS 305/19(f)(1).

November 6, 2024

O102924
KAD/as
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022913
Case Name	Rachel Werner v. State of Illinois - Alton Mental Health Center
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Caitlin Fiello

DATE FILED: 3/13/2024

/s/ Jeanne AuBuchon, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 12, 2024 5.10%

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

March 13, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Rachel Werner
Employee/Petitioner

v.

State of IL / Alton Mental Health
Employer/Respondent

Case # **21** WC **22913**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Mt. Vernon, Illinois**, on **February 23, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **07/11/2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**100,156.68**; the average weekly wage was $**1,926.09**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**31,761.69 in extended benefits** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**31,761.69**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize and pay for the prospective treatment, including follow-up appointments, radiofrequency ablations and injections recommended by Dr. Gornet.

Respondent shall pay Petitioner temporary total disability benefits of $1,284.06/week for 106 and 1/7 weeks, commencing 08/15/2021 through 03/12/2023, and from 09/09/2023 through 02/23/2024, as provided in Section 8(b) of the Act.

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

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

March 13, 2024

PROCEDURAL HISTORY

This matter proceeded to trial on February 23, 2024, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's cervical spine condition requiring the need for surgery; 2) payment of medical bills related to the surgery; 3) entitlement to prospective medical treatment; and 4) entitlement to temporary total disability (TTD) benefits from August 15, 2021, through March 12, 2023, and from September 9, 2023, through February 23, 2024.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 45 years old and employed by the Respondent as a registered nurse. (AX1, T. 10) On July 11, 2021, she was helping other staff put a physical hold on a patient who was attacking staff – kicking, punching, jumping up and dropping her weight on staff. (T. 11) In the process, the Petitioner injured her neck, mid-back and leg. (T. 12) The Petitioner testified that at the time of arbitration, her leg was fine, her mid-back still hurt and her neck was the biggest problem. (Id.)

On July 12, 2021, the Petitioner went to the emergency room at Alton Memorial Hospital and complained of pain in the back, neck and knee. (PX3) X-rays showed moderate degenerative disc disease at C5-C6. (Id.) The Petitioner was diagnosed with cervicalgia, pain in the left knee and dorsalgia, was given pain medication and was discharged. (Id.)

The Petitioner followed up with her family physician, Dr. Craig Harms at BJCMG Family Physicians of Bethalto, on July 20, 2021, and reported pain from the lumbar, across the thoracic and into the cervical spine with significant discomfort. (PX4) She also reported that her knee injury had resolved. (Id.) Dr. Harms diagnosed cervicalgia, acute bilateral low back pain without sciatica and acute bilateral thoracic back pain. (Id.) He ordered physical therapy, prescribed a

muscle relaxant and oral steroids, and took the Petitioner off work for two weeks. (Id.) The Petitioner underwent physical therapy at Apex Network Physical Therapy from July 29, 2021, through August 3, 2021, for a total of four visits. (PX5)

At a follow-up visit with Dr. Harms on August 3, 2021, the Petitioner reported continuing significant pain in the upper back when sitting and lower back when standing and right upper extremity paresthesias. (Id.) Dr. Harms referred the Petitioner to a spine surgeon. (PX4) At this and other visits, Dr. Harms continued to prescribe a muscle relaxant and pain medication. (Id.)

The Petitioner also treated with chiropractor Dr. Dan Brunkhorst at DB Health Services. (PX6) At her initial visit on August 9, 2021, she complained of: headache pain that radiated up the back of the skull; cervical spine pain with radiating symptoms of numbness and tingling into the right arm down to the hand; and lumbar spine pain radiating into the left hip and buttock. (Id.) Dr. Brunkhorst diagnosed: post-traumatic headache; cervical disc displacement; cervical radiculopathy; cervical ligaments sprain; cervical muscle, fascia and tendon strain; disorder of vertebrae ligaments; thoracic ligaments sprain; thoracic muscle, tendon and fascia strain; lumbar disc displacement; lumbar ligaments sprain; lumbar muscle, tendon and facia strain; ligament disorder; myalgia; myositis; and muscle contracture. (Id.) Treatment included electrical stimulation, therapy, cervical and lumbar traction, manipulation, myofascial release and therapeutic exercise. (Id.)

Dr. Brunkhorst ordered a cervical MRI that was performed on August 17, 2021, at MRI Partners of Chesterfield that showed: bilateral foraminal protrusions at C5-6 resulting in moderate to severe left greater than right foraminal stenosis but no central canal stenosis; Left lateral recess foraminal protrusion at C6-7 resulting in moderate left foraminal stenosis; bilateral foraminal protrusions at C3-4 with moderate left greater than right foraminal stenosis and facet arthropathy

but no central canal stenosis; left foraminal protrusion at C2-3 with facet arthropathy on the left side and moderate to severe left foraminal stenosis but no central canal stenosis. (PX4, PX7)

The Petitioner attended treatment with Dr. Brunkhorst through February 7, 2022, for a total of 37 visits. (PX6) She testified that treatment by Dr. Harms and Dr. Brunkhorst helped temporarily but not enough. (T. 13) She said Dr. Brunkhorst referred her to Dr. Matthew Gornet, an orthopedic surgeon at The Orthopedic Center of St. Louis. (T. 13-14)

On October 11, 2021, the Petitioner saw Dr. Gornet and complained of pain to the base of her neck to both trapezius, both shoulders and between her shoulder blades and tingling and pain intermittently down her right arm to her hand. (PX8) She also complained of low back pain central to both sides. (Id.) She acknowledged having a history of neck pain that was treated with injections and medial branch blocks earlier in 2021 and low back pain two or three years early for which she treated with chiropractic care. (Id.) She said she had always been able to work full duty before the accident and felt this episode was different in that it was much more severe and not going away. (Id.)

Dr. Gornet reviewed cervical MRIs from February 11, 2021, and August 13, 2021, and found that the later scan showed increasing size of herniations at C5-6 and C6-7, with C5-6 now butting up to the level of the spinal cord, where it previously had not. (Id.) He stated that it was easy to understand how the altercation at work could make the Petitioner's symptoms worse. (Id.) As to the low back, Dr. Gornet stated that her prior low back pain was some time ago, and there was no indication that she had an active problem. (Id.) He said that at a minimum, she aggravated her underlying degenerative condition. (Id.) He found that the Petitioner's current symptoms – at least at their level of severity – were causally connected to the work injury. He prescribed calcium and vitamin D and recommended MRI and CT scans. (Id.)

The scans were performed on January 31, 2022. (PX9) Dr. Gornet found that the CT scan of the cervical spine showed no evidence of significant facet arthropathy at C5-6 or C6-7 but some facet changes on the right side at C3-4. (PX8) He noted that the scan did not show significant foraminal narrowing at any level but some mild narrowing on the left side at C5-6 and air in the facet joint and a cyst at C7-T1. (Id.) On the lumbar MRI, he saw what appeared to be sacralization/lumbarization of the lowest segment with structural disc pathology and an annular tear at the first open movable segment and some mild facet changes bilaterally at L5-S1. (Id.)

Dr. Gornet elected to place the Petitioner's back on hold, as her neck was the bigger issue, which he found to be more on the left side as well as a portion of the right side and right upper arm. (Id.) He recommended cervical disc replacement at C5-6 and C6-7, as the Petitioner had failed conservative measures. (Id.) Dr. Gornet performed the surgery on March 30, 2022. (PX8, PX10) In his operative report, he identified a central herniation, a small left-sided herniation and a larger right-sided herniation at C6-7. (Id.) He noted that the right-sided herniation was greater than what was expected by the MRI. (Id.) At C5-6, he found a right-sided free fragment of disc that was unexpected compared to the MRI scan and a moderate lift-sided fragment. (Id.) At follow-up visits with Dr. Gornet, the Petitioner reported continued improvement. (PX8)

On June 28, 2022, the Petitioner underwent a Section 12 examination by Dr. Robert Bernardi, an orthopedic surgeon at Olive Surgical Group. (RX4, RX5) Dr. Bernardi interviewed the Petitioner, performed an examination, reviewed medical records from Dr. Harms and Dr. Gornet and reviewed the cervical MRIs from February 11, 2021, and August 13, 2021, as well as the cervical CT scan and lumbar MRI from November 8, 2021. (RX4)

The Petitioner reported to Dr. Bernardi that she had a prior history of neck pain, for which she had been seeing her internist since November 2020 who referred her to a pain management

specialist. (Id.) She underwent an MRI, took medications and had several injections. (Id.) Her symptoms were entirely confined to her neck with no radiation to either upper extremity. (Id.) Years before, she experienced low back pain, for which she was seen by her family doctor and a chiropractor. (Id.) Her symptoms resolved, and she did not have any recurrent ones until the accident. (Id.) She denied prior middle back discomfort. (Id.) The Petitioner told Dr. Bernardi that after the accident, her neck pain was pretty much the same and did not change in either its location or intensity, but she had new pain in her right arm, with a numb sensation in the fourth and fifth digits of her right hand and milder extension into the third digit. (Id.) She was not sure when she noticed arm pain but felt it was "shortly" after the accident. (Id.)

The Petitioner told Dr. Bernardi that after her surgery, there was no change in her right arm symptoms, but her cervicalgia was about 70 percent better. (Id.) She said her lower back pain was at waist level and below, extending to the upper gluteal area but not radiating leg pain. (Id.)

On the February 11, 2021, cervical MRI, Dr. Bernardi saw loss of lordosis, degenerative disc disease at every segment except C7-T1 that was most pronounced at C5-6 and C6-7, where the loss of disc hydration was coupled with loss of disc height and more prominent bulging. (Id.) He found no cord compression, no central stenosis, no right-sided foraminal stenosis and minimal left C4, C6 and C7 degenerative foraminal compromise. (Id.) Dr. Bernardi reviewed the August 13, 2021, MRI and stated that it was unchanged from the earlier study. (Id.) He read the November 8, 2021, cervical CT scan and noticed spurring at C5 and C6 and caldification within the anterior annulus at C5-6. (Id.) He said that at C5-6 and C6-7, there was loss of disc height and small uncovertebral osteophytes. (Id.) He noted left C2-3, bilateral C3-4 and left C7-T1 facet disease. He saw minimal narrowing of the left C4 and C7 along with mild narrowint of he left C6 foramina. (Id.) As to the lumbar MRI from November 8, 2021, Dr. Bernardi saw lumbosacral segmentation

abnormality and termed the lowest mobile level as L5-S1. (Id.) He said there was very mild degenerative disc disease at every segment except L2-3, marked facet disease at L5-S1, milder facet changes at L3-4, no foraminal narrowing, no acute abnormalities and advanced degenerative disc disease at T10-11 and T11-12. (Id.)

Dr. Bernardi characterized the abnormalities on the scans as degenerative and present prior to the work accident. (Id.) He disagreed with Dr. Gornet's interpretation of the August 13, 2021, MRI as showing enlarged herniations at C5-6 and C6-7 but that the changes represented degenerative bulging. (Id.) Dr. Bernardi did not believe the need for the two-level disc replacement could be causally related to the work accident. (Id.) He gave three reasons for his opinion:

1. The Petitioner's history of neck pain before the accident, her statement that her chronic pain was about the same after the accident and her saying that after the surgery, it had improved by 70 percent.
2. The onset of right arm pain after the accident that superficially was consistent with cervical radiculopathy but was not radicular – not following a dermatomal distribution. Dr. Bernardi stated that the Petitioner did not have nerve root tension signs, her strength was normal, and her reflexes were normal and symmetric. He said there was no right-sided nerve root compression on either the pre-operative or post-operative MRIs. He acknowledged that if the Petitioner had not experienced arm pain in the past and if the pain was secondary to an irritated nerve root – whether due to an acute process or aggravation of a pre-existing degenerative condition – then the surgery would have been reasonable and potentially work-related. He pointed out that he did not know whether the Petitioner experienced arm pain prior to the accident, and he would need to see her old medical records.
3. The delayed onset of arm pain. He stated that while there can be some lag time between a traumatic event and the onset of associated nerve root symptoms, it is generally measured in hours, while the Petitioner's arm pain was first documented in Dr. Brunkhorst's August 9, 2021, evaluation.

(Id.)

Dr. Bernardi believed the chiropractic care and physical therapy was reasonable and appropriate, but the number of visits was excessive. (Id.) He said 4-6 weeks should have been sufficient. (Id.) He thought the treatment and testing at the emergency room, the cervical and

lumbar MRIs and the medications were reasonable, but the CT scan was not, as it was done in anticipation of recommending a cervical disc replacement, which he thought was not warranted. (Id.) He did not believe the Petitioner required additional testing or treatment for her residual neck, middle back or low back complaints. (Id.) He believed the Petitioner reached maximum medical improvement from the perspective of her work accident and identified no objective basis for assigning activity restrictions. (Id.)

Dr. Gornet turned his attention to the Petitioner's low back, and on July 11, 2022, he recommended an epidural steroid injection at L5-S1 and medial branch blocks and radiofrequency ablation (RFA) at L4-5 and L5-S1. (PX8) On July 27, 2022, the Petitioner underwent an L5-S1 interlaminar epidural steroid injection performed by Dr. Helen Blake, a pain management specialis with United Physicians Group. (PX11) Dr. Blake performed medial nerve branch blocks (MNBB) at L4-5 and L5-S1 on the right on August 23, 2022, and MNBBs at the same levels on the left on August 30, 2022. (PX11, PX12) On September 12, 2022, the Petitioner reported significant improvement of her low back pain for 6-8 hours, which was consistent with the duration of the local anesthetic used for the MNBB procedure. (PX11) The Petitioner then experienced return of her painful symptoms. (Id.) Dr. Blake felt that the Petitioner would benefit from more definitive treatment of her axial low back pain with an RFA. (Id.) She performed an RFA of the right L4-5 and L5-S1 facet nerves on September 20, 2022, and at the same levels on the left on September 27, 2022. (PX11, PX12)

On October 3, 2022, the Petitioner reported to Dr. Gornet's physician assistant, Nathan Collins, that the injections and RFAs provided some relief. (PX8) She also reported ongoing right arm intermittent numbness and tingling and mid-back pain. (Id.) PA Collins recommended an MRI of the thoracic spine and continued physical therapy with Dr. Brunkhorst. (Id.)

The Petitioner saw another physician assistant, Allyson Joggerst on December 8, 2022, and continued to complain of right-sided neck pain going to her right trapezius, right shoulder and intermittently down her right arm, as well as some mid-back pain. (Id.) PA Joggerst reported that a thoracic MRI performed that day revealed a central right disc herniation at T8-9 and a smaller protrusion at T7-8. (Id.) She also looked at the cervical CT scan from July 11, 2022, and said it showed facet arthropathy at the C3-4 level on the right side. (Id.) She recommended an epidural steroid injection (ILESI) at T8-9 and a second injection at T7-8 if the Petitioner did not improve. (Id.) She also recommended medial branch blocks and RFAs on the right side at C3-4. (Id.)

During this time, the Petitioner continued to treat with Dr. Brunkhorst. (PX6) She attended 22 sessions from August 31, 2022, through December 5, 2022. (Id.)

Dr. Blake performed a right C3-4 MNBB on January 24, 2023. (PX11, PX12) On January 30, 2023, the Petitioner reported that the MNBB provided significant improvement of her axial neck pain for the duration of the local anesthetic – approximately 1-3 hours. (PX11) Dr. Blake then performed an RFA of the right C3-4 facet nerves on February 8, 2023. (PX11, PX12)

On February 15, 2023, and March 7, 2023, Dr. Blake performed ILESIs at T8-9. (Id.) On March 7, 2023, the Petitioner reported some interval improvement and described the pain moving superiorly relative to its initial spot. (PX11) She described constant pain radiating around the left side of her chest wall asymmetric to the left of the back. (Id.) Dr. Blake felt the Petitioner would benefit from an injection at T7-8 towards the left. (Id.)

Dr. Gornet testified consistently with his records at a deposition on January 27, 2023. (PX15) He explained that the pertinent findings from his examination were the decreased sensation in the C6 dermatome on the right side, which would mean a C6 nerve root abnormality. He said usually it's at C5-6 but could also be at C6-7. (Id.) He reiterated his opinion that he

observed a difference between the pre- and post-accident MRIs in that the post-accident MRI showed increasing size of the herniations to both C5-6 and C6-7, with the C5-6 level abutting up to the level of the spinal cord, where it previously had not. (Id.) He believed the changes in the later MRI correlated with the Petitioner's complaints, particularly on the right side. (Id.) He agreed that the severity of the Petitioner's symptomology after the accident was causally connected to the work injury, assuming that the Petitioner's history was factually correct, that she was working full duty and that her symptoms were more tolerable before the accident. (Id.)

On cross-examination, Dr. Gornet disagreed that the Petitioner's post-accident symptoms could have been the natural progression of her prior neck issues. (Id.) He said it did not seem like the Petitioner was ever on that trajectory, and the work incident seemed to have broken that line and changed her clinical course. (Id.)

Dr. Bernardi testified consistently with his report at a deposition on March 3, 2023. (RX5) He thought it was reasonable to conclude that the Petitioner may have suffered muscular injuries – cervical, thoracic or lumbar sprain/strains – as a result of the accident. (Id.) He said that as these injuries heal within a matter of days to weeks, he didn't think that her ongoing symptoms after a year could be attributed to the accident. (Id.)

On cross-examination, Dr. Bernardi acknowledged that the accident the Petitioner reported could have increased the size of her disc herniations but said he didn't think it did. (Id.) He said that comparing the pre- and post-accident MRIs, a small difference in disc herniations would be hard to detect visually. (Id.) He maintained that he did not think the Petitioner had disc herniations at all but said that if the disc pathology was called herniations or bulges, he did not think they were causing symptomatic nerve root compression. (Id.) He stated that experts disagree on

interpretations of MRIs and such interpretations are very subjective and depend on where a patient had an MRI performed and who looked at the scan. (Id.)

On March 9, 2023, the Petitioner reported that the medial branch blocks and RFAs helped her right-sided neck pain. (PX8) Dr. Gornet wanted to sort out the Petitioner's right arm symptoms with nerve function studies. (Id.) He released her with restrictions of a 10-pound limit, no repetitive bending or lifting, alternating between sitting and standing as needed, no overhead work and no direct patient contact. (Id.)

The nerve studies were performed on October 16, 2023, by neurologist Dr. Daniel Phillips at the Neurological & Electrodiagnostic Institute. (PX13) Dr. Phillips said the study was not impressive for active cervical radiculopathy nor did it disclose evidence of right upper extremity entrapment, including an ulnar neuropathy across the elbow. (Id.) He said it appeared that historically the Petitioner may have been describing residual right C7 sensory neuropathy. (Id.)

The Petitioner also saw Dr. Gornet on October 16, 2023. (PX8) He reviewed the nerve studies and wanted a new cervical MRI to confirm there was nothing else going on, as well as a plain CT. (Id.) Regarding the Petitioner's mid-back, he would repeat steroid injections at T8-9. (Id.) He placed treatment of the low back on perpetual hold, given the Petitioner's lack of response in her neck and mid-back. (Id.) He stated that if the injections did not provide more sustained relief and the Petitioner still had low back, mid-back and neck problems, the best option would be a functional capacity evaluation (FCE). (Id.)

Dr. Blake performed a T8-9 ILESI on December 12, 2023. (PX11, PX12)

At the Petitioner's latest visit to Dr. Gornet on January 8, 2024, the Petitioner still had some residual symptoms, particularly on the right side. (PX8) The injection at T8-9 helped a moderate amount, but the Petitioner still had problems. (Id.) Dr. Gornet referred the Petitioner for an FCE

and stated that given the sum total of the Petitioner's injuries and problem, he thought the Petitioner would require permanent restrictions. (Id.) Dr. Gornet continued light-duty restrictions.

Dr. Gornet testified again at a deposition on January 25, 2024. (PX16) He explained that his intraoperative findings correlated with the objective findings and the Petitioner's preoperative symptoms. (Id.) He characterized the outcome of the neck surgery as successful, adding that the Petitioner still had some residual neck pain that he didn't feel was coming from the levels he treated but from the C3-4 level. (Id.) Dr. Gornet stated that the Petitioner would benefit from further RFAs and injections. (Id.) He said that if those treatments became refractory, the Petitioner would become a candidate for fusion surgery, but he thought it was better to not undergo further surgery if at all possible. (Id.) He did not believe the Petitioner's cervical spine would have improved without the surgery he performed. (Id.) He believed the surgery stopped the progression of her cervical condition. (Id.) He also stated that the work restrictions he gave were causally related to the work accident. (Id.)

The Petitioner underwent an FCE on February 6, 2024, at ApexNetwork Physical Therapy. (PX14) Occupational Therapist Kurt Muskopf found the Petitioner's pain complaints during testing were consistent with displayed function and that she performed tests with acceptable effort. (Id.) OT Muskopf noted: decreased cervical, lumbar and right shoulder range of motion; a mild decrease in right shoulder strength; decreased lifting tolerances from floor level; and decreased postural tolerances of squatting, bending and prolonged walking. (Id.) He placed the Petitioner at a light physical demand level and stated that the functional abilities displayed were not consistent with the full duty demands in the Petitioner's job description. (Id.)

The Petitioner testified that before surgery, she was having a rough time, was pretty miserable and was having a hard time turning her neck and looking down to read. (T. 14) She

said the surgery and subsequent therapy helped the pain and numbness in her arm, but she had a hard time with therapy because of her back. (Id.) She said she worked light duty for 180 days, after which she was told she was "out of light duty days," and her light duty was terminated. (T. 16-17) She said her employment was terminated on February 2, 2024. (T. 17) She said she was ready, willing and able to work light duty. (Id.)

Petitioner's Exhibit 17 shows that for the first three pay periods following the accident (ending on August 15, 2021), the Petitioner received paychecks that averaged a weekly wage consistent with the agreed-upon average weekly wage. (PX17, AX1) For the next seven pay periods (ending on March 15, 2022), the Petitioner received benefits from the State Employee Retirement Service (SERS). (PX17) The Petitioner then received extended benefits for what appeared to be 6½ pay periods. (Id.) Afterwards, the Petitioner received SERS benefits for the next nine pay periods until March 12, 2023. (Id.) She then worked light-duty from March 13, 2023, until September 8, 2023. (Id.) She received no other pay or benefits after that. (Id.)

At the time of arbitration, the Petitioner was still treating with Dr. Gornet for her low back and had a follow-up appointment scheduled for April 4, 2024, to get some clarity on what direction her condition is headed. (T. 15, 17-18) She said she wants to get better and be able to get back to work. (T. 18)

CONCLUSIONS OF LAW

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

Issue (F): Is Petitioner's current condition of ill-being, specifically her cervical spine injury requiring surgery, causally related to the accident?

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278

Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

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

The experts agreed that the Petitioner had pre-existing cervical degenerative disc disease. Dr. Bernardi acknowledged that the work accident could have aggravated this condition but did not believe it did because: 1) the Petitioner reported that her neck pain was the same as before the accident; 2) her pain did not follow a dermatomal distribution and he saw no evidence of right-sided nerve root compression in his examination or on either the MRIs; and 3) there was no documentation of right arm symptoms until almost a month after the accident.

The records reflect different descriptions of her symptoms to Dr. Gornet and Dr. Bernardi – specifically, telling Dr. Gornet that her symptoms were more severe after the accident and telling Dr. Bernardi that they were the same as before the accident. Given that Dr. Bernardi's examination occurred nearly a year after the accident and months after surgery, the Arbitrator finds that the Petitioner's description to Dr. Gornet is more likely accurate, due to it being closer in time to the accident and onset of symptoms. Therefore, the Arbitrator relies more on the Petitioner's reports to Dr. Gornet. The Petitioner was credible, and her reports were otherwise consistent. Because of this, the Arbitrator finds Dr. Bernardi's first rationale for his causation opinion was misplaced.

As to the second basis for Dr. Bernardi's opinion, Dr. Gornet disagreed as to dermatomal distribution and interpretation of the MRIs. Dr. Gornet thoroughly explained his findings and noted that what he saw during surgery was consistent with these findings. Dr. Bernardi's explanation was murky and contradictory. He said the Petitioner's right arm pain after the accident superficially was consistent with cervical radiculopathy but then said it was not radicular. He acknowledged that if the Petitioner had not experienced arm pain in the past and if the pain was secondary to an irritated nerve root – whether due to an acute process or aggravation of a pre-existing degenerative condition – then the surgery would have been reasonable and potentially work-related. There was no evidence that the Petitioner experienced right-arm symptoms before the work accident.

The Arbitrator finds that Dr. Bernardi's third rationale for his opinion was based solely on when the Petitioner's arm complaints showed up in the medical records. It does not appear that Dr. Bernardi asked the Petitioner for clarification to determine when the arm symptoms began. Therefore, an opinion based on this rationale is speculative.

Lastly, the Arbitrator also gives Dr. Gornet's opinions greater weight because, as the Petitioner's treating physician, he had more opportunities to become familiar with the Petitioner and her condition both before and after surgery. In addition, his surgical findings revealed that the Petitioner's cervical condition was worse than what was depicted on the imaging studies, this supporting his surgical recommendation.

The circumstantial evidence also supports Dr. Gornet's opinion. The chain of events showed that despite having a pre-existing condition, the Petitioner was able to perform manual duties before accident but had decreased ability to perform immediately afterwards.

Therefore, the Arbitrator finds that the Petitioner's cervical spine condition and the need for surgery are causally related to the accident of July 11, 2021.

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

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const.*, 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009).

The Respondent disputes the necessity of disc replacement surgery and its causal relationship to the accident. Based on the above findings regarding causation and Dr. Gornet's decision that the surgery was necessary, the Arbitrator finds that the treatment – including disc replacement surgery – was reasonable and necessary.

Dr. Bernardi also opined that the physical therapy and chiropractic treatment was excessive and should have lasted 4-6 weeks. However, the Petitioner did not experience significant improvement in that time. The Arbitrator finds that the additional treatment was reasonable and necessary as a conservative measure before undergoing surgery.

Therefore, the Arbitrator finds the medical services provided – including disc replacement surgery, physical therapy and chiropractic treatment, were reasonable and necessary. The Respondent has not paid for these services. The Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules. The Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which a third party, such as the Petitioner's health insurance carrier, claims credit.

Issue (K): Is Petitioner entitled to any prospective medical care?

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Based on the causation findings above and Dr. Gornet's recommendations, the Arbitrator finds that future treatment – to include visits with Dr. Gornet, RFAs and injections – are reasonable and necessary. The Respondent shall authorize and pay for such treatment.

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

"The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force." *Interstate Scaffolding, Inc., v. Illinois Workers' Compensation Comm'n,* 236 Ill.2d 132, 146, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010). "Therefore, when determining whether an employee is entitled to TTD benefits, the test

is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force." *Id.*

Based on the findings above, the Petitioner being ordered off work and Dr. Gornet's testimony that his work restrictions were causally related to the work accident, the Arbitrator finds the Petitioner was temporarily totally disabled. Although the Respondent provided light duty work after the Petitioner's release with restrictions, the Respondent stopped accommodating the restrictions, giving no reason other than the Petitioner was "out of light duty days."

Therefore, the Arbitrator finds that the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 106 and 1/7 weeks – from August 15, 2021, through March 12, 2023, and from September 9, 2023, through the date of arbitration on February 23, 2024. The Respondent shall be entitled to credit of $31,761.96 for extended benefits paid.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC000713
Case Name	Crucita De La Cruz v. Fedex
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0523
Number of Pages of Decision	11
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Adilene Gonzalez
Respondent Attorney	Timothy Alberts

DATE FILED: 11/6/2024

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CRUCITA DE LA CRUZ,

Petitioner,

vs. NO: 23 WC 000713

FEDEX,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, prospective medical treatment, and wages, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980).

For the reasons set forth in the Arbitrator's Conclusions of Law relating to "Issue (L), What amount of compensation is due for temporary total disability, temporary partial disability and/or maintenance," the Commission modifies the Arbitration Decision to enter an additional Order denying Petitioner's claim for temporary partial disability (TPD) benefits.

All else is adopted and affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the reasonable and necessary medical services of $2,448.01 as provided under §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for prospective medical treatment in the form of a follow-up visit with Dr. Goldflies and chiropractic treatment with Dr. Lopez as provided under §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim for temporary partial disability (TPD) benefits is denied. This award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total or temporary partial compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $2,548.01. 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 6, 2024
O 92424
KAD/swj
42

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC000713
Case Name	Crucita De La Cruz v. Fedex
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Adilene Gonzalez
Respondent Attorney	Timothy Alberts

DATE FILED: 4/2/2024

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 2, 2024 5.125%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Crucita De La Cruz Case # **23** WC **000713**
Employee/Petitioner
v.
FedEx
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **October 27, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **December 17, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**36,192.84**; the average weekly wage was $**696.02**.

On the date of accident, Petitioner was **21** years of age, ***single*** with **0** dependent children.

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

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

ORDER

Respondent shall pay reasonable and necessary medical services of $2,448.01, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care in the form of a follow up visit with Dr. Goldflies and chiropractic treatment as recommended by Dr. Lopez, as provided in Sections 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator

April 2, 2024

ICArbDec19(b)

FINDINGS OF FACT

This matter proceeded to a hearing on October 27, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Petition for Immediate Hearing under Section 19(b)/8(a). The issues in dispute were accident, notice, causal connection, medical expenses, temporary partial disability, and prospective medical care. Arbitrator's Exhibit 1 (AX1).

Testimony/ Accident

Petitioner testified that on December 17, 2022, she was loading packages into the back of a trailer. (T. 10) Petitioner was carrying heavy packages from the belt into the trailer. (T. 9) While loading a heavy package into the trailer, her left leg went through the gap between the dock and the trailer. (T. 8) Petitioner fell and hit the ground. *Id.*

Petitioner testified that she felt immediate pain in her left leg and left hip following the work accident. (T. 12) Petitioner testified that a manager came to help her out of the gap and told her to wait and someone would come help her and fill out an accident report. (T. 59) Petitioner testified that no one ever came to her to make the accident report on the day of the accident. (T. 12) Petitioner's pain worsened after the work accident. *Id.* Petitioner testified that at the time the accident report was completed, she was not sure of the exact accident date but later verified December 17, 2023, was the correct date. (T. 65) Petitioner explained that this same accident had happened once before, but she did not report it because she was not injured. (T. 11) Petitioner filled out an employee medical treatment authorization and release form on January 5, 2023. (T. 14-15) That same day, Petitioner also filled out an intake form at Concentra and on the injury date she wrote roughly December 9, 2022. (T. 52-53) Petitioner testified that at the time of that visit, she didn't exactly recall the date of injury. (T. 68)

Corey Wilson, Sr., Respondent's safety specialist testified that he is the appropriate person to whom accidents are reported. (T. 76-77) According to Mr. Wilson, Petitioner reported the work accident to him on January 5, 2023. (T. 79-80) Petitioner reported that she fell between the trailer and the dock on December 9, 2022. (T. 80) Mr. Wilson then completed an accident report. (*Id.* & RX1) Mr. Wilson testified that after Respondent became aware of the accident and Petitioner's restrictions, Petitioner was placed on modified duty within her restrictions. (T. 83-84) According to Mr. Wilson, Petitioner was terminated from Respondent's employ due to attendance issues. (T. 86-88) Mr. Wilson testified that Petitioner was terminated on or about July 8, 2023. (T. 89, 91-92) Mr. Wilson did not recall Petitioner reporting any accident occurring on December 17, 2022. (T. 92) Mr. Wilson acknowledged that Petitioner could have reported the December 17, 2022, accident to his partner or Petitioner's manager, which would have been in line with Respondent's protocols and procedures. (T. 93) If Petitioner had reported the December 17, 2022, accident to her manager, per protocol, the manager would then have notified Mr. Wilson or his partner of the accident. (T. 94) This did not happen, according to Mr. Wilson. (T. 94-95)

Job Duties

Petitioner testified that she was a package handler for Respondent. (T. 9) Petitioner's job duties included sorting packages into trailers, carrying packages and pushing, pulling, lifting. *Id.*

Prior Medical Condition

There is nothing in the record to indicate that Petitioner suffered any prior medical conditions associated with her lower back, left leg or left hip.

Summary of Medical Records

On January 5, 2023, Petitioner saw Dr. Joseph Laluya at Concentra and complained of left hip and leg pain. (PX1, pg. 222) Dr. Laluya prescribed medication, ordered physical therapy and placed Petitioner on work restrictions of no lifting, pushing or pulling more than 10 pounds occasionally, no climbing, minimal ambulation and mainly seated work. (PX1, pgs. 201, 224) Petitioner began physical therapy on January 10, 2023. (PX1, pg. 194)

Petitioner followed up with Dr. Laluya on January 12, 2023, complaining of pain in her left buttock area, thigh and leg with radiation down her left lower extremity. (PX1, pgs. 175, 177) Dr. Laluya noted during physical exam that Petitioner had tenderness in the anterior hip joint, gluteus maximus, proximal hamstring and proximal quadriceps, limited range of motion in all planes with pain and an antalgic gait favoring the left lower extremity. (PX1, pg.182) Dr. Laluya referred Petitioner to see Dr. Sean Salehi and continued Petitioner's work restrictions. (PX1, pg. 169)

Petitioner saw Dr. Salehi on January 19, 2023, and complained of lower back and left hip pain that radiated down her left leg. (PX1, pg. 152) Dr. Salehi ordered an MRI of the lumbar spine and hip and continued Petitioner's work restrictions. Petitioner continued to follow up with Dr. Laluya in January and February of 2023. (PX1) Dr. Laluya noted the MRI was still pending, continued physical therapy and kept Petitioner on restrictions. On February 17, 2023, Dr. Laluya noted that Petitioner was unable to undergo the MRI due to a metallic piercing. (PX1, pg. 51)

Petitioner followed up with Dr. Salehi on March 23, 2023. (PX1, pg. 19) Petitioner complained of continued left sided low back, hip and anterior thigh pain with radiation into the groin and left knee. Dr. Salehi referred Petitioner for an orthopedic consult.

On May 5, 2023, Petitioner attended her annual exam with her primary care physician where she complained of left sided lower back, left hip and left anterior thigh pain. Muglena Garkova APNP ordered physical therapy, CT imaging of the lumbar spine, hip and left lower leg and restricted Petitioner to no lifting more than 10 pounds and seated work. (PX2, pgs. 5-6) On May 24, 2023, Petitioner went to the emergency room at Saint Anthony Hospital with complaints of left hip pain and lower extremity pain after falling through a trailer crack at work. (PX3, pg. 2)

On June 6, 2023, Petitioner underwent a Section 12 Examination (IME) by Dr. Benjamin Domb at the request of Respondent. (RX8) The report outlines Petitioner's treatment following the December 17, 2022, work accident and notes Petitioner's complaints of ongoing pain in the left hip.

On July 24, 2023, Petitioner saw Dr. Mitchell Goldflies at Saint Anthony Hospital for orthopedic consult. (PX3, pg. 8) Petitioner described the December work accident and complained of left knee pain that radiated up to her left hip. Dr. Goldflies diagnosed her with a pelvic malrotation and tilt, referred her for physical therapy and a chiropractor, gave her a patella knee sleeve and advised Petitioner to follow up in two weeks.

On July 31, 2023, Petitioner saw Dr. Roberto Lopez of Lopez Family Chiropractic with complaints of pain following a work-related accident where she fell between the gap between the dock and truck. (PX4, pgs. 1-2) Dr. Lopez administered-manipulation to T9, T11-T12, L1, L3-L5, and S1 using the diversified technique. Dr. Lopez recommended a treatment plan of 2 visits per week for 6 weeks. Petitioner attended 7 visits between July 31, 2023, and September 11, 2023.

Petitioner's Current Condition

Petitioner testified that she is currently working for Tootsie Roll and that her work is light in nature. (T. 31) Petitioner indicated that the chiropractic therapy was helping her a lot and that she still suffers from pain through her left leg when she places too much weight on it. (T, 31).

CONCLUSIONS OF LAW

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

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

An employee's injury is compensable under the Act only if it arises out of and in the course of her employment. 820 ILCS 305/2. "In the course of" employment refers to the time, place and circumstances under which the accident occurred. *Lee v. Industrial Comm'n,* 167 Ill.2d 77, 81 (1995). "For an injury to 'arise out of' the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill.2d 52, 58 (1989). An injury arises out of an employment related risk when the claimant is engaged in an activity that she might reasonably be expected to perform incident to her duties. *Accolade v. Illinois Worker Compensation Comm'n*, 371 Ill. Dec. 713 (App.Ct. 3d Dist. 2013), *Young v. Illinois Workers Compensation Comm'n*, 383 Ill.Dec. 131. (App. Ct. 4d Dist. 2014).

The Arbitrator notes that Petitioner was working as a packager handler for Respondent on December 17, 2022. Further, Petitioner was performing her essential job duty of carrying packages and loading them into the trailers at the time of the accident. Petitioner was engaged in an activity that she was reasonably expected to perform incident to her duties.

Based on the above, the Arbitrator finds that Petitioner's accident on December 17, 2022, arose out of and in the course of her employment with Respondent.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. 820 ILCS 305/6(c). No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. 820 ILCS 305/6(c). Notice of the accident shall give the approximate date and place of the accident, if known, and may be given orally or in writing. 820 ILCS 305/6(c).

Petitioner testified that her manager helped her out of the gap on the date of the accident and advised Petitioner that someone would take her statement for an accident report. According to Petitioner, no one ever came by to complete an accident report. Mr. Wilson testified that Petitioner reported that an accident occurred on December 9, 2022, on January 5, 2023. Mr. Wilson completed an accident report indicating that the accident occurred on December 9, 2022. Petitioner testified that she again reported the accident on January 5, 2023, and acknowledged that, at that time, she did not exactly recall the date of injury and wrote that it occurred roughly on December 9, 2022, when she completed the intake form at Concentra, which is confirmed by the intake form in the records. (PX1, pg. 203) The Arbitrator further notes that the accident report was filed on January 5, 2023, well within the 45-day requirement under the Act.

Based on the above, the Arbitrator finds that Petitioner provided timely notice under the Act.

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

The Arbitrator notes that Petitioner did not have any issues with her lower back, left hip and left leg prior to December 17, 2022, and was working full duty. There was no evidence presented to suggest she had any issues with these body parts prior to December 17, 2022. The Arbitrator also notes that Petitioner testified that the injury caused immediate pain to her lower back, left leg and left hip. Petitioner complained of left hip pain, low back pain and leg pain all throughout the course of treatment. With exception to the exact date reported by the medical providers at Concentra and Dr. Lopez, the history portions of the medical records were consistent with Petitioner's testimony with respect to the way the incident happened and mechanism of injury.

The Arbitrator also notes that Dr. Domb's full report was not offered into evidence by Respondent, so no contradictory opinion regarding causation was provided by Respondent. Further, the medical records do not contain inconsistent histories, nor any evidence of any intervening cause for the Petitioner's current condition of ill-being.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the December 17, 2022, work accident.

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

The Arbitrator notes her findings above regarding causation in this matter. The Arbitrator further notes that Petitioner testified that while she still has pain, chiropractic treatment has helped a lot. Therefore, the Arbitrator finds that Petitioner's treatment for injuries incurred during the December 17, 2022, work accident has been reasonable and necessary.

Based on the above, Respondent shall pay outstanding medical services incurred for the treatment injuries sustained during the December 17, 2022, work accident of $15.01 (Concentra Urgent Care), $2,033.00 (Saint Anthony Hospital), and $400.00 (Lopez Family Chiropractor), totaling $2,448.01 as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes her findings above regarding causation in this matter. The Arbitrator further notes that Petitioner continues to have pain and problems resulting from the December 17, 2022, work accident. Further, Petitioner has not reached maximum medical improvement and has reported improvement from the recommended chiropractic care. The records also indicate that Petitioner was to follow up with Dr. Goldflies.

Based on the above, the Arbitrator finds that Petitioner is entitled to prospective medical care in the form of follow-up visit with Dr. Goldflies and chiropractic care as recommended by Dr. Lopez, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that the issue of temporary partial disability was put into dispute by the parties. (AX1) However, there was no testimony regarding the dates and hours Petitioner worked modified duty, nor her rate of pay for that work. Further, no wage statements were provided showing the dates and hours Petitioner worked modified duty or her rate of pay for that work. As such, any award of temporary partial disability benefits would be speculative.

Based on the above, the Arbitrator finds that Petitioner failed to prove entitlement to temporary partial disability benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC023040
Case Name	Bonita Edwards v. State of Illinois - Dept of Juvenile Justice
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0524
Number of Pages of Decision	20
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Caitlin Fiello, Aaron Wright

DATE FILED: 11/7/2024

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0524

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BONITA EDWARDS,

Petitioner,

vs. NO: 11 WC 023040

STATE OF ILLINOIS, DEPARTMENT
OF JUVENILE JUSTICE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, TTD, 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 finds that Petitioner failed to prove by a preponderance of the credible evidence that her subsequent trip and fall accident in the State of Texas on March 24, 2022, and resulting left elbow injury with radial neck fracture, was causally related to her original work related accident of January 25, 2011. As documented in the emergency department records from MMC-South Texas Health System McAllen, Petitioner reported she "stepped off a curb and then tripped over a car stopped in a parking lot." Because there was no mention of Petitioner's injured right knee giving way or buckling in the emergency room records, the Commission finds that Petitioner failed to prove that her right knee condition caused or contributed to this trip and fall accident. The Commission therefore modifies that portion of the arbitration decision directing Respondent to pay Petitioner and/or reimburse Petitioner's health plan for medical bills from South Texas Health System and "The University of Texas Rio Grande Valle" contained in Petitioner's Group Exhibit #16.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of $1,051.28 per week for a period of 95-1/7 weeks, commencing 1/26/2011 through 8/23/2012 and 3/23/2015 through 6/17/2015, that being the period of temporary total incapacity for work under §8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for all temporary total disability benefits and service-connected benefits paid as itemized in Respondent's Exhibit #12.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner for the medical bills contained in Petitioner's Group Exhibit #16, as provided in §8(a) and §8.2 of the Act, pursuant to the medical fee schedule, except those medical expenses related to the left elbow injury sustained in Texas on March 24, 2022. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all medical expenses previously paid through its group medical plan, pursuant to §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay Petitioner the sum of $669.64 per week for a period of 123.625 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused a 40% loss of the right leg and 17.5% loss of the left leg.

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

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

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1).*

November 7, 2024
O 102924
KAD/swj
42

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	11WC023040
Case Name	Bonita Edwards v. State of Illinois - Department of Juvenile Justice
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Caitlin Fiello

DATE FILED: 6/28/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 27, 2023 5.21%

/s/ Linda Cantrell, Arbitrator

Signature

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

June 28, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Bonita Edwards
Employee/Petitioner

v.

State of Illinois - Department of Juvenile Justice
Employer/Respondent

Case # **11** WC **023040**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, on **4/25/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 **1/25/11**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**82,000.00**; the average weekly wage was $**1,576.92**.

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

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

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

Respondent shall be given a credit of $**Any and all TTD and service-connected benefits paid (RX12)**, $**0** for TPD, $ **0** for maintenance, and $**Any and all medical expenses paid (RX12)**, for a total credit of $**Any and all TTD, service-connected, and medical benefits paid, pursuant to the stipulation of the parties.**

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

ORDER

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

Respondent shall pay Petitioner temporary total disability benefits of $**1,051.28**/week for **95-1/7th** weeks, commencing **1/26/11 through 8/23/12** and **3/20/15 through 6/17/15**, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for all temporary total disability benefits and service-connected benefits paid as itemized in Respondent's Exhibit 12.

Respondent shall pay Petitioner permanent partial disability benefits of $**669.64**/week for **123.625** weeks, because the injuries sustained caused **40%** loss of use of her right leg and **17.5%** loss of use of her left leg, pursuant to Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 6/17/15 through 4/25/23, and shall pay the remainder of the award, if any, in weekly payments.

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

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

JUNE 28, 2023

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BONITA EDWARDS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 11-WC-023040
	)	
STATE OF ILLINOIS/DEPARTMENT OF JUVENILE JUSTICE,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on April 25, 2023 on all issues. On 6/24/2011, Petitioner filed an Application for Adjustment of Claim alleging injuries to her right lower extremity as a result of falling down steps while carrying a cooler with an inmate on 1/25/2011. (PX1) On 2/21/2012, Petitioner filed an Amended Application for Adjustment of Claim alleging injuries to her left lower extremity as a result of overuse due to her injuries sustained on 1/25/2011. (PX1) On 8/29/2018, Petitioner filed a Second Amended Application for Adjustment of Claim alleging injuries to her left leg as a result of the accident that occurred on 1/25/2011. (PX1)

The parties stipulated that Respondent shall receive credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act. The parties further stipulated that Respondent shall receive credit for any and all TTD benefits, nonoccupational indemnity disability benefits, and medical expenses previously paid, which are itemized in Respondent's Exhibit 12.

The issues in dispute are causal connection, medical expenses, temporary total disability benefits, and the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 55 years old, married, with no dependent children at the time of accident. Petitioner was hired by Respondent in 1999 and was a Support Service Worker II at time of her accident. She ran the dietary department and her job duties included fixing meals, cleaning, and working with the youth who worked in the dietary hall. On 1/25/11, Petitioner was taking snacks from the dietary building to a parole party. Two youths were walking behind her carrying a cooler when they began horsing around and shoved Petitioner down a flight of limestone rock steps. Petitioner testified that the weight of the youth and the cooler landed on her right leg. She

could not bend her right knee or stand on her leg. A coworker retrieved a wheelchair for Petitioner, and she was taken to Alton Memorial Hospital by security staff.

Petitioner was provided a splint and was ultimately referred to orthopedic surgeon Dr. Daniels at SIU Physicians. She underwent physical therapy and was referred to orthopedic surgeon Dr. El-Amin who recommended surgery. Petitioner obtained a second opinion with Dr. Johnston who also recommended surgery. Dr. El-Amin performed an arthroscopic surgery on Petitioner's right knee in November 2011. She underwent physical therapy and was prescribed a cryo cuff to prevent blood clots.

Petitioner began having symptoms in her left leg due to favoring her right knee. She used a wheelchair, crutches, and a walker following surgery. She testified that she had no issues with her left leg prior to her work accident. Dr. El-Amin ordered an MRI of Petitioner's left knee in early 2012. She underwent five Supartz injections in her right knee in March and April 2012 and physical therapy that provided only temporary relief. She did not have strength to stoop, and she could not go up or down stairs. Petitioner testified she was off balance, and it was difficult to carry a pan from the stove to her sink.

Petitioner last saw Dr. El-Amin in August 2012 at which time she still had ongoing issues with her right knee. She was referred to Dr. Leutz in July 2013 who administered a pain injection to her right knee that did not provide relief. She underwent physical therapy and Viscosupplementation injections in October and November 2014 that provided temporary relief. Dr. Leutz performed a second right knee surgery in March 2015 that provided very little relief. She underwent additional right knee injections in June 2016 and continued to undergo physical therapy.

Petitioner testified that she sustained a fall in February 2018 at a courthouse. She attempted to descend a hardwood staircase and her right knee gave out. She fell down the staircase, hit her head against a wall, and landed on her left side. Petitioner testified that prior to this incident she had weakness in her right leg, but it never completely gave out. Petitioner went to the emergency room and was diagnosed with a left hip fracture. She was placed in a wheelchair for non-weight bearing and underwent physical therapy. Dr. Leutz ordered a CT scan of her left hip, but she did not require surgery.

Petitioner testified that her left hip and right knee are painful and weak making her feel off balance. Dr. Leutz opined that Petitioner would require a total knee replacement in the future. Petitioner testified she is holding off on undergoing a total knee replacement because they do not last long, and she wants to avoid a second replacement surgery. She wears a brace on her right knee almost every day, particularly if she goes anywhere that requires walking.

Petitioner testified that she has difficulty carrying things and bending her right knee. Petitioner sold her house in 2019 because she can no longer navigate stairs or tend to the small farm she had on her property. Her farm consisted of chickens, pheasants, quail, rabbits, and bottle calves, which she ran since 1995. Petitioner can no longer ride horses or motorcycles, camp, perform yard work, or raise a garden. She testified that she never knows when her knee is

going to give out and cause her to fall. She cannot play with her grandchildren. Her injuries have significantly affected her entire life, including her marital relations.

Petitioner testified she could not perform her job duties for Respondent that she did prior to her accident. Her job required her to stand and walk on concrete, lift steam table pans out of ovens that fed 200 people, clean ovens and stovetops, supervise youths, and climb up and down stairs. She testified she never had any issues or treatment for her right knee prior to 1/25/11.

On cross-examination, Petitioner testified she was able to perform some of her outdoor activities prior to her fall at the courthouse in 2018, including filling the water troughs and feeding the animals. She testified that her left side was weak, and her right knee did not always hold up. She was not able to clean out the chicken coups or barn stalls or move hay bales after her 1/25/11 accident. She testified that she moved to Tennessee in 2019 and lives close to her grandchildren.

MEDICAL HISTORY

Petitioner presented to Alton Memorial Hospital immediately following the accident. (PX3) She provided a consistent history of accident and complained of pain and swelling in her right knee. X-rays revealed a calcification adjacent to the lateral epicondyle of the femur, representing a fracture. She was provided a splint and instructed to follow up with her primary care physician.

On 1/27/11, Petitioner presented to her primary care physician's office. She was placed off work and an MRI of her right knee was ordered. The MRI was performed on 2/4/11 that revealed knee effusion, soft tissue contusion and edema, extensive abnormal increased T2 signal approximal tibia consistent with bone marrow contusion and edema, a hairline non-displaced proximal fracture, post-traumatic contusion and edema, and an ACL strain. (PX5, p. 4-6) Petitioner was referred to an orthopedic specialist and continued off work.

On 2/17/11, Petitioner was examined by Dr. Jim Daniels at SIU Healthcare. Dr. Daniels diagnosed a tibial plateau fracture and recommended physical therapy. Petitioner was placed on non-weight bearing restrictions. (PX6, p. 2-4) She began physical therapy at Jerseyville Community Hospital on 3/7/11. (PX8)

On 3/24/11, Petitioner was examined by Dr. Saadiq El-Amin at SIU. He diagnosed a tibial plateau fracture, recommended that Petitioner continue non-weight bearing, and continued Petitioner off work. Dr. El-Amin felt that if Petitioner failed to improve with conservative care, she would be a surgical candidate. (PX6, p. 26-29)

On 5/5/11, Dr. El-Amin suspected meniscal pathology. He reviewed the MRI dated 2/4/11 and believed it showed possible medial and lateral meniscal tears. He recommended arthroscopic surgery and continued Petitioner off work. (PX6, p. 31-36)

On 6/14/11, Petitioner returned to her primary care physician and requested a second opinion. She was referred to Dr. Richard Johnston at Parkcrest Orthopedics. (PX4, p. 16-20)

On 6/23/11, Petitioner was examined by Dr. Johnston who recommended a repeat MRI and sedentary restrictions. (PX9, p. 2-3) The MRI was performed on 7/25/11 and revealed internal decrease in the degree of marrow edema in the posterior lateral aspect of the proximal right tibia with signal irregularity extending to the articular surface of the right knee joint reflecting the non-displaced fracture. Also noted were probable mild partial tears or inflammatory change in the ACL and distal quadriceps and patellar tendons. A small decrease in her joint effusion was noted. (PX5, p. 11)

On 11/30/11, Dr. El-Amin performed a right partial medial meniscectomy. (PX6, p. 54; PX7, p. 7) Postoperative diagnosis was right knee medial anterior horn tear with outer bridge grade 3 lateral tibial plateau chondromalacia. Petitioner began postoperative physical therapy at Boyd Memorial Hospital on 12/21/11. (PX10)

On 1/12/12, Petitioner followed up with Dr. El-Amin and reported she was wearing her post-operative brace as instructed and she complained of left knee problems. Dr. El-Amin ordered an MRI of her left knee, continued her physical therapy, and kept her off work. The MRI was performed on 2/14/12 and revealed mild patellar tendinopathy with no tendon tear and increased T2 signal within the distal femur and proximal tibia which Dr. El-Amin opined could be due to chronic overuse or stress reaction. (PX7, p. 14)

On 3/8/12, Dr. El-Amin administered a Supartz injection into Petitioner's right knee. She was provided with a knee immobilizer and continued off work. (PX6, p. 72-76) Dr. El-Amin performed a series of five Supartz injections in March and April 2012. On 5/24/12, Dr. El-Amin continued Petitioner in physical therapy.

On 6/21/12, Petitioner was examined by Dr. Leo Ludwig pursuant to Section 12 of the Act. (RX6) He diagnosed Petitioner with a healed lateral tibial plateau fracture with chondromalacia of the lateral compartment of the right knee. Dr. Ludwig also noted Petitioner underwent a resection of an anterior horn tear of the medial meniscus, but that the meniscus had appeared normal in all MRIs. He placed Petitioner at MMI and opined she could return to work with permanent restrictions of being on her feet 2 to 3 hours at a time, no lifting heavier than 50 pounds, and no squatting, kneeling, or crawling. However, Dr. Ludwig noted that Petitioner had retired.

Petitioner last saw Dr. El-Amin on 8/23/12 at which time he recommended she continue physical therapy to focus on strengthening and range of motion of her quads and right knee. He advised she could undergo an additional course of Supartz injections in the future and instructed her to follow up on an as-needed basis. (PX6, p. 99-104) Petitioner underwent physical therapy through February 2013.

On 6/18/13, Petitioner returned to her primary care physician who ordered an updated MRI of her right knee. (PX4, p. 34-38) She was referred to Dr. Darr Leutz. (PX4, p. 39-42)

On 7/22/13, Petitioner was examined by Dr. Leutz for ongoing right knee joint pain with swelling and stiffness. She described the feeling of her kneecap being out of place at times and

she was unable to straighten her knee. Dr. Leutz administered an injection and ordered physical therapy. (PX11, p. 2-3) Petitioner started physical therapy at Boyd Memorial Hospital on 7/29/13. (PX10, p. 33-34)

On 8/26/13, Dr. Leutz opined Petitioner would require a right total knee replacement. He considered an additional right knee arthroscopic procedure with debridement synovectomy and possible multiple drilling; however, Dr. Leutz thought such a procedure would be a temporary solution and she would eventually need a total knee replacement. (PX11, p. 6-7)

On 11/4/13, Petitioner followed up with Dr. Leutz who recommended a lateral retinacular release of Petitioner's right knee with medial release, arthroscopy with limited synovectomy, and debridement of articular cartilage.

On 2/26/14, Petitioner followed up with Dr. Leutz for ongoing right knee symptoms. Dr. Leutz noted that the recommended surgery was not approved, and he recommended an updated MRI.

On 6/26/14, Section 12 examiner Dr. Ludwig reviewed additional medical records and diagnosed posttraumatic arthritis of the lateral compartment of Petitioner's right knee related to her previous lateral tibial plateau fracture. (RX7). He related Petitioner's condition to her work accident on 1/25/11. Dr. Ludwig disagreed that a total right knee replacement was appropriate and recommended viscosupplementation injections and a possible partial knee replacement.

On 10/23/14, Dr. Leutz again noted surgery was not approved and he performed a series of three viscosupplementation injections into Petitioner's right knee through 11/6/14 that did not provide relief. (PX11, p. 22-23)

On 1/29/15, a right knee MRI was performed that revealed soft tissue edema, bone marrow increased T2 signal due to contusion and edema, increased involving the distal femur posteriorly proximal tibia medially, and decreased involving the proximal tibia laterally with small meniscal tears. (PX5, p. 19-20)

On 3/20/15, Dr. Leutz performed a right knee arthroscopy, major debridement and synovectomy, chondroplasty of the lateral femoral condyle and lateral tibial plateau, with multiple drilling and abrasion arthroplasty of the lateral femoral condyle. (PX5, p. 34) Petitioner was placed off work. She underwent postoperative physical therapy.

On 6/17/15, Dr. Leutz noted Petitioner still had an occasional aching pain that woke her at night. She completed physical therapy. He assessed osteoarthritis and improving articular cartilage of the right knee. No follow up visits were scheduled.

On 9/23/15, Dr. Leutz recommended an additional round of injections into Petitioner's right knee. He administered a series of three Hyalgan injections in June 2016. (PX11, p. 50-58)

On 8/29/16, Dr. Leutz noted Petitioner had no significant improvement following the injections and he recommended an updated MRI. The MRI was performed on 12/22/16 and

revealed degeneration of the medial and lateral meniscus with blunting of the body of the medial meniscus resulting from postsurgical change, mild tricompartmental osteoarthritis greatest in the lateral compartment which had progressed since the prior study, and a small joint effusion. (PX5, p. 121-122)

On 1/4/17, Dr. Leutz administered another injection into Petitioner's right knee and ordered x-rays of her right hip. (PX11, p. 64-66) On 2/13/17, Dr. Leutz recommended a third arthroscopic procedure. (PX11, p 70-72)

On 9/21/17, Petitioner was examined a second time by Section 12 examiner Dr. Ludwig. (RX8) He noted Petitioner's complaints of pain on both sides of her right knee and occasional swelling, locking, and giving way. Petitioner reported occasionally wearing a brace but was not wearing one at the time of examination. Examination of Petitioner's left knee showed neutral alignment, no swelling or effusion, and nontender joint lines. Her left knee had range of motion from 0-140 degrees of flexion and normal extension power of 5/5. Petitioner had full range of motion in her left hip without pain and the ligaments in the left knee were stable. Examination of Petitioner's right knee showed neutral alignment with no visible swelling, range of motion of 0-130 degrees flexion, and her right hip had full range of motion with no pain. The extension power of the right knee was a normal 5/5 and all ligaments were stable. Dr. Ludwig noted that since his previous examination there has been a 10-degree loss of flexion in Petitioner's right knee, some mucinous degeneration of the medial and lateral meniscus, mild tricompartmental osteoarthritis, and a small joint effusion. Dr. Ludwig opined that all treatment prior to his initial examination on 6/21/12 was reasonable and necessary. He opined that the cortisone injections and viscosupplementation injections provided after 6/21/12 were reasonable and necessary. However, Dr. Ludwig opined that the extensive physical therapy and repeat arthroscopy performed in 2015 were not necessary. He further opined that no additional medical treatment was necessary for Petitioner's right knee and recommended that Petitioner live with her current situation because of the likelihood of a poor result if further intervention was attempted.

On 2/26/18, Petitioner presented to the emergency room at Passavant Area Hospital following a fall down stairs at a courthouse. Petitioner complained of pain in her left hip, left knee, left shoulder, and low back. X-rays of her left hip revealed a small non-displaced fracture of the greater trochanter. (PX5, p. 151-162)

On 3/14/18, Petitioner returned to Dr. Leutz and reported her injury of 2/26/18. Petitioner had been taking Norco and Tramadol for pain. X-rays of her left hip confirmed a non-displaced fracture of the greater trochanter. (PX11, p. 78-84) Petitioner began physical therapy at Boyd Memorial Hospital on 3/28/18. (PX10, p. 63)

On 4/11/18, Dr. Leutz recommended that Petitioner continue physical therapy and ordered a CT scan of Petitioner's left hip that revealed a fracture involving the greater trochanter. (PX5, p. 181)

On 5/7/18, Dr. Leutz recommended continued physical therapy and a transition into a home exercise program. (PX11, p. 92-96)

On 7/25/19, Petitioner returned to Dr. Ludwig for a third Section 12 examination. (RX10) Dr. Ludwig reviewed x-rays taken after Petitioner's fall on 2/26/18. He noted the fracture at the left greater trochanter. Dr. Ludwig noted x-rays of Petitioner's left knee and lumbar spine were negative for fracture. He reviewed Dr. Leutz's medical records that showed conservative treatment with walking aides and that the fracture had healed. Dr. Ludwig performed a physical examination that revealed Petitioner walked with a mild limp, but she did not use any walking aids. Her right knee had a slight valgus alignment with no effusion or swelling. Petitioner's right knee range of motion was -5 to 100 degrees of flexion with normal extension power at 5/5. Examination of Petitioner's left knee showed normal extension power and stable ligaments. Petitioner's right hip showed 100 degrees forward flexion, 45 degrees external rotation, 20 degrees internal rotation, and 40 degrees of abduction. Forward flexion strength of the right hip was normal at 5/5, as well as the abduction strength at 5/5. Petitioner complained of some low back and buttock pain with resisted use of her left hip, but no pain over the greater trochanter. Dr. Ludwig opined that Petitioner's left greater trochanter fracture was unrelated to her right knee issues and the initial accident on 1/25/11. He opined that Petitioner did not require further treatment for her right knee or left hip.

Petitioner suffered additional falls as a result of her right knee giving way which resulted in her seeking medical care. (PX12, 13, 14, and 15)

Dr. Leo Ludwig testified by way of deposition on 3/14/19 and 8/18/22. (RX 9, 11) Dr. Ludwig is a board-certified orthopedic surgeon. His testimony was consistent with all of his reports. On 3/14/19, Dr. Ludwig opined that Petitioner's right lateral tibial plateau fracture and post-traumatic arthritis of the lateral compartment was causally connected to her work injury on 1/25/11. He testified that at the time of his initial examination on 6/21/12, Petitioner had reached MMI from the standpoint of her initial surgery and conservative treatment. He testified that in a situation like Petitioner's where you have an arthritic joint that is due to a trauma, it is a condition that is probably going to advance slowly over time and continue to be an issue. It is not something that is going to resolve itself. As of 6/21/12, Dr. Ludwig did not believe that further surgery was indicated.

Dr. Ludwig testified that in September 2017 he did not believe Petitioner required additional surgery because she did not have significant joint space narrowing and was not even close to being bone on bone. He testified that an arthroscopic procedure would not provide significant relief of post-traumatic arthritis and Petitioner did worse following her initial surgery.

Dr. Ludwig testified that Petitioner will require surgery in the future as her condition will worsen over time. He stated that Petitioner is the type of patient that should be followed and provided with occasional conservative treatment such as cortisone injections and serial x-rays until she is bone on bone and requires a knee replacement. He testified that if that was indicated, it is related to the original injury of 1/25/11 because it is a post-traumatic arthritic situation. Dr. Ludwig opined that Petitioner's treatment for the fracture, immobilization, physical therapy, arthroscopic surgery, cortisone injections, and viscosupplementation injections were reasonable and necessary. He testified that the necessity of the second arthroscopic procedure was a "soft indication", and he personally would not have performed a second arthroscopy for post-traumatic

arthritis. He testified that the fact Petitioner's condition was worse following the second surgery supports his opinion that it was not reasonable or necessary.

Dr. Ludwig testified that Petitioner would require low-impact exercise, Tylenol, and an occasional cortisone injection in the future and ultimately an arthroplasty if indicated which was related to her work accident. He agreed that on 6/21/12 he recommended permanent restrictions as a result of Petitioner's work accident. He agreed that in 2014 he opined that if Petitioner's condition did not improve with viscosupplementation injections she might be a candidate for a partial total knee replacement on the lateral side of her right knee. He agreed that Petitioner presented with an antalgic gait. He agreed that some orthopedic surgeons perform total knee replacements on patients prior to them being bone on bone.

On 8/18/22, Dr. Ludwig testified that he examined Petitioner in 2019 related to a fall she sustained on 2/26/18. He opined that Petitioner's left hip fracture was not related to her work accident on 1/25/21 because it is common fall people to fall down stairs, especially with no handrailing, and x-rays showed minimal arthritis in Petitioner's right knee when he examined her. He opined that the amount of impairment to Petitioner's right knee related to the 1/25/11 injury was not a significant enough contribution to her 2018 fall. Dr. Ludwig agreed that Petitioner provided a history of stepping down with her right leg and her knee gave out.

Dr. Ludwig testified that he did not place Petitioner on any permanent restrictions and that she would be able to perform most of the duties of someone who works in the position that Petitioner did at the juvenile justice center. He did not have his Section 12 report in front of him to review. He testified that Petitioner may have some limitations and difficulty with deep squatting, going up and down stairs, and carrying objects.

CONCLUSIONS OF LAW

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

In addition to or aside from expert medical testimony, circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 III.App.3d 92, 96-97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 111.2d 59, 442 N.E.2d 908 (1982).

In addition, the employee is entitled to benefits where a second injury occurs due to treatment for the first. See *Shell Oil Co. v. Indus. Comm'n*, 2 Ill. 2d 590, 119 N.E.2d 224 (1954); *International Harvester Co. v. Indus. Comm'n*, 46 Ill.2d 238, 263 N.E.2d 49 (1970); *Lincoln Park Coal & Brick v. Indus. Comm'n*, 317 Ill. 302, 148 N.E. 79 (1925); *Harper v. Indus. Comm'n*, 24 Ill.2d 103, 180 N.E.2d 480 (1962), *Brookes v. Indus. Comm'n*, 78 Ill.2d 150, 399 N.E.2d 603 (1979); *Tee Pak, Inc. v. Indus. Comm'n*, 141 Ill.App.3d 520, 490 N.E.2d 170 (1986). Courts have consistently held that for an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the

original work-related injury and the ensuing condition. *Vogel v. Indus. Comm'n*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). "Every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). Where the second injury occurs due to treatment for the first, there is no break in the causal chain. *International Harvester supra*.

There does not appear to be a dispute that the current condition of ill-being in Petitioner's right knee is causally connected to the work injury on 1/25/11. Respondent's Section 12 examiner Dr. Ludwig opined that Petitioner's right lateral tibial plateau fracture and post-traumatic arthritis of the lateral compartment was causally connected to her work accident. He testified that Petitioner's post-traumatic arthritic joint will likely advance slowly over time resulting in the need for surgery. He opined that Petitioner is the type of patient that should be followed and provided with occasional conservative treatment such as cortisone injections and serial x-rays until she is bone on bone and requires a knee replacement. He testified that if surgery was indicated, it is related to the original injury of 1/25/11 because it is a post-traumatic arthritic situation.

Respondent disputes causal connection with regard to Petitioner's left hip. Petitioner credibly testified that she fell down stairs on 2/26/18 when her right knee gave way and she fractured her left hip. Dr. Ludwig agreed that Petitioner told him she was stepping down with her right leg and her knee gave out. However, Dr. Ludwig testified that Petitioner's left hip fracture was not related to her work accident of 1/25/11 because it is common for people to fall down stairs, especially with no handrailing, and x-rays showed minimal arthritis in Petitioner's right knee when he examined her on 7/25/19. He opined that the amount of impairment to Petitioner's right knee related to the 1/25/11 injury was not a significant enough contribution to her 2018 fall. The Arbitrator does not find Dr. Ludwig's causation opinion credible as it contradicts his own medical records and opinions with respect to Petitioner's right knee.

There is no dispute that Petitioner underwent significant treatment to her right knee as a result of the 1/25/11 work accident. She sustained a lateral tibial plateau fracture which is a fracture of the shinbone at the knee. On 11/30/11, Petitioner underwent a partial medial meniscectomy followed by extensive physical therapy, a knee immobilizer and brace, and Supartz injections.

In June 2012, prior to Petitioner undergoing a second surgery, Dr. Ludwig opined that Petitioner could return to work with permanent restrictions of being on her feet 2 to 3 hours at a time, no lifting greater than 50 pounds, and no squatting, kneeling, or crawling. He recommended that Petitioner engage in home exercises to keep her knee as strong as she could and to maintain range of motion. When Dr. Ludwig examined Petitioner a second time in September 2017, just five months prior to her fall in 2018, he noted her complaints of pain on both sides of her right knee and occasional swelling, locking, and giving way. He noted that since his previous examination there had been a 10-degree loss of flexion in Petitioner's right knee, some mucinous degeneration of the medial and lateral meniscus, mild tricompartmental osteoarthritis, and a small joint effusion. He opined that the cortisone and viscosupplementation

injections provided after he saw her in 2012 were reasonable and necessary. Dr. Ludwig recommended that Petitioner live with her current condition. At the time of Dr. Ludwig's deposition on 8/18/22, he testified that Petitioner may have some limitations and difficulty with deep squatting, going up and down stairs, and carrying objects. He could not recall placing Petitioner on permanent restrictions in 2012.

The evidence supports that the amount of impairment to Petitioner's right knee related to the 1/25/11 injury was a significant enough contribution to her 2018 fall. Petitioner's testimony was consistent with her treating records that she had decreased strength and range of motion and ongoing pain in her right knee after both surgeries in November 2011 and March 2015. Her treating physician and Dr. Ludwig opined that she would eventually require a partial or total knee replacement due to the arthritic condition in her right knee caused by the work accident.

Based on the evidence, the Arbitrator finds that Petitioner's current conditions of ill-being in her right knee and left hip are causally connected to the work accident of 1/25/11.

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

Upon a claimant's establishment of a causal nexus between injury and illness, employers are responsible for the employees' medical care reasonably required in order to diagnose, relieve, or cure the effects of the claimant's injury. Plantation Mfg. Co. v. Indus. Comm'n, 294 Ill.App.3d 705, 691 N.E.2d 13 (2000); F & B Mfg. Co. v. Indus. Comm'n, 325 Ill.App.3d 527, 758 N.E.2d 18 (1st Dist. 2001).

Based upon the above finding as to causal connection, the Arbitrator finds that Petitioner's treatment was reasonable, necessary, and related to the work accident. Therefore, Respondent shall pay Petitioner's medical bills contained in Petitioner's Group Exhibit 16, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all medical expenses previously paid under Section 8(a) of the Act, and a credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

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

Petitioner claims entitlement to temporary total disability benefits from 1/26/11 through 8/23/12 and 3/20/15 through 6/17/15. Respondent disputes liability for TTD benefits and alleges it paid Petitioner service-connected time (full scale wages) from 1/25/11 through 2/1/11 and temporary total disability benefits from 2/2/11 through 5/31/12, representing payments in the amount of $66,490.07. (RX12)

Petitioner underwent a right partial medial meniscectomy on 11/30/11. On 1/12/12, Dr. El-Amin ordered a repeat MRI of Petitioner's left knee, continued her physical therapy, and kept her off work. On 3/8/12, Dr. El-Amin administered a Supartz injection into Petitioner's right knee, prescribed a knee immobilizer, and continued Petitioner off work. Dr. El-Amin performed

a series of five Supartz injections in March and April 2012. On 5/24/12, Dr. El-Amin continued Petitioner in physical therapy. On 6/21/12, Respondent's Section 12 examiner Dr. Ludwig opined Petitioner was at MMI and recommended permanent restrictions of being on her feet 2 to 3 hours at a time, no lifting heavier than 50 pounds, and no squatting, kneeling, or crawling. However, Dr. Ludwig noted that Petitioner had retired. Petitioner last saw Dr. El-Amin on 8/23/12 at which time he recommended she continue physical therapy and could consider additional Supartz injections in the future. He instructed Petitioner to follow up on an as-needed basis.

On 3/20/15, Dr. Leutz performed a right knee arthroscopy, major debridement and synovectomy, chondroplasty of the lateral femoral condyle and lateral tibial plateau, with multiple drilling and abrasion arthroplasty of the lateral femoral condyle. Petitioner was placed off work. On 6/17/15, Dr. Leutz noted Petitioner still had an occasional aching pain that woke her at night. She completed physical therapy. He assessed osteoarthritis and improving articular cartilage of the right knee. No follow up visits were scheduled.

There was no evidence that Respondent offered Petitioner a position within the light duty restrictions imposed by Dr. Ludwig on 6/21/12. Neither party submitted a job description of the duties required of a Support Service Worker II and there was no evidence that Dr. Ludwig reviewed a job description prior to opining she could return to work with specific restrictions. In fact, Dr. Ludwig testified that Petitioner "would be able to perform most of the duties of someone who works in the position that Petitioner did at the juvenile justice center". He did not clarify which job duties Petitioner would not be able to perform. He did not describe any of Petitioner's job duties or what position Petitioner held with Respondent.

Petitioner testified that she could not perform her job duties for Respondent that she did prior to her accident. Her job required her to stand and walk on concrete, lift steam table pans out of ovens that fed 200 people, clean ovens and stovetops, supervise youths, and climb up and down stairs. Petitioner did not testify that she retired from employment due to her work-related injuries or provide a date of retirement. She was 55 or 56 years old at the time she retired according to Dr. Ludwig's record of June 2012. There is no evidence that Petitioner attempted to obtain employment after she retired.

Based on the evidence and the findings as to causal connection, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits. Respondent shall pay Petitioner temporary total disability benefits from 1/26/11 through 8/23/12 and 3/20/15 through 6/17/15, representing 95-1/7th weeks, at the TTD rate of $1,051.28/week, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for all temporary total disability benefits and service-connected benefits paid as itemized in Respondent's Exhibit 12.

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

The Arbitrator notes that Petitioner's work accident on 1/25/11 predates the amendment of the Act in September 2011, specifically the criteria set forth in Section §8.1b.

Petitioner underwent a right partial medial meniscectomy on 11/30/11. She underwent extensive post-operative treatment, including physical therapy, Supartz injections, a knee immobilizer, and permanent restrictions of no standing longer than 2 to 3 hours at a time, no lifting heavier than 50 pounds, and no squatting, kneeling, or crawling. On 3/20/15, Petitioner underwent a second arthroscopy consisting of major debridement and synovectomy, chondroplasty of the lateral femoral condyle and lateral tibial plateau, with multiple drilling and abrasion arthroplasty of the lateral femoral condyle. Petitioner again underwent extensive post-operative treatment including physical therapy, injections, and bracing. Petitioner also sustained a non-displaced fracture of the left greater trochanter. She underwent physical therapy and surgery was not recommended.

Dr. Ludwig testified that Petitioner had an arthritic joint as a result of the work accident which was probably going to advance slowly over time and require surgical intervention. He opined that Petitioner would likely require occasional conservative treatment such as cortisone injections and serial x-rays until she is bone on bone and required a knee replacement. He agreed that Petitioner presented with an antalgic gait, and she would have limitations and difficulty with deep squatting, going up and down stairs, and carrying objects.

Petitioner testified she has not undergone the total knee replacement because they do not last long, and she is holding off as long as she can to avoid a second replacement surgery. She has pain and weakness in her knee and wears a brace almost every day, particularly if she goes anywhere that requires walking. She testified that she is off balance and has difficulty carrying things and bending her knee. Petitioner testified that her right knee injury has significantly affected every aspect of her life, including her marital relations. She stated she sold her house in 2019 because she can no longer navigate stairs, garden, or maintain her small farm. She can no longer ride horses or motorcycles, camp, perform yard work, or play with her grandchildren. She is cautious with physical activities because she never knows when her knee is going to give out and cause her to fall.

Petitioner testified she could not perform her job duties for Respondent that she did prior to her accident. Her job required her to stand and walk on concrete, lift steam table pans out of ovens that fed 200 people, clean ovens and stovetops, supervise youths, climb up and down stairs. There was no testimony or evidence that Petitioner retired due to her work injuries, the date she retired, a job description of Petitioner's pre-accident position with Respondent, or whether Respondent could accommodate her permanent work restrictions.

Based upon the foregoing factors and the record as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% loss of use of her right leg and 17.5% loss of use of her left leg, as provided under Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 6/17/15 through 4/25/23, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC001053
Case Name	Megan Fricke v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0525
Number of Pages of Decision	14
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Aaron Wright

DATE FILED: 11/7/2024

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MEGAN FRICKE,

Petitioner,

vs. NO: 23 WC 01053

STATE OF ILLINOIS – CHESTER MENTAL HEALTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, causal connection, prospective medical, and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 19, 2024 is hereby affirmed and adopted.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

November 7, 2024
O102924
AHS/ldm
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC001053
Case Name	Megan Fricke v. State of Illinois/Chester Mental Health Center
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Jason Coffey
Respondent Attorney	Aaron Wright

DATE FILED: 1/19/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 17, 2024 4.97%

/s/ Linda Cantrell, Arbitrator
Signature

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

January 19, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Megan Fricke
Employee/Petitioner

v.

State of Illinois/Chester Mental Health Center
Employer/Respondent

Case # **23** WC **001053**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin, IL**, on **12/8/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **11/9/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**39,586.63**; the average weekly wage was $**761.28**.

On the date of accident, Petitioner was **36** years of age, ***single*** with **3** dependent children.

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

Respondent shall be given a credit of $**3,045.30** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**3,045.30**.

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

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Group Exhibit 4, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all medical expenses paid through its group medical plan under Section 8(j) of the Act.

Respondent shall provide and pay for prospective medical care recommended by Dr. Golz, including, but not limited to, a right arthroscopic rotator cuff repair, and all reasonable and necessary attendant care.

Respondent shall pay Petitioner temporary total disability benefits of $**507.52**/week for **7-4/7**th weeks, commencing **7/29/23 through 9/19/23**, as provided in Section 8(b) of the Act. Respondent shall receive a credit for TTD benefits paid in the amount of $3,045.30 pursuant to the stipulation of the parties.

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.

JANUARY 19, 2024

Arbitrator Linda J. Cantrell
ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

MEGAN FRICKE,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 23-WC-001053
	)	
STATE OF ILLINOIS/	)	
CHESTER MENTAL HEALTH CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACTS

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on December 8, 2023, pursuant to Section 19(b) of the Act. On 1/13/23, Petitioner filed an Application for Adjustment of Claim alleging she sustained accidental injuries to her right shoulder while mopping floors on 11/9/22. (AX2) The issues in dispute are accident, causal connection, medical expenses, temporary total disability benefits, and prospective medical care. The parties stipulated that Respondent is entitled to a credit for any and all medical expenses paid through its group medical plan under Section 8(j) of the Act, and a credit of $3,045.30 in temporary total disability benefits paid.

TESTIMONY

Petitioner was 36 years old, single, with three dependent children at the time of the alleged accident. Petitioner has been employed by Respondent for over four years as a Support Service Worker. Her housekeeping duties include cleaning toilets, wiping down beds and common areas, mopping, sweeping, and buffing floors. Petitioner testified that on 11/9/22 she was mopping the breakroom and felt pain in her right shoulder. She was not able to lift her arm above shoulder level. Petitioner testified that mopping is part of her daily work routine. Petitioner reported the injury to her supervisor who instructed her to visit the on-site medical facility. Following evaluation, Petitioner was instructed to go to convenient care at Chester Memorial Hospital. Petitioner testified that prior to her accident she never received medical treatment or underwent an MRI for her right shoulder.

Petitioner treated with her primary care physician, Dr. Molnar, who recommended physical therapy and placed her on work restrictions which were accommodated by Respondent. Petitioner requested to return to full duty work after completing a few weeks of physical therapy. She testified that she returned to work and realized it was not a good

decision as she was in pain. Petitioner was placed on light duty restrictions and referred to Dr. Golz at Southern Illinois Orthopedics.

Petitioner testified that she continued to work within her light duty restrictions until June 2023 when she exhausted Respondent's 180-day light duty policy. She was placed off work and began receiving temporary total disability benefits. Petitioner underwent a Section 12 examination with Dr. Farley at which time her TTD benefits were terminated.

Petitioner is currently working full duty for Respondent. She testified that she is trying to work through her pain. Petitioner has been recommended for surgery which she desires to undergo.

On cross-examination, Petitioner demonstrated that when she mops she grips the mop handle with both hands together at approximately chest level and not with one hand at the top of the mop handle. Petitioner testified that she does not mop side-to-side but moves the mop in various motions depending on the layout of the area she is cleaning. She testified that she mopped other areas that morning before she went to the breakroom to continue mopping. She estimated that she mopped for 30 minutes altogether off and on as they completed their morning tasks. She denied telling Dr. Farley that she had only been mopping for two minutes before she felt pain in her shoulder.

MEDICAL EVIDENCE

Petitioner completed a Workers' Compensation Employee's Notice of Injury on 11/9/22 at 9:15 a.m. (RX1) She alleged that she injured her right shoulder and shoulder blade at 9:00 a.m. that morning while mopping the kitchen area in Unit B breakroom. Petitioner also completed an Incident Report and reported a consistent history of injury. (RX1) She reported she had pain lifting her arm with slight numbness in her arm and hand. Her right shoulder blade hurt to touch.

On 11/9/22, Sara Chandler, FNP-C, completed an Initial Workers' Compensation Medical Report. (RX1) She noted that Petitioner was mopping the breakroom on Unit B when she felt a sharp pain in her right shoulder. Petitioner had increased pain lifting and moving her arm and slight numbness into her hand. She rated per pain at 8/10 in the scapula area. NP Chandler assessed a right shoulder strain with muscle spasms in the trapezius and referred Petitioner to Convenient Care at Chester Memorial Hospital.

Petitioner presented to the emergency department at Chester Memorial Hospital at 10:05 a.m. on 11/9/22. (PX1) She reported sudden right shoulder pain while mopping floors at work. It was noted that Petitioner could not raise her arm to shoulder level without significant pain. X-rays of the right shoulder were negative for fracture or dislocation.

Petitioner followed up with her primary care physician at Chester Clinic on 11/10/22. (PX2) She reported a consistent history of injury. She was prescribed Naprosyn and instructed to rest her shoulder. Petitioner returned to the clinic on 11/16/22 with increased pain while working, specifically doing laundry. Petitioner was referred to physical therapy.

On 11/28/22, Petitioner returned to Chester Clinic with increasing right shoulder pain. It was noted that the physical therapy referral had not yet been authorized. Petitioner began physical therapy at Therapy and Sports Rehab on 12/9/22. On 12/19/22, Petitioner requested to return to work as her shoulder pain had improved. She returned to Herrin Clinic on 1/4/23 and reported increased shoulder pain since her return to full duty work. An MRI was ordered.

A right shoulder MRI was performed on 1/11/23 that revealed moderate supraspinatus tendinopathy with a small interstitial tear, moderate infraspinatus tendinopathy, and fluid and edema within the subacromial/subdeltoid bursa. (PX1) Petitioner was referred for an orthopedic evaluation.

On 1/26/23, Petitioner presented to the Orthopaedic Institute of Southern Illinois (OISI). (PX3, Ex. 2, p. 33-35, 39) NP Robert Deaton noted Petitioner had a sudden onset of right shoulder pain while mopping at work on 11/9/22. She was currently working light duty and was right hand dominant. She rated her pain 5/10 and increased with activities. Physical examination demonstrated full forward flexion and abduction with discomfort and mild weakness with external rotation against resistance. The remainder of her rotator cuff strength was intact. She was assessed with traumatic incomplete tear of the right rotator cuff and was given a Lidocaine injection in the right shoulder subacromial space. The MRI was reviewed and showed a partial thickness tear to the supraspinatus. NP Deaton recommended home exercises, light duty restrictions of no lifting, pushing, pulling, repetitive motion, or lifting greater than five pounds with her right arm. She was instructed to return to the clinic in 6 to 8 weeks.

On 3/9/23, Petitioner returned to OISI and reported the second round of physical therapy that did not improve her symptoms. Medications and the Lidocaine injection provided mild improvement. She continued to perform light duty work and had difficulty performing daily activities. Arthroscopic surgery in the form of a mini open rotator cuff repair was recommended. Petitioner's light duty restrictions were continued.

On 4/28/23, Dr. Golz's office noted that workers' compensation approved Petitioner's surgery but they received another notice that the surgery was not approved and Petitioner was to undergo an independent medical examination.

On 7/11/23, Petitioner was examined by Dr. Timothy Farley pursuant to Section 12 of the Act. (RX3) Dr. Farley noted that Petitioner was mopping the floor with her right hand on top of the mop handle and moved in a side-to-side fashion. Her right hand was chest level in front of her as she was pushing down on the mop. He noted that Petitioner was two minutes into the activity when she noticed sharp pain in her right shoulder. Dr. Farley reviewed Petitioner's medical records and performed a physical examination. He did not have the MRI images for review. He felt that the MRI report indicated no objective pathology of a shoulder injury and that the small interstitial tear of the supraspinatus was a completely normal age-related finding that would not be considered symptomatic or acute given her mechanism of injury. He opined that pushing down on a mop would not add any strain to the supraspinatus and would cause the opposite affect and unload the supraspinatus. He diagnosed subjective right shoulder pain with no evidence of a work injury. He opined that Petitioner was not a surgical candidate, she did not

require further treatment, she had reached MMI, and she could return to work without restrictions.

On 8/15/23, Dr. Golz reviewed Dr. Farley's report with Petitioner and noted Dr. Farley did not personally review the MRI films. Dr. Golz noted that Petitioner had no right shoulder complaints prior to 11/9/22 with an acute onset of pain while using a heavy mop at work. Petitioner had a constant aching pain at rest and moderate to severe pain with activity. She had significant nocturnal complaints and was not able to lay on her side. He noted that Petitioner was off work. Dr. Golz continued to recommend surgery. He disagreed with Dr. Farley and opined that the MRI changes were not age-related. He continued Petitioner's light duty restrictions pending surgery. On 9/28/23, Dr. Golz again continued Petitioner's light duty restrictions.

Dr. Robert Golz testified by way of deposition on 10/13/23. (PX3) Dr. Golz is a board-certified orthopedic surgeon. He performs approximately 50 surgeries per month. He testified that Dr. Farley did not review the MRI films and made no specific inquiry into Petitioner's job duties other than stating she was a housekeeper for Respondent. In response to Dr. Farley's report, Dr. Golz testified that mopping for a short period of time in itself may not have caused Petitioner's injury, but her overall work duties of filling the bucket, carrying it, and the weight of the mop, likely aggravated and caused her present right shoulder complaints. Dr. Golz found no evidence that Petitioner had any issues with her right shoulder until her sudden onset of symptoms on 11/9/22. He stated that Petitioner was working full duty without restrictions prior to 11/9/22 and she has not been able to return to her work duties since the accident.

On cross-examination, Dr. Golz testified that he assumed the mop was heavy but he did not ask Petitioner how much it weighed. Likewise, he did not know who much the mop bucket weighed or how long Petitioner had been working before her accident. He testified that the MRI showed signal changes within the insertion of the supraspinatus which he did not quantitively measure. He testified that the only way to know if the changes seen on the MRI existed prior to 11/9/22 was to have a prior MRI for comparison. He testified that the radiologist noted fluid and edema within the subacromial bursa consistent with inflammation. He opined that Petitioner's MRI findings were not consistent with a 37-year-old with normal life-style activities.

Dr. Timothy Farley testified by way of deposition on 10/3/23. (RX4) Dr. Farley is a board-certified orthopedic surgeon. Dr. Farley testified that Petitioner reported she was holding the mop with her right hand on top, somewhat at chest level, and her left hand below mopping in a side-to-side fashion. He testified that Petitioner reported her right shoulder pain started about two minutes into mopping. His physical examination revealed normal range of motion and strength of the rotator cuff, tenderness all over her shoulder including areas that would not normally be tender, pain with Neer's, Hawkins', O'Brien's, and Speed's maneuvers, and excellent strength and sensation in her arm, wrist, and fingers. He opined that an interstitial tear is on the inside of a tendon that is age-related, and a small tear of approximately 1 mm would not typically be seen when performing a rotator cuff repair because it is inside the tendon by 6 to 7 millimeters of normal tendon. He testified that tears that extend to the side of the tendon are not typically surgically repaired unless they are greater than 50%.

Dr. Farley vehemently disagreed that Petitioner was a surgical candidate as she did not have an acute rotator cuff tear and he expected a worse outcome than a nonsurgical approach. He testified that in a patient with Petitioner's condition he would recommend a corticosteroid injection into the subacromial space, physical therapy, and over-the-counter anti-inflammatories.

Dr. Farley testified that the mechanism of injury described to him by Petitioner would in no way cause a rotator cuff tear. He understood that Petitioner's right hand was resting on the top of the mop while she was mopping back and forth, which he opined does not activate the supraspinatus to cause an injury or aggravate a pre-existing condition. He stated that pushing down on a mop is pushing the opposite way of the supraspinatus which does not apply pressure to cause injury. He stated that mopping causes very little pressure. He opined that Petitioner did not require physical restrictions.

On cross-examination, Dr. Farley agreed he did not review the MRI films. He agreed that the radiologist noted moderate infraspinatus and supraspinatus tendinopathy. He testified that tendinopathy is an age-related condition. He had no evidence that Petitioner had any issues with her right shoulder prior to 11/9/22.

CONCLUSIONS OF LAW

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

"To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n,* 797 N.E.2d 665, 671 (2003). "In the course of employment" refers to the time, place, and circumstances surrounding the injury. *Id.* That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment.

An injury "arises out of" one's employment if its origin is in a risk connected with or incidental to the employment. *Id.* A risk is incidental to the employment "…when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. In order to meet this burden, a claimant must prove that the risk of injury is peculiar to the work *or* that he or she is exposed to the risk of injury to a greater degree than the general public. *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848. Illinois courts recognize the following three categories of risks: "1) risks distinctly associated with the employment; 2) risks personal to the employee; and 3) neutral risks which have no particular employment or personal characteristics." *Id.* A risk is distinctly associated with the employment if the employee was "performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." *Id.*

Petitioner credibly testified that on 11/9/22 she was mopping the breakroom and had an acute onset of right shoulder pain. She testified that mopping was part of her daily work routine as a Support Service Worker. She immediately reported the incident to Respondent and sought

medical treatment within an hour of its occurrence. Petitioner completed a Workers' Compensation Employee's Notice of Injury and an Incident Report that day which was consistent with her testimony. Respondent's on-site Nurse Practitioner noted a consistent history of injury and acute symptoms in Petitioner's right shoulder. NP Chandler noted Petitioner had pain with lifting and moving her arm and slight numbness into her hand the morning of the incident. NP Chandler assessed a right shoulder strain with muscle spasms in the trapezius and referred Petitioner to Convenient Care at Chester Memorial Hospital. Petitioner subsequently reported a consistent history of injury to all of her treating physicians.

There was no evidence that Petitioner was performing acts that she was not instructed or expected to perform at the time of her injury. Based on the record as a whole, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 11/9/22.

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

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident and decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill.2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96-97, 197 Ill.Dec. 502, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 666 Ill.Dec.347, 442 N.E.2d 908 (1982).

Petitioner was working full duty without restrictions prior to 11/9/22. She performed housekeeping duties for over four years that included cleaning toilets, wiping down beds and common areas, mopping, sweeping, and buffing floors. She denied having any issues or treatment with respect to her right shoulder prior to 11/9/22. The evidence supports that Petitioner sustained a sudden onset of right shoulder pain while mopping a floor at work on 11/9/22. She immediately reported the incident, completed accident reports, and presented to Respondent's on-site medical clinic within one hour of the accident. NP Chandler noted that Petitioner felt a sharp pain in her right shoulder while mopping and she had increased pain lifting and moving her arm and slight numbness into her hand. NP Chandler assessed a right shoulder strain with muscle spasms in the trapezius and referred Petitioner to Convenient Care at Chester Memorial Hospital. Petitioner reported a consistent history of injury to all of her treating physicians. Her symptoms failed to improve with conservative treatment, including medications, physical therapy, activity restrictions, and a Lidocaine injection.

The Arbitrator finds the opinions of Dr. Golz more persuasive than those of Dr. Farley. Dr. Golz noted that Dr. Farley did not review the actual MRI films and he disagreed with Dr. Farley that the MRI changes were age-related or consistent with a 37-year-old person with normal life-style activities. Dr. Golz testified that the MRI showed signal changes within the insertion of the supraspinatus, fluid and edema within the subacromial bursa consistent with inflammation, and a partial thickness tear in the supraspinatus. He testified that the only way to know if the changes seen on the MRI existed prior to 11/9/22 was to have a prior MRI for comparison. When Petitioner presented to his office on 1/26/23 she had pain at 5/10 that

increased with activities. Petitioner was not able to perform her full work duties and her symptoms were not improving with conservative treatment. He diagnosed a traumatic incomplete tear of the right rotator cuff and recommended an arthroscopic surgery in the form of a mini open rotator cuff repair. Dr. Golz found no evidence that Petitioner had any issues or treatment to her right shoulder prior to the sudden onset of symptoms on 11/9/22.

Dr. Farley opined that Petitioner did not sustain an injury and that the mechanism of injury that Petitioner described to him could in no way cause a rotator cuff tear. He understood that Petitioner's right hand was resting on the top of the mop while her left hand was below at chest level and she was mopping in a side-by-side fashion. He opined that pushing down on a mop does not activate the supraspinatus to cause an injury or aggravate a pre-existing condition. He testified that mopping causes very little pressure. He understood that Petitioner was mopping for two minutes before she felt pain.

Petitioner demonstrated at arbitration that she held the mop with both hands together in front of her at approximately chest level and not with her right hand on top of the mop handle. She testified that she did not mop side-to-side, but used the mop in various motions depending on the layout of the area she was cleaning. She testified that she mopped other areas that morning before she went to the breakroom to continue mopping. Petitioner estimated that she mopped for 30 minutes altogether off and on as they completed their morning tasks. She denied telling Dr. Farley that she had only been mopping for two minutes before she felt pain in her shoulder.

Based on the entirety of the evidence, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the work accident of 11/9/22.

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

Issue (K): Is Petitioner entitled to prospective medical care?

Dr. Golz testified that Petitioner's treatment was reasonable and necessary and that she failed conservative treatment, including medications, physical therapy, activity restrictions, and a Lidocaine injection. Petitioner is currently working full duty and works through her pain. She desires to undergo the arthroscopic open rotator cuff repair recommended by Dr. Golz. Despite causation, Dr. Farley opined that he would recommend a corticosteroid injection into the subacromial space, physical therapy, and over-the-counter anti-inflammatories for a patient with Petitioner's condition. He opined that Petitioner was not a surgical candidate because she did not have an acute rotator cuff tear and surgery would likely result in a worse outcome than nonsurgical treatment.

Based on the findings as to accident and causal connection, the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses. Therefore, Respondent shall pay the medical expenses outlined in Petitioner's Group Exhibit 4, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all medical expenses paid through its group medical plan under Section 8(j) of the Act.

The Arbitrator finds that Petitioner is entitled to receive prospective medical care recommended by Dr. Golz, including, but not limited to, a right arthroscopic rotator cuff repair, and all reasonable and necessary attendant care.

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

Petitioner claims entitlement to temporary total disability benefits from 7/29/23 through 9/19/23. Petitioner testified that Respondent accommodated her light duty restrictions until June 2023, at which time she exhausted Respondent's 180-day light duty policy. She was placed off work by Respondent and began receiving temporary total disability benefits. Petitioner testified that her TTD benefits were terminated shortly after her Section 12 examination by Dr. Farley on 7/11/23. Respondent paid TTD benefits in the amount of $3,045.30; however, no evidence was admitted at arbitration that reflects what dates Petitioner was paid TTD benefits. Respondent did not dispute the period of TTD benefits claimed, but denied liability based on accident and causation.

Petitioner testified that she is currently working full duty for Respondent, and she is trying to work through her pain until surgery. Petitioner did not testify what date she returned to full duty work; however, she demands TTD benefits through 9/19/23. Dr. Golz initially placed Petitioner on light duty restrictions of no lifting, pushing, pulling, repetitive motion, or lifting greater than five pounds with her right arm on 1/26/23. He continued her restrictions on 8/15/23 and 9/28/23 pending surgery.

Based on the above findings, Respondent shall pay Petitioner temporary total disability benefits of $507.52/week for 7-4/7ths weeks, commencing 7/29/23 through 9/19/23, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit for TTD benefits paid in the amount of $3,045.30.

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

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC026059
Case Name	Rebecca Sayles v. State of Illinois - Alton Mental Health
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0526
Number of Pages of Decision	10
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Nicole Werner, Caitlin Fiello

DATE FILED: 11/7/2024

/s/Amylee Simonovich, Commissioner

Signature

24IWCC0526

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rebecca Sayles,

Petitioner,

vs. NO: 22 WC 026059

State of Illinois – Alton Mental Health,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission agrees with the Arbitrator's analysis of the Section 8.1(b) factors, however, we disagree with the level of disability awarded. This injury was more than a simple meniscus tear and surgical repair. At the time of the surgery, Dr. Bradley excised 50% of the posterior horn of the medial meniscus, removed 3 very large loose bodies, and upon finding the ACL was torn at the anterior junction, he also debrided the anterior ACL. PX4, p. 8. Dr. Bradley noted the ACL was 75% torn. PX4, p.7. Dr. Bradley noted even before the surgery that there was a "very significant" possibility of post meniscal degenerative disease, which could require a total knee arthroplasty in the future. PX4, p. 6.

Given the totality of the injury and the anticipated degeneration of Petitioner's knee following the medically necessary surgery, the Commission finds an award of 27.5% loss of use of the left leg is appropriate.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 21, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay Petitioner permanent partial disability benefits of $998.02/week for 59.13 weeks, as the injuries sustained caused 27.5% loss of use of the left leg, as provided in Section 8(e) of the Act.

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review.

November 7, 2024
o: 9/10/2024
AHS/kjj
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC026059
Case Name	Rebecca Sayles v. State of Illinois/Alton Mental Health
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Caitlin Fiello

DATE FILED: 2/21/2024

/s/ Jeanne AuBuchon, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 21, 2024 5.10%

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

February 21, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

REBECCA SAYLES
Employee/Petitioner

v.

STATE OF IL/ALTON MENTAL HEALTH
Employer/Respondent

Case # **22** WC **26059**

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **January 19, 2024**. By stipulation, the parties agree:

On the date of accident, **9/20/22**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**156,000.00**, and the average weekly wage was $**3,000.00**.

At the time of injury, Petitioner was **49** years of age, ***married*** with **1** dependent children.

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

Respondent shall be given a credit of $**ALL PAID** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**ALL PAID**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $**998.02**/week for a further period of **53.75** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **the 25% loss of the left leg**.

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

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

Jeanne L. AuBuchon
Signature of Arbitrator
February 21, 2024

PROCEDURAL HISTORY

This matter proceeded to trial on January 19, 2024. The sole issue in dispute is the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 49 years old and employed by the Respondent as a registered nurse. (AX1, T. 8-9) On September 20, 2022, she was administering a gluteal injection to a violent patient in a chair such that she had to get underneath the patient. (T. 9) When she was getting up, her knee popped twice, and she experienced pain. (T. 10) She acknowledged having an anterior cruciate ligament (ACL) repair in 2014. (Id.) She was released around 2015 and was working full duty at the time of her September 20, 2022, accident. (Id.)

The Petitioner sought treatment at the Alton Memorial Hospital emergency department on September 23, 2022. (PX3) The Petitioner was diagnosed with unspecified left knee pain and recommended to follow up with an orthopedist. (Id.)

On October 3, 2022, Petitioner saw Dr. Matthew Bradley, an orthopedic surgeon at St. Louis Spine and Orthopedic. (PX4) Dr. Bradley recommended nonsteroidal anti-inflammatories and Tylenol, a home exercise program and an MRI. (Id.) The MRI was performed on October 11, 2022. (PX5) On October 24, 2022, Dr. Bradley reviewed the MRI and found a complex nondisplaced tear of the posterior horn of the medial meniscus that extended into the meniscal root with mild medial compartmental osteoarthritis and small to moderate knee joint effusion. (PX4) Dr. Bradley noted it was unclear on the MRI whether the root ligament was unstable or if the tear propagated to the ligament. He recommended arthroscopic surgery and stated that the Petitioner may require a total knee arthroplasty in the future due to her condition. (Id.)

On January 3, 2023, Dr. Bradley performed an arthroscopic partial medial meniscectomy, arthroscopic loose body excision, and debridement of a partial ACL tear. (PX4, PX6) At follow-up visits, the Petitioner was doing well. (PX4) She returned to work full duty on February 6, 2023, and was released at maximum medical improvement on March 2, 2023. (Id.)

The Petitioner went back to Dr. Bradley on May 11, 2023, and reported a feeling of instability in her knee and felt her knee was going to hyperextend from time to time. (Id.) Dr. Bradley found the Petitioner's quadricep was slightly weak and recommended she start formal physical therapy to focus on her stability and strengthening of her quadricep. (Id.) The Petitioner underwent physical therapy at Apex Physical Therapy from May 15, 2023 through July 6, 2023. (PX7) On August 17, 2023, the Petitioner reported to Dr. Bradley that she had some mild lateral pain in the area of her IT insertion from time to time, though it was fairly minimal and significant improved. (Id.) Dr. Bradley found the Petitioner had good stability and strength about her knee and again placed her at maximum medical improvement. (Id.)

On October 2, 2023, the Petitioner saw Dr. Bradley and reported that she was doing great until two weeks prior, at which time she began noticing some swelling and pain along the medial aspect of her knee. (Id.) Following new x-rays and her physical examination, Dr. Bradley found some fairly significant medial joint space narrowing and loss of cartilage. (Id.) He said she had exacerbation of her underlying degenerative disease of the left knee and discussed treatment options of activity modification, weight loss, anti-inflammatories, ice and heat as needed, and injection therapy. (Id.) Dr. Bradley performed an intra-articular corticosteroid injection and stated that if the Petitioner continued to have exacerbations, he would consider viscoelastic supplementation or hyaluronic acid type injections. (Id.)

The Petitioner testified that before the surgery, she could not bear weight on her knee and had sharp pain in the knee with swelling, ecchymosis, and bruising. (T. 12) She said the surgery and physical therapy improved her symptoms (T. 12-13)

The Petitioner still works as a registered nurse for the Respondent and has no trouble performing her job duties. (T. 8-9, 15) She said that periodically experienced a sharp pain, and her knee would give out. (T. 14, 18) She said she had difficulty getting up from a kneeling position and going downhill and down stairs. (T. 14) She said her ankle swells with prolonged activity, and kneeling aggravating her symptoms, for which she takes ibuprofen a couple of times a week. (T. 14-15) Her hobbies of hiking, dancing and fishing had been affected by her knee symptoms, and sometimes her symptoms wake her up when sleeping. (T. 15) She said she can't get in and out of a bathtub and does not carry her grandbabies anymore. (T. 16)

CONCLUSION

Issue 10: What is the nature and extent of the Petitioner's injury?

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

(i) **Level of Impairment.** Neither party submitted an AMA rating. Therefore, the Arbitrator uses the remaining factors to evaluate the Petitioner's permanent partial disability.

(ii) **Occupation.** The Petitioner continues to work as a registered nurse for the Respondent and faces the same physical demands. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 49 years old at the time of the injury. She has many work years left during which time he will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

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

(v) **Disability.** The Petitioner experiences swelling and her knee giving out, has difficulty getting up from a kneeling position and going downhill and down stairs. Although she has no trouble performing her job duties, the injury has affected her hobbies and activities of daily living. The Arbitrator puts some weight on this factor.

Based on the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent injuries that resulted in the 25% loss of her left leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC026445
Case Name	Dustin Meredith v. Republic Services
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0527
Number of Pages of Decision	23
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Matthew Coleman
Respondent Attorney	Edward A. Coghlan

DATE FILED: 11/8/2024

/s/Kathryn Doerries, Commissioner

Signature

DISSENT: /s/Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DUSTIN MEREDITH,

Petitioner,

vs. NO: 19 WC 026445

REPUBLIC SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, reasonableness and necessity of medical treatment, and prospective medical treatment, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 26, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $67,871.50. 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 8, 2024
O 91024
KAD/swj
42

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

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

DISSENT

I respectfully dissent from the majority's decision finding Petitioner's left rotator cuff tear was casually related to the work accident and awarding prospective medical benefits for the left shoulder rotator cuff surgery recommended by the treating surgeon, Dr. Pizinger. In this case, Petitioner sustained a nondisputed accident on February 5, 2019, resulting in diagnoses for SLAP tear and impingement in the left shoulder. Petitioner also sustained a cervical spine injury which is not at issue on review. Petitioner underwent arthroscopic shoulder surgery on November 6, 2019, during which Dr. Pizinger performed a labral debridement, subacromial decompression, and open biceps tenodesis. Dr. Pizinger testified he was able to "eyeball" the rotator cuff during the surgery and noted there was no rotator cuff tear present. (PX1 at 45-46) Petitioner later underwent a cervical spine fusion with Dr. Templin on December 9, 2020. Dr. Pizinger testified that Petitioner began having more shoulder pain after the cervical spine surgery. On May 12, 2021, approximately eighteen months after the 2019 shoulder surgery, Petitioner underwent a repeat MRI arthrogram of the shoulder which demonstrated a full-thickness tear of the supraspinatus tendon. Dr. Pizinger opined that Petitioner must have torn his rotator cuff during post-operative therapy and recommended surgery. In forming this opinion, Dr. Pizinger reasoned that Petitioner must have torn his rotator cuff in therapy because in his view there was no other explanation. Dr. Pizinger made this clear when he testified, "*I do not know of any other incidents that you could attribute it to at this point*." (PX1 at 34) (Emphasis added)

Respondent disputed causation as to the rotator cuff tear. Petitioner had been off work and collecting TTD benefits from October 4, 2019 through the date of trial for the cervical spine injury, and the therapy records were devoid of any reported trauma or re-injury sustained in therapy.

Additionally, Dr. Pizinger never recorded any history describing a subsequent trauma or re-injury to the shoulder. Approximately four months after the rotator cuff tear was diagnosed, Petitioner appeared for an examination with Respondent's Section 12 physician, Dr. Bare, and despite having several months to reconstruct events, Petitioner did not report any new shoulder injury sustained in therapy or elsewhere, nor did he attribute his rotator cuff tear to any repetitive overuse type of injury or overexertion during therapy.

I believe Dr. Pizinger's causation opinion was based on speculation and conjecture and would find Petitioner failed to prove by the preponderance of the credible evidence that the left rotator cuff tear was causally related to the post-operative therapy and strengthening. Accordingly, I would deny prospective medical benefits for the recommended surgery.

The medical evidence and testimony revealed the following germane to the rotator cuff tear and the question of causation. Petitioner first presented to Dr. Pizinger's office on July 24, 2019, where he was evaluated by a nurse practitioner. Petitioner presented with very specific anterior joint line pain and pain in the scapular region. Petitioner also exhibited pain down the biceps, primarily with lifting the arm. The nurse practitioner found Petitioner's clinical presentation suspicious for a SLAP tear and she ordered an MRI arthrogram. Dr. Pizinger agreed Petitioner's findings were consistent for SLAP tear and he testified that provocative maneuvers performed by his nurse practitioner failed to elicit any pain across the supraspinatus. (PX1 at 16)

Dr. Pizinger personally reviewed the MRI arthrogram. (PX1 at 17) Dr. Pizinger testified that the superior labral tissue had irregularities and inflammation consistent for labral tear. He further testified that the rotator cuff tendons appeared to be intact with no signs for obvious tear. (PX1 at 20) Dr. Pizinger testified that Petitioner exhibited normal rotator cuff strength during his examination on August 19, 2019. Dr. Pizinger testified he elicited pain with Speed's test and O'Brien's test consistent for SLAP tear. (PX1 at 20-21)

On November 6, 2019, Dr. Pizinger performed a debridement, subacromial decompression, and open biceps tenodesis. (PX1 at 27) Dr. Pizinger opined that the SLAP tear was causally related to the accident. (PX1 at 30) On cross-examination, Dr. Pizinger confirmed he was able to "eyeball" the rotator cuff during the surgery and confirmed there were no rotator cuff tears. (PX1 at 45-46) Petitioner's shoulder improved and on May 21, 2020, Dr. Pizinger noted the shoulder was stable and it was his recommendation that the therapist "show him strength conditioning exercises he can do on his own." (PX2 at 39)

Dr. Pizinger was aware that Petitioner was treating concurrently with Dr. Templin for the cervical spine injury and continued seeing Petitioner for follow-up. Dr. Pizinger testified that Dr. Templin subsequently performed spine surgery in December 2020, which provided a good resolution of Petitioner's radiating symptoms going down the arm. Dr. Pizinger saw Petitioner on January 8, 2021, at which time Petitioner complained of shoulder pain over the front of the acromion while laying for a prolonged period of time with his arm elevated. (PX2 at 29) It was Dr. Pizinger's assessment that Petitioner had impingement type pain secondary to scar tissue. Dr.

Pizinger further noted this was Petitioner's only shoulder-related complaint at the time and commented "I think this is a good sign at this point." *Id*.

On March 26, 2021, Petitioner reported shoulder pain during therapy while performing "small-ball movements" but no injury or popping sensation was documented. (PX2 at 19) On April 1, 2021, a therapist at ATI Physical Therapy noted a "dent" involving the long head bicep muscle belly. (PX2 at 16) There was nothing documented concerning the rotator cuff. The therapist questioned whether the finding could possibly suggest "loosening of the long head tendon upon tenodesis?" and recommended further consultation with the "MD in regards to bicep symptoms/representation." (*Id*.) There was no mention of any re-injury to the shoulder. On April 27, 2021, Dr. Pizinger's nurse practitioner observed what she described as a divot near the proximal portion of the humerus and noted Petitioner complained of pain across the front of the shoulder. (PX2 at 27) Petitioner did not mention any new injury. She ordered a second MRI arthrogram. Dr. Pizinger testified he reviewed the updated study on June 7, 2021, and noted a full-thickness tear of the supraspinatus. (PX1 at 32) When Dr. Pizinger next saw Petitioner on June 7, 2021 to discuss the imaging results, Dr. Pizinger noted that Petitioner's pain was different in that it was localized in the area of the supraspinatus. (PX1 at 44)

During his deposition, Dr. Pizinger verified that the supraspinatus tear seen in the second MRI arthrogram was not present during the shoulder surgery on November 6, 2019. (PX1 at 32-33) Dr. Pizinger testified that the rotator cuff tear occurred at some point in time between the November 6, 2019 surgery and the May 12, 2021 MRI arthrogram. (PX1 at 33) This time window amounted to a period of one year, 6 months and seven days, or approximately 18 months. Dr. Pizinger evidently did not believe the reported pain while performing "small-ball movements" in therapy was of any significance. Dr. Pizinger testified that tears of the supraspinatus can occur with every day activities, primarily lifting. (PX1 at 12) Despite the absence of any reported new injury, Dr. Pizinger opined that the rotator cuff tear must have been causally related to the post-operative therapy because Petitioner was in a weakened condition and there was no other explanation. Dr. Pizinger testified to the following:

> *I do not know of any other incidents that you could attribute it to at this point*. With the extensive amount of strength conditioning that he has had to endure, that's the explanation, and is causally associated with the original injury and treatment. (PX1 at 34) (Emphasis added)

On cross-examination, Dr. Pizinger was questioned whether he had seen any records from physical therapy or from Dr. Templin or from any other provider documenting any sort of re-injury or new trauma to the shoulder. Dr. Pizinger could not recall ever seeing any documented subsequent injuries or incidents involving the shoulder. (PX1 at 47) Interestingly, after the second MRI arthrogram showed the supraspinatus tear, Dr. Pizinger ordered continued therapy for the shoulder on May 27, 2021, suggesting that Dr. Pizinger was unconcerned with the therapy in relation to the supraspinatus tear. (PX2 at 24)

At Respondent's request, Dr. Bare performed two Section 12 examinations, the second of which is relevant to the rotator cuff tear. Dr. Bare testified the second MRI arthrogram showed a full-thickness rotator cuff tear with about 1½ centimeters of retraction. (RX1 at 15) Dr. Bare testified the tear had not been present on either the standard MRI (without contrast) or the MRI arthrogram performed in 2019; he noted both were good high-quality studies and both were negative for rotator cuff tears. Dr. Bare then testified that he was unable to explain why Petitioner now had a rotator cuff tear two years later. (RX1 at 16) Dr. Bare testified that the tear could not be attributed to the work accident sustained on February 5, 2019, since both the initial MRI and first MRI arthrogram performed in 2019 did not show any tear. Like Dr. Pizinger, Dr. Bare also concluded, "And so somewhere between 2019 and 2021 he tore his rotator cuff." (RX1 at 16) On cross-examination, Dr. Bare agreed Petitioner could have possibly re-injured his shoulder during therapy, subject to the caveat that "anything's possible." (RX1 at 37; T. 90) That being said, Dr. Bare further testified that Petitioner never mentioned having any new injury when he appeared for the second IME.

At trial, Petitioner never testified to any new injury or aggravation. Petitioner testified that the therapeutic modalities utilized in therapy included stretching exercises, using an exercise ball, and using a rowing machine; however, he never testified to any difficulties encountered during therapy and he never provided any testimony describing how or when his new shoulder pain localized in the area of the supraspinatus came about.

Decisions of the Commission must 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). Employees seeking benefits under the Act bear the burden to prove all elements of their claims by a preponderance of the evidence, including that a causal connection exists between the condition of ill-being and the work accident. *Bahler Trucking v. Illinois Workers' Compensation Comm'n*, 2024 IL App (5th) 231008WC-U, P 64. While I agree employers have continuing liability where a work injury itself causes or contributes to a subsequent injury, the evidence in this case fails to support compensability for Petitioner's rotator cuff tear.

Every natural consequence that flows from an injury which arose out of and in the course of a claimant's employment is compensable under the Act, unless caused by an independent intervening accident. *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 742, 640 N.E.2d 1 (1994). An independent intervening accident is one which breaks the chain of causation between a work-related injury and an ensuing disability or injury. *Id.* The law requires application of a "but for" test and finds compensability for an ultimate injury or disability where it was caused by an event which would not have occurred had it not been for the original injury. See *International Harvester Co. vs. Industrial Comm'n*, 46 Ill. 2d 238, 247, 263 N.E.2d 49 (1970) ("Where the work injury itself causes a subsequent injury, however, the chain of causation is not broken.") That other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant. *Lasley Construction Co. vs. Industrial Comm'n*, 274 Ill. App. 3d 890, 893, 655 N.E.2d 5 (1995)

Where treatment or therapy being provided for a compensable work injury causes a new injury, it is well established that the employer has continuing liability for the ensuing condition. For example, in *Tee-Pak, Inc. vs. Industrial Comm'n*, 141 Ill. App. 3d 520, 490 N.E.2d 520 (1986), involving a claimant prescribed the drug lithium to treat chronic headaches resulting from a head trauma, the medication caused side effects which later rendered the claimant unemployable. On appeal, the employer argued that lithium was not a proper treatment for headaches and was itself the cause of the present disability. The Court rejected the employer's argument, stating "the chain of events remains intact when the subsequent disability *results from treatment* for the first injury." *Tee-Pak, Inc. vs. Industrial Comm'n*, 141 Ill. App. 3d 520, at 526. (Emphasis added) This principle has been reaffirmed in several decisions. See *Bradford Craig vs. Prairie Material Sales, Inc*., 2014 Ill. Wrk. Comp. LEXIS 165, 13 IWCC 1040**,** affirmed on appeal, *Prairie Material Sales v. Illinois Workers' Compensation Comm'n*, 2015 IL App (4th) 141075WC-U (after sustaining right knee injury, claimant later felt his opposite left knee "pop" when a physical therapist directed claimant to lie down and positioned his knee in order to compare ranges of motion); *Lewis v. Illinois Workers' Compensation Comm'n*, 2021 IL App (5th) 200302WC-U (after sustaining a back injury, claimant developed avascular necrosis in both shoulders secondary to steroid injections); and *Jackson vs. DHL*, 2009 IWCC 767; 2009 Ill. Wrk. Comp. LEXIS 760 (after sustaining a back injury, claimant "felt a crack/pop in his knee which caused immediate pain" while performing "ball squats" in physical therapy). Additionally, employers may have continuing liability for overuse or overcompensation injuries involving the opposite limb during the post-operative recovery period. See e.g. *Goodman vs. State of Illinois, Vienna Correctional Center*, 2024 Ill. Wrk. Comp. LEXIS 511, 24 IWCC 0442, awarding prospective medical for surgery to repair the opposite shoulder.

In each of the cases cited above, no speculation was needed to causally connect the subsequent injury or condition to the original work injury; in each case the mechanism of injury or instrumentality involved in the causal link was clearly identified and documented, i.e., side-effects of prescribed medication, complication from steroid injections, knee popping during therapy. Unlike the examples cited above, the medical records in the case at bar contain no documented subsequent trauma, popping, or aggravating event sustained by Petitioner during his post-operative physical therapy. There were also no documented complaints attributed to repetitive overuse during therapy. And aside from summarily describing the various modalities used in therapy, Petitioner was unable to offer any mechanism of injury at trial. Due to the dearth of testimony from Petitioner as to the cause of the rotator cuff tear injury and the absence of any documented re-injury or aggravating event in the treatment records, Petitioner was left with only Dr. Pizinger's opinion.

Expert testimony must be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Comm'n*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC. If an expert's opinion is based on facts not properly supported by the record, then the opinion should be disregarded. *Caterpillar Tractor*

Co. vs. Industrial Comm'n, 98 Ill. 2d 400, 456 N.E.2d 1366 (1982) Additionally, if the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue and may look "behind" the opinion to examine the underlying facts.

Based on the credible medical evidence, it is uncontested that Petitioner did not have any rotator cuff tear resulting directly from the work accident of February 5, 2019. The first MRI performed without contrast suggested a small low grade partial thickness intrasubstance tear in the distal insertional fibers; however, that radiological finding was later found non-existent by Dr. Pizinger based on his personal review of the MRI arthrogram and his intraoperative observation during the November 2019 surgery. Further, Dr. Bare reviewed the initial MRI films and opined that there were no pathological entities on the MRI or MRI arthrogram. (RX1 at 11) As such, I do not rely on that first radiological interpretation. Both Dr. Pizinger and Dr. Bare agreed that Petitioner subsequently developed a supraspinatus tear at some point in time during the 18-month period between the November 6, 2019 surgery and the second MRI arthrogram performed on May 12, 2021. The Arbitrator noted "there is no evidence of an intervening injury" during this 18-month period. (Arbitration Decision at 10) Dr. Bare candidly admitted he had no explanation as to how the tear developed. Dr. Bare agreed it was possible that Petitioner could have sustained a tear during therapy; however, that was subject to caveat that "anything's possible." Dr. Pizinger opined that the tear must have occurred during therapy; however, he based that opinion on the premise that there was no other explanation. I find Dr. Pizinger's opinion to be at odds with his order for continued shoulder therapy on May 27, 2021, suggesting that Dr. Pizinger was unconcerned with the therapy after the supraspinatus tear was diagnosed. (PX2 at 24) I further find his opinion was infused with speculation and conjecture. Compare, *Avery vs. Frank's Masonry*, 2012 Ill. Wrk. Comp. LEXIS 45; 12 IWCC 31 (rejecting doctor's causation opinion where the doctor reasoned "there was simply no other explanation.") I therefore find Dr. Pizinger's reasoning and opinion not credible.

Also, Dr. Pizinger's opinion ignores alternative possible explanations. Indeed, Dr. Pizinger admitted that ordinary activities of daily living can cause rotator cuff tears. (PX2 at 12) Dr. Pizinger further testified that slip and falls can cause rotator cuff tears. He further testified, "There are a variety of ways in which tears can occur." *Id.* Dr. Pizinger, who admitted he did not have an independent recollection of Petitioner at the time of his deposition (PX2 at 12), had no knowledge of Petitioner's outside physical activities which included jogging and swimming and a health club membership at the YMCA. (T. 37)

Additionally, I believe the majority's finding that a weakened post-operative condition was a contributing causative factor is not factually supported. The labrum and biceps insertion were injured and in a weakened condition following the surgical intervention, and if Petitioner's *labrum had re-torn*, the continuing liability for a second surgical labral repair would not be in doubt. Compare, *PAR Electric vs. Illinois Workers' Compensation Comm'n*, 2018 IL App (3d) 170656WC (subsequent accidents did not break the chain of causation where claimant sustained a

new SLAP tear determined to be an extension or enlargement of claimant's original labral tear which had not yet completely healed). Here, however, Petitioner's labrum was not re-torn and the rotator cuff represents a different aspect of the shoulder anatomy. Dr. Pizinger provided a conclusory opinion that the "shoulder" was weakened but offered no testimony explaining *why* the supraspinatus he found intact during surgery was weakened. Where a medical witness provides an opinion without further explanation or elaboration, the opinion may be considered incomplete and accorded less weight. See *Collazo vs. Eklind Tool Co*., 2018 Ill. Wrk. Comp. LEXIS 1362, 18 IWCC 560 (where the Commission affirmed the arbitrator's finding that the treating physician "simply determined that the Petitioner's employment caused her CTS because the Petitioner reported performing computer work for six years" but [h]is causation opinion failed to explain why Petitioner's symptoms were work related."); and *Cole vs. State of Illinois, Illinois Veteran's Home*, 2011 Ill. Wrk. Comp. LEXIS 900, 11 IWCC 816 (where the Commission affirmed the arbitrator's finding that the treating surgeon's recommended three level cervical fusion was not reasonable and necessary "because he *failed to explain* his rationale for the proposed treatment.") (Emphasis added.) Based on the limited evidence before us, I do not reach the conclusion that Petitioner's intact supraspinatus tendon was in a weakened condition.

Finally, the adjacency of the supraspinatus to the labrum does not automatically mean that the supraspinatus tear was a natural consequence flowing from the SLAP tear. This case is somewhat analogous with the change in lumbar spine pathology encountered in *Smith vs. National Freight*, 10 IWCC 0523, 2010 Ill. Wrk. Comp. LEXIS 594. In that case, the claimant sustained a low back injury while employed as a driver for Fischer Lumber and was about to undergo a L3-4 microdiscectomy when he had another accident one day before the scheduled surgery while driving for National Freight. The second accident caused a change in pathology at the adjacent level, resulting in a revised surgical recommendation for two-level lumbar laminectomy and fusion at L3-4 *and L4-5*. In affirming the arbitrator's decision, the Commission determined that the second accident was a subsequent intervening accident that broke the chain of causation because the second accident caused a new injury to "a different disc level" and that the claimant's "present condition was not a natural consequence flowing from" the first accident. *Id*. On judicial review, the Appellate Court affirmed, finding that second accident resulted in an altered condition of ill-being which included: (1) a change in symptoms, (2) a change in pathology, (3) and a change in the type of surgical intervention needed to address the condition of ill-being. See *National Freight Industries vs. Illinois Workers' Comp. Comm'n*, 2013 IL. App (5th) 120043WC. In the case at bar, Petitioner's original work-related shoulder injury produced anterior joint line pain with biceps pain while lifting and clinical findings consistent for a SLAP tear, which was then verified with an MRI arthrogram, and surgically repaired in November 2019. About 18 months later, Petitioner presented with a different pain localized over the supraspinatus and a new tear to the supraspinatus was identified in the second MRI arthrogram completed in May 2021, which now requires a different type of surgical repair, that being a rotator cuff repair different than the labrum repair performed in 2019. The change in pathology encountered in *National Freight* is similar to the change in pathology here.

Therefore, based upon the totality of the medical evidence and the record, including Petitioner's testimony, I would find that Petitioner failed to prove his subsequent rotator cuff tear was causally related to the work accident that occurred on February 5, 2019. For all the above reasons, I respectfully dissent from the majority's affirmance of the arbitration award directing Respondent to authorize and pay for the rotator cuff repair recommended by Dr. Pizinger.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC026445
Case Name	Dustin Meredith v. Republic Services
Consolidated Cases	
Proceeding Type	19(b) 8(A) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jessica Hegarty, Arbitrator

Petitioner Attorney	Matthew Coleman
Respondent Attorney	Edward A. Coghlan

DATE FILED: 6/26/2023

THE INTEREST RATE FOR THE WEEK OF JUNE 21, 2023 5.17%

/s/ Jessica Hegarty, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b) 8(A)

Dustin Meredith
Employee/Petitioner

v.

Republic Services
Employer/Respondent

Case # **19** WC **026445**

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 **Jessica Hegarty** Arbitrator of the Commission, in the city of **Kankakee**, on **March 8, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **February 5, 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*** 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 with regard to his ***cervical spine is*** causally related to the accident.

Petitioner's current condition of ill-being with regard to his ***left shoulder is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**63,902.28**; the average weekly wage was $**1,228.89**.

On the date of accident, Petitioner was **30** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**149,112.60** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**149,112.60.**

ORDER

- Respondent shall pay *directly to Petitioner* reasonable and necessary medical services of $67,771.50, as provided in Sections 8(a) and 8.2 of the Act.

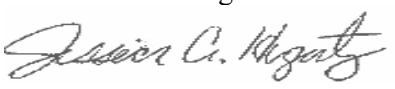
- Petitioner is entitled to temporary total disability benefits in the amount of $819.26 per week for the time period October 4, 2019 through March 8, 2023 (178 and 5/7 weeks). The Arbitrator further finds Respondent has made payments to the full extent of its liability for this time period as it stipulated to its liability for the cervical spine injury and awards a credit to Respondent for TTD paid in the amount of $149,112.60.

- Respondent is liable for and shall authorize the left shoulder rotator cuff surgery recommended by Dr. Pizinger and all postoperative care and modalities recommended by Dr. Pizinger, pursuant to Section 8(a) of the Act.

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

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

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



Signature of Arbitrator

JUNE 26, 2023

ICArbDec19(b)

ADDENDUM TO THE DECISION OF THE ARBITRATOR

This matter proceeded to hearing on March 8, 2023, in Kankakee, Illinois. (Arb. 1) Petitioner was the only witness to testify at the hearing. Respondent does not dispute that Petitioner sustained a work-related cervical spine injury on February 5, 2019, that necessitated a cervical fusion, and that Petitioner was temporarily totally disabled from October 4, 2019, through June 15, 2021, and was entitled to maintenance benefits from June 16, 2021, through the date of the hearing, March 8, 2023, as a result of his cervical spine injury. (Arb. 2)

Respondent disputes the causal connection between Petitioner's February 5, 2019, accident, and his left shoulder condition, associated medical treatment, including surgery performed in November of 2019, and prospective left shoulder surgery currently recommended by Petitioner's treating surgeon. (Arb. 1; Arb. 2)

On February 5, 2019, the Petitioner was 29-years-old and had been employed for the past four years by Respondent as a garbage truck driver with residential and commercial collection routes. In the course of his residential garbage routes, Petitioner drove a front-end, side-loading, garbage truck, equipped with an automated mechanical arm that would grab, lift, and dump the contents of a garbage bin into the truck's hopper. Petitioner made between 300 and 500 stops per day on his residential routes. Half of these stops required Petitioner to manually dispose of items that were not placed inside garbage bins. In such instances, Petitioner would get out of the truck, crouch down, pick the item up, carry it over to the truck, and hoist it into the truck's garbage receptacle. Items that required manual disposal included mattresses, toilets, and water softener tanks that weighed as much as 200 lbs.

Petitioner testified that he worked for Respondent in the rain, snow, sleet, sun, and dark.

Petitioner testified that he had a heathy left shoulder prior to his accident. He had not sought medical treatment for any left shoulder issues and was physically able to perform all of his job duties for Respondent prior to his accident.

Regarding his accident, Petitioner testified that on February 5, 2019, he was working a residential garbage route when he encountered a toilet along his route that required manual disposal. Petitioner got out of the truck, bent down, picked up and carried the toilet, when he stepped over an ice bank and began to slip. Petitioner avoided falling backward onto the ground by pushing the toilet away from his body with his left arm which he then used to grab the truck. Petitioner reported the incident to Respondent and finished his route for the day.

The following day, Petitioner reported to work, at which time Respondent scheduled an appointment at their occupational provider where Petitioner presented the following day and began treatment with Dr. John Fiszer.

The records from OSF St. Elizabeth Medica Center show that Petitioner presented on February 7, 2019, to Dr. John Fiszer with a history of intense and sudden left shoulder pain following a work-related accident consistent with Petitioner's testimony. (PX4, 1-5) Petitioner reported sharp pain and aching in his anterior and posterior left shoulder that extended into his neck. Petitioner also complained of numbness and tingling in his left shoulder when his left arm rested on a steering wheel. He further complained of a needle-like sensation from his shoulder to the tip of his left finger when he raised his left arm. (Id.) On exam, Dr. Fiszer noted extreme restriction in Petitioner's range of motion, tenderness to palpation mostly over the anterior aspect near the AC joint, a positive drop arm test, along with positive Hawkins, AC compression, and lift-off tests. Dr. Fiszer noted Petitioner's history and clinical presentation was consistent with a rupture of the supraspinatus tendon. Petitioner was fitted with a sling and restricted from any use of his left arm, including driving. (Id)

On February 12, 2019, Dr. Fiszer noted Petitioner's report of persistent left shoulder symptoms. On exam, the doctor noted decreased strength and range of motion along and positive findings pursuant to provocative testing. Left shoulder x-rays were significant for a possible AC joint sprain although Dr. Fiszer noted a "real possibility" of a rotator cuff tear. (Id.) The doctor continued Petitioner's work restrictions and ordered an MRI. (Id.)

On February 18, 2019, Petitioner underwent a left shoulder MRI without contrast at OSF St. Elizabeth Medical Center. (Id., 21) The interpreting radiologist noted the scan was negative for a full-thickness rotator cuff tear but showed findings of mild supraspinatus tendinopathy/contusion and bone marrow edema/hypertrophy along with subchondral cysts compatible with mild degenerative arthritis with superimposed low-grade AC sprain. (Id.)

On February 22, 2019, Dr. Fiszer noted improvement in Petitioner's left shoulder pain although Petitioner reported persistent numbness and tingling in his left hand. (Id., 22) Dr. Fiszer reviewed the recent MRI noting a small low grade partial thickness tear in the distal insertional fibers of the supraspinatus tendon and findings consistent with mild degenerative arthritis and a superimposed low grade AC sprain. Dr. Fiszer maintained Petitioner's work restrictions (no use of left arm, no driving). (Id., 24)

In March 2019, Petitioner requested that Dr. Fiszer ease up his work restrictions. (Id., 23)

On May 29, 2019, Petitioner presented to Mohammed Ahmad Awad, DO (Orthopaedic Surgery) who noted that Petitioner had been in physical therapy which had significantly helped him regarding his left shoulder pain and range of motion. (RX 2) Dr. Awad noted Petitioner would continue to make progress if he continues physical therapy. (Id.) Dr. Awad noted Petitioner could start to advance his lifting to weightbearing as tolerated and advised Petitioner he would likely make small improvements over the next 1 to 2 months. The doctor released Petitioner to full duty work as of June 3, 2019. A primary diagnosis of a left shoulder AC sprain was noted. (Id)

Petitioner testified that on June 3, 2019, he returned to work for Respondent on a restricted-duty basis, riding along on garbage routes in a supervisory role. After a period of time, Petitioner was asked to fill in for a co-worker at which time he felt pain in his left shoulder to the point where Petitioner felt he could not perform his job duties for Respondent.

On July 24, 2019, Petitioner presented for initial consult to the nurse practitioner at the office of Dr. Ryan Pizinger, an orthopedic surgeon. (PX2, 62) Petitioner complained of left shoulder pain with left arm numbness that radiated down to his fourth and fifth digits of his left hand. (Id.) Petitioner reportedly had undergone 29 physical therapy sessions that helped with his range of motion but failed to relieve his pain. Petitioner was taking multiple medications including Tramadol and Prednisone and other anti-inflammatory medications that helped a little. On exam, it was noted that Petitioner had "very specific anterior joint line pain" with occasional pain in his biceps primarily when lifting something. The nurse practitioner noted "very obvious symptoms for a SLAP tear" in Petitioner's left shoulder. A left shoulder MR arthrogram and EMG was ordered. (Id.) Dr. Pizinger spoke with Petitioner about off work versus light duty restrictions and Petitioner was "very concerned" about losing his job as multiple drivers at work had been let go. Petitioner was released to full-duty work. (Id.)

On August 7, 2019, Petitioner underwent MR arthrogram which found no evidence of a SLAP tear although rotator cuff impingement syndrome was noted along with downward sloping of the lateral aspect of the distal acromion, type II acromion, supraspinatus and subscapularis tendinosis and thickening without tear or muscle atrophy, mild fraying of the anterior glenoid without significant contrast uptake.

On August 19, 2019, Petitioner followed up at Dr. Pizinger's office where the nurse practitioner reviewed the recent imaging noting no signs of tearing in the supraspinatus although the superior labral tissue showed irregularities and inflammation within the anterosuperior region consistent with intrasubstance tearing along with signal change within the intraarticular biceps tendon consistent with intra-tendinous inflammation. On exam, positive Speed's and O'Brien's which reproduced anterior shoulder pain. Dr. Pizinger noted an impression of a left shoulder complex SLAP tear. A steroid injection was administered to Petitioner's left shoulder noting Petitioner would follow up in one month. (Id., 64-65)

On August 29, 2019, Petitioner followed up at Dr. Pizinger's office reporting that the injection started to help with his shoulder pain although he continued to experience burning left shoulder pain and tightness in the trapezius muscle and intermittent numbness and shooting pain down his left arm to the ulnar aspect of his left hand. (Id., 59) Petitioner reported to the nurse practitioner that his pain was intolerable. The recent EMG of Petitioner's left upper extremity showed mild radiculopathy at C5, C, and C7. Dr. Pizinger diagnosed Petitioner with a left shoulder SLAP tear and left-sided cervical radiculopathy. (Id., 58) Dr. Pizinger ordered a cervical MRI and took Petitioner off of work. (Id.)

On September 9, 2019, Petitioner presented to Dr. Pizinger with complaints of persistent anterior left shoulder pain. Dr. Pizinger opined that, given the failure of conservative treatment, Petitioner was a surgical candidate in the form of a left shoulder arthroscopic debridement with subacromial decompression and biceps tenodesis. (Id., 56) Regarding Petitioner's cervical spine, the doctor continued to recommend a cervical MRI noting the EMG findings indicated an underlying herniated disc rubbing on the nerve from the C5-C7 level. (Id.) The doctor recommended that Petitioner undergo left shoulder surgery. (Id., 56) Petitioner's off duty restrictions were continued. (Id., 74)

On September 16, 2019, Petitioner underwent a cervical MRI significant for a 3 mm focal central disc protrusion with annular tear indenting the thecal sac at C3-4. (Arb. 2)

On September 23, 2019, Petitioner presented at Dr. Pizinger's office with complaints of constant, intermittent, aching, burning, sharp left shoulder pain with any kind of movement. (Id., 53) Dr. Pizinger reviewed Petitioner's recent cervical MRI noting a posterior central disc herniation at C3-C4. (Id., 54) The doctor referred Petitioner to Dr. Templin for his cervical spine. (Id.) Regarding Petitioner's left shoulder, Dr. Pizinger was still awaiting approval for his previously recommended left shoulder surgery. (Id.) Petitioner's off-duty restrictions were continued pending surgery. (Id., 75)

On October 22, 2019, Petitioner presented to Dr. Cary Templin at Hinsdale Orthopaedics pursuant to the referral from Dr. Pizinger. (Arb. 2) Dr. Templin diagnosed Petitioner with an acute cervical strain that began after the work accident without evidence of myelopathy or foraminal stenosis. (Id.) Dr. Templin ordered Petitioner to begin physical therapy for his neck in addition to his post-operative shoulder regime. (Id.)

On October 23, 2019, Petitioner presented for an IME with Dr. Aaron Barr whose testimony is discussed below. Petitioner testified that Dr. Aaron Bare told him that his left arm complaints were actually stemming from his neck. (Id., 31) Petitioner testified that after his IME with Dr. Bare, Respondent approved his consult with Dr. Cary Templin regarding his cervical condition while Dr. Pizinger continued monitoring his left shoulder. (Id.)

On November 6, 2019, Petitioner underwent left shoulder arthroscopic surgery, performed by Dr. Pizinger, consisting of debridement, subacromial decompression, and open biceps tenodesis. (PX 2, 20) Petitioner's pre- and post-operative diagnoses note a left shoulder SLAP tear and left shoulder subacromial decompression. (Id.)

On November 13, 2019, Petitioner followed up with Dr. Pizinger at which time physical therapy, 2-3 times per week for 4 weeks, was prescribed and prescriptions for Norco, Ultram, and Naproxen were issued. Off work restrictions were continued. (Id., 52, 76)

On November 20, 2019, Petitioner presented for initial evaluation following left shoulder surgery at ATI Physical Therapy. (PX 2, 4)

On December 4, 2019, Dr. Pizinger noted Petitioner presented without any major complaints and was doing well post-operatively. (Id., 49) Petitioner was neurovascularly intact in the left upper extremity according to the doctor who noted, "I can actually passively elevate him to about 150 to 160 degrees of forward elevation." (Id., 50) Dr. Pizinger noted Petitioner's restrictions would be in effect for the next two weeks and then "he can resume activity with no restriction". (Id.) The doctor issued a new prescription for physical therapy noting, "They can advance him with motion and strengthening." (Id.) Prescriptions for Norco and Tramadol were re-filled, and off-work restrictions continued. (Id., 77)

On January 9, 2020, Petitioner followed up with Dr. Pizinger's office

The records from ATI Physical Therapy show that Petitioner had completed 33 sessions for his left shoulder/arm as of February 6, 2020. (Id., 6) Petitioner reported that his left shoulder felt 50% better. Petitioner's therapist noted that Petitioner had made objective improvements with his range of motion, strength, and lifting mechanics. (Id.)

On February 7, 2020, Dr. Pizinger's office noted Petitioner's report that therapy was helping him improve although he did report a minor sharp pain in his left shoulder radiating up to his neck when turning his neck. (Id., 45) Petitioner further complained of numbness and tingling from his elbow to his hand along with tightness of the lateral neck. Dr. Pizinger noted Petitioner was progressing well and he agreed with the therapist that Petitioner would continue with strength conditioning and that work conditioning could be utilized in about a month. Given Petitioner's complaints in his neck and down the arm, the doctor referred Petitioner to a pain specialist for a possible injection to his neck. (Id.)

On March 9, 2020, Petitioner's physical therapist at ATI noted that he had completed 46 sessions for his left shoulder and had made improvements with range of motion, strength, posture, weight bearing and lifting mechanics. (Id., 8)

On March 13, 2020, Petitioner followed up at Dr. Pizinger's office where Petitioner indicated he was ready to begin work conditioning for his left shoulder. (Id., 44) Petitioner reportedly had undergone an epidural steroid injection on March 11, 2020, to his neck after which, he experienced significantly increased pain to his left arm and shoulder. (Id.). On exam, Petitioner had essentially full range of motion with complaints of pain all the way down his arm. The nurse practitioner noted this reaction to the injection indicated that Petitioner's cervical spine was causing his symptoms. For that reason, work hardening for the left shoulder was not recommended. Petitioner was referred to Dr. Cary Templin for evaluation of his cervical spine. Physical therapy for the left shoulder was continued to ensure that he did not lose range of motion or strength.

On April 15, 2020, Petitioner's physical therapist at ATI noted that he had completed 53 sessions for his left shoulder and that Petitioner reported increased neck and shoulder pain since he had an injection to his neck on March 11, 2020. Petitioner reported that the pain through the base of his skull travels along the top of his shoulder to the front of his shoulder. Petitioner reportedly could not lay on his left side, pull blankets over him with his left arm, could not carry heavier groceries, had difficultly pulling his pants up, experienced tightness with reaching overhead, and that his sleep had been significantly disturbed.

On December 9, 2020, Petitioner underwent a cervical fusion at C3-C4, performed by Dr. Templin. (Arb. 2) Petitioner testified that during his post-operative physical therapy, he used his left shoulder to exercise using rubber bands, an exercise ball, and a rowing machine.

On January 28, 2021, Dr. Pizinger noted Petitioner's complaints of left shoulder pain described as intermittent, aching, burning, pins and needles, numbness, radiating, sharp, and throbbing. Petitioner rated his pain level at a 6 out of 10. (PX2 at 29) Petitioner reportedly began physical therapy the day prior for his neck. (Id.) Dr. Pizinger ordered physical therapy and noted "at this point, with regards to the shoulder, I am going to give him a prescription for therapy for the shoulder, as he is doing with the neck. I think it is reasonable to continue working on strengthening to optimize function in the shoulder." (Id.)

On April 27, 2021, Petitioner presented to Dr. Pizinger's office where the nurse practitioner noted, "he is also concerned as he has a divot in his arm that the current therapist is concerned about, and he is here for evaluation." On exam, the nurse practitioner noted the presence of a divot to the more proximal portion of the humerus. Petitioner complained of pain across the front of his shoulder. (Id., 27) The nurse practitioner was concerned that Petitioner had re-ruptured his biceps tendon. An MRI arthrogram was prescribed which Petitioner underwent on May 12, 2021.

On June 8, 2021, Dr. Pizinger reviewed the recent MRI Arthrogram images noting full-thickness tearing of the supraspinatus tendon. (Id., 23) Dr. Pizinger recommended arthroscopic debridement with subacromial decompression with rotator cuff repair of the supraspinatus tendon. (Id., 23)

On June 15, 2021, Dr. Templin released Petitioner from care for his cervical condition with permanent work restrictions. (Id., 29)

Petitioner testified that he wishes to proceed with the surgery currently being recommended by Dr. Pizinger. (Id., 38)

The parties do not contest the causation relationship between the cervical treatment and the work accident. All medical and TTD benefits related to this condition have been paid.

Respondent disputes that Petitioner's left shoulder condition is causally related to his work accident based on the opinions of Dr. Aaron Bare who examined Petitioner on two occasions, October 23, 2019, and September 29, 2021.

Dr. Ryan Pizinger Testimony

Dr. Ryan Pizinger is a board-certified orthopedic surgeon who diagnoses and treats patients with shoulder impingement syndrome, as well as rotator cuff and SLAP tears. (PX1, pg. 7-12)

Dr. Pizinger testified that Petitioner presented to his nurse practitioner on July 24, 2019, with a history of carrying a toilet back to a truck, slipping on ice, throwing the toilet upward, and attempting to catch himself by grabbing the truck with his left arm. (Id., 13) Petitioner experienced throbbing left shoulder pain that evening and began a course of treatment, including 29 physical therapy sessions and multiple medications that failed to relieve his symptoms. (Id.) Dr. Pizinger testified that at his initial exam, Petitioner had very specific anterior joint line pain, pain in his scapula, and some pain in his left biceps with lifting the arm. An arthrogram was ordered for Petitioner's shoulder and an EMG was ordered because of Petitioner's numbness and tingling in the ulnar nerve distribution. (Id., 17-18) On review of Petitioner's MRI arthrogram, Dr. Pizinger noted superior labral tissue irregularities and inflammation within the anteroposterior region consistent with a complex tear

along with biceps tendinosis. (Id., at 17-20) Based on the MRI arthrogram and provocative testing that reproduced anterior shoulder pain, Dr. Pizinger diagnosed Petitioner with a SLAP tear on August 19, 2019, and recommended arthroscopic surgery.

On November 6, 2019, Petitioner underwent surgery with Dr. Pizinger including open biceps tenodesis, intended to treat Petitioner's SLAP tear, which the doctor visualized intraoperatively. (Id., 20, 27) The surgery also consisted of joint debridement, to clean up the labral tissue within the shoulder joint, and a subacromial decompression to address Petitioner's subacromial impingement. (Id., 28)

Regarding causation, Dr. Pizinger opined that Petitioner's SLAP tear and impingement syndrome are causally related to Petitioner's work accident based on the description of the accident, the diagnostic findings, the failure of conservative care to alleviate Petitioner's symptoms, and the surgical findings noted during the operation. (Id., 30)

Regarding Petitioner's cervical injury, Dr. Pizinger testified that he referred Petitioner to Dr. Cary Templin who ultimately performed a cervical fusion on Petitioner. Dr. Pizinger continued treating Petitioner following Petitioner's release from care by Dr. Templin. (Id., 30-31)

Regarding Petitioner's left rotator cuff tear, Dr. Pizinger testified that following Petitioner's cervical fusion, Petitioner started having more pain in his left shoulder joint, across the subacromial space. (Id., 31) On May 12, 2021, an updated MRI arthrogram revealed a full thickness tear of the supraspinatus tendon that was not present during the November 6, 2019. (Id., 32, 43) The doctor agreed that the rotator cuff occurred at some point following the November 6, 2019 surgery and the May 12, 2021 MRI. (Id., 33) Dr. Pizinger noted that following Petitioner's left shoulder surgery, Petitioner began therapy and rehabilitation where he was resuming strength via exercise and conditioning. Following his cervical spine surgery, Petitioner was dealing with weakness throughout his left extremity that would require therapy and conditioning as well. In the doctor's opinion, Petitioner's left rotator cuff tear is causally connected to the strength conditioning that Petitioner performed during his post-operative physical therapy and rehabilitation following his left shoulder arthroscopic surgery and cervical fusion. (Id., 33-34) Dr. Pizinger noted there are no other incidents to point to, other than the accident at issue and the excessive amount of strength conditioning that Petitioner performed following the surgeries to his left shoulder and cervical spine. (Id., 32-33)

Dr. Pizinger is currently recommending that Petitioner undergo surgery to repair his left rotator cuff followed by postoperative car including physical therapy, and possible work conditioning. (Id., 35-36)

Dr. Pizinger further testified on direct exam that at no point did he suspect that Petitioner was malingering, being dishonest, or acting in pursuit of secondary gain. (Id., 37)

Dr. Aaron Bare Testimony

In his August 27, 2021, evidence deposition, orthopedic surgeon, Dr. Aaron Bare, testified that Petitioner presented to him on October 23, 2019, for an IME at Respondent's request. Dr. Bare reviewed Petitioner's February 2019 MRI and August 2019 MRI arthrogram concluding that both studies were within normal limits. (RX 1, p. 11) Dr. Bare diagnosed Petitioner with left shoulder and arm pain and opined that causation existed between his pain and the work accident as Petitioner had no preexisting conditions. (Id., 11) Dr. Bare felt that no additional treatment was medically necessary for the left shoulder, that Petitioner had been treated within the standard of care, that surgery was unnecessary, and that Petitioner should attempt to resume full-duty work (pp. 11-12)

At Petitioner's 2nd IME, on September 29, 2021, Dr. Bare agreed that the May 12, 2021, MRI arthrogram was significant for a left rotator cuff tear, but the doctor could not explain "how or why" the rotator cuff tear occurred (Id., 15) Dr. Bare testified that Petitioner reported that his November 5, 2019, left shoulder surgery "did not help him." (Id., 14) Dr. Bare opined that Petitioner's left rotator cuff tear is not causally related to the work accident of February 5, 2019, because after a traumatic injury, a rotator cuff tear is evident on diagnostic testing (Id., 16) Dr. Bare noted that Dr. Pizinger, back in 2019, did not suggest any rotator cuff problems and "so somewhere between 2019 and 2021 he tore his rotator cuff." (Id., 16) Dr. Bare agreed with both the diagnosis of the left rotator cuff tear and the need for surgery, but did not causally relate the rotator cuff tear to the work accident (Id., 16-17)

On cross examination, Dr. Bare testified that it is possible for a person with an asymptomatic SLAP tear to suffer an injury that causes the SLAP tear to become symptomatic. (Id, 23) Dr. Bare did not disagree with Dr. Pizinger's intraoperative findings noting "tearing of the bices and superior labral tissue junction in the under surface of the biceps tendon and inflammation within the biceps groove." (Id., 25) Dr. Bare agreed that the reported mechanism of injury in this case is a competent cause of a SLAP tear and impingement syndrome. (Id., 26) He agreed there is no evidence to suggest Petitioner was experiencing left shoulder pain prior to the accident. (Id., 29) Dr. Bare does not dispute Dr. Pizinger's impression of signal change indicating biceps tendinosis or that Dr. Pizinger, intra-operatively noted tearing of the biceps and a SLAP tear. (Id., at 25) Dr. Bare believed causation existed between Petitioner's complaints on October 23, 2019 and the work accident. 9Id., 31) Dr. Bare agreed with Dr. Pizinger that the rotator cuff tear on the May 12, 2021 MRI arthrogram was not present on the August 7, 2019, MRI arthrogram or the arthroscopic findings noted by Dr. Pizinger on November 6, 2019. (Id. 32) The doctor agreed the rotator cuff tear occurred as an injury some time between November 6, 2019, and May 12, 2021. (Id. 32) Dr .Bare reviewed records related to Petitioner's C3 to C4 ACDF surgery on December 9, 2020. (Id., 33) Dr. Bare testified he did not suspect Petitioner was malingering or acting for secondary gain. (Id. 39) Dr. Bare testified it is possible for a person to sustain a rotator cuff tear in physical therapy, but atypical. (Id., 43) On re-direct, Dr. Bare testified that Petitioner did not report to him that he was injured in physical therapy. He further testified that if he was Petitioner's treating physician, he would not have performed the surgery performed by Dr. Pizinger on November 6, 2019. (Id., 44) On recross, Dr. Bare testified he did not believe the November 6, 2019, arthroscopic procedure performed by Dr. Pizinger to be outside the standard of care. (Id., 44)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner's Credibility

The Arbitrator noted Petitioner's demeanor during the hearing, including his facial expressions, eye contact, gestures, tone of voice, gave the Arbitrator the impression that he was sincere and trust-worthy. Petitioner testified without hesitation. He seemed confident and eager to tell his story. After the hearing, the Arbitrator found the documentary evidence contained in the record corroborative of Petitioners testimony. There are no allegations of dishonesty, malingering or secondary gain contained in the record. Accordingly, the Arbitrator finds Petitioner credible and places significant weight on his testimony.

F. Causal Connection

The Arbitrator finds Petitioner has established by a preponderance of the credible evidence that his current condition of ill being in his left shoulder is causally related to the accident of February 5, 2019.

Petitioner sustained a compensable accident on February 5, 2019, that caused injury to his cervical spine, necessitating a cervical fusion at C3-C4. Respondent does not dispute that Petitioner sustained a left shoulder injury during the accident, Respondent disputes the extent of the left shoulder injury.

Regarding Petitioner's left shoulder impingement and SLAP tear, the Arbitrator finds little controversy regarding the causal relationship between the accident and these conditions. Petitioner's testimony regarding his general state of good health prior to the accident is uncontested. Less than 48 hours after the accident, Dr. Fiszer noted Petitioner's clinical presentation was consistent with a rupture of the supraspinatus tendon. Petitioner was fitted with a sling that day and restricted from using his left arm. On February 12, 2019, Dr. Fiszer noted left shoulder x-rays were significant for a possible AC joint sprain although, pursuant to his exam of Petitioner, Dr. Fiszer also noted a "real possibility" of a rotator cuff tear or shoulder impingement. MRI without contrast on February 22, 2019, was reviewed by Dr. Fiszer who noted a small low grade partial thickness tear in the distal insertional fibers of the supraspinatus tendon and findings consistent with mild degenerative arthritis and a superimposed low grade AC sprain. Dr. Fiszer maintained Petitioner's work restrictions (no use of left arm, no driving). After an unsuccessful attempt to resume his full duty job, Petitioner sought treatment with Dr. Pizinger whose treating medical records document Petitioner's consistent complaints of "very specific anterior joint line pain" with bicep pain primarily when lifting objects. Dr. Pizinger's examination findings noted reproduction of anterior shoulder pain with provocative testing and the diagnostic arthrogram revealed superior labral tissue irregularities and inflammation within the anteroposterior region consistent with a complex tear along with biceps tendinosis. Dr. Pizinger's intraoperative findings confirmed the presence of a SLAP tear and tearing of the biceps. Respondent's IME, Dr. Bare does not dispute that Dr. Pizinger visualized bicep tearing and the SLAP tear during Petitioner's surgery. Dr. Pizinger and Dr. Bare agree that the mechanism of injury in this case is sufficient to cause or aggravate these conditions. Petitioner's general state of good health before his accident is uncontested. The Arbitrator finds Petitioner has marshalled sufficient evidence establishing a chain of events wherein he was asymptomatic and able to perform the essential duties of his job, and, following a work-related accident, was unable to carry out his duties due to left shoulder pain. The Arbitrator finds that Petitioner has established a causal connection between his left shoulder impingement, SLAP tear, and bicep tearing, and the work accident in this case.

Regarding Petitioner's rotator cuff tear, the Arbitrator notes both Dr. Pizinger and Dr. Bare agree that the rotator cuff occurred at some point following the November 6, 2019, shoulder surgery and the May 12, 2021, MRI arthrogram. The Arbitrator notes that during this 18-month-long period, Petitioner was off work, had yet to reach maximum medical improvement for his shoulder, and was concurrently treating for his cervical spine. There is no evidence of an intervening injury. The parties stipulated that Petitioner sustained an injury to his cervical spine which required C3-C4 ACDF surgery, performed on December 9, 2020, followed by post-operative physical therapy between January 12, 2021, and June 15, 2021, when he reached MMI for his cervical injury. Petitioner testified that during his post-op therapy for his cervical spine, he would perform stretches, use the rowing machine, and an exercise in which he would roll an exercise ball against the wall. Each of these activities required Petitioner to use his left shoulder. Following January 28, 2021, Petitioner was undergoing concurrent physical therapy programs for his left shoulder and his cervical spine. On April 27, 2021, Dr. Pizinger's nurse practitioner noted Petitioner's and his therapist's concern over a "divot" in his left arm. At that time a second MRI arthrogram confirmed the presence of the torn rotator cuff. Following his cervical spine surgery, Petitioner was dealing with weakness throughout his left extremity that would require therapy and conditioning as well. Dr. Pizinger opined that Petitioner's left rotator cuff tear is causally connected to the strength conditioning that Petitioner performed during his post-operative physical therapy and rehabilitation following his left shoulder arthroscopic surgery and cervical fusion. (Id., 33-34) Dr. Pizinger noted there are no other incidents to point to, other than the accident at issue and the excessive amount of strength conditioning that Petitioner performed following the surgeries to his left shoulder and cervical spine. (Id., 32-33)

The Arbitrator finds the opinions of Dr. Pizinger credible, persuasive, and supported by the treating medical records and the chain of events in this case. Again, the Arbitrator notes that Petitioner was not working during the period of time that the rotator cuff occurred and had been participating in concurrent physical therapy programs for his left shoulder and his cervical spine due to the injuries he sustained in the accident at issue. There is no evidence of an intervening accident. There is no evidence of malingering or secondary gain. Petitioner's credible testimony in this case is unrebutted. The Arbitrator finds the preponderance of credible evidence supports a finding that Petitioner was in a weakened condition during the period between November 6, 2019, and May 12, 2021, post left shoulder surgery, post C3-C4 ACDF surgery, which contributed to his torn right rotator cuff.

Accordingly, the Arbitrator finds that Petitioner has established by a preponderance of the credible evidence that the current condition of ill-being with regard to Petitioner's left shoulder, including his supraspinatus tendon tear, is causally related to the work accident of February 5, 2019.

J. Medical Bills

Based on the Arbitrator's findings on the issue of causal connection, the Arbitrator finds that the medical bills submitted for medical treatment in Petitioner's Exhibits 3 and the below medical bill summary in the amount of $67,757.74 is awarded pursuant to all applicable provisions of the Illinois Workers' Compensation Act, including the fee schedule. (PX3):

Provider	DOS	Amount
Illinois Orthopaedic Institute	7/24/2019 – 6/28/2021	$12,055.00
Oak Brook Surgical Centre	8/7/2019	$702.00
Southwest Surgery Center	11/6/2019	$2,875.00
Center for Minimally Invasive Surgery	11/06/2019	$27,825.50
Network Durable Medical Equip	11/07/2019 – 01/16/2020	$20,525.00
ATI	11/20/2019 – 8/3/2020	$1,195.76
Pain & Spine Institute	05/12/2021	$2,579.48
TOTAL		$67,757.74

K. Prospective Medical

The Arbitrator incorporates the findings with regard to Issue (F) into Issue (K). Regarding the prospective surgery recommended by Dr. Pizinger, the Arbitrator notes that Dr. Bare agrees that Petitioner currently has a rotator cuff tear which requires arthroscopic surgical repair. (PX1 at 35; RX1 at 17) Given the Arbitrator's findings regarding causation, the Arbitrator finds that Petitioner has sustained his burden regarding this issue. Dr. Pizinger is currently recommending that Petitioner undergo surgery to repair his left rotator cuff followed by postoperative car including physical therapy, and possible work conditioning. The Arbitrator finds that Respondent is liable for and shall authorize the recommended surgery and all post-op modalities recommended by Dr. Pizinger.

L. TTD

Petitioner claims entitlement to temporary total disability benefits for the period of October 4, 2019, through March 8, 2023. (AX1) The Arbitrator notes that Petitioner was initially taken off work on October 4, 2019, for symptoms related to *both* his left shoulder and cervical spine injuries. The restrictions set forth by Dr. Pizinger

are causally related to the work accident of February 5, 2019, thereby entitling Petitioner to temporary total disability benefit. The parties agree that Respondent has paid temporary total disability benefits for this time period as it stipulated to its liability with regard to the cervical spine injury. (AX2) Accordingly, the Arbitrator awards temporary total disability benefits in the amount of 819.26 per week for the time period October 4, 2019 through March 8, 2023 (178 and 5/7 weeks). The Arbitrator further finds Respondent has made payments to the full extent of its liability for this time period as it stipulated to its liability for the cervical spine injury and awards a credit to Respondent for TTD paid in the amount of $149,112.60.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031063
Case Name	Matthew Fenton v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0528
Number of Pages of Decision	20
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Thomas Bowman

DATE FILED: 11/12/2024

/s/Amylee Simonovich,Commissioner

Signature

DISSENT: /s/Amylee Simonovich,Commissioner

Signature

24IWCC0528

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Matthew Fenton,

Petitioner,

vs. NO: 21 WC 031063

State of Illinois- Graham Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses, temporary total disability and nature and extent, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

Factual Background

Petitioner was employed with the Illinois Department of Corrections, Graham Correctional Center, as a Correctional Sergeant. T.12. He started working for Respondent in April 2015. *Id*.

When he was initially hired by Respondent, he was hired as a correctional officer. T.14. Prior to hearing, he prepared a job description of the duties of a correctional officer, which he testified was an accurate description of his job duties at Graham. T.15. He also had an opportunity to review the deposition testimony of Dr. Bradley and agreed that Dr. Bradley had an accurate understanding of his job duties. *Id*.

Petitioner testified that approximately 100% of his time was spent on a wing or gallery. *Id*. During his work as a gallery or wing officer, he did 30-minute wing checks, which included shakedowns, compliance checks, writing tickets and doing whatever was necessary to ensure the rules were followed. T.17. He would also search property boxes during shakedowns. *Id*. The property boxes could weigh up to 100 pounds. *Id*. He opened and closed doors, including cell doors and closet doors. *Id*. This involved constant pushing and pulling. *Id*. He also pulled food carts during the time of COVID. *Id*.

At the time COVID first started, Petitioner was acting as a day room officer. T.18. The

job duties as a day room officer included: wing log checks, shakedowns, going through inmates' stuff, using food carts (getting the carts, bringing them to the house, feeding, and sending them back up), drawing up paperwork, writing tickets that needed to be performed, and unlocking/locking for medical staff. T.33. He also acted as a walk officer, wherein he provided escort for nursing staff. *Id*. His job duties were pretty much the same at the time of hearing. T.33-34. He used a mixture of keys. T.34. The majority of the keys were like a typical house key, but he also used bigger keys for which he didn't know the name. *Id*.

Petitioner testified that while the prison was in medical lockdown during COVID, he believed the job duties of all correctional officers at Graham increased, as the doors had to be opened and closed multiple times throughout the day. T.18. He testified there were no chuckholes and that they had to use the doors to provide service. T.19. Petitioner testified this increased the activity of his hands and arms exponentially. T.19.

Major Wright testified on behalf of the Respondent. He testified to being employed at Graham Correctional Center for approximately 18 years. T.36-37. He denied having any disagreement with Petitioner's testimony. T.37. When asked about COVID, he testified that they had to start locking down the institution for quarantine reasons. T.37-38. He testified that most of the work is usually done by inmates, but when they went on lockdown, the staff had to do more of those job duties, such as feeding and cleaning. *Id.*

Petitioner testified that in early 2021 he began to notice his hands and arms would start tingling. T.34. They had a heat-like sensation and would go numb. T.34, 19. He noticed his symptoms towards the middle of the day while he was working. T.20. Petitioner denied having gout, hypothyroidism, diabetes, or sleep apnea. T.20,28. He denied being overweight. *Id*. He was 32 years old at the time of hearing. *Id.* Petitioner admitted to smoking for 15 years but testified that he stopped smoking in November of 2022. T.28. He admitted to using chew. *Id*. He denied prior treatment or injuries to his hands. T.34.

After he had problems with numbness, tingling, problems with grip strength, and pain in his hand going up to his shoulder, he went to his family doctor, Dr. Lausen. T.2-23. Dr. Lausen referred him to neurologist, Dr. Becker. *Id*. Dr. Becker ordered an EMG and NCV, after which Petitioner came to see his attorney. T.21. His attorney referred him to Dr. Bradley. *Id*. Petitioner testified he tried conservative therapy, including muscle relaxers, Ibuprofen, anti-inflammatories, and a wrist splint, but they did not really help. T.21-22. After those methods did not work, Dr. Bradley recommended surgery. *Id*. Petitioner had undergone surgery to both wrists and elbows. *PX3, p.9-11.* Petitioner did not have any injections prior to surgery. T.29.

At the time of hearing, Petitioner testified that he was back to work without restriction. T.27. He denied having any complaints against him at work or undergoing disciplinary actions for not being able to perform his job duties. T.31-32. He was no longer seeing a doctor or taking medication for his condition. T.27-28. He felt his overall condition had improved since surgery, with the exception of his left arm. T.22-23, 28.

He had been promoted to correctional Sergeant in January 2022. T.32. He testified his job duties were pretty much the same, but he had added responsibilities of more housing units instead

of just one. *Id*. As a sergeant, he had COs working underneath him. *Id*.

After returning to work, Petitioner's hands and fingers still hurt and cramped during certain activities, including anything having to do with a simple hand tool. T.23. He provided examples of having his fingers cramp when he would use a screwdriver to change the batteries in the kids' toys, while keying doors at work, while writing reports, and while driving. T.23-24. He testified his grip strength wasn't near as good as what it used to be. T.24. Due to the numbness, stiffness, and hand locking in his left arm, Dr. Bradley wanted to perform another surgery. T.22.

Petitioner testified he was a volunteer firefighter. *Id*. He felt the condition had hampered the performance of his duties as a volunteer firefighter, as he had lost grip strength. T.24-25.

At his deposition, Dr. Bradley testified that he had reviewed a job site analysis for a Correctional Officer at Graham Correctional Center. PX11, p. 14. He noted he had reviewed other materials over the years when treating other correctional officers that had worked at Graham Correctional Center. PX 11, p. 14. He also testified Petitioner had informed him of his ten (10) years of work as a Correctional Officer, describing the repetitive activities Petitioner performed with his hands/elbows. PX11, p.14-16. Dr. Bradley diagnosed Petitioner with bilateral carpal tunnel and cubital tunnel syndrome conditions and performed right and left hand/elbow surgeries on December 22, 2021, and January 12, 2022, respectively. PX11, p. 15-24.

Dr. Bradley opined there was a causal relationship between Petitioner's carpal tunnel and cubital tunnel syndrome conditions and Petitioner's repetitive work activities over his ten (10) years of employment with Respondent. PX 11, p. 30-31, 35. Dr. Bradley relied solely upon Petitioner's own description of his job duties over the years. PX 11, p. 42-45.

Petitioner was also seen by Dr. Patrick K. Stewart for a Section 12 examination at Respondent's request. Dr. Stewart opined there was no causal relationship between Petitioner's work activities and the conditions of bilateral carpal and cubital tunnel syndromes. PX7, p. 7-8.

During his deposition, Dr. Stewart testified that he had been provided job descriptions by Respondent consistent with the Correctional Sergeant position at Graham Correctional Center. RX8, p.18-19. Dr. Stewart also testified he was allowed to tour the Graham Correctional Center. RX8, p.21. When he did so, Dr. Graham physically used keys to open doors, locks and chuckholes and testified he was able to do so without applying any significant force. *Id*.

Dr. Stewart opined Petitioner's work activities were essentially supervisory and did not subject Petitioner to an increased risk for development of compression neuropathies. He noted keying of cell doors was performed with a normal household door key/lock and required no more than one second. RX7, p. 7. He found there was not a significant amount of force required to unlock a chuck door padlock. *Id*. He also found Petitioner was not required to perform repetitive forceful grasping as part of his job duties. *Id*.

Legal Analysis and Conclusions

Petitioner bears the burden of proving each element of his case by a preponderance of the

evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). He must prove he suffered a disabling injury which arose out of and in the course of his employment. *Id*. The phrase "in the course of employment" refers to the time, place and circumstances surrounding the injury. *Id*. To satisfy the "arising out of" prong, Petitioner must show that the injury "…had its origin in some risk connected with, or incidental to, the employment." *Id*. Petitioner's claim is compensable only if he meets his burden of proving his bilateral wrist and elbow injuries arose out of and in the course of his employment as a Correctional Sergeant.

A claimant alleging an accidental injury due to repetitive trauma must show that the injury is work-related and not a result of the normal degenerative aging process. *See Peoria County Belwood Nursing Home v. Indus. Comm'n*, 15 Ill. 2d 524, 530 (1987).

The Commission may review the manner and method of a claimant's job to determine if such duties are sufficiently repetitive to establish a compensable accident under a repetitive trauma theory of recovery. See *Williams v. Industrial Commission*, 244 Ill. App. 3d 204,211, 614 N.E.2d 177 (1993) citing *Perkins Product Co. v. Industrial Commission*, 379 Ill 115, 120 (1942) ("the claimant's injury 'was directly connected with the manner and method in which she was required to do her work, and to use her arm in the discharge of her duties'"). Although medical testimony as to causation is not necessarily required, "where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that claimant's work activities caused the condition complained of." *Nunn v. Indus. Comm'n*, 157 Ill. App. 3d 470, 477, 478 (1987). After carefully considering the totality of the evidence, the Commission finds Petitioner did not meet his burden of proving he sustained a work-related injury as a result of repetitive trauma.

At the time of trial, Petitioner provided a limited description of the duties he performed as a correctional officer. T.14. He was able to provide a list of the duties he performed as correctional officer and sergeant, including shakedowns, compliance checks, writing tickets, searching property boxes, pulling food carts, push/pulling doors and locking/unlocking doors. T.17-19, 23, 32-34. Major Wright agreed with the description of the job duties provided. T.37. However, there was no testimony as to the frequency of these duties, other than a vague reference to "multiple times throughout the day". T.18. The only reference to the time spent performing these duties was in the job description Petitioner prepared. T.14; PX7.

Petitioner's Exhibit 7, entitled "Detailed Job Description" contained a listing of various types of activities, including "lifting", "pushing/pulling", "bending/stooping", "reaching above shoulder level", "use of hands for gross manipulation", and "use of hands for fine manipulation". PX7. Despite an instruction on the form to provide detail as to how much and how often a task was to be performed, Petitioner provided no time frame for the "lifting", "push/pull", or "reaching above shoulder" inquiries. The frequency for "bending/stooping" was extremely vague, not noting the frequency of the bending/stooping, instead providing only the number of shakedowns per day (2-5). This provides no reasonable understanding as to what Petitioner was lifting or pushing/pulling on a daily basis. Again, with regard to the use of his hands for fine manipulation, Petitioner provides a list of paperwork duties, but with no real description of what the paperwork entails or how often the tasks were performed. While there is a time notation as to "performance of wing check logs" every 30 minutes, there is no indication of what fine manipulation is necessary

for completion of that particular report/log. The only tangible quantification provided by Petitioner in this report was with regard to the locking/unlocking of doors, noting that from November to April he would lock/unlock 500 doors per day. However, there was no indication as to what types of doors/keys he was utilizing during this activity. It was only during Petitioner's testimony that he indicated they had to use the doors to provide service and that he used a mixture of keys, with the majority of them like a typical house key. T.19, 34. Petitioner's testimony and job questionnaire are not sufficient to support a repetitive trauma claim.

Petitioner relied upon the medical causation opinions of Dr. Bradley to support his position of a repetitive injury caused by his work activities. However, the Commission is not persuaded by Dr. Bradley's causation opinions, as he did not have a sufficient understanding of Petitioner's job duties to allow him to render a causation opinion. Dr. Bradley's opinions were based solely upon the Petitioner's limited description of his job duties and an incomplete job duty questionnaire. There was insufficient information to demonstrate the frequency, duration, and manner in which Petitioner performed his job duties. Dr. Bradley acknowledged he did not know how often Petitioner had to lock or unlock cell doors, chuck holes, handcuffs, or anything else prior to the COVID pandemic. PX8, p.29. He was unable to estimate how many minutes a day Petitioner would have spent locking and unlocking locks during the COVID pandemic. *Id*. Dr. Bradley stated the Petitioner did not tell him which hand he used when locking or unlocking. *Id*. He acknowledged that he did not discuss with the Petitioner specifically what types of keys the Petitioner used at Graham Correctional Center. PX8, p.30. Dr. Bradley admitted he did not know what types of doors the Petitioner was locking or unlocking when Petitioner asserted he had to lock and unlock up to 500 doors a day during the pandemic. *Id*.

A key element to proving a repetitive trauma theory is producing clear and detailed evidence of the manner and means in which the work activities alleged to have constituted the repetitive trauma were performed. *Edward Hines Precision Components*, 356 Ill. App. 3d 186, 194 (2005). Petitioner failed to provide Dr. Bradley with any reasonable specificity as to what duties he performed each day, or how much time was spent on a specific duty. He provided only a general and vague description of his job duties, which could not have provided Dr. Bradley with an appropriate understanding of the mechanism or force involved to perform said duties. As such, the Commission does not find Dr. Bradley's opinions as to causation sufficient to support Petitioner's claim of a repetitive trauma injury.

While the Petitioner's failure of proof is sufficient to deny benefits, the Commission also notes that Respondent's expert, Dr. Stewart, found Petitioner's job duties at Graham Correctional Center did not affect the onset, severity, or progression of Petitioner's compression neuropathies.

After reviewing the evidence, the Commission finds that Petitioner failed to meet his burden of proof as to show he sustained a repetitive trauma injury arising out of and in the course of his employment and causing his disabling conditions.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 18, 2024, is reversed in its entirety and all benefits are denied.

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820*

ILCS 305/19(f)(1) (West 2013).

November 12, 2024
O: 9/10/24
AHS/kjj
51

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

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

DISSENT

I respectfully dissent from the opinion of the majority and would affirm the Decision of the Arbitrator. After carefully considering the totality of the evidence, I find that Petitioner has met his burden of proving he sustained a repetitive trauma of bilateral carpal and cubital tunnel as a result of his activities at work.

The long-established threshold for a compensable injury is that the work-related accident need not be the sole or principal causative factor, as long as it was **a** causative factor in the resulting condition of ill-being. (*Emphasis added*) *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205 (2003).

Petitioner credibly testified to hand intensive activities, including locking/unlocking doors at the facility. He further testified that because of the lockdown mandated by the pandemic, his hand intensive activities significantly increased. T.19. He was required to escort healthcare staff throughout the prison and provide food service, which included locking/unlocking doors and push/pulling food carts. *Id*. This testimony was backed by Respondent's own witness, Major Wright, when he testified that normally most of the work in the prison was performed by the inmates, however, when the prison was on lockdown due to COVID, the staff had to do more of the job duties, such as feeding and cleaning. T.37-38.

Petitioner also completed a detailed questionnaire, wherein he described the type of job duties he performed which included lifting, pushing/pulling, bending/stooping, reaching above shoulder level, using his hands for gross and fine manipulation. PX7. He did not provide a breakdown of exactly how often the tasks were performed, however, he is not required to do so. The Appellate Court in *Darling v. Indus. Comm'n* found that quantitative evidence of the exact nature of repetitive work duties was not required to establish a repetitive trauma injury. *Darling*, 176 Ill.App.3d 186 (1988). The Appellate Court refused to expand the proof necessary to include specific quantitative evidence of amount, time, duration, exposure or dosage. *Darling* at 196. Similarly, we should not require it in the present case.

This is particularly true, as the unique nature of Petitioner's job means that his duties would likely vary from day to day depending upon the number of inmates, the disposition of the inmates, and the staff at the prison on any given day. The quantity of Petitioner's performance of duties would have also changed drastically from the pre-pandemic schedule to the lockdown due to

COVID. The variation in his day-to-day experiences would have made it almost impossible for Petitioner to accurately quantify his individual duties and the courts have frowned upon imposing this hurdle onto claimants. Petitioner's work may be "varied", but still be "repetitive" pursuant to the findings in *City of Springfield v. Ill. Workers'. Comp. Comm'n*, 388 Ill.App.3d 297, (2009). The Appellate Court goes on to say that "while [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id*. While the frequency of Petitioner's duties may have varied in terms of numerical quantification, Petitioner was very clear the actual duties including pushing/pulling, locking/unlocking and otherwise using of his hands for gross and fine manipulation were required multiple times daily. T.18-19. The repetitive nature of his duties is most easily demonstrated in his testimony regarding the requirements of his job in the time of COVID, wherein he was required to push/pull a food cart, lock/unlock and open/close doors to serve the inmates and provide healthcare staff access. In his assignment to a wing or gallery, Petitioner was tasked with the supervision and care of multiple inmates. T.15. It follows that his duties would not be performed once a day, but instead repeated for each inmate for which he was charged. Petitioner's descriptions of the activities provide an adequate picture of the duties involved in his position, and most importantly the increase in job activities during the COVID pandemic lockdowns at the prison.

As his treating physician, I find Dr. Bradley was most familiar with Petitioner overall and the development of his condition and is, therefore, best suited to provide a medical opinion as to the relation of Petitioner's compression neuropathies and his work duties. In addition, the above written job description was also reviewed by Dr. Bradley in forming his opinion. PX8, p.31. The combination of the Petitioner's oral and written description of his duties provides a solid basis for Dr. Bradley's opinion that Petitioner's job duties were a contributing factor in his development of compression neuropathies.

Overall, I agree with the Arbitrator and find Petitioner was successful in showing that his job duties were **a** contributing factor in the development of his condition of ill-being, and more than just a degenerative condition. Petitioner provided credible testimony and a medical expert's opinion to show the repetitive nature of his activities and an increase of his symptoms following an increase in his activities due to the COVID lockdowns at Graham.

I would also note that since the COVID lockdowns at Graham there are a number of Commission decisions holding the correctional staff's duties of using their hands/arms to lock/unlock cells, open doors, perform inspections and complete reports at Graham Correctional Center aggravated or contributed to compression neuropathies, such as carpal tunnel and cubital tunnel syndromes. *See Brian Caver v. State of Illinois/Graham C.C., 24 I.W.C.C. 0222; Michael Dunn v. State of Illinois/Graham C.C., 24 I.W.C.C. 0353; Shane Walters v. State of Illinois/Graham C.C., 24 I.W.C.C. 0352.*

Even prior to the pandemic the Commission has found compensable compression neuropathy injuries to have developed as a result of similar repetitive activities of a Correctional Officer at Graham Correctional Center. *See Scott Honnies v. State of Illinois/Graham C.C., 20 I.W.C.C. 0643; Jerry Miller v. State of Illinois/Graham C.C., 20 I.W.C.C. 0279.*

In *James Wines v. State of Illinois/Graham C.C.*, at Arbitration the Respondent even stipulated to accident and causation for bilateral carpal and cubital tunnel conditions based upon the claimant's duties of a Correctional Officer at Graham. *James Wines v. State of Illinois/Graham C.C., 23 I.W.C.C. 0180 (21 WC 019033).*

To the extent the majority relies upon the opinion of Dr. Stewart in his finding that Petitioner's job did not cause or contribute to his carpal tunnel syndromes (RX6, P.25-27), I find Dr. Stewart's opinions to be lacking a sufficient basis. Dr. Stewart's report and testimony both support a narrow consideration of Petitioner's overall job duties.

Dr. Stewart fails to comprehend the increase of work for Petitioner during the months of COVID lockdowns. Dr. Stewart rationalized that there would be a decrease in activities due to the prisoners being "moved around less". RX6, p.21. This was in complete opposition to the Petitioner and Major Wright's testimony as to a prison wide increase in duties for staff during that period. Further, while Dr. Stewart heavily based his causation opinions on his personal experiences at the Respondent's work site, there was no evidence he had been given any information regarding which doors and/or locks *Petitioner* would have been manipulating. He admitted that during his tour, he did not have the opportunity to directly observe Petitioner performing his job duties and that he had no knowledge if any of the locks he had "tried" were locks that Petitioner would have been manipulating. RX6, p. 45-46. I find Dr. Stewart did not have sufficient understanding of Petitioner's actual job duties or the frequency with which they were performed, and this negatively impacted his credibility.

For the foregoing reasons, I would affirm the Decision of the Arbitrator.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC031063
Case Name	Matthew Fenton v. SOI/Graham C.C.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Thomas Bowman

DATE FILED: 1/18/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 17, 2024 4.97%

/s/ William Gallagher, Arbitrator
Signature

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

January 18, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Matthew Fenton
Employee/Petitioner

v.

SOI/Graham C.C.
Employer/Respondent

Case # 21 WC 31063

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on December 21, 2023. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On June 1, 2021, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $60,756.56; the average weekly wage was $1,168.40.

On the date of accident, Petitioner was 29 years of age, married with 3 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, for medical services provided to Petitioner, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $778.93 per week for six and two-sevenths weeks commencing November 19, 2021, through December 9, 2021, and January 25, 2022, through February 18, 2022, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $701.04 per week for 28.5 weeks because the injury sustained caused the seven and one-half percent (7 1/2%) loss of use of the right hand and seven and one-half percent (7 1/2%) loss of use of the left hand, as provided in Section 8(e) of the Act.

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

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

William R. Gallagher

JANUARY 18, 2024

William R. Gallagher, Arbitrator
ICArbDec p. 2

Evidentiary Ruling

One of the Exhibits tendered by Petitioner was a series of e-mails regarding a request by Dr. Matthew Bradley (Petitioner's primary treating physician) to tour the Graham Correctional Center (Petitioner's Exhibit 10). Respondent objected to the admission into evidence of same on the basis of relevance and that the e-mail chain was incomplete. Petitioner agreed the e-mail chain was incomplete; however, he explained it was incomplete because it was limited to those e-mails relevant to the issue of Dr. Bradley's request to work the facility.

As noted herein, Petitioner is claiming to have sustained an injury to his hands as a result of repetitive trauma. Dr. Bradley was Petitioner's primary treating physician and testified regarding the etiology of Petitioner's hand condition and its relationship to Petitioner's work activities. The Arbitrator finds Dr. Bradley's attempt to learn more about Petitioner's work activities and environment to be relevant. In regard to the e-mail chain being incomplete, there was no evidence that anything pertaining to Dr. Bradley's request to tour the facility was omitted. Accordingly, Respondent's objection to the admission of Petitioner's Exhibit 10 is overruled and Petitioner's Exhibit 10 is received into evidence.

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment by Respondent. The Application alleged a date of accident (manifestation) of June 1, 2021, and that as a result of "Repetitive job duties" Petitioner sustained an injury to his "Bilateral hands, wrists and arms" (Arbitrator's Exhibit 2). Petitioner sought an order for payment of medical bills, as well as temporary total disability and permanent partial disability benefits. Respondent disputed liability on the basis of accident and causal relationship. In regard to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of six and two-sevenths (6 2/7) weeks, commencing November 19, 2021, through December 9, 2021; and January 25, 2022, through February 18, 2022. Respondent stipulated Petitioner was disabled during the aforestated periods of time, but disputed liability for payment of temporary total disability benefits during same (Arbitrator's Exhibit 1).

Petitioner became employed by Respondent in April, 2015, as a Correctional Officer at the Graham Correctional Center. In January, 2022, Petitioner was promoted to Correctional Sergeant. At the time of trial, Petitioner continued to work for Respondent in that capacity.

Prior to working for Respondent, Petitioner worked for a lawn care company, a factory and as a stocker at Walmart. All of these jobs required the active use of both hands; however, Petitioner did not experience any hand symptoms prior to his being employed by Respondent.

Petitioner prepared a job description which was received into evidence at trial. According to the job description, Petitioner performed hand intensive tasks which included lifting property boxes which weighed up to 80 pounds; opening/closing doors; pushing/pulling doors; pushing food carts during lockdown; locking/unlocking doors on an average of 500 per day from November through April; filling out equipment logs, tickets, tags, various paperwork, etc. (Petitioner's Exhibit 7). At trial, Petitioner's testimony regarding his job duties was consistent with the job description he prepared.

Because of COVID, the facility was put on a medical lockdown which increased the job duties of all of the Correctional Officers. Specifically, more doors had to be opened/closed, there were multiple checks of the healthcare staff and food had to be delivered to the inmates.

Petitioner testified that, during the lockdown, in early 2021, he began to experience tingling, numbness and heat sensations in his hands and arms. Petitioner stated this occurred mostly during the middle of the workday. While not at work, Petitioner noted symptoms primarily when sleeping and driving.

When Petitioner was promoted to Sergeant, he had the same responsibilities as a Correctional Officer, but had to deal with more than one housing unit. Petitioner stated his job duties at the time of trial were pretty much the same as they had been previously.

Major Trevor Wright, Respondent's representative, was present during all of Petitioner's testimony. He had no disagreement with Petitioner's description of his work activities. In respect to the lockdown which occurred during COVID, Major Wright stated a significant amount of work which was previously performed by the inmates had to be performed by the staff.

Petitioner initially sought medical treatment on June 10, 2021, when he was evaluated by Dr. August Adams, his family physician. At that time, Petitioner complained of left hand/forearm numbness. Dr. Adams ordered EMG/nerve conduction studies and referred Petitioner to Dr. Cecile Becker, a neurologist (Petitioner's Exhibit 3).

Dr. Becker saw Petitioner on June 17, 2021, and performed EMG/nerve conduction studies on Petitioner's left upper extremity. The diagnostic tests were positive for mild median neuropathy at the left wrist (Petitioner's Exhibit 4).

On August 12, 2021, Petitioner was evaluated by Dr. Harald Lausen, (a physician associated with Dr. Adams). At that time, Petitioner complained of numbness/tingling in his left thumb and index finger as well as left shoulder pain. Dr. Lausen noted Petitioner had undergone EMG/nerve conduction studies which revealed a mild median neuropathy consistent with carpal tunnel syndrome. He diagnosed Petitioner with left carpal tunnel syndrome and recommended a surgical consultation (Petitioner's Exhibit 3).

Petitioner was again seen by Dr. Lausen on August 26, 2021. At that time, Petitioner continued to complain of left hand symptoms as well as right hand symptoms. Petitioner advised he had experienced a burning sensation in his right hand going into the forearm as well as tingling. Petitioner did not have right thumb and index finger symptoms like those he had experienced on the left. Dr. Lausen recommended Petitioner undergo EMG/nerve conduction studies on the right upper extremity to assess for possible right carpal tunnel syndrome (Petitioner's Exhibit 3).

On November 1, 2021, Petitioner was evaluated by Dr. Matthew Bradley, an orthopedic surgeon. At that time, Petitioner informed Dr. Bradley he had experienced numbness/tingling in his left thumb and index finger in May/June, 2021 and had undergone EMG/nerve conduction studies which were positive for left carpal tunnel syndrome. Petitioner also advised that recently, he had also experienced right hand symptoms (Petitioner's Exhibit 5).

In respect to Petitioner's work duties, he informed Dr. Bradley he had been a Correctional Officer for the preceding six and one-half years and had to repetitively lock/unlock doors. Because of the pandemic, the number of doors Petitioner had to lock/unlock had increased significantly to in excess of 500 doors per day. Petitioner advised this activity has caused a worsening of his symptoms of numbness/tingling. Dr. Bradley noted Petitioner did not engage in any hobbies which included vibration or repetitive use of his hands. Further, he noted Petitioner did not have a history of diabetes, thyroid disorder or obesity (Petitioner's Exhibit 5).

Dr. Bradley examined Petitioner and reviewed the EMG/nerve conduction studies. He noted Petitioner had received conservative treatment, but his left hand symptoms had become more chronic. Dr. Bradley recommended Petitioner proceed with an open left carpal tunnel release procedure. In respect to causality, Dr. Bradley opined that the chronic repetitive microtrauma Petitioner experienced on a daily basis contributed to the development of his left carpal tunnel syndrome (Petitioner's Exhibit 5).

On November 4, 2021, Petitioner was again seen by Dr. Becker. At that time, Petitioner underwent EMG/nerve conduction studies of the right upper extremity. The diagnostic studies were positive for mild median neuropathy at the right rest (Petitioner's Exhibit 4).

Dr. Bradley performed surgery on Petitioner's left wrist on November 17, 2021. The procedure consisted of an open left carpal tunnel release. The surgical report noted the left hand symptoms had increased from intermittent to chronic and Petitioner had developed weakness and pain (Petitioner's Exhibit 6).

Dr. Bradley saw Petitioner on December 2, 2021, and Petitioner's left hand symptoms had improved. However, Petitioner continued to have right hand symptoms and Dr. Bradley opined Petitioner should undergo right carpal tunnel release surgery. Dr. Bradley again saw Petitioner on December 23, 2021, and Petitioner's left hand symptoms continued to improve, but he continued to have significant right hand symptoms. At Petitioner's request, Dr. Bradley continued to treat him for his right hand symptoms with conservative care consisting of medication and exercises (Petitioner's Exhibit 5).

Dr. Bradley performed surgery on Petitioner's right hand on January 26, 2022. The procedure consisted of an open right carpal tunnel release. The surgical report noted Petitioner had signs/symptoms consistent with carpal tunnel syndrome which had been confirmed by EMG/nerve conduction studies (Petitioner's Exhibit 6).

Dr. Bradley saw Petitioner on February 10, 2022. At that time, Petitioner advised he had significantly improved and wanted to return to work in one week. On examination, Petitioner still had some swelling in the palm and fingers of his right hand, but the range of motion was normal. Dr. Bradley authorized Petitioner to return to work without restrictions on February 17, 2022 (Petitioner's Exhibit 5).

Petitioner was again seen by Dr. Bradley on March 28, 2022. At that time, Petitioner advised she had some tenderness in his right palm, but his strength was improving. Dr. Bradley opined no further

treatment was indicated and Petitioner was at MMI (Petitioner's Exhibit 5). This was the last time Petitioner was seen by Dr. Bradley.

At the direction of Respondent, Petitioner was examined by Dr. Patrick Stewart, an orthopedic surgeon, on May 6, 2022. In connection with his examination of Petitioner, Dr. Stewart reviewed medical records provided to him by Respondent. When examined by Dr. Stewart, Petitioner complained of residual numbness in his left thumb. Because of this complaint, Dr. Stewart referred Petitioner for discrimination and grip strength testing which Petitioner refused to do. Dr. Stewart described Petitioner as being "suspicious" and "confrontational" and that a significant portion of the treatment Petitioner had received was based on subjective complaints (Respondent's Exhibit 5).

Because Dr. Stewart did not examine Petitioner prior to Petitioner undergoing the surgeries, he noted it was difficult to "…verify the veracity of his symptoms and his complaints." Specifically, Dr. Stewart noted that the second EMG/nerve conduction studies were "actually normal." In regard to causality, Dr. Stewart opined that the opening/closing of doors with normal household locks was not sufficient to cause carpal tunnel syndrome. He also noted Petitioner had an elevated BMI (Respondent's Exhibit 5).

Dr. Bradley was deposed on January 13, 2023, and his deposition testimony was received into evidence at trial. Dr. Bradley testified he diagnosed Petitioner with left and right carpal tunnel syndrome and performed open carpal tunnel release surgeries on November 17, 2021, and January 26, 2022, respectively. He stated Petitioner's hands symptoms resolved, Petitioner was able to return to work at full duty and had an "excellent result." (Petitioner's Exhibit 8; pp 11-13).

In regard to non-occupational risk factors for the development of carpal tunnel syndrome, Dr. Bradley testified the most important three factors were being female of advancing age which he defined as 40 to 50 or over, diabetes and hypothyroidism. He stated Petitioner was not female, was not diabetic and did not have hypothyroidism. In respect to obesity, Dr. Bradley noted Petitioner had a BMI of 31, and obesity was defined as a BMI of greater than 30, which put Petitioner into the obese category by 10 pounds (Petitioner's Exhibit 8; pp 7-8).

In respect to causality, Dr. Bradley testified that the cause of carpal tunnel syndrome was multifactorial and the Petitioner's repetitive keying of locks which was increased during the pandemic accelerated the development of the carpal tunnel syndrome on both the left and right sides. Dr. Bradley noted Petitioner was "…slightly overweight with a BMI of 31.", But he did not have any other comorbidities (Petitioner's Exhibit 8; p 16).

Dr. Bradley review Dr. Stewart's report and testified he disagreed with Dr. Stewart's statements that the locks at Graham were ordinary household locks. Dr. Bradley also stated he had requested permission to tour the facility, but his request had been denied (Petitioner's Exhibit 8; pp 8, 19).

On cross-examination, Dr. Bradley agreed he did not have specific data regarding the shifts Petitioner worked and he had never locked/unlocked a cell door at an IDCC facility. When Dr. Bradley responded, he again stated he had requested permission to tour the facility, but his request had been denied (Petitioner's Exhibit 8; pp 27-28).

In respect to Petitioner's smoking cigarettes, Petitioner informed Dr. Bradley he smoked one pack per week so Dr. Bradley did not characterize Petitioner as being a frequent smoker. However, on cross-examination, Dr. Bradley agreed Petitioner's smoking probably contributed to the development of the carpal tunnel syndrome conditions, but it did not change his opinion that Petitioner's work activities also contributed (Petitioner's Exhibit 8; pp 32-33).

Dr. Stewart was deposed on May 9, 2023, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Stewart's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, Dr. Stewart testified Petitioner complained of numbness and had refused to undergo discrimination and grip strength testing. He also stated Petitioner was not cooperative and Petitioner's estimate of locking/unlocking 500 doors per day was excessive (Respondent's Exhibit 6; pp 13, 17-21).

Dr. Stewart testified there were other risk factors that contributed to the development of carpal tunnel syndrome which included being female, advancing age, hypertension, diabetes, thyroid dysfunction, smoking, elevated BMI, and rheumatoid arthritis. In respect to Petitioner, Dr. Stewart testified Petitioner was a smoker and had a BMI of 31 (Respondent's Exhibit 6; pp 15-17).

Dr. Stewart testified he had toured the facility and personally locked/unlocked multiple locks without any difficulties. Further, he stated there was a locksmith on duty at the facility who would address any issues regarding the locks. In respect to causality, Dr. Stewart testified there was not a causal relationship between Petitioner's carpal tunnel syndrome conditions and his work activities because the activities performed by Petitioner were not forceful and repetitive (Respondent's Exhibit 6; pp 18-19, 25-27).

On cross-examination, Dr. Stewart testified that the locks at the facility he locked/unlocked were normal household locks which required little to no force to open/close. Dr. Stewart stated he toured the facility in March, 2022, and estimated he operated the locks on eight to 10 doors, and four or five padlocks (Respondent's Exhibit 6; pp 43, 53).

On cross-examination, Dr. Stewart also agreed that the only non-occupational risk factors Petitioner had was his being a smoker and having a BMI of 31. He further stated that 50% of all carpal tunnel syndrome conditions are idiopathic and Petitioner's work activities had nothing to do with his development of carpal tunnel syndrome (Respondent's Exhibit 6; pp 47, 60-61).

Petitioner testified that when he was examined by Dr. Stewart, he felt as though Dr. Stewart was "attacking" him and asking what he perceived as irrelevant questions. However, Petitioner did not provide a specific reason for his refusing to undergo the discrimination and grip strength testing requested by Dr. Stewart. Petitioner testified the symptoms in both of his hands had improved following surgery; however, he complained that he still experiences pain and cramping in his fingers especially when he uses hand tools, keys doors at work, writes reports and when he is driving. Petitioner further stated his grip strength is not as good as it was previously and has, on occasion, interfered with his work as a volunteer firefighter.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner sustained a repetitive trauma injury to both of his hands arising out of and in the course of his employment by Respondent which manifested itself on June 1, 2021, and his current condition of ill-being is causally related to his work activities.

In support of this conclusion the Arbitrator notes the following:

Petitioner prepared a job description which revealed that he performed various hand intensive tasks at work and, at trial, his testimony regarding same was consistent.

Because of the lockdown mandated by the pandemic, Petitioner testified his hand intensive activities significantly increased.

Major Trevor Wright, Respondent's representative, was present during Petitioner's testimony and, when he testified, he had no disagreement with Petitioner's testimony in which he described his work activities. Further, Major Wright testified that, during COVID, a significant amount of work previously performed by the inmates had to be performed by the staff.

Petitioner underwent EMG/nerve conduction studies on his left and right upper extremities on June 17, 2021, and November 4, 2021, and both were administered by Dr. Cecile Becker, a neurologist, who opined that they were both positive for mild median neuropathy.

Petitioner's primary treating physician, Dr. Matthew Bradley, diagnosed Petitioner with carpal tunnel syndrome in both his left and right hands and performed open carpal tunnel release procedures on November 17, 2021, and January 26, 2022, respectively.

Respondent's Section 12 examiner, Dr. Patrick Stewart, opined the EMG/nerve conduction studies of November 4, 2021, were normal; however, this opinion was contrary to that of Dr. Becker, the neurologist who administered the test. The Arbitrator is not persuaded by Dr. Stewart's interpretation of the EMG/nerve conduction studies of November 4, 2021.

Dr. Bradley opined there was a causal relationship between Petitioner's carpal tunnel syndrome conditions and his repetitive work activities which increased during the pandemic, in particular, Petitioner's locking/unlocking the doors at the facility. On cross-examination, Dr. Bradley conceded he had never locked/unlocked a cell door, but he also noted that he had requested permission to tour the facility but his request had been denied.

Dr. Bradley acknowledged Petitioner had a BMI of 31, but noted Petitioner's was only slightly overweight. Further, Dr. Bradley's acknowledgment that Petitioner's smoking may have contributed to the development of the carpal tunnel syndrome conditions was persuasive and consistent with his opinion that the condition was multifactorial.

Dr. Stewart's opinion that there was not a causal relationship between Petitioner's work activities and the carpal tunnel syndrome conditions was based, in part, on his tour of the facility wherein he operated some of the locks; his suspicions regarding Petitioner's credibility; his opinion that Petitioner

would not have locked/unlocked 500 locks per day; and Petitioner's lack of cooperation during the examination by refusing testing.

The Arbitrator acknowledges Petitioner was not completely cooperative during Dr. Stewart's examination of him; however, this does not directly impact whether there was or was not a causal relationship.

The Arbitrator finds the opinion of Dr. Bradley that Petitioner's work activities that contributed to the development of the carpal tunnel syndrome conditions and the carpal tunnel syndrome is multifactorial to be more persuasive than that of Dr. Stewart's that Petitioner's work activities had nothing to do with the development of Petitioner's carpal tunnel syndrome conditions.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical services incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of this conclusion the Arbitrator notes the following:

There was no viable dispute regarding the reasonableness and necessity of the medical services provided to Petitioner.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of six and two-sevenths (6 2/7) weeks, commencing November 19, 2021, through December 9, 2021; and January 25, 2022, through February 18, 2022.

In support of this conclusion the Arbitrator notes the following:

Petitioner and Respondent stipulated Petitioner was temporarily totally disabled during the aforestated periods of time.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of seven and one-half percent (7 1/2%) loss of use of the left hand and seven and one-half percent (7 1/2%) loss of use of the right hand.

In support of this conclusion the Arbitrator notes following:

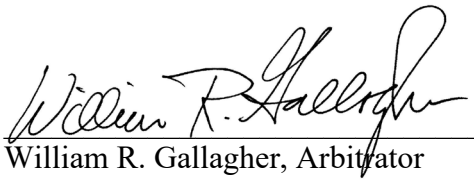
Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

At the time of the accident, Petitioner worked for Respondent as a Correctional Officer and he was subsequently promoted to Correctional Sergeant. The job duties of both are very similar and require the active and repetitive use of both hands. The Arbitrator gives this factor moderate weight.

Petitioner was 29 years old at the time he sustained the accident. He will have to live with the effects of the injury for the remainder of his working and natural life. The Arbitrator gives this factor moderate weight.

There was no evidence the injury had any effect on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.

As a result of the injury, Petitioner was diagnosed with carpal tunnel syndrome in both his left and right hands and underwent open carpal tunnel release surgeries. Petitioner continues to have complaints of pain and cramping in his fingers as well as diminished grip strength. The Arbitrator finds Petitioner's complaints can only be partially corroborated by the treatment records because when Dr. Bradley last saw Petitioner, Petitioner only complained of some tenderness in his right palm and that his strength was improving. Further, as is noted herein, Dr. Stewart was unable to completely evaluate Petitioner's condition because of Petitioner's refusal to be tested. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC021629
Case Name	Cynthia White v. Continental Tire
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0529
Number of Pages of Decision	21
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	James Keefe, Jr.

DATE FILED: 11/12/2024

/s/Amylee Simonovich, Commissioner

Signature

24IWCC0529

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cynthia White,

Petitioner,

vs. NO: 18 WC 21629

Continental Tire,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, and prospective medical treatment, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

In the interest of efficiency, the Commission primarily relies on the detailed recitation of facts provided in the Decision of the Arbitrator, except as stated below. The Commission affirms the Arbitrator's conclusion that Petitioner's condition of ill-being regarding her cervical spine is causally related to the April 14, 2018, work accident. The Commission also affirms the Arbitrator's award of prospective medical treatment in the form of the C5-6 and C6-7 disc replacement surgery recommended by Dr. Gornet. However, the Commission reverses the Arbitrator's conclusions regarding the causal connection of Petitioner's lumbar spine condition to the work accident, and modifies the award of medical expenses.

Causal Connection

The Commission affirms the Arbitrator's conclusion that Petitioner's cervical spine condition and need for the recommended treatment is causally related to the April 14, 2018, work accident. However, the Commission finds Petitioner's lumbar spine condition is not causally related to the work accident.

In reaching the conclusion that Petitioner's lumbar condition is causally related to the work accident, the Arbitrator primarily relied on the opinions of Dr. Gornet, Petitioner's treating doctor. The Commission views the evidence quite differently. After considering the totality of the evidence, the Commission finds Petitioner's lumbar condition is not causally related to the April 14, 2018, work accident.

The Commission does not find Dr. Gornet's opinions regarding the causal connection of Petitioner's lumbar condition persuasive given the credible evidence. Dr. Gornet did not review any records that pre-dated his initial examination of Petitioner on October 10, 2019, a year and a half after the work accident. Dr. Gornet also did not review any pre-accident medical records. His entire understanding of Petitioner's lumbar condition is based solely on the history Petitioner gave him. His limited and clearly flawed information completely undercut Dr. Gornet's opinions regarding the causal connection of Petitioner's lumbar condition to the work accident.

Dr. Gornet was unaware that Petitioner provided a wholly inaccurate history regarding both the onset and report of lumbar symptoms following the work accident, and her pre-accident lumbar condition. Petitioner told the doctor that she began experiencing low back pain with pain radiating to her right buttock, hip, and down her right leg to the foot on or about April 24, 2018. Petitioner testified that the symptoms she reported to Dr. Gornet during his initial examination began immediately after her work accident. However, her medical records tell a starkly different story. Due to the seriousness of Petitioner's injuries after the work accident, Petitioner underwent extensive treatment, both inpatient and outpatient, with numerous medical providers before Dr. Gornet examined her in October 2019. Yet, despite her extensive treatment, there is no evidence that Petitioner even hinted at low back pain or pain radiating into the right leg before her visit with NP Davenport on September 4, 2019. During that visit, Petitioner for the first time complained of "chronic" low back pain, with pain radiating to the bilateral hips and buttocks. (PX 5).

Petitioner tried to explain away the lack of any documented complaints involving her low back or right leg prior to September 4, 2019, by alleging she was unable to express her symptoms to her providers for a long period after her accident due to lingering effects from her head injury. Petitioner even testified that at times she was unable to even say the word "pain" to her doctors and could only hope they could interpret what she was unable to convey regarding her numerous complaints. However, once again the medical records tell a very different story. While medical providers at times did note Petitioner's mild communication issues, there is no evidence that any provider was unable to determine Petitioner's symptoms. There is also no evidence that any of her numerous providers were unable to understand everything Petitioner told them. No medical provider documented times when Petitioner was unable to clearly convey her symptoms. Instead, the credible evidence shows that Petitioner did not complain of any low back or right leg symptoms to any of her providers until almost 1.5 years after the April 2018 work accident. This is critical information Dr. Gornet lacked when forming his causation opinion regarding Petitioner's low back condition.

Similarly, Petitioner denied experiencing any pre-accident lumbar complaints or treatment and told Dr. Gornet that she underwent a pre-accident lumbar MRI solely due to an ovarian mass. However, the credible evidence directly contradicts this reported history. Unfortunately, the relevant pre-accident treatment records are not in evidence; however, it is undisputed that Dr.

Mirkin, Respondent's Section 12 examiner, reviewed certain records that shed light on Petitioner's history of lumbar complaints.[1] In his February 2021, report, Dr. Mirkin wrote that on October 26, 2016, Petitioner complained of low back pain for the prior three to four years to NP Davenport. NP Davenport is Petitioner's primary care provider and has continued to treat Petitioner since the work accident. Per Dr. Mirkin's summary, Petitioner complained of low back pain radiating into her right hip and leg. Petitioner was already taking gabapentin to treat her chronic low back pain. A month later, Petitioner complained of continued low back pain radiating into both hips, worse on the right. The Commission notes that this evidence of pre-accident chronic low back pain with radiculopathy into the right hip and leg is identical to the complaint of chronic low back pain with right-side radiculopathy Petitioner made to NP Davenport in September 2019.

The Commission finds Dr. Gornet's causation opinion regarding Petitioner's low back condition wholly unpersuasive because it is based on inaccurate information Petitioner provided regarding her pre-accident lumbar condition and the onset of her lumbar complaints after the work accident. After considering the totality of the evidence, the Commission finds Petitioner's lumbar condition and associated complaints of radiculopathy are not causally related to the April 14, 2018, work accident.

Medical Expenses

The Commission has found that Petitioner's lumbar condition is not causally related to the work accident. Thus, the Commission must modify the Arbitrator's award of medical expenses in this matter. The Commission finds Respondent is not liable for any expenses related to Petitioner's lumbar condition as such expenses are not related to the April 14, 2018, work accident.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on August 31, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that Petitioner's current condition of ill-being regarding her cervical spine is causally related to the April 14, 2018, work accident. However, Petitioner's lumbar spine condition is not causally related to the work accident.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical services included in Petitioner's Exhibit 16 as provided in Sections 8(a) and 8.2 of the Act. Respondent is not liable for any medical services related to Petitioner's lumbar spine condition. Respondent shall receive a credit for any medical expenses paid through its group insurance, pursuant to Section 8(j) of the Act.

1 The Commission notes that Petitioner thoroughly cross-examined Dr. Mirkin during his evidence deposition and never disputed the accuracy of the summary of the pre-accident records in the doctor's narrative report.

IT IS FURTHER ORDERED that Respondent shall authorize and pay for prospective medical treatment in the form of the C5-6 and C6-7 disc replacement surgery recommended by Dr. Gornet.

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

IT IS FURTHER ORDERED that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $12,800.00. 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 12, 2024

o: 9/10/24
AHS/jds
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/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC021629
Case Name	Cynthia White v. Continental Tire
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	James Keefe Jr.

DATE FILED: 8/31/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 29, 2023 5.35%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Cynthia White
Employee/Petitioner

v.

Continental Tire
Employer/Respondent

Case # **18** WC **021629**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, on **7/27/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **4/14/18**, 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 in her cervical and lumbar spine ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**32,479.13**; the average weekly wage was $**810.81**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **2** dependent children.

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

Respondent shall be given a credit of $**29,729.70** for TTD, $**518.41** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**30,248.11**.

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

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Group Exhibit 16, as provided in Sections 8(a) and 8.2 of the Act, pursuant to the medical fee schedule. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

Respondent shall provide and pay for prospective medical treatment, including, but not limited to, disc replacements at C5-6 and C6-7 as recommended by Dr. Gornet, and all reasonable and necessary attendant care.

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.

AUGUST 31, 2023

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) **SS**
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

CYNTHIA WHITE,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 18-WC-021629
	)	
CONTINENTAL TIRE,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on July 27, 2023 pursuant to Section 19(b) of the Act. The parties stipulated that on April 14, 2018 Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent. The issues in dispute are causal connection, medical expenses, and prospective medical care.

The parties stipulated that Respondent shall receive credit for any and all medical expenses paid through its group medical plan, under Section 8(j) of the Act. The parties stipulated that Petitioner is entitled to temporary total disability benefits for the period 6/18/18 through 7/7/19 and temporary partial disability benefits for the period 7/8/19 through 8/4/19, all of which have been paid. The parties stipulated that Respondent is entitled to a credit of $29,729.70 in TTD benefits paid and a credit of $518.41 in TPD benefits paid.

TESTIMONY

Petitioner was 47 years old, single, with two dependent children at the time of accident. Petitioner was employed by Respondent as an industrial maintenance technician. On 4/14/18, Petitioner was working on a conveyor drive shaft and gearbox when something broke and struck her in the right side of her face. She testified that everything got blurry, and she could not recall some of the post-accident events because she lost consciousness.

Petitioner testified that she had severe headaches after the accident and continues to wake with a headache every day. She suffered seizures following the accident and severe light sensitivity. She sees a halo or shadowing in her vision. Petitioner broke three teeth and sustained facial fractures. She has a screw above her right eye where bone separated, and she wore a patch over her eye. Petitioner had confusion and was very angry following the accident because she could not communicate properly. She was not able to focus and underwent inpatient speech

therapy in August and September 2018. She testified that her speech was stuttered and she could not complete a sentence or find words to communicate.

Petitioner had numbness and tingling down her arms and loss of strength. She told Dr. Davenport about her neck symptoms but her ability to articulate and her other injuries and treatment distracted the focus on her neck. Her dizziness, confusion, cognitive and psychological issues, facial pain, dental pain, ability to walk, and light sensitivity had improved when she was examined by Dr. Gornet. Petitioner underwent injections that caused extreme pain.

Petitioner moved to Florida after she lost her employment with Respondent. She has 30 years of experience in the construction industry as an industrial electrician and maintenance technician. She testified she is not able to work in the same field she did prior to her accident. She accepted a job as a construction manager for a non-profit company that distributed grant funds following Hurricane Sally in Florida. She is currently laid off from Wood Group where she works as a safety coordinator and the work is seasonal. Petitioner teaches OSHA classes on the side. She testified she is extremely limited in her trade because she has hand tremors and cannot perform the duties of an electrician. She cannot look or reach up to perform electrical work above her head. Her injuries have limited her ability to work because she cannot perform physical labor to work outages and she has to take on a managerial role. Prior to her accident Petitioner could work full-time twelve months a year.

Petitioner testified she can no longer perform the activities she did prior to her injuries, including riding a side-by-side, hiking, golfing, and mowing. She cannot perform housework without pain. Petitioner testified that Dr. Gornet has recommended surgery which she desires to undergo.

On cross-examination, Petitioner testified that she last saw Dr. Gornet's physician assistant in May 2022. She agreed she completed a pain diagram when she saw Dr. Mirkin at Respondent's request. She testified she still experiences the symptoms stated on the pain diagram which were present immediately after her accident. Petitioner testified there were times after her accident she could not articulate the work "pain" and there were huge amounts of her life she could not recall. She moved to Florida in July 2021 and agreed she visited Florida after her accident prior to moving there.

Petitioner identified her Facebook post dated 9/24/19 and explained that her children were changing brakes on her car. She denied participating in the event other than retrieving tools for her boys. On 10/15/19, Petitioner was laying out on a friend's boat. She agreed that five days prior to the event she reported to Dr. Gornet she had neck pain radiating to both trapezius, shoulders, and down both arms, hand numbness and tingling, low back pain to both sides radiating into her right buttock, hip, and down her leg to her foot.

Petitioner identified Facebook posts dated March 2020 where her children rode at King City Dirt Riders. She denied riding on that date. She stated she walked on a sidewalk to the spillway to take a photograph of the waterfall. She testified that her children put her truck on a jack to change the wheel bearings in the photo dated 4/18/20 and she did not participate. She

denied riding a jet ski in June 2020. She agreed she went fishing in the ocean since she moved to Florida. She testified that her son went skydiving and she denied participating.

Petitioner testified that the cervical injection caused her pain to go from 10/10 to 15/10. Her symptoms improved with the lumbar injection. She has not treated with any other doctors for her neck since May 2022. She takes over-the-counter Ibuprofen and no prescription medications for her neck symptoms.

MEDICAL HISTORY

On 4/14/18, Petitioner was transported to Good Samaritan Hospital by ambulance. (PX3) Petitioner reported she was working on a conveyor belt when something shot up and hit her above her right eye. She sustained a 1.5 cm laceration and pain to her lateral right eyebrow. She had tenderness to her right forehead and lateral orbit. Range of motion of her cervical spine was normal with mild tenderness to palpation. She believed she lost consciousness for a few seconds. She denied neck pain or any other injuries. The laceration was repaired with five sutures. A CT scan of her head revealed a soft tissue laceration along the superolateral margin of the right orbit, the bone immediately deep to the laceration was slightly irregular due to a 3-4 mm fracture fragment along the anterior margin of the superolateral portion of the orbit. Diagnoses included contusion of the face; laceration of right eyebrow; cervical strain; open fracture of the lateral wall of orbit; and acute head injury with loss of consciousness. She was discharged with prescriptions for Keflex, Hydrocodone, Celexa, Flexeril, Percocet, and Ibuprofen. She was instructed to follow up with the Washington University Neurology Department.

On 4/29/18, Petitioner was examined by neurologist Dr. Gerald Cho at Washington University. (PX4) She reported blurry vision in her right eye, numbness along the distribution of the zygomatic facial nerve, decreased sensation of the maxillary nerve on the right, tenderness along the right temporomandibular joint, damage to the crown on tooth #2, and frequent headaches. Dr. Cho recommended an ophthalmologic exam, observation of the decreased sensation of the right zygomatic, frontal NV2 nerve distributions likely secondary to neuropraxia, and an oral surgeon. Dr. Cho was waiting on the CT scan results before making additional recommendations. Petitioner did not return to Dr. Cho.

On 4/30/18, Petitioner saw her primary care physician Dr. Davenport. (PX5) She reported she had been seen by an ortho and a reconstructive surgeon who suggested she see her primary physician for constant headaches. Dr. Davenport noted Petitioner's current injuries were being handled by specialists and referred her to a neurologist.

On 5/29/18, Petitioner was examined by neurologist Dr. Syed Shah. (PX6) She reported seizing, blackout spells, severe headaches, and dizziness. She was not sure she could perform her light duty work of a desk job. She had difficulty with balance, memory, and concentration. She denied diplopia, nausea, or vomiting. She had difficulty sleeping due to unbearable headaches. Dr. Shah diagnosed post-concussion migraine headaches, closed head injury with post-concussion syndrome, and central vertigo due to closed head injury. He prescribed Depakote Extended Release and Zonisamide for headaches and advised Petitioner not to drive. Dr. Shah ordered an EEG with CT scan and MRI scan of the brain.

Petitioner returned to Dr. Shah on 6/7/18 and 6/12/18 with no improvement. The head CT scan and brain MRI were normal.

On 6/18/18, Petitioner returned to Dr. Davenport who noted Petitioner was taking Dilantin for seizures. Petitioner went to the emergency room yesterday for worsening right-sided headaches and stuttering. She rated her headaches 10/10 that occurred 3 to 4 times a week and could last all day. She had ringing in her ears and difficulty completing sentences. Dr. Davenport referred Petitioner to Washington University for a second opinion. On 6/28/18, Dr. Davenport noted Barnes/Washington University would not take third party liability insurance. Petitioner's nurse case manager was scheduling her for speech therapy.

On 7/12/18, Petitioner was examined by physiatrist Dr. Christopher Wolf for headaches, difficulty with concentration, memory, confusion, irritability, and sadness. (PX18) She had difficulty with the right side of her mouth. Other symptoms included occasional diplopia and photophobia that worsened with concentration. Petitioner's headaches remained consistent on the right side. Her balance and gait made her feel concerned for her safety. Dr. Wolf reviewed the brain MRI and EEG that were normal. He diagnosed concussion with loss of consciousness; movement disorder; visual impairment; altered activities of daily living; impairment of balance; and depressive disorder. Dr. Wolf opined that Petitioner had significant alteration in function due to her diagnoses. He felt that Petitioner's movement disorder and cogwheeling was related to myocardial clonus-type movement disorder and not seizures. He recommended a hospital-based EEG to determine if there was any seizure activity, neuro-ophthalmologist assessment for headaches and vision, referral to Dr. Robert Hagen to address the occipital nerve injury, neuro-psych evaluation, and in-patient rehabilitation for occupational and physical therapy.

On 7/30/18, Petitioner was admitted to SSM Health Rehabilitation. (PX8) Dr. Nguyen diagnosed concussion with loss of consciousness, seizure disorder, and deficits in activities of daily living, mobility, and cognition. Evaluation on 8/8/18 revealed improving headaches with accu pressure; seizures with rolling eyes up during therapy with no jerking movements; mobility deficits; and moderate to maximum assistance with cognitive activities. Petitioner expressed continued distress with acceptance, hope, perception of rehabilitation gains, and understanding of her condition.

On 8/14/18, Petitioner began care at NeuroRestorative Clinic. She underwent physical therapy, occupational therapy, speech, counseling, woodshop, residential services, and medical management. Petitioner was discharged from full active rehab upon her request and transitioned to outpatient services on 9/13/18. It was recommended she continue outpatient rehab due to noted deficits. Goals were not met secondary to shortened in-patient rehab and continued challenges with severe headaches, fatigue, eye strain, and dizziness. Petitioner engaged in weekly individual out-patient counseling. Her last physical therapy assessment indicated she required extended time to recover following therapy modalities due to dizziness and eye pain symptoms. She had numbness/tingling in her arms and hands with upper extremity weight bearing or exercises and weakness. Petitioner complained of grinding/popping in her neck with movement. She had ataxia like movements in her arms and could not control her arms for some time after her symptoms started. Her greatest complaint and barrier were headaches with pain behind her right eye and the frontal and temporal region. Her pain was 10/10 at times that

affected her vision, cognition, light sensitivity, and word finding. The therapist ordered sensory garments to wear to reduce burning pain all over her body. Petitioner reported feeling "fire ants" biting her all over. Petitioner received the garments on 10/9/18. She was anxious to be referred to the movement disorder specialist at SLU as soon as possible.

On 9/12/18, Petitioner was examined by neurologist Dr. Ahmed Jafri. (PX9) Review of symptoms included immediate headaches following the accident; tremors in right arm 2 to 3 weeks post-accident; jerking in the left arm 4 weeks post-accident; persistent sharp/dull/throbbing right hemi-cranial headaches; ocular pain as if the eyeball is being pulled out that radiated to the occipital head region; aversion to light and noise; nausea and vomiting aggravated by head movement; dizziness; concern for seizures with arms jerking; tremors in hands and arms provoked by physical activity; loss of smell and taste; difficulty with balance; hands and arm numbness; difficulty with cognitive memory, concentration, focusing, and recognizing symbols related to work; and head fog. Dr. Jafri requested prior imaging studies, neuro-psychological evaluation at SLU, use of a walker, continued Topiramate for headaches, and use of Sumatriptan for breakthrough headaches.

On 10/11/18, Dr. Jafri recommended consultation for orbital nerve blocks and cervical facet blocks. He was still working on scheduling the neuropsychology, neuro-otology, and neuro-epilepthology consults. He noted Petitioner's dizziness was severe.

On 10/18/18, pain management specialist Dr. Gerson Criste injected the right occipital and right supra-orbital nerves for constant neck pain. (PX11)

On 12/3/18, Petitioner was examined by Dr. Robert Hagen at STL Plastic & Hand Surgery for right-sided facial and occipital pain. (PX12) He documented her pain distribution in the right malar region radiating over the zygomatic into the pre-auricular region. It radiated into the anterior temple region and over the frontal region to the midline. Dr. Hagen performed diagnostic blocks of the zygomaticotemporal, zygomatic facial, supra-orbital, and supra-trochlear nerves. Petitioner's headache pain reduced from 8.5/10 to 4.5/10. Dr. Hagen recommended occipital nerve injections to determine whether a nerve block was necessary.

On 12/11/18, Dr. Jafri noted no improvement with the injections performed by Dr. Criste. The neuro-otology consultation was pending and neuropsychology evaluation and epileptology consult was to follow. Petitioner had increasing right-sided face pain located in front of her ear radiating up to her temple. He referred Petitioner to an oral surgeon to address TMJ pain.

On 12/12/18, Petitioner was examined by Michael Hoffmann, DDS. (PX13) Dr. Hoffmann noted Petitioner's posterior teeth were fractured, with #'s 4 and 30 needing a root canal, post build up, and crown. Tooth #19 was non-restorable and required extraction, with bone graft and replacement with implant and crown. He noted Petitioner had chronic oral pain since her work accident and had a limited opening due to trauma. She had not been able to brush or floss and ate soft foods and liquids since her accident, causing gross decay of tooth #'s 2, 3, 7, 13, and 29 which were restorable with composite restorations. Tooth #'s 8 and 9 were fractured on the incisal edges that could be restored with composite restorations.

On 12/14/18, Petitioner was examined by neuropsychologist Dr. Phillip Rupert at SLU. (PX14) Petitioner reported taking Gabapentin and Vicodin for facial pain. She reported increased difficulty with organization, focus, calculation, multi-tasking, and short-term memory. Dr. Rupert felt she was angry and depressed. He concluded that Petitioner obtained atypically low scores on multiple measures of performance validity, indicating likely suboptimal task engagement during the evaluation. Thus, the results likely underestimated her actual level of cognitive ability. Dr. Rupert further noted Petitioner's mood and personality results were atypically elevated, indicating an extremely high reporting and possible over-endorsement of somatic and cognitive symptoms. This included self-reported neurologic pain and cognitive symptoms. The final differential diagnoses were adjustment disorder with depressed mood that may benefit from psychiatry evaluation and psychotherapy.

On 1/14/19, Petitioner was involuntarily admitted to Good Samaritan Hospital. (PX15) It was noted Petitioner was trying to get her headaches to go away and she took approximately 2400 mg of Gabapentin and another medication she could not recall. The hospital recorded she was threatening suicide. Petitioner denied being suicidal and was eventually discharged.

On 1/28/19, Petitioner was examined by neuro-ophthalmologist Dr. Khanna at SLU. She opined the accident caused the orbital fracture, which led to a shift in her eyes. Dr. Khanna felt it explained Petitioner's reports of seeing things off balance, which contributes to dizziness, balance loss, headaches, and pain. Dr. Khanna diagnosed binocular vision disorder with diplopia, convergence spasms, and esotopia. She prescribed eyeglasses, artificial tears, and follow up with Dr. Gillian Roper-Hall to assist with eye alignment and shadowing to balance her vision.

On 2/21/19, Dr. Davenport noted Petitioner was being followed by multiple specialists due to her closed head injury and facial fractures. She had been following protocol for brain trauma and has been unable to work. Dr. Davenport noted Petitioner presented with anxiety and feeling overwhelmed. He recommended a neurologist for traumatic brain injury rehabilitation, which would include physical, occupational, and speech therapy. Her anxiety medication was changed from Clonazepam to Lorazepam.

On 2/28/19, Petitioner followed up with Dr. Jafri. He noted persistent cognitive difficulties, right face/eye pain, and ataxia of the left upper extremity. Petitioner was seen in neuro-ophthalmology and no ocular pathology was detected. It was felt she was suffering from convergence spasm, with persistent periorbital pain, and photophobia due to post-concussion syndrome. Dr. Jafri recommended psychiatry and psychotherapy consults to address underlying adjustment disorder with depression. He noted the ENT opined that Petitioner's symptoms were the aftermath of her head injury with no inner ear causation. Dr. Jafri recommended a cervical MRI, continued physical therapy, and pain management.

On 3/5/19, Petitioner was examined by neurologist Dr. Todd Silverman pursuant to Section 12 of the Act. (RX4) Petitioner complained of facial pain, migraine, difficulty speaking, and pins and needles throughout her body. Exam of the cervical spine showed full range of motion and no tenderness to palpation. Motor exam was normal. Dr. Silverman diagnosed concussion with chronic facial pain and post-traumatic migraine as a result of the work accident. He opined her speech/language and movement disorders were not related to her work accident.

He opined that Petitioner's double vision and paresthesia all over her body were not causally related to the accident. He opined there was likely a psychiatric cause to many of Petitioner's symptoms.

On 4/17/19, Petitioner followed up with Dr. Davenport for anxiety and cognitive difficulties. He noted Petitioner had a multitude of oral surgeries and she continued to be followed by neurology. Her cognitive, occupational, and physical therapy previously recommended was denied by worker's comp. Petitioner continued to struggle with speech and cognitive ability in her daily activities. She had difficulty with attention span, completing tasks and thoughts, anxiety, and sleeping. Dr. Daveport prescribed Wellbutrin and Lorazepam and continued to recommend a neurology referral for therapy.

On 4/22/19, Petitioner underwent a cervical spine MRI at Good Samaritan. (PX17) The radiologist interpreted a C5-6 disc protrusion effacing the anterior subarachnoid space and contacting the cord with subtle flattening. The remainder of the spine was unremarkable.

On 5/6/19, Dr. Elizabeth Pribor, in conjunction with Marsha McCabe performing testing, performed an independent medical psychiatric evaluation at Respondent's request. (RX2, 3) Dr. Pribor concluded Petitioner suffered from major depressive disorder and somatoform disorder. The work accident was an aggravating factor of the depression, and the accident could have partially aggravated the somatic disorder. She recommended therapy and medications.

On 7/17/19, Dr. Davenport noted Petitioner returned to light duty work. She continued to have speech issues that were much improved since her last visit. Dr. Davenport noted Petitioner had a cervical MRI that revealed some central bulging. Petitioner complained of neck pain that radiating down both arms. She rated her pain 4/5 and she was taking 1 to 2 Hydrocodone every few days. Physical examination of the cervical spine revealed limited range of motion and increased pain with rotation. Dr. Davenport prescribed Oxycodone to use sparingly for her neck.

On 9/4/19, Petitioner returned to Dr. Davenport with worsening neck pain. Her pain was to her posterior neck midway down, and pain in her central low back to her bilateral hips and buttocks. She was taking Oxycodone and Gabapentin with some improvement. Dr. Davenport noted right-sided facial droop when fatigued and a burning pain from Petitioner's right ear to the macular crescent and right side of her face. Dr. Davenport prescribed Hydrocodone and Cyclobenzaprine for her neck and back pain and recommended range of motion and stretching exercises. He recommended therapy for facial droop.

On 10/10/19, Petitioner was examined by Dr. Matthew Gornet. (PX1) Petitioner complained of neck pain with frequent headaches to both trapezius, shoulders, and down her arms to her hands with numbness and tingling. She also reported low back pain to both sides, particularly to the right buttock, hip, and down her leg to her foot. She denied prior neck and low back injuries. Dr. Gornet reviewed the cervical MRI of 4/22/19 to show an obvious C5-6 disc injury and potentially at C6-7. He recommended high resolution MRIs of the cervical and lumbar spines. He opined that Petitioner's condition was causally connected the work accident.

On 1/9/20, Petitioner followed up with Dr. Gornet who opined the cervical MRI revealed C3-4, C5-6, and C6-7 disc herniations. The lumbar MRI revealed bilateral facet arthropathy and a small tear at L4-5. He recommended physical therapy and prescribed Meloxicam. On 5/21/20, Petitioner called Dr. Gornet's office reporting no improvement following four weeks of physical therapy. Injections were ordered.

On 7/21/20, Dr. Helen Blake performed a right C5-6 epidural steroid injection. On 8/11/20, Dr. Blake performed a right C3-4 epidural steroid injection. Petitioner's post-procedure scores were 10/10. On 8/25/20, Dr. Blake performed an L4-5 transforaminal steroid injection that improved Petitioner's symptoms with a post-procedure pain rating of 2/10.

On 12/5/20, Dr. Gornet noted the cervical injections provided no relief. He advised he would see her in January with a new MRI and CT scan. He opined that at a minimum Petitioner required a disc replacement at C5-6. He was concerned with C3-4 due to her predominant axial neck pain. He prescribed Meloxicam and Tizanidine.

On 1/28/21, Dr. Gornet noted the new MRI revealed obvious disc pathology at C5-6 and C6-7, with a central herniation at C3-4. He recommended disc replacements at C5-6 and C6-7. He placed her on light duty restrictions. The radiologist commented that Petitioner had a new caudally extruded disc fragment at C6-7 and the central protrusion at C5-6 increased in size since the prior study.

On 2/22/21, Petitioner was examined by Dr. Peter Mirkin pursuant to Section 12 of the Act. Petitioner completed a pain diagram indicating burning, pins and needles, and stabbing pain on the right side of her head radiating down the front and back of both arms all the way to her hands. She reported the same symptoms in her right low back down the back of the right leg to the foot. She described the symptoms as fire in her neck and back with face numbness. Turning her head, standing, and sitting increased her symptoms. Her hobbies included golf, softball, running, and yoga. Dr. Mirkin opined that Petitioner suffered from a non-compressive disc protrusion at C5-6 with cervical strain. He opined she did not require any work restrictions.

On 4/27/21, Dr. Mirkin prepared a supplemental report following review of MRI scans. He noted the 1/28/21 cervical spine MRI revealed a new extruded disc protrusion at C6-7 not seen on the first MRI. He opined it was not causally connected to the work accident.

On 10/25/21, Dr. Gornet reviewed Dr. Mirkin's Section 12 report who diagnosed a cervical strain and a small non-compressive protrusion at C5-6 that did not require surgery. Dr. Gornet noted disc injuries at C5-6 and C6-7 on the studies performed in January 2020, which he agreed progressed.

On 5/23/22, Petitioner was seen by Dr. Gornet's physician assistant. She reported neck pain with headaches going into both trapezius and pain between her shoulder blades going down both arms to her hands. She was still having bilateral low back pain going into her right buttock, hip, and down her leg to her foot. Exam was unchanged. She reported working light duty.

Dr. Matthew Gornet testified by way of deposition on 4/25/22. He is a board-certified orthopedic surgeon. Dr. Gornet testified that the objective pathology correlated with Petitioner's subjective complaints. He recommended disc replacements at C5-6 and C6-7 which was causally connected to her work accident.

On cross-examination, Dr. Gornet testified he did not review any of Petitioner's medical records prior to his examination. He could not comment on when Petitioner's neck and low back pain was initially documented. He opined that disc injuries may not always cause neck pain but present with headaches, pain between the shoulder blades, or paresthesias in the arms. He testified that with a traumatic blow to the head it may be assumed the headaches are associated with a concussion until the concussive symptoms improve. He did not have any prior lumbar scans to know if Petitioner had lumbar spine pathology prior to her accident. He testified that Petitioner's lumbar spine looked relatively healthy with a little tear on the right. He felt facet changes were playing a role in her low back pain, but he had no prior objective studies to opine what conditions were pre-existing. His working diagnosis was disc injury at L4-5, in the face of sacralized L5-S1 segment, and aggravation of some pre-existing facet arthritis. He opined that Petitioner's lumbar condition was causally connected to her work accident absent any evidence she had active treatment just prior to her accident. He opined that Petitioner's mechanism of injury could cause the lumbar condition she presented with. He opined that the numbness down the back of Petitioner's arms was related to her cervical disc pathology, particularly at C5-6. He testified Petitioner will require updated imaging prior to surgery.

Dr. Peter Mirkin testified by way of deposition on 2/7/22. (RX1) He is a board-certified orthopedic surgeon. Dr. Mirkin testified that Petitioner completed a pain diagram and questionnaire for his office. He testified that the first time Petitioner sought formal treatment for her neck was on 4/22/19, and her for her back on 10/10/19. He testified that Petitioner indicated on her pain diagram she had pain going down the front and back of her arms and the back of her right leg. He opined that the cervical MRI dated 1/28/21 was of moderate quality and the MRI dated 4/22/19 was of better quality. He noted a small disc bulge at C5-6 with no compression of the spinal cord or nerves. He did not see any objective pathology that explained Petitioner's symptoms. He testified that the radiologist did not note any lateral extension or canal encroachment. He testified that the cervical MRI dated 1/9/20 showed no change and a small bulge at C5-6. The cervical MRI dated 1/28/21 showed the C5-6 bulge and now a small protrusion on the left at C6-7. He opined that the C6-7 protrusion could cause left C7 symptoms which Petitioner did not have, which would be pain down her outer left hand to the small and ring fingers and motor weakness. He opined that the C6-7 pathology was not causally connected to Petitioner's accident as it did not appear at all on the initial MRI. He testified that Petitioner had a normal examination with the exception of slight loss of range of motion in her cervical spine. Dr. Mirkin opined that Petitioner was not a surgical candidate as it relates to her work accident, and she does not require restrictions.

Dr. Mirkin opined that the lumbar MRI performed on 1/15/20 was essentially normal with minimal bulging at several levels with no nerve root compression. He opined that Petitioner's lumbar condition was not causally related to her work accident because there were months before she had any lumbar spine pain, and the MRI was normal. He opined that Petitioner does not require restrictions or surgery for her lumbar spine.

On cross-examination, Dr. Mirkin agreed that the head trauma Petitioner sustained could cause neck pain and disc injuries. He did not review any MRI films that pre-dated Petitioner's accident. He testified it is impossible to tell if the C5-6 disc injury occurred as a result of the work accident as there were no prior MRIs for comparison. He testified that certainly the work accident could have aggravated the disc protrusion at C5-6.

CONCLUSIONS OF LAW

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

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

There is no dispute that Petitioner sustained facial and head injuries on 4/14/18 that arose out of and in the course of her employment with Respondent. Petitioner was working full duty without restrictions at the time of accident. She has 30 years of experience in the construction industry as an industrial electrician and maintenance technician. There is no evidence that Petitioner had any injuries or treatment to her cervical or lumbar spine prior to 4/14/18.

Petitioner was transported to Good Samaritan Hospital immediately following the accident. She was diagnoses with a contusion of the face, 1.5 cm laceration of the right eyebrow that was repaired with five sutures, a cervical strain, an open fracture of the lateral wall of the right orbit, and acute head injury with loss of consciousness. Her cervical spine was noted to be tender to palpation. Petitioner treated for a multitude of injuries following the accident, including blurred vision in her right eye, facial nerve damage, dental injuries, severe headaches, seizure-like symptoms, blackout spells, dizziness, movement disorder, and cognitive and behavioral deficits including difficulty with concentration, speaking, memory, confusion, irritability, sadness, and depression.

Petitioner underwent in-patient rehabilitation in August and September 2018, including physical therapy, occupational therapy, speech therapy, and counseling. Upon discharge on 9/13/18, it was noted Petitioner continued to have severe headaches, fatigue, eye strain, and dizziness. She had numbness/tingling in her arms and hands with upper extremity weight bearing or exercises and weakness. Petitioner complained of grinding/popping in her neck with movement. She had ataxia like movements in her arms and could not control her arms for some time after her symptoms started. Her greatest concern at that time was headaches with pain behind her right eye and the frontal and temporal region. Her pain was 10/10 at times that affected her vision, cognition, light sensitivity, and word finding. She was referred to a specialist for movement disorder.

Five months after the accident Dr. Jafri noted Petitioner's symptoms included immediate headaches following the accident, right arm tremors and jerking in the left arm that developed within weeks of the accident, persistent sharp/dull/throbbing right hemi-cranial headaches, ocular pain as if her eyeball was being pulled out that radiated to the occipital head region, aversion to light and noise, nausea and vomiting aggravated by head movement, dizziness, concern for seizures with arms jerking, tremors in hands and arms provoked by physical activity, loss of smell and taste, difficulty with balance, hands and arm numbness, difficulty with cognitive memory, concentration, focusing, and recognizing symbols related to work, and head fog. He recommended a neuro-psychological evaluation and the use of a walker.

Petitioner underwent injections in the right occipital and supra-orbital nerves for a chief complaint of neck pain. She underwent diagnostic blocks of the zygomaticotemporal, zygomatic facial, supra-orbital, and supra-trochlear nerves. On 2/28/19, Dr. Jafri noted Petitioner continued to have cognitive difficulties, right face/eye pain, ataxia of the left upper extremity, convergence spasm, periorbital pain, photophobia due to post-concussion syndrome, and depressive disorder. He recommended a cervical MRI. The MRI was performed on 4/22/19 that revealed a C5-6 disc protrusion effacing the anterior subarachnoid space and contacting the cord with subtle flattening. On 7/17/19, Dr. Davenport noted Petitioner had neck pain that radiating down both arms. She was taking Hydrocodone. Physical examination of the cervical spine revealed limited range of motion and increased pain with rotation. Dr. Davenport prescribed Oxycodone to use sparingly for her neck.

On 9/4/19, Dr. Davenport noted worsening neck pain and central low back that radiated to her bilateral hips and buttocks. She had some improvement with Oxycodone and Gabapentin. Dr. Davenport prescribed Hydrocodone and Cyclobenzaprine.

The Arbitrator does not find the delay in treatment of Petitioner's cervical spine and its correlation to causal connection persuasive given her significant facial and head injuries that dominated her treatment for over one year following the accident. The evidence supports that Petitioner complained of neck pain immediately following the accident. Petitioner was diagnosed with a cervical sprain the day of the accident. During in-patient rehabilitation in August and September 2018 Petitioner complained of numbness/tingling in her arms and hands with upper extremity weight bearing or exercises and weakness. Petitioner complained of grinding/popping in her neck with movement. She had ataxia like movements in her arms and could not control her arms for some time after her symptoms started. In September 2018, Dr. Jafri noted Petitioner's right arm tremors and jerking in the left arm developed within weeks of the accident, with tremors in her hands provoked by physical activity. Petitioner complained of numbness in her hands and arms at that time. It was not until February 2019 that Dr. Jafri ordered a cervical MRI which was performed on 4/22/19.

The Arbitrator is more persuaded by the opinions of Dr. Gornet than those of Dr. Mirkin. Neither doctor had any evidence that Petitioner sustained cervical or lumbar spine injuries or received treatment prior to 4/14/18. Dr. Gornet noted disc herniations at C3-4, C5-6, and C6-7, and bilateral facet arthropathy and a small tear at L4-5. Petitioner failed to improve with physical therapy and cervical injections. Dr. Gornet testified that cervical injuries can present with

headaches, pain between the shoulder blades, or paresthesias in the arms. He testified that with a traumatic blow to the head it may be assumed the headaches are associated with a concussion until the concussive symptoms improve. His opinion is consistent with Petitioner's medical records as her cervical spine and upper extremities presented immediately following the accident and persisted as her facial and head injuries improved. Dr. Gornet opined that the numbness down the back of Petitioner's arms was related to her cervical disc pathology, particularly at C5-6. He opined that Petitioner's mechanism of injury could cause the lumbar condition she presented with, which was a small tear at L4-5 on the right and an aggravation of pre-existing facet arthritis, in the absence of any lumbar symptoms or treatment prior to the work accident.

Dr. Mirkin agreed that the head trauma Petitioner sustained could cause neck pain and disc injuries. He did not review any MRI films that pre-dated Petitioner's accident. He testified it is impossible to tell if the C5-6 disc injury occurred as a result of the work accident as there were no prior MRIs for comparison. He testified that certainly the work accident could have aggravated the disc protrusion at C5-6.

Based on the evidence as a whole, the Arbitrator finds that Petitioner's current condition of ill-being in her cervical and lumbar spine is causally connected to the work accident that occurred on 4/14/18.

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

Issue (K): Is Petitioner entitled to prospective medical care?

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Based on the finding as to causal connection, the Arbitrator finds that Petitioner is entitled to medical benefits related to her undisputed work injury. Respondent shall therefore pay the medical expenses outlined in Petitioner's Group Exhibit 16, as provided in Sections 8(a) and 8.2 of the Act, pursuant to the medical fee schedule. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

The Arbitrator further finds Petitioner is entitled to receive the additional care recommended by Dr. Gornet. Despite conservative care, Petitioner has persistent symptoms that prevent her from returning to full duty work. Therefore, Respondent shall provide and pay for prospective medical treatment, including, but not limited to, disc replacements at C5-6 and C6-7 as recommended by Dr. Gornet, and all reasonable and necessary attendant care.

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

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC018553
Case Name	Michael Moore v. Centurylink Communications, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0530
Number of Pages of Decision	31
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Christopher Mose
Respondent Attorney	Edward Jordan

DATE FILED: 11/12/2024

/s/Kathryn Doerries,Commissioner
Signature

DISSENT: /s/Kathryn Doerries,Commissioner
Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL MOORE,

Petitioner,

vs. NO: 18 WC 018553

CENTURYLINK COMMUNICATIONS, LLC.,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Arbitrator's Decision solely to correct scrivener's errors.

Conclusions of Law

Scrivener's Errors

In the first paragraph under the Order, on page two of the Arbitrator's Decision form, the Commission strikes the word "through" in the first sentence of the TTD Order and substitutes the word "to" so the first sentence now reads, "The Arbitrator awarded 27-3/7 weeks of TTD benefits from October 6, 2017 to April 16, 2018."

In the first paragraph, on page one, in the second sentence under "Decision of Arbitrator" the Commission strikes the referenced date of accident, "October 15, 2017" and substitutes, "October 5, 2017" so the sentence now reads as follows: "Michael Moore [hereinafter "Petitioner"] filed an Application for Adjustment of Claim on June 21, 2018, alleging accidental injuries while working for CenturyLink Communications, LLC. [hereinafter "Respondent"] occurring on October 5, 2017."

On page two, in the last sentence of the third paragraph, the Commission strikes the word "he" so that the sentence now reads as follows: "Petitioner indicated that the ground in the ditch line was wet."

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on February 7, 2023, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $751.13 per week for a period of 27-3/7 weeks, commencing October 6, 2017, to April 16, 2018, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $676.02 per week for a period of 162 weeks, as provided in §8(e)13 of the Act, for the reason that the injuries sustained caused the 100% loss of use of the right eye.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable, necessary and related medical bills as provided in §8(a) and §8.2 of the Act and as evidenced by Petitioner's Exhibit 8. Further, Respondent shall pay Petitioner directly $1,379.12 for out of pocket expenses.

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

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

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

November 12, 2024
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KADbsd
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/s/*Maria E. Portela*
Marie E. Portela

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

KAD/bsd
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DISSENT

I respectfully dissent from the majority Decision and Opinion on Review ("Opinion") finding Petitioner sustained his burden of proving accident, notice, and causal connection. I would reverse the Opinion on the issues of accident, notice, and causal connection and vacate the award of temporary total disability, medical expenses, and permanent disability.

I disagree with the majority for the following reasons:

Accident/Notice

Petitioner failed to sustain his burden of proving accident. Petitioner testified that when he opened the door to his truck, he "hit the ditch and fell and hit, banged my right eye and head" against the topper of his truck. (T. 31-32) Petitioner testified that Russ Francis and the City of Alexis guys (Jim Olson included) had a backhoe and "Russ was directing them with the backhoe how to dig it up" without cutting more fiber. (T. 30) In finding accident, the majority relied on the testimony of the Petitioner's two trial witnesses, Russ Francis ("Francis") and Jim Olson ("Olson") finding their testimony was more credible than Respondent's witness, Petitioner's supervisor, Kimberly Singleton ("Singleton"), despite multiple inconsistencies in the testimony regarding the actual accident and the fact that neither occurrence witness actually saw the incident take place. More importantly, the majority found Petitioner sustained his burden of proving accident despite the fact that not one single contemporaneous medical treatment record documented a history of accident, and all of the treating medical records were devoid of a history of Petitioner striking the right side of his face, or his head. Further, not one medical record documented that Petitioner had a bruise, cut, bump, or redness that would corroborate Petitioner's or his co-workers' trial testimony.

As further evidence that no accident took place, Petitioner did not seek medical attention on the night of the alleged incident. (T. 43) Petitioner testified he was dizzy but did not notice anything else about his head or eye. Then after his break, he finished his work around 7:00 or 7:30 p.m. and he drove about 100 miles home in the dark, at night. (T. 35, 109-110) Petitioner testified that on October 6, 2017, the day after the alleged accident date, he began a scheduled vacation. (T. 44) Petitioner testified that he planned to go to Talladega Speedway, and as he was loading his truck he "could not focus." (T. 44, 82) Petitioner testified that he told his wife he thought something was going on with his eye. (T. 44) Petitioner testified that he and his son went down to Talladega with a friend. (T. 83) They left on Monday but he did not drive. (T. 84) They went down to set up a camper, stayed in the camper and went to the races. *Id.* Petitioner testified this was before he began treating for his right eye condition. (T. 85) Petitioner later testified that this vacation was

after his first treatment figuring that he went down to Talladega on October 12, 2017, and came back October 15, 2017. (T. 115-116) The medical records confirm that Petitioner had treatment on his right eye on October 12, 2017, and again on October 18, 2017. (PX4) As the Appellate Court has noted, "flaws in portions of a witness's testimony may affect the credibility of the witness as a whole." See *People v. Herman,* 407 Ill. App. 3d 688, 707-08, 945 N.E.2d 54, 348 Ill. Dec. 747 (2011).

Petitioner testified that he went on vacation because he was in no pain. (T. 86) Petitioner denied having any pain, or increased pain, in his right eye when he was on vacation after October 5, 2017. (T. 109)

Petitioner testified in closing testimony, that he actually did not "have much pain at all with this." (T. 109) He further confirmed that on October 5, 2017, that he drove home approximately 100 miles at night and it was dark. (T. 109-110)

Petitioner testified that he was familiar with company procedures to report injuries at work. (T. 87) He had worked with people who sustained an injury while working together. (T. 88) Petitioner testified that he did not fill out an accident or Workers' Compensation report, or any written report of an incident or accident on October 5, 2017, (T. 89) Petitioner testified that he worked for Respondent since 1971 and was familiar with the procedures to report injuries at work. (T. 87)

Petitioner testified that his first medical treatment was at SPECS to see an optometrist. *Id.* The medical records confirm the SPECS visit was on October 10, 2017. (PX1, 5) The history/reason for visit stated, "Patient has lost vision in right eye, film, since last Saturday. As patient remembers now, he has had some floater and flashes over the last 2-3 weeks." *Id.* This record confirmed use of two types of eye drops since December 2014 were being used. *Id.* Under "Related Conditions" the record confirms a "No" was in answer to Employment, Auto Accident or Other accident. (PX1, 6) The Assessment and Plan states, "Patient walks in today with an eye problem, sudden loss of vision OD, looks like a vitreous hemorrhage, need referral to Eye MD, patient is leaving for a trip for a week leaving tomorrow so timing is not the greatest. Would like him to be seen by one of the docs at QMG if possible to coordinate next steps. He has his right eye dilated currently." (PX1, 7-8) The SPECS portion is signed by Daniel Hayden, O.D. (PX1, 8). Petitioner was referred to Dr. David Phillips at QMG. (PX1, 3)

Petitioner first saw Dr. Phillips at Quincy Medical Group ("QMG") on October 10, 2017, for his eye condition. (PX2, 1) Petitioner gave a history of having right eye flashes of light and floaters the prior Thursday night that went away at that time. He also reported the night before he "just saw a cloud out of his right eye." *Id*. Driving at night, he had noted persistent flashing light out of his right eye. Petitioner reported having the occasional floater out of his right eye over the last several months. His last eye exam was one year prior. The records confirm Petitioner was status post cataract extraction with intraocular lens insertion having had surgery in Hannibal three

years prior. *Id.* He had astigmatism correcting lens. *Id.* Dr. Phillips diagnosed a possible retinal tear and referred Petitioner to Dr. Blinder. *Id.*

There is absolutely no mention of an accident, bump, hit or any mention of soreness around Petitioner's face, right eye or nose. *Id.* There was no mention in the medical records of bruising/ecchymosis, a bump or hematoma, scratch or cut, or any form of trauma or even a statement that he hit his head. (PX1, PX2, PX4) Further, Petitioner never mentioned any head "trauma" at that appointment or anytime during the course of his treatment. Petitioner testified he treated with Dr. Blinder at The Retina Institute for about two years, yet again, the entirety of the records are devoid of any mention of a work accident or medical opinion regarding causal connection to a work accident. (T, 49, 81; PX4)

I find that Petitioner's claim to have been hit in the eye, but never documented in the medical records, defies even a modicum of plausibility. What makes it even less likely is that he drove 100 miles home the night of the alleged incident and within a week, went on a vacation to Talladega Speedway to watch car races, a notably visual activity. To bolster his case, Petitioner had to hire an expert who provided a narrative report dated January 20, 2022, more than two years after the alleged accident. (PX9) No treating physician provided a causal opinion or documented an accident.

Further, Petitioner never filled out a work accident report or First Report of Injury until 2-1/2 months after the alleged incident. (RX6) The date and time of accident was listed as October 5, 2017, at 12:00 p.m. *Id.* Petitioner testified, however, that he could not recall ever completing any written report of accident for Respondent regarding this October 5, 2017, incident. (T. 89) The report states it was prepared by Petitioner, but reported by phone. (RX6) Petitioner testified that he hit his head on the truck probably around 5:00 o'clock, which does not comport with his First Report of Injury report. He testified that he then stayed at the job site for approximately 1½ to 2 hours before heading home. (T. 82) Petitioner testified that during that time he worked assisting Francis, as Francis was doing the splicing. *Id.*

I would rely on Singleton's testimony over Petitioner's and Petitioner's long-time work friend, Francis and long-time business acquaintance, Olson. The mere existence of testimony does not require its acceptance. *Smith v Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). I base this finding in large part upon the fact there was not one mention of an accident, eye or head trauma, nor evidence of any trauma, bruising or scratch or cut in the treating medical records throughout the pendency of Petitioner's treatment, nor any causal connection opinion offered by either of Petitioner's treating eye physicians.

Notwithstanding the foregoing, Singleton testified that she was not aware that Petitioner reported an accident that occurred on October 4, 2017, or October 5, 2017, while working for Respondent, until May 21, 2018. (TX3, 18.) The majority discounted her testimony because she testified that she authored her May 21, 2018, e-mail strictly from memory which would have been approximately seven months after the accident, but later admitted that she had referred to her notes

to corroborate information in the email. (ArbDec, 9) Based upon the totality of the evidence, I find that testimony did not taint her credibility.

On the other hand, Petitioner testified regarding conflicting dates of his vacation, and other pertinent facts about the day of the alleged incident, and adamantly denied that he told his treating doctor that he had flashing lights or floaters prior to October 5, 2017. (T. 79) The medical records, however, were replete with notations of Petitioner's reporting that he had been having a history of flashing lights and floaters for weeks and even months prior to October 5, 2017. Petitioner also testified that he told Dr. Blinder that he hit his head on the side of the truck, and if the records were devoid of that information, they would be wrong. (T. 79) Petitioner then conceded the events on October 5, 2017, were fresher in his mind in October 2017 than at the time of the Arbitration Hearing. (T. 80)

Petitioner testified that on the day in question, he had a conversation with Singleton in the evening, when it was dark, at 6:30 or 7:00 o'clock to tell her that the job was completed. (T. 39, 91-92) Petitioner testified that he and Singleton would communicate via telephone "probably three times a week." (T. 43) Singleton testified that she and Petitioner communicated via telephone three or four times per week or more if there were issues in the network. (RX3, 10) Petitioner testified that he did not call Singleton immediately after his alleged injury. (T. 92) Petitioner testified that he knew he would have to notify her if he was injured. *Id.* Petitioner testified that he told her jokingly that he thought he was seeing UFOs, aliens and yellow lights at the time of their phone conversation. (T. 92-93)

Singleton also testified that during her phone call with Petitioner on or about October 4, 2017, Petitioner reported that he was seeing UFOs or stars, and she thought nothing of it because Petitioner was a jokester. (RX3, 17-18) Singleton testified that during this conversation that Petitioner did not report that he was injured in a work accident or that he fell or that he hit his head on his truck. (RX3, 18) Singleton testified that at no time after October 4, 2017, until May 21, 2018, did Petitioner report to her that he had an accident that occurred on October 4, 2017, or October 5, 2017, while working for Respondent. (RX3, 19) If he had an accident, Singleton testified that he should have notified her of any injuries at work. (RX6, 20) As field operations manager, Singleton would have been involved in reported work injuries. *Id.*

Singleton testified that Respondent had monthly safety meetings for its technicians. Singleton testified Respondent's procedure to report accidents was to call 1-866-Unicall. (RX6, 21) Further, Respondent's employees are given training and information regarding work injury reporting procedures which included Unicall contact information. *Id.* Unicall is an incident reporting system or a group called Unicall, for reporting employee injuries. This includes a way for an employee to report for themselves they are in an accident. *Id.* The injured workers are instructed to call Unicall. *Id*. Unicall's contact information is on Respondent's intranet site. *Id.*

Singleton further testified that once the employee calls Unicall they are directed to the appropriate resources to contact about the particular incident. *Id.* Singleton testified that employees

would be given hand-out cards as a reminder of who to contact in case there is an incident. (RX3, 21-22) Written reports would be created if a work injury was reported through Unicall. Singleton would receive a copy of the written report of accident for any one of the field technicians that she supervised. (RX3, 22) Singleton never received a written accident report from Unicall or anyone regarding an incident that occurred with Petitioner on either October 4, 2017 or October 5, 2017. If an individual was not able to call Unicall, then Singleton would be able to place the call for them and get the process started. (RX3, 22-23) Singleton testified that she did not advise Petitioner to seek medical treatment because there was no indication that he had an accident. (RX6, 23)

Petitioner's testimony confirming that he did not fill out a report of injury contemporaneous with the occurrence on October 5, 2017, comports with Singleton's testimony. The evidence includes an Employer's First Report of Injury which is dated December 22, 2017, approximately 2-1/2 months after the alleged incident, that indicates it was completed by Petitioner via telephone. (RX6) The date of the first report of injury, December 22, 2017, comports with the time Petitioner's co-worker and witness, Russell Francis ("Francis") testified that he wrote his statement about the events of October 5, 2017, a couple of months after the alleged incident. (PX5, 21) Petitioner testified that he asked Francis to write a statement about what happened. (T, 97-98)

Francis retired February 5, 2019. (PX5, 6-7) Francis also testified that he had "possibly" six prior worker's compensation cases with Respondent. (PX5, 40) Francis called and reported his last accident by calling his supervisor immediately after it occurred. (PX5, 41) Francis testified that he had previously testified in his own worker's compensation case. (PX5, 28-29)

Francis testified he knew he was supposed to put the date in front of the letter, but he did not. (PX5, 21) Francis testified that Petitioner asked him to write the letter. (PX5, 22) Francis testified that he and Petitioner "talked on and off throughout the years," but he could not recall if it was also about this incident. (PX5, 27) They spoke "probably twice a month." *Id.* Francis testified that he and Petitioner are friendly. *Id*. On cross examination, Francis testified that as of the date of the hearing, he and Petitioner go back 21 years and confirmed that they were friends. (PX5, 28) Francis testified that he had previously been in court before the Worker's Compensation Commission for a hearing on his own workers' compensation case. (PX5, 28-29) Therefore, since Francis was familiar with reporting his work accidents, he was friends with Petitioner, and they spoke frequently, I am not persuaded that they did not discuss this incident or the filing of this claim. Francis also testified that before he prepared the letter, he did not have a conversation with Petitioner about the events of the day. (PX5, 29) I find that testimony incredulous.

Francis did not recall whether he ever provided the document to Respondent. *Id*. Francis testified that he provided the letter to Mr. Moore, "probably" via email. (PX5, 30) Francis confirmed there was no date on the letter and it was not signed by him. He could not recall sending a copy to Petitioner's attorney or to Kimberly Singleton, the work supervisor. (PX5, 30)

Francis testified that he worked with Petitioner since the year 2000, or for 17 years before the alleged incident. (PX5, 8) They worked in the same capacity. (PX5, 8-9) Francis testified that

he also had worked with Jim Olsen, a representative from the City of Alexis, working with him since 2000 as well, as they were often at the same work site. (PX5, 11-12) In 2000, Francis and Petitioner were hired to maintain the fiber route. (PX5, 12)

On the day in question, Francis testified, he, Petitioner and Olsen were at a job site together. The truck was 20 or 25 feet from where Francis was working, approximately a block from the business district. Francis testified Petitioner was getting "either cleaner and towels or something like that" and he recalled hearing a thud and "not happy words" that Petitioner was saying. (PX5, 15) Francis testified "you could see that he was dizzy and not oriented to what was going on at that time." *Id.* Francis testified that when he heard the noise his own head was down doing the work. *Id.* Francis testified that he was in a position that he could not leave because he "was trying to hold things together." *Id.* When he heard the noise, he was between 20 and 25 feet away. (PX5, 13, 34) Petitioner notably testified that his truck was 30-40 feet from the other workers. (T. 83) Francis testified that all the equipment was off. (PX5, 34)

Francis testified that he and the people from the City of Alexis were talking to Petitioner from the distance he described as 20-25 feet. (PX5, 17) Petitioner testified that he was 30 or 40 feet from the others. (T. 29) Francis could not recall if Petitioner was facing the drivers or the passenger side of the truck. (PX5, 35) He could not recall what side of the truck Petitioner fell against. *Id.* Francis did not know how Petitioner allegedly fell, whether or not there was something on the ground, or whether or not Petitioner tripped or slipped, or what side of his head he alleged that he hit. *Id.* Francis acknowledged that it was possible Petitioner could have hit his shoulder on the side of the vehicle, confirming he did not see it. Francis agreed it was possible for Petitioner to have hit other parts of his body. Francis confirmed that his recollection of the incident was strictly based on what Petitioner told him, not what he actually witnessed. (PX5, 36)

Francis further testified that Petitioner was "shook up" and rubbing his head where he had gotten hit. (PX5, 19-20) Francis did not recall his exact exchange with Petitioner but that Petitioner said he was not seeing "a hundred percent. He was seeing stars." *Id*. Francis did not see any physical signs of injury. *Id.*

Francis testified that it was not raining. (PX5, 32) Francis did not have his eyes toward the direction of Petitioner's truck. (PX5, 36) Francis testified that his eyes were down on the ground where the cable would be. *Id.* He could not recall whether or not he was speaking with any other individual at that time. *Id.* Francis testified that his statement that said he heard him hit his head and saw how it came close to knocking him out was based on what Petitioner told him and Petitioner's actions. (PX5, 36-37) Francis testified that Petitioner finished the work with him on October 5, 2017, after this alleged incident occurred. (PX37) Francis could not recall how long they were at the site. *Id.* The job went into the evening. It went into the dark. *Id.*

Francis confirmed that Petitioner did not go to the hospital or emergency room. (PX5, 38)

Olson also testified that he was retired but he worked previously for the Village of Alexis and was working with Petitioner and Francis on October 5, 2017. Olson testified that he was told Petitioner's accident date was October 5, 2017, but he was positive the date they were working together was October 4, 2018. (PX6, 7) Olson testified he could not find a book that he kept in his truck describing the job descriptions, writing down where they went and where they were going after. (PX6, 7-8) Olson testified that he and Don Sperry were there installing a fire hydrant when they hit a fiberoptic. (PX6, 8-10) Olson also identified working with Moore and "Russ" as the guy that did the splicing. (PX6, 10) Olson testified that when they call JULIE, 811, Century Link, shows up, "so I say we're working with them then, you know." (PX6, 11) Olson and Sperry were installing a new fire hydrant. The fire hydrant was 15 to 20 feet from the street he estimated. *Id.*

Olson testified that Petitioner went to his truck to get something and the truck has a topper shell on it. (PX6, 14) When Petitioner opened the lid, he could "hear him" and Olson thought Petitioner hit his right eye. *Id.* Olson testified Petitioner sat down for another ½ hour or so and rested then he headed for home. *Id.* Olson testified that he was four or five feet of (sic) the first hydrant and Petitioner was headed to his truck east of the fire hydrant sitting on South Main Street. Olson testified he was 10 to 12 feet from Petitioner but his back was turned to him at the time when the incident happened. When asked what he heard, Olson testified, "I suppose he probably said some cuss words I probably better not say here." (PX6, 15) Olson testified Petitioner was in pain with his right eye, over Respondent's objection. I would reverse the ruling as that statement was speculation.

Olson further testified that "topper shell door on the back of the truck somehow hit him in the eye." *Id.* Olson testified that he did not visually see how it hit him because their backs were turned. *Id.* I find this testimony was completely incredible. Olson did not see Petitioner hitting his head or eye, he knew him for years, and further, Petitioner testified that the City of Alexis people were operating a back hoe which is contrary to Francis's testimony that all the machines were off. Either way, it is not credible to suggest that these two witnesses "heard" Petitioner striking his head yet there is no mark on Petitioner's head as a result of a trauma that was heard 25-30 feet away. Nor does that comport with him not seeking medical attention for ten days or that his eye had no pain the next day and that the medical records were devoid of medical history of injuring his eye.

The majority opinion found it "persuasive that each witness testified to versions of the events set forth above without knowing what the other individual testified. Mr. Olson and Mr. Francis were deposed separately and outside of earshot from each other. Moreover, Petitioner did not hear their testimony prior to his descriptions." The majority found it impressive that these witnesses testified that they didn't review deposition transcripts, etc. However, Francis testified that he and Petitioner were friends and talked on the phone twice per month. Francis was also retired at the time of the hearing and familiar with workers' compensation hearings by his own admission due to his own workers' compensation cases. It is patently obvious that Petitioner requested that Francis write his note at the same time Petitioner decided to file an injury report 2½ months after October 5, 2017.

Further, Francis never testified that he had a problem with reporting his six work accidents, thus there is no reason to suspect Singleton would not testify credibly or that she would decide arbitrarily to stop Petitioner from filing his work accident report of injury, when he and Francis knew it should be reported through Unicall and an Employer's First Report of Injury needed to be completed. It is patently clear that the accident reporting was not timely, and Petitioner asked his friend Francis to write a note backing up his claim that something work-related happened to his eye. Francis also testified that they knew Olson for the same number of years that they worked together thus more probable than not that they discussed the "story" amongst themselves in anticipation of filing the claim or of the hearing. They each may have testified that they did not read each other's depositions, however, that is not proof that Francis and Olson never discussed the basis of Petitioner's after-the-fact claim.

The majority seized upon the characterization of Petitioner's eye condition as "injury" in Singleton's October 18, 2017, correspondence with the short-term disability carrier as if the use of the word was a tacit admission that Petitioner's right eye condition was from a work injury. Singleton's testimony is more reliable because the medical records are devoid of any evidence of an injury, cut, scratch or bruise or report of him injuring his eye or any part of his head and no Employee First Report of Injury was filed until 2½ months later. If a report of work injury was filed, Singleton would not have corresponded to the short-term disability carrier in the first place. Singleton credibly testified she would have been notified if Petitioner reported a work accident. Singleton testified neither Petitioner nor Francis reported it to her. Petitioner still could have reported the injury, if he had an injury, through Unicall and he did not. Petitioner testified that he went on a scheduled vacation to Talladega "to go down to the races." (T. 71) Petitioner testified that he went because he had no pain in his right eye. If Petitioner had hit his right eye, especially as described by Francis and Olson, that does not comport with his testimony that he had no eye pain afterwards.

Adding to the Petitioner's credibility issue is the fact that he testified that he did not tell Dr. Phillips at Quincy Medical Group ("QMG") on October 10, 2017, that he had vision issues for months. (T. 75) The October 10, 2017, QMG record documents otherwise. (PX1, PX2) The QMG records confirm multiple references to the flashes and floaters between the prior weeks and months before the alleged work incident.

The October 10, 2017, QMG record confirms that Petitioner reported both occasional floater and flashes out of his right eye over the last 2-3 weeks (PX1, T.133) and he had the occasional floater out of the right eye over the last several months. (PX1,T.140) Dr. Phillips and Dr. Blinder continued to treat Petitioner with no mention of a work accident or head trauma for the duration of Petitioner's treatment. (PX2, PX3) Neither doctor offered a causal connection opinion. Based on the foregoing, I would find Petitioner failed to prove he sustained a work-related accident.

Based upon the totality of the evidence discussed above, I would also find Petitioner failed to sustain his burden of proving that he reported an accident withing the 45 days afforded by the

Act. Singleton testified that Petitioner never reported a work injury or that he was injured. (Rx. 3) Ms. Singleton testified that she never spoke with Russ Francis regarding this alleged accident. (Rx. 3) Ms. Singleton testified that following this incident, she knew that Petitioner took time off work due to his eye and had vision issues. (Rx. 3)

Singleton testified that if Petitioner reported a work accident, he would have been instructed to call Unicall, complete an accident report and a written report of accident would have been generated. (RX3) She stated that she would have been notified if an injury was reported by Petitioner and she was not notified. (RX3) Based upon the totality of the evidence discussed above, I would find Petitioner failed to sustain his burden of proving Notice.

Causal Connection

I further disagree with the majority's Opinion and would find that Petitioner failed to sustain his burden of proving the alleged work accident is causally related to his eye condition. Dr. Hayden, Dr. Phillips, and Dr. Blinder treated Petitioner with no mention of a work accident or head trauma for the duration of Petitioner's treatment. (PX2, PX3) Neither Dr. Phillips nor Dr. Blinder offered a causal connection opinion on behalf of their patient. Further, the medical records confirm Petitioner smokes two packs of cigarettes per day. All the visits to Dr. Blinder end with documentation of Smoking Admonition/Cessation Education. Petitioner was offered information about the potential health hazards associated with tobacco use including accelerated retinal vascular disease, age-related macular degeneration, COPD, cancer, heart disease, stroke, and premature death. Smoking cessation was recommended. Petitioner had already had a stroke in 2015.

Further, Dr. Carrie Golden-Brenner authored a records review report dated November 21, 2019. Dr. Golden-Brenner opined that, " both retinal tears and vitreous hemorrhage can occur absent any trauma." (RX2)

In her November 21, 2019, opinion report Dr. Golden-Brenner stated the following:

> If the retinal tear and associated vitreous hemorrhage was secondary to head trauma, I would expect symptoms to occur shortly after the head trauma. Since symptoms reportedly started two days prior to the examination on October 11, 2017, I would expect the head trauma to have occurred on October 11, 2017 or shortly before. Also, if there was recent trauma, I would expect the medical record to document the trauma or complaints related to head trauma. Of interest, the medical records document prior history of cataract extraction with intraocular lens implantation. Prior cataract surgery increases the risk of retinal detachment. If he did have significant head trauma around October 9, 2017, when he reportedly started having symptoms, it is possible that the retinal tear and vitreous hemorrhage were secondary to head trauma. However, retinal tear and vitreous hemorrhage can also occur spontaneously absent trauma especially with history of prior cataract

> surgery. The fact that no trauma is documented in the medical record and there are no complaints related to head trauma make it less likely that the retinal tear and vitreous hemorrhage was secondary to trauma. (RX2)
>
> Dr. Golden-Brenner then reviewed the medical treatment and opined further as follows:
>
> As noted above, it is unlikely this was due to a work incident as nothing was documented in the medical records. Mr. Moore had prior history of cataract extraction on in his right eye. As noted, this increases the risk of retinal detachment. The October 11, 2017, record also notes the presence of chorioretinal scarring; "There is a retinal tear superiorly adjacent to some old chorioretinal scarring," This suggests prior history of chorioretinal problem that caused scarring. When there is chorioretinal scarring, the vitreous attachment to the retina may be abnormal. Thus, this may have contributed to his developing the retinal tear and vitreous hemorrhage. The record also documents under Ocular history "OD (right eye) Eye Problems: Retinal tear, vitreous hemorrhage, PVD (posterior vitreous detachment) OD". If this was present prior to the declared incident, the story of previous retinal tear and vitreous hemorrhage significantly increases risk of spontaneous or developmental retinal tear and vitreous hemorrhage absent a trauma. *Id.*

Dr. Eidt, hired by Petitioner for the purpose of providing a causal connection opinion, authored a records review report, and without interviewing Petitioner, provided an opinion on January 20, 2022, almost four years after the alleged occurrence on October 5, 2017. It is noted that Dr. Eidt was provided Francis's "attestation letter" in which Francis stated that he "heard him hit his head and saw how close to knocking him out and how it made him feel."

Relying on Francis's statement, Dr. Eidt noted that Petitioner had a documented head injury. With respect to causal connection, Dr. Eidt opined ultimately as follows: "It is my opinion that there is no way to definitively determine when the original retinal tear in Mr. Moore's right eye developed." (PX9) Dr. Eidt went on to give what he characterized as a "probable sequence of events." In so doing, Dr. Eidt states that Petitioner, "struck his head forcibly." This statement is in reliance upon Francis's attestation, rendering Dr. Eidt's opinion as to the "probable sequence" of events, entirely unreliable. "If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them*." In re Joseph S.,* 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, (2003). A finder of fact is not bound by an expert opinion on an ultimate issue, but may look 'behind' the opinion to examine the underlying facts. *Id.*

Thus, Dr. Eidt's characterization, that Petitioner hit his head "forcibly" was a conclusion that Dr. Eidt drew with no supporting facts. Francis testified that he was 20-25 feet from Petitioner. Petitioner testified he was 30-40 feet from the other workers, something Dr. Eidt did not know. He also did not know that Francis testified that did not see any physical signs of injury on Petitioner. He did not know that Petitioner filled out an accident report 2½ months after the alleged incident.

Both Dr. Eidt and Dr. Golden-Brenner noted the lack of an accident history in the records and that Petitioner's eye issue could have been caused spontaneously without trauma. Dr. Eidt's opinion, of the "probable sequence of events" rests entirely on the attestation statement of Francis, and he ignored the fact that the medical records were devoid of any evidence of a head or eye trauma. Therefore, based upon all of the above, I would find that in addition to Petitioner failing to sustain his burden of proving accident, that Petitioner further failed to sustain his burden of proving a causal connection between a work accident and his right eye condition of ill-being.

Temporary Disability

I would vacate the Arbitrator's award of TTD based on my conclusions regarding accident, notice, and causation.

Medical

"[A]n employee is entitled to recover only those medical expenses which are reasonable and causally related to an industrial accident." *Zarley v. Industrial Comm'n.,* 84 Ill. 2d 380, 389, 418 N.E.2d 717, 721. Given my opinion regarding accident, notice, and causation, I would find further that Petitioner is not entitled to medical benefits.

Permanent Disability

Given my disagreement with the majority opinion regarding accident and causation, I would find further that Petitioner failed to sustain his burden of proving that he is entitled to permanent partial disability and I would vacate the Arbitrator's award. Assuming arguendo the Petitioner sustained his burden of proving accident, notice, or causal connection, I would find that he failed to establish that he sustained 100% loss of use of his right eye. The majority, while analyzing the factors set out in Section 8.1b(b) of the Act, put primary emphasis on Petitioner's visual acuity number.

In *Gilbert v. Shughart Painting Contractors*, the Court addressed the narrow and difficult question concerning the loss of use of an eye, where an industrial injury caused the uncorrected vision to be almost totally extinguished but was almost totally restored by the use of artificial lenses. *Gilbert & Shughart Painting Contractors v. Industrial Comm'n*., 136 Ill. App. 3d 163, 483 N.E.2d 392 (1985). The *Gilbert* Court did an exhaustive analysis of cases and conflicting authorities, culminating in the decision in *Pridgeon v. Industrial Comm'n*. 89 Ill. 2d 477, 433 N.E.2d 659 (1982). The *Pridgeon* court, citing the same cases, concluded: "This court has noted previously that our workmen's compensation act contains no standards for determining the percentage of loss of use of an eye, and does not specify whether corrected or uncorrected vision shall be used in determining the extent of eye injuries compensable under the Act. In this State it has been uniformly held that the loss of use of an eye is a question of fact and is not one to be determined by mechanical measurement as to corrected or uncorrected vision." (Citation.) *Gilbert & Shughart Painting Contractors*, 136 Ill. App. 3d 163 at 169.

The *Gilbert* Court concluded the sum of all the case law appears to be "that there is no mechanical standard and that the Commission may base an award for loss of vision on either corrected or uncorrected vision or a hybrid of both according to the particular circumstances of the case." *Id.* at 169.

I would look to Petitioner's testimony, his actions, and the expert opinions regarding Petitioner's eye condition in establishing the percentage loss of use of his eye. I would modify Section 8.1b(b)(ii), (iii), (iv) and (v) of the five factors accordingly. I would, therefore, modify the majority award in Section 8.1b(b) as follows:

(ii) Petitioner is currently retired. He did, however, return to work for Respondent and after he retired from Respondent's employ he obtained work at Bear Creek driving 30 hours per week until one or two years prior to the hearing. Therefore, this factor is afforded great weight.

(iii) Petitioner was 69 years old at the time of the accident, and 73 years old at the time of the hearing. (T. 16) Petitioner will suffer from the effects of the eye condition for a shorter span than if the condition was incurred as a young man. Therefore, this factor is afforded great weight.

(iv) There is no evidence that Petitioner experienced a loss of future earning capacity since Petitioner returned to work after the alleged accident, then retired. Subsequently, Petitioner testified that he worked for Bear Creek Farming Supplies, either two or three years before the hearing. (T. 103-104) At Bear Creek, Petitioner's job description was to drive a Ford van to hog houses approximately 30 hours per week. *Id.* He last worked there in February of 2021. (T. 104) Therefore, this factor is afforded significant weight.

(v) Petitioner's visual acuity at his last visit with Dr. Blinder was 3/200. Neither Dr. Phillips nor Dr. Blinder commented on Petitioner's vision and the medical records do not specify Petitioner's restrictions. Petitioner testified that he can see light and people move. (T. 53) He testified that he could see from where he was sitting at trial to the door or to where his attorney was sitting. *Id.* He confirmed that his vision was distorted. (T. 54) Petitioner further testified that he has trouble perceiving the difference between a curb and the sidewalk. He testified that he drives short distances but only in the daytime. (T. 55-56) He agreed his peripheral vision is off. (T. 57) Petitioner testified that he can no longer fish alone but can if someone takes him fishing, he can go but that he does not shoot trap or deer hunt. He testified he sold his boat as he could no longer run it. (T. 58-59)

On cross-examination, Petitioner testified that he wore glasses his whole life before October 5, 2017. (T. 76) Petitioner further testified that he had cataracts in both eyes and they put lenses in both eyes and the lenses were still in his eyes. (T. 77) Petitioner further testified that prior to October 5, 2017, he went to see an eye doctor every two or three years. (T. 77) He confirmed he had no other eye surgery to his right eye prior to the alleged accident. (T. 78)

Petitioner denied having any pain or increased pain in his right eye on vacation after October 5, 2017. (T. 109) Petitioner testified, "I actually didn't have much pain at all with this." *Id.* Further, at the time of hearing, he had no pain in his right eye. *Id.*

Petitioner testified that he has no restrictions on his driver's license, except for glasses. He confirmed that he is currently able to drive a car. (T. 107) He has tripped but nothing serious. He has not been in a motor vehicle accident since October 5, 2017. *Id.*

Dr. Golden-Brenner opined the following under the Heading "Disposition" regarding Petitioner's vision:

> Mr. Moore has decreased vision in his right eye. This means that he has decreased depth perception and should not work on ladders or at heights. He may also have difficulties with near depth perception and therefore may have difficulty operating power tools safely. Most individuals with poor vision in one eye develop monocular depth perception which allows them to perform most of the usual and ordinary activities of life. He should wear safety glasses any time there is a risk of ocular injury. The restriction due to poor vision in his right eye and lack of depth perception is secondary to the retinal tear, vitreous hemorrhage and sequelae. He has no other visual restrictions. (RX2, 3)

Dr. Eidt expressed no opinion regarding Petitioner's vision or restrictions. (PX9) I would afford this factor significant weight.

Assuming arguendo Petitioner had sustained his burden of proving accident, notice, and causation, I would reduce the majority's award of PPD to 60% loss of use of the right eye based upon the five factors, especially Dr. Golden-Brenner's opinion that Petitioner has decreased vision in his right eye, not 100% loss of vision in his eye.

Therefore, for all the reasons cited above, I dissent from the majority and I would reverse the findings of accident, notice, and causal connection and I would vacate the Arbitrator's award of TTD, medical, and PPD.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC018553
Case Name	MOORE, MICHAEL v. CENTURYLINK COMMUNICATIONS, LLC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Christopher Mose
Respondent Attorney	Edward Jordan

DATE FILED: 2/7/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 7, 2023 4.75%

/s/Bradley Gillespie, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Rock Island**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Micheal Moore
Employee/Petitioner

v.

CenturyLink Communications, LLC.
Employer/Respondent

Case # **18** WC **18553**

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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Rock Island**, on **May 11, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **October 5, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**58,588.40**; the average weekly wage was $**1,126.70**.

On the date of accident, Petitioner was **69** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**18,271.52** for other benefits, for a total credit of $**18,271.52**.

Respondent is entitled to a credit of $**22,043.76** under Section 8(j) of the Act.

ORDER

Respondent shall pay temporary total disability benefits of **$ 751.13** week for a period of **27 3/7 weeks** from **10-6-2017 through 4-16-2018** as provided in Section 8(b) of the Act. Respondent shall receive a credit for group disability payments as set forth above under other benefits.

Respondent shall pay the reasonable, necessary and related medical bills as provided in Section 8(a) of the Act and as evidenced by Petitioner's Exhibit 8. Further, Respondent shall pay Petitioner directly **$1,379.12** for out of pocket expenses.

Respondent shall pay permanent partial disability benefits of **$676.02** week for a period of **162 weeks** as provided in Section 8(e) of the Act, as Petitioner established that she was entitled to an award of **100%** loss of use to the right eye.

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

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

Bradley D. Gillespie

Signature of Arbitrator

FEBRUARY 7, 2023

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL MOORE,	)	
	)	
Petitioner,	)	
	)	**Case No. 18 WC 018553**
v.	)	
	)	
CENTURYLINK COMMUNICATIONS, LLC.,	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR

This matter proceeded to hearing on May 11, 2022, in Rock Island, Illinois. (Arb. Ex. #1). Michael Moore [hereinafter "Petitioner"] filed an Application for Adjustment of Claim on June 21, 2018, alleging accidental injuries while working for CenturyLink Communications, LLC. [hereinafter "Respondent"] occurring on October 15, 2017. The following issues were in dispute:

- Accident
- Notice
- Causal Connection
- Medical Bills
- Temporary Total Disability
- 8(j) Credit
- Nature & Extent

STATEMENT OF FACTS

Petitioner was employed with Respondent at the time of the accident. Petitioner retired from Respondent in 2018.

Petitioner was employed with Respondent as a Fiberoptic Tech II and retired from there in 2018. (Tr. pp. 16-17) He was responsible for the area surrounding Basco, Illinois to Hillsdale, Illinois. (Tr. p. 17) His territory encompassed approximately 16 towns and his route was approximately 175 miles. (Tr. p. 35) He would start each day from his home and travel to various locations throughout his territory. (Tr. p. 37)

As a Fiberoptic Tech, Petitioner was responsible for locating the company's fiberoptic cables and marking them appropriately for anyone that might be digging. (Tr. p. 18) He explained that these cable location services could be requested by anyone, such as a cable or gas company or even an individual farmer. *Id*. Petitioner also connected fiberoptic cable for 17 offices within his region. (Tr. p. 17).

On October 5, 2017, Petitioner was called to Alexis, Illinois for a a cut fiberoptic cable. (Tr. p. 21) His supervisor, Kim Singleton, advised Petitioner there was an issue in the area and sent him to that location. (Tr. pp. 21-22) Petitioner testified that the City of Alexis was installing a fire hydrant and struck Respondent's fiberoptic cable because it was unmarked. (Tr. p. 21)

Petitioner testified that two City of Alexis employees, Jim Olson and another individual, were at the location along with himself and his co-worker, Russ Francis. (Tr. p. 24) Petitioner testified that Mr. Francis was also a Fiberoptic Tech who had the territory north of his. (Tr. p. 25) Petitioner testified that when he arrived at the location, there was already a ditch created for the fiberoptic cable measuring approximately three feet wide. (Tr. pp. 23-25) He indicated that there was a 45-degree incline from the ditch to the road. (Tr. p. 25) Petitioner indicated that most fiberoptic cable is laid under the ground and next to a road. (Tr. p. 26) Petitioner parked his work truck approximately 30 to 40 feet from the cable repair location on the side of the road. (Tr. p. 28)

Petitioner testified that Mr. Francis was handling the actual repair of the fiberoptic cable that day as he was the designated splicer. (Tr. p. 29) Petitioner was assisting Mr. Francis with the repairs. (Tr. p. 30) Petitioner testified that he went to his work truck to retrieve some materials for Mr. Francis when he slipped on the angled ditch and struck his head on his work truck. (Tr. p. 31) Petitioner indicated that the ground in the ditch line he was wet. (Tr. pp. 31-32)

Petitioner stated he felt dizzy and off balance after striking his head. (Tr. p. 34) Petitioner testified Mr. Francis instructed him to sit down by his work truck to recuperate. (Tr. p. 32) After approximately 30 minutes, Petitioner indicated that he started to feel better and returned back to assisting with the repairs. (Tr. pp. 32-34).

Russ Francis testified at an evidence deposition on July 23, 2021, regarding Petitioner's accident. (PX #5) Mr. Francis testified that the City of Alexis was putting in a fire hydrant and, in the process, cut Respondent's fiberoptic cable. (PX #5 pp. 10-11) He described the work area as fairly flat except there was a three-foot hole that was dug 25 feet long in order to access the fiberoptic cable. (PX #5 p. 14) Mr. Francis explained that there was an incline getting in and out of the hole where they were working. (PX #5 p.15)

Mr. Francis testified that Petitioner was retrieving some tools for him when he heard a loud thud and heard Petitioner complaining of pain. (PX #5 pp. 15-16) Mr. Francis stated he instructed Petitioner to sit down because it was clear Petitioner was dizzy and not oriented. (PX #5 p. 16) Mr. Francis continued with repairs to the fiberoptic cable while Petitioner sat down and rested. (PX #5 p. 18) Petitioner rejoined Mr. Francis after approximately 30 minutes but not at full capacity as he was having a hard time walking. (PX #5 pp. 45-46) Mr. Francis said he

advised Petitioner to seek medical attention for his injuries because he could tell he was hurt but Petitioner wanted to finish the work. (PX #5 pp. 46, 49)

Jim Olson testified via evidence deposition on October 29, 2021, regarding Petitioner's accident. (PX #6) Mr. Olson was employed with the Village of Alexis as superintendent of Water and Sewer at the time of the accident. (PX #6 p. 5) Mr. Olson testified that the Village of Alexis was installing a new fire hydrant and they hit Respondent's unmarked fiberoptic cable. (PX #6 p. 9) He testified that they dug up the ground to install the fire hydrant, approximately six to eight feet on each side of the fire hydrant. (PX #6 pp. 12, 19) Prior to Petitioner and Mr. Francis arriving, the Village of Alexis left the ditch open to allow them access and waited for repairs to be completed so they could finish backfilling the ditch. (Tr. pp. 12-13, 19).

Mr. Olson testified that Petitioner went to his truck to retrieve an item and he heard him strike his truck. (PX #6 p. 14) He stated that he heard Petitioner "let out a warhoop" and he knew something was wrong. (PX #6 p. 15) Mr. Olson stated he could tell Petitioner was in pain. (PX #6 p. 14) He testified that Petitioner then sat down for approximately half an hour and rested. (PX #6 p. 14)

Petitioner testified that he called his supervisor, Kim Singleton, while driving home after completing the fiberoptic cable repair regarding completion of the assignment. (Tr. p. 38) During the telephone call, Petitioner testified that he notified Ms. Singleton of his work accident. (Tr. p. 40) Petitioner also reported during the conversation with Ms. Singleton that he was seeing yellow lights, which he stated he jokingly referred to as seeing aliens due to him seeing yellow lights. *Id*. But, in the conversation, Petitioner stated he reported hitting his head at the work site. *Id*.

Mr. Francis indicated that he contacted his supervisor, Kim Singleton, the day after completion of the repair of the fiberoptic cable to indicate the assignment was done. (PX #5 pp. 21-23) During this conversation, Mr. Francis testified that he reported Petitioner had gotten injured while on the job. (PX #5 p. 23) Mr. Francis testified that Ms. Singleton acknowledged the incident and said she had already spoken to Petitioner regarding the accident. *Id*.

Respondent's witness, Kim Singleton, testified via evidence deposition on March 26, 2021. (RX #3) Ms. Singleton was Petitioner's direct supervisor at the time of the accident. (RX #3 pp. 7-8) Ms. Singleton oversaw the field technicians who were responsible for maintaining and protecting Respondent's long haul fiber network. (RX #3 p. 8) She stated that Petitioner worked primarily by himself and had a route responsibility which he managed alone unless an incident required more than on person. (R #3 p. 11)

Ms. Singleton testified that she authored an email dated May 21, 2018, at the request of Petitioner. (RX #3 pp. 13-20; PX #7). Ms. Singleton testified that on the date of drafting the email she did so by her own recollection and did not reference notes. (RX #3 pp.15, 46-52). However, when questioned how she could be so specific about dates and events she referenced in

her email after such a time gap, Ms. Singleton acknowledged referencing some notations in drafting the email. (RX #3 pp. 51-53)

Ms. Singleton's email dated May 21, 2018, acknowledged having a phone conversation with Petitioner "on or about October 4, 2017" while he was in Alexis, IL on a fiber cut on CenturyLink's network. (PX #7) It was her testimony that Petitioner never stated he had an accident and injured while on the job. (RX #3 p. 18) She stated that Petitioner indicated he was seeing yellow lights and joked about seeing UFOs. (RX #3 pp.17-18, PX #7).

Ms. Singleton testified that she never spoke with Russ Francis regarding the accident involving Petitioner. (RX #3 p.25) She testified that she believed Petitioner received short-term disability benefits and she was not involved in the benefits process as Petitioner's manager. (RX#3 p. 26) Ms. Singleton testified that the first time she became aware of Petitioner indicating he had an accident on October 5, 2017, and was injured was in May of 2018. (RX #3 p. 55) She stated that Petitioner did not tell her about the accident or injury on the date of the accident nor in the other follow up calls with Petitioner after the incident. (RX #3 pp. 55-56)

Respondent entered Petitioner's disability records into evidence regarding to his short-term disability coverage. (RX #8). At the outset of the disability coverage investigation, Ms. Singleton drafted an email to "Disability Claim Info" on October 18, 2017, in which she asks about Petitioner's time off entries. (RX #8 p. 244) Ms. Singleton wrote that she is confirming a time entry for "my employee, Michael "Butch" Moore. He was scheduled to be on PTO from 10/9-10/16, but his eye injury cut that short. His first visit to the DR. was 10/11." (RX #8 p. 244)

On October 10, 2017, Petitioner first treated with Dr. Hayden at SPECS. (PX #1 p. 5) The record documents he had lost vision in his right eye since last Saturday. *Id*. The intake note states, "As patient remembers now, he has had some floater and flashes over the last 2-3 weeks." *Id*. The diagnosis was blindness in right eye, category 3 and vitreous hemorrhage. (PX #1 p. 7) He was referred to Dr. Phillips at Quincy Medical Group.

Later that same day, Petitioner was able to treat with Dr. Phillips. (PX #2 p. 1) The intake history notes that Petitioner started seeing flashes and floaters since last Thursday. *Id*. The symptoms initially dissipated but returned over the weekend. *Id*. Dr. Phillips referred him to Dr. Blinder for the following day as he was concerned Petitioner had a retinal tear with positive vitreous hemorrhage. (PX #2 p. 2)

On October 11, 2017, Petitioner treated with Dr. Blinder at The Retina Institute. (PX #4 p. 129) The intake notes he had a sudden onset of blurry vision in the right eye for the past two days. (PX #4 p. 129) Dr. Blinder's impression was: 1) tear in retina, unspecified, right eye; 2) vitreous hemorrhage; 3) PVD, bilateral; 4) pseudophakia. (PX #4 p. 130)

On October 12, 2017, Petitioner got cryotherapy treatment in his right eye performed by Dr. Blinder. (PX #4 p. 140) Dr. Blinder indicated that Petitioner was at high risk to develop progressive and irreversible vision loss without treatment.

On October 18, 2017, Petitioner returned to Dr. Blinder following treatment. (PX #4 p. 149) Petitioner was found to have macula-on retinal detachment in his right eye. Discussion was had regarding potential progressive and irreversible vision loss which led to a recommendation of surgery for retinal detachment repair immediately. (PX #4 p. 153)

On October 25, 2017, Petitioner had a Pars plana vitrectomy, air-fluid exchange, endolaser photocoagulation, SF6 injection performed on his right eye. (PX #4 p. 156)

On November 7, 2017, Petitioner went to the emergency room and then to see Dr. Phillips for severe pain to his right eye. (PX #2 p. 8) Petitioner was diagnosed with hemorraghic choroidal in his right eye and it was noted to be very uncommon. (PX #2 p. 8) He was referred to follow up with Dr. Blinder the next day.

On November 8, 2017, Petitioner treated with Dr. Blinder noting his severe right eye pay 2 days prior. (PX #4 p. 167) Dr. Blinder continued his topical drop regimen, oral medications, and maintain decreased activity level. (PX #4 p. 168)

On November 29, 2017, Petitioner had a one month post operative follow up for management of retinal detachment. (RX #8 p. 300) Petitioner was noted to have a constant blind spot centrally in his right eye. *Id*. Dr. Blinder recommended surgical retinal detachment repair. (RX #8 p. 304)

On December 4, 2017, Petitioner had a Pars plana vitrectomy, membranectomy, SBP, air-fluid exchange, endolaser photocoagulation, silicone oil injection on his right eye. (PX #3 p. 58) On January 3, 2018, Petitioner had a one month follow up appointment after his recent surgery. (RX #8 p. 278) Petitioner is noted to still have visual distortion. Dr. Blinder diagnosed that Petitioner had recurrent retinal detachment in his right eye and recommended surgery. (RX #8 p. 281)

On January 8, 2018, Petitioner had a Pars plana vitrectomy, silicone oil removal, retinectomy, air-fluid exchange, endolaser photocoagulation, silicone oil injection on his right eye. (PX #3 p. 83) Petitioner had post-surgical follow ups with Dr. Blinder on January 10, 2018; January 24, 2018; February 21, 2018; April 4, 2018, with documentation of continued blurred vision and distortion. (PX #2 pp. 48-53; RX #8 pp. 257-75)

On May 22, 2018, Dr. Blinder noted in his two month follow up appointment that Petitioner has an epiretinal membrane in his right eye. (PX #4 pp.10-15) Dr. Blinder recommended surgical intervention of membranectomy. (PX #4 p. 15)

On June 11, 2018, Petitioner had a Pars plana vitrectomy with silicone oil removal, membranectomy, air-fluid exchange, endolaser photocoagulation, silicone oil injection of the right eye. (PX #4 pp. 22-23) Petitioner had post-surgical management with Dr. Blinder on June 27, 2018; July 18, 2018; September 26, 2018; and November 17, 2018. (PX #4 pp. 31-80)

On December 17, 2018, Petitioner had a Pars plana vitrectomy with silicone oil removal, Kenalog, membranectomy, air-fluid exchange of the right eye. (PX #4 p. 82) Petitioner had post-surgical management with Dr. Blinder on December 19, 2018; January 2, 2019; and March 6, 2019, with notations of retina being attached, Petitioner continued to experience right eye distortion, and having cystoid macular edema in the right eye. (PX #4 pp. 84-114)

On June 19, 2019, Petitioner had his final treatment with Dr. Blinder. (PX #4 p. 115) Petitioner notes his right eye distortion has not progressed since last visit. *Id*. Petitioner's visual acuity in his right eye was 3/200 compared to 20/30 for his left eye. *Id*.

Dr. Carrie Golden-Brenner authored a records review report at the request of Respondent dated November 21, 2019. (RX #2). Dr. Golden-Brenner indicated in her report that retinal tears can occur secondary to head trauma due to rapid acceleration/deceleration forces acting on the vitreous. (RX #2 p. 9) However, she also indicated that both retinal tears and vitreous hemorrhage can occur absent any trauma. *Id*.

Dr. Golden-Brenner acknowledged in her report that if Petitioner had significant head trauma around October 9, 2017, when his symptoms manifested, it was possible that the retinal tear and vitreous hemorrhage were secondary to head trauma. (RX #2 p. 10) However, she noted, the fact no trauma was documented in the medical records make it less likely that the injuries were secondary to trauma. *Id*.

Dr. Golden-Brenner stated in her report that epiretinal membrane can occur spontaneously, however, it is more likely that the retinal tears/vitreous hemorrhage, recurrent retinal detachments, and surgical repairs significantly aggravated or caused the epiretinal membrane. (RX #2 p. 10) Further, she documented that cystoid macular edema is also a known complication of retinal detachment and epiretinal membrane surgery. (RX #2 p. 11) She felt that Petitioner's medical treatment was reasonable and necessary for her conditions and injuries. *Id.* Dr. Golden-Brenner notes Petitioner has decreased vision in his right eye, with decreased depth perception which preclude him from working on ladders or at heights. (RX #2 p. 12) He may have difficultly operating power tools safely because of difficulties with near perception.

Dr. Steven Eidt authored a records review report at the request of Petitioner's counsel dated January 20, 2022. (PX #9) Dr. Steven Eidt was able to review the same medical records Dr. Golden-Brenner reviewed with the inclusion of Mr. Francis' witness statement. Dr. Eidt acknowledged Petitioner's initial medical treatment records varied slightly in regard to medical histories. (PX #9 p. 3) However, Dr. Eidt indicated that this was not uncommon when histories are obtained from multiple providers. *Id*. Dr. Edit opined that "the cause of Mr. Moore's retinal

tear was almost certainly from the vitreous gel pulling and subsequently tearing the retina." *Id*. He explained that as the retina is being pulled, it can send distress signals of "flashes." *Id*. Further, as attachments in the eye get further dislodged, it can cause "floaters" as well. (PX #9 p. 3) The cause of the pulling can be multifactorial according to Dr. Eidt in his report. (PX #9 p. 4) The most common cause of retinal pulling is syneresis which is natural degeneration of the vitreous from aging. *Id*. Additionally, trauma can cause significant fluid shifts in the eye, inducing the vitreous to pull on the retina. *Id*.

Dr. Eidt opined that Mr. Moore was predisposed to increased risk for a retinal tear due to his specific ocular anatomy, as evidenced by his chart notes. (PX #9 p. 4) However, it was his opinion, that the most probable sequence of events was the following: Mr. Moore likely began the natural process of vitreous degeneration 2-3 weeks prior to the retinal tear, he then struck his head forcefully, exacerbating the natural process and eliciting new flashes he noted on 10/5/17, and by 10/7/17, the retinal tear had progressed causing the vitreous hemorrhage, distorting his vision and prompting Petitioner to seek an eye doctor. *Id*.

Dr. Eidt stated that Petitioner's medical treatment was reasonable and medically necessary. (PX #9 p. 4) It was his opinion that Petitioner's eye complications are well known and consistent with the disease state. *Id.* He felt Petitioner will require continued care for his right eye, possible ocular injections for cystoid macular edema. *Id.*

Petitioner testified he still has visual distortion out of his right eye. (Tr. pp. 51-52) He states he only drives during the day and approximately six blocks. (Tr. p. 55) He had a family member drive him to the hearing that day. Petitioner testified he does not feel safe driving on the highway because of his lack of ability with reaction time. (Tr. p. 116) He testified he has issues with his depth perception and peripheral vision. (Tr. p. 56) Petitioner indicated he has given up or is unable to do leisure activities like fishing, hunting, and sport shooting as a result of his poor vision. (Tr. p. 57) Petitioner testified he recently sold his boat because he no longer had use for it without being able to fish. (Tr. p. 58)

CONCLUSIONS OF LAW

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

In a workers' compensation case, the claimant has the burden of proving by a preponderance of the evidence, all of the elements of his claim. *R&D Theil v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 867 (2010). It is the function of the Commission to determine the facts, judge the credibility of the witnesses, and draw reasonable inferences from competent evidence. *Ingersoll Milling Machine Co. v. Industrial Comm'n*, 253 Ill.App.3d 462, 467 (1993). 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). Similarly, internal inconsistencies of Respondent's witnesses with the documented evidence can indicate unreliability as well.

The Arbitrator finds and concludes that Petitioner sustained accidental injuries on October 5, 2017, which arose out of and in the course of Petitioner's employment with Respondent. The Arbitrator finds that Petitioner testified in a credible, believable, and consistent fashion supported by the multiple fact witnesses which corroborate Petitioner's testimony.

In support of this conclusion, the Arbitrator finds that the most persuasive testimony regarding the issue of accident was that of Mr. Jim Olson and Mr. Russ Francis. Neither individual had a personal stake in providing their testimony, especially Mr. Olson who was neither a close personal friend nor a coworker of Petitioner. After review of all the witnesses' testimony, including Petitioner's testimony, fact witnesses and Respondent's witness, the facts as presented for October 5, 2017, are largely consistent and illustrate Petitioner had an accident while working on a cut fiberoptic cable. There appears to be no question that Petitioner was summoned to Alexis, Illinois to determine the cause of Respondent's issue with their fiberoptic network on October 5, 2017. Each individual's testimony illustrate that the Village of Alexis caused the cut installing a fire hydrant. No testimony questions the nature of the work or what was done on October 5, 2017, to repair the fiberoptic cable.

The testimony of those individuals who were actually present at the accident location (Petitioner, Russ Francis, and Jim Olson) is remarkably consistent. Their testimonies establish that there was an open trench or ditch allowing access to the underground cable. Petitioner's truck was parked approximately 30 feet away on the side of the road near the ditch. Each individual describes the ditch being approximately 3 feet wide and extending for some distance. There was an incline going up to the road where the work trucks were parked. Petitioner went to his work truck to retrieve some materials for Mr. Francis, who was located in the ditch actively repairing the cut fiber cable and could not leave. A loud thud was heard followed by Petitioner making sounds of distress after which he appeared dazed and disoriented. Petitioner's testimony was that he struck his head. Petitioner stated unable to continue working for a period of 30 approximately minutes.

The Arbitrator finds it persuasive that each witness testified to a versions of the events set forth above without knowing what the other individual testified. Mr. Olson and Mr. Francis were deposed separately and outside of earshot from each other. Moreover, Petitioner did not hear their testimony prior to his descriptions. Further, both Mr. Olson and Mr. Francis testified credibly that they did not review any documents prior to their testimonies, including any deposition transcripts of any witness. Again, they testified that the only information they had prior to their depositions was the time and location of the deposition hearing, indicating that they did not review with Petitioner's counsel at any time any information about other individual's testimony or version of events. Petitioner also testified that he did not review any deposition transcript or testimony prior to the hearing.

In contrast, Kim Singleton's testimony was not as credible as the other witnesses. Ms. Singleton indicated she authored her May 21, 2018, e-mail strictly from memory which would have been approximately 7 months after the accident. However, she later admitted that she had referred to her notes to corroborate information in said e-mail Further, Ms. Singleton testified that she was not aware of Petitioner claiming to have had an accident and suffered an injury until much later in time. Yet, on October 18, 2017, Ms. Singleton corresponded with the short-term disability carrier stating that Petitioner's time off was due to an "eye injury." The Arbitrator observes that Ms. Singleton's use of the term injury which would indicate an accident or event, which is different than describing it as a "condition" or vision problems. The Arbitrator notes that this singular instance is not conclusive or dispositive of the accident inquiry, but it is illustrative and another element in Petitioner's favor.

Based on the foregoing, the Arbitrator finds and concludes that Petitioner sustained accidental injuries arising out of and in the course of his employment with Respondent on October 5, 2017, as a result of slipping near his work truck which resulted in him striking his head.

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

The Arbitrator incorporates by reference the findings of fact and conclusions of law as set forth in the foregoing paragraphs.

Petitioner testified that he spoke with Ms. Singleton while on his way home after completion of the repair work on the fiberoptic cable. He stated that he told Ms. Singleton about his accident and injury during that conversation. Ms. Singleton acknowledged having a conversation with Petitioner, both in her testimony and in her e-mail requested by Petitioner. Petitioner testified that along with reporting specifics about completing the repairs, he mentioned his accident and injury. He testified that he was having visual irregularities while driving home. Ms. Singleton acknowledged and corroborated a significant amount of the alleged conversation; however, she denied any discussion about the accident. Mr. Francis also testified that he told Ms. Singleton about Petitioner's accident when he reported to her the following day. As stated above, the Arbitrator finds Petitioner and Mr. Francis' testimony credible. Each testified that they told Mr. Singleton about the accident.

Wherefore, based on the foregoing, the Arbitrator finds and concludes that verbal notice was provided on October 5, 2017 by Petitioner to Respondent.

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

It is well established that an employer takes its employees as it finds them. *County of Cook v. Industrial Comm'n*, 69 Ill.2d 10, 17 (1977). Even if an employee suffers from a pre-existing condition, such as heart disease or hypertension, if the condition which brings on

disability is work-related, the employee may recover workers' compensation. *Wheelan Funeral Home v. Industrial Comm'n*, 208 Ill.App.3d 832, 836 (1991). A work-related injury "need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). As long as there is a "but-for" relationship between the work-related injury and subsequent condition of ill-being, the employer remains liable. *Global Products,* 392 Ill.App. 3d 408, 412 (2009).

Determining which of two medical witnesses is more worthy of belief and whose evidence is entitled to the greater weight is a function of the Commission. *Ghere v. Indus. Comm'n,* 278 Ill.App.3d 840, 847, 663 N.E.2d 1046 (4th District 1996). It is well established that the Act is a humane law of remedial nature and is to be liberally construed to effect the purpose of the Act – that the burdens of caring for the causalities of industry should be borne by industry and not by the individual whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n*, 2 Ill.2nd 590, 603 (1964).

The Arbitrator finds that Dr. Golden-Brenner and Dr. Steven Eidt both used similar medical analysis regarding Petitioner's eye condition. Both doctors stated that retinal tears can occur secondary to head trauma due to movement of the vitreous which can pull at attachment of the retina. Both doctors also illustrated that there are natural disease processes at play as well. Both doctors also agreed that the medical treatment provided to Petitioner had been reasonable and necessary for treatment of his condition.

Dr. Eidt opined that Petitioner's eye injury was a multifactorial issue and his work accident was a factor in causing his need for immediate medical care. It appears that Dr. Golden-Brenner's opinions determining a lack of causal relationship is based upon the lack of documented trauma in Petitioner's records. She acknowledges that if Petitioner did suffer a significant head trauma around the date of his symptoms, it would be possible for his injuries to be caused by the accident. (RX #2 p. 10)

Dr. Steven Eidt's opinions regarding causation are more persuasive than those provided by Dr. Golden-Brenner because he considered the witness statement of Mr. Francis to provide context missing in the medical records. Having found Mr. Francis's testimony credible, the Arbitrator considers this a critical piece of the analysis relied upon by Dr. Eidt in his causation opinion and tilts the scale in favor of Dr. Eidt's opinion being more persuasive.

Therefore, the Arbitrator finds and concludes that Petitioner's eye injury is causally related to his October 5, 2017 work accident.

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

The arbitrator finds that all the medical treatment Petitioner has received has been reasonable and necessary. The arbitrator awards medical bills up through Petitioner's medical

discharge on June 19. 2019 and as indicated in Petitioner's Exhibit 8. Petitioner paid $1,379.12 in out of pocket expenses. Therefore, Petitioner is also awarded $1,379.12 in reimbursement costs for those out of pocket expenses pursuant to Section 8(a). Respondent will receive an 8(j) credit for bills paid through Respondent's group medical plan.

Issue (K): Was Petitioner entitled to Temporary Total Disability Benefits?

The arbitrator awards temporary total disability benefits representing Petitioner's lost time of 10/6/2017 through 4/16/2018 totaling a period of 27 3/7 weeks. Respondent shall receive an 8(j) credit for any amounts paid under Respondent's group disability insurance.

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

The Arbitrator finds and concludes that Petitioner is entitled to 100% loss of the right eye.

For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established pursuant to Section 8.1b of the Illinois Workers' Compensation Act, 820 ILCS 305/1 et seq.

In determining the level of permanent partial disability, the arbitrator's determination is based on the following factors:

i) The arbitrator notes that neither party submitted an AMA impairment rating for Petitioner's injuries. The arbitrator places no weight into this factor.

ii) Petitioner is currently retired and no longer works for Respondent. The arbitrator places little weight in this factor.

iii) Petitioner was 69 years old at the time of the accident. The arbitrator notes that Petitioner's age will only contribute to Petitioner's continued deterioration of his vision. However, the Arbitrator still places little weight in this factor.

iv) Following Petitioner's work injury, Petitioner retired from working Respondent and is no longer working. Petitioner did not experience a loss in future earning capacity before his retirement. The Arbitrator puts no weight on this factor when making the permanency determination.

vi) The medical records corroborate Petitioner's disability as Petitioner had multiple surgical interventions involving his right eye. Following each of Petitioner's surgeries, he did not improve significantly. Petitioner continues to experience pain and distortion in his right eye. Petitioner's visual acuity at his last visit with Dr. Blinder was 3/200. This is over the legal limit to be determined legally blind at 20/200. Petitioner testified as a result of his visual impairment, he has been forced to give up significant leisure activities like fishing and trap shooting. He

credibly testified to significant alterations to his quality of life like selling his fishing boat because he cannot go fishing anymore.

The Arbitrator finds that the medical records corroborate Petitioner's disability and is therefore given greater weight. The Arbitrator finds and concludes that Petitioner is entitled to 100% loss of the right eye.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC029761
Case Name	Jim Gass v. M-Class Mining
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0531
Number of Pages of Decision	13
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Roman Kuppart, Steven Hanagan
Respondent Attorney	Kenneth Werts, Julie Webb

DATE FILED: 11/12/2024

/s/Amylee Simonovich,Commissioner
Signature

DISSENT: /s/Amylee Simonovich,Commissioner
Signature

24IWCC0531

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jim Gass,

Petitioner,

vs. NO: 19 WC 29761

M-Class Mining,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering all issues, and being advised of the facts and law, reverses the Decision of the Arbitrator.

Findings of Fact

Petitioner alleged he sustained an occupational disease while working for Respondent in a coal mine. He worked in coal mines for 32 years, until November 10, 2017. On that date, his left arm was crushed in a work-related accident that is unrelated to this occupational disease claim.[1]

Petitioner testified that he spent his entire career working underground in coal mines and was regularly exposed to coal and rock dust. Petitioner testified that he was also exposed to diesel fumes for 17 years. He began working for Respondent in 2011. On his last date of exposure, Petitioner was a continuous miner coordinator/production coordinator. He testified that on November 10, 2017, he inhaled coal dust. Petitioner started smoking at around age 25 and testified that he stopped smoking in 2016. He testified that on average, he smoked 3/4 pack a day.

Petitioner testified that before his left arm injury, he had to squat, bend, and stoop to perform his job duties and that those actions caused breathing difficulties. He testified that he had experienced breathing trouble for a while, and the July 2019 NIOSH chest x-ray confirmed his respiratory condition. Petitioner testified that he continues to experience breathing difficulties. He

1 The November 10, 2017, work accident was addressed in case number 18 WC 3911. In the September 10, 2019, Arbitration Decision, the parties stipulated that Petitioner was entitled to a wage differential award as Petitioner sustained a loss of earnings due to the work accident.

testified that currently, he is able to walk only for approximately a block before becoming winded. He is winded after climbing a flight of stairs. He testified that his breathing difficulties have progressively worsened and that his doctor prescribed an inhaler that he uses only as needed.

In 2019, Petitioner began working for the Illinois Department of Natural Resources in the land management division at a state park. He testified that he performs maintenance work including painting, maintaining equipment, mowing, and performing other upkeep duties. He testified that he gets winded very easily particularly when performing activities that require him to bend and anything that causes exertion. He testified that his breathing difficulties take away from his quality of life. He testified that even while testifying he had to take a quick gasp of air at times. He testified that he lacks the lung capacity to bike ride and quit hunting several years earlier because he lacked his prior endurance. Petitioner testified that he lacks the capacity to get enough air when walking at a quick pace for a long period. He testified that he has difficulty walking in the mall while shopping with his wife, but is able to grocery shop alone as long as he leans on the cart and walks slowly.

Under cross-examination, Petitioner denied bringing the results of all the chest x-rays and black lung screenings performed by NIOSH over the years. Petitioner denied ever being diagnosed with sleep apnea and testified that his sleep study was scheduled for January 2023. Petitioner agreed that Dr. Istanbouly only examined him once at his attorney's request in August 2020. Petitioner testified that he loves to fish from a boat at Rend Lake once a month in his spare time. He also has a pond on his 20-acre property where he enjoys fishing and does tasks around the house. His property consists of pasture and woods and he has someone mow the property. Petitioner has an exercise bike and elliptical machine at home that he rarely uses. He also travels out of state to see his three adult children approximately once a month.

Medical Treatment

Respondent submitted medical records from Petitioner's primary care provider including a significant amount of medical records pre-dating November 10, 2017. The records show that Petitioner was diagnosed with sleep apnea before August 2018. The records also show that Petitioner indicated during each appointment that he continued to smoke tobacco.

On January 14, 2016, Petitioner sought treatment for an upper respiratory infection. He complained of head congestion and drainage over the prior few days. He received a steroid injection and was to return if his symptoms worsened or failed to improve. His oxygen saturation level was 98%. In August 2018, Petitioner denied respiratory and cardiovascular symptoms including coughing, difficulty breathing, and shortness of breath. His oxygen saturation level was 96% and his chest and lung exam was normal. Sleep apnea is listed as a current condition. Petitioner had his annual physical on July 31, 2019. On that date, he had no complaints and reported having good energy. Petitioner reported exercising three to four times each week. He denied respiratory symptoms including coughing, decreased exercise tolerance, difficulty breathing, and difficulty breathing on exertion. His oxygen saturation level was 98% and the chest and lung exam was normal. On August 13, 2019, Petitioner followed up with NP Franklin regarding certain chronic conditions. Petitioner's oxygen saturation level was 97%. He denied respiratory and cardiovascular symptoms such as coughing, difficulty breathing, and shortness of

breath. The chest and lung exam was normal.

On September 3, 2019, Petitioner complained to Dr. Neahring of chest discomfort over the past few months while sitting in a chair or resting in bed. The symptoms lasted less than five minutes and resolved spontaneously. He denied discomfort associated with physical activity and shortness of breath. Petitioner reported he was a former smoker and reported he continued to chew tobacco. The doctor wrote that Petitioner was not ready to quit smoking or using "chew." (RX 5). The physical exam was normal and Dr. Neahring ordered a stress test. The September 10, 2019, treadmill stress test revealed normal exercise parameters including functional capacity and chronotropic response to exercise and heart rate recovery. (RX 5). The test was negative for inducible ischemia by EKG criteria, and there was a hypertensive blood pressure response to exercise. In April 2020, Petitioner had a telemedicine appointment with NP Franklin. Petitioner denied experiencing respiratory or cardiovascular symptoms including coughing, difficulty breathing, and shortness of breath. In May 2021, he followed up with NP Franklin on various health issues. He again denied experiencing any respiratory or cardiovascular symptoms including coughing, shortness of breath, and difficulty breathing. His oxygen saturation level was 99% and the lung and chest exam was normal.

In late September 2021, Petitioner visited NP Franklin and denied experiencing respiratory or cardiovascular symptoms including coughing, difficulty breathing, and shortness of breath. Petitioner's oxygen saturation level was 98%. The chest and lung exam was normal. In November 2021, Petitioner again denied experiencing respiratory or cardiovascular symptoms including coughing, difficulty breathing, and shortness of breath. The chest and lung exam was normal. In December 2021, Petitioner again denied experiencing respiratory or cardiovascular symptoms including coughing, difficulty breathing, and shortness of breath. His oxygen saturation level was 99%, and NP Franklin recorded a normal chest and lung exam.

Petitioner returned to NP Franklin in February 2022 to follow up various complaints. He again denied experiencing respiratory or cardiovascular symptoms including coughing, difficulty breathing, or shortness of breath. His oxygen saturation level was 97% and the chest and lung exam was normal. Petitioner returned to NP Franklin in June 2022. He confirmed being a light smoker and denied respiratory and cardiovascular symptoms including coughing, difficulty breathing, or shortness of breath. Petitioner's oxygen saturation level was 98% and his chest and lung exam was normal.

On August 16, 2022, Petitioner complained to NP Franklin of anxiety with associated fatigue and insomnia. He denied shortness of breath but reported waking up wheezing or short of breath. His oxygen saturation level was 98%, and the chest and lung exam was normal. NP Franklin referred Petitioner to a sleep specialist to address his sleep apnea. Two weeks later, Petitioner continued to complain of waking up wheezing or short of breath. His oxygen saturation level was 98% and his lung and chest exam was normal. Petitioner had an upcoming appointment in a few weeks with the sleep center regarding his sleep apnea.

On October 4, 2022, Petitioner denied symptoms of coughing or shortness of breath to NP Franklin. However, he continued to complain of waking up wheezing or short of breath. The record indicates that Petitioner continued to smoke a half pack every two days. His oxygen saturation

level was 97% and the chest and lung exam was normal.

Expert Opinions and Testimony

Dr. Henry Smith—Petitioner's Section 12 Examiner

Dr. Smith reviewed Petitioner's July 30, 2019, chest x-ray and authored a narrative report on Petitioner's behalf on September 22, 2019. (PX 2 at Exh. 2). He opined the study showed simple coal workers' pneumoconiosis (CWP) "…of classification p/p, mid and lower zones involved bilaterally of a profusion 1/0." *Id*.

Dr. Smith testified on Petitioner's behalf via evidence deposition on November 4, 2021. (PX 2). He is a board-certified diagnostic radiologist and is a certified B-reader. He testified that the quality of the film is important because one can miss small opacities on overexposed film. One can also overread an underexposed film. He testified that opacities are small abnormal densities that are not seen in a normal chest, but are often seen with occupational lung disease or pneumoconiosis. Dr. Smith testified that with coal workers, the densities usually occur in the upper to mid lung zones. He testified that the profusion tells the intensity or overall predominance of the opacities. There are four categories of profusion, from 0-3.

The doctor testified that an 0/1 film "…looks like it probably is going to be [some new pneumoconiosis], but when you finally analyze it and do your final reading…it's not; so it's a 0, but it's not a completely normal 0…" *Id*. at 33. A 1/0 reading means "…[t]here's enough there that I can call that. It's not a normal, it's just the least abnormal that you're going to run into." *Id*. at 34. A 1/1 reading is the mid-range of mild involvements. Dr. Smith testified that reading films is an art and different readers interpret the same films differently. He testified that the July 30, 2019, chest x-rays show Petitioner has CWP and associated lung damage.

Under cross-examination, Dr. Smith testified that he currently only reviews films for black lung for five law firms that all represent claimants. Dr. Smith testified that he takes the syllabus used to prepare for the B-reading exam as gospel and highly respects the doctors on the panel. He agreed that the syllabus states that small opacities associated with exposure to silica and coal dust are usually rounded. He testified that profusion and opacity size do not regress. He agreed that underinflation could accentuate the pulmonary vasculature, which could mimic disease. He agreed that the small, rounded opacities usually involve the upper lung zones first, but other zones might become involved as dust exposure continues. He agreed that simple CWP is unlikely to progress once exposure ceases.

Dr. Smith agreed that pulmonary impairment is determined by valid pulmonary function testing. He testified that a chest x-ray can show changes consistent with COPD, hyperinflation, diminished vascularity, shunting of vascularity, and other conditions. Dr. Smith could not verify whether his computer monitors meet relevant federal guidelines. He also did not know if his computer processing specifications meet the DICOM standard.

The doctor agreed that the numerical profusion ratings were adopted to avoid terms such as early, moderate, or severe pneumoconiosis. He agreed that he only found the smallest of the

small round opacities in Petitioner's chest x-ray. He agreed that he did not record any opacities in the bilateral upper lung zones. Dr. Smith also agreed that the 1/0 profusion he assigned to Petitioner's film is the lowest profusion that can be assigned.

Dr. Suhail Istanbouly—Petitioner's Section 12 Examiner

Dr. Istanbouly examined Petitioner at his attorney's request on August 17, 2020. (PX 1 at Exh. 2). Petitioner reported that he suffered from a moderately intense daily cough for the past several years. He further reported that the cough was aggravated by strenuous activities and was mostly dry, but occasionally produced slight white sputum. Petitioner reported he was diagnosed with obstructive sleep apnea in 2012 or 2013. Petitioner reported exertional dyspnea and reported getting short of breath after walking one block. He believed his physical capacity had declined slowly over the past few years, and complained of frequent episodes of wheezing especially when lying on the bed.

Dr. Istanbouly examined the results of a spirometry test administered to Petitioner on the date of his examination. He wrote that the spirometry test revealed mild nonspecific ventilatory limitation with FEV1 3.21 L, 79% predicted, FVC 4.22 L, 81% predicted, and FEV1/FVC 76%. *Id*. He opined, "The flow volume loop revealed mild scooping in the expiratory limb suggestive of underlying obstructive lung disease." *Id*. He also reviewed the July 2019 chest x-ray and agreed with Dr. Smith's interpretation.

Petitioner's oxygen saturation level was 98%. Dr. Istanbouly diagnosed Petitioner with simple CWP related to his long history of coal dust inhalation. He also diagnosed chronic bronchitis which he believed was primarily related to Petitioner's history of inhaling coal dust and smoking. Dr. Istanbouly wrote:

> It is obvious…that long-term coal dust inhalation is a significant contributing factor to his chronic respiratory symptoms (chronic daily cough, occasional sputum production, frequent wheezing, and exertional dyspnea). It is advisable for him to avoid any further coal dust inhalation to prevent the progression of his pulmonary disease.

Id.

The doctor testified on Petitioner's behalf via evidence deposition on April 26, 2022. (PX 1). Dr. Istanbouly is a board-certified pulmonologist and specializes in pulmonary critical care and sleep medicine. While working in southern Illinois for the past 16 years, 30-40% of his patients suffered from black lung. He used to perform black lung exams for the Department of Labor. He testified that a person with CWP could be asymptomatic or could have chronic respiratory symptoms such as coughing, sputum production, shortness of breath, exertional dyspnea, chest pain, or wheezing. Dr. Istanbouly testified one might have CWP and not know it. He testified that Petitioner's physical exam was normal, which is common in the early stages of the disease.

Dr. Istanbouly testified that someone with CWP would have pulmonary function that varies from normal to obstructive or restrictive defect. He testified that one can have a normal pulmonary

function study, but still have lung damage that is not yet severe enough to be recognized on the test. He testified that spirometry is a global impairment test and that a person can have focal areas of pulmonary impairment in the lungs but have normal overall function. Someone with early or mild CWP could have normal oxygen saturation. He interpreted Petitioner's chest x-ray as showing mild bilateral interstitial changes, more prominent in the mid and lower zones bilaterally.

The doctor testified that chronic bronchitis requires persistent daily cough that produces sputum for a minimum of three months over at least two consecutive years, or a total of six months total. Petitioner's reported history meets those requirements. Dr. Istanbouly testified that CWP is chronic and has no cure. At times, the disease can be progressive. He testified that Petitioner has clinically significant pulmonary impairment based on his reported cough, sputum production, and exertional dyspnea.

Under cross-examination, the doctor agreed that Petitioner had a fairly significant smoking history, which could also be associated with the symptoms of coughing, sputum production, and shortness of breath. He testified that those symptoms should progress with continued tobacco use and could make Petitioner more prone to lung infections and pneumonia. Dr. Istanbouly testified that Petitioner specified only exertion triggered his symptoms. The doctor agreed that there are causes for exertional dyspnea other than pulmonary disease, including heart disease and deconditioning. He agreed that Petitioner was obese on the date of his examination and was approximately 100 lb. overweight.

Dr. Istanbouly only reviewed the August 17, 2020, spirometry results, Dr. Smith's narrative report, and a CD with Petitioner's chest x-ray. He did not review any other medical records. He agreed that not all coal miners develop CWP; instead, one has to be an acceptable host for the condition.

Dr. Christopher Meyer—Respondent's Section 12 Examiner

Dr. Meyer interpreted Petitioner's July 30, 2019, chest x-ray at Respondent's request on September 25, 2020, and authored a narrative report. (RX 1 at Exh. B). Dr. Meyer noted no small rounded, small irregular, or large opacities. He concluded there was no evidence of CWP and that the films showed clear lungs. Dr. Meyer wrote that his interpretation complied with the relevant federal code. After reviewing Dr. Smith's B-reading and narrative summary, Dr. Meyer added an addendum, and wrote:

> The examination is Q2 not Q1 due to mottle and edge-enhancement. I disagree with his reported findings of small opacities of size "p" with profusion of 1/0. The lungs are clear. This is a normal examination with no findings of [CWP].

Id.

Dr. Meyer testified on Respondent's behalf via evidence deposition on June 3, 2022. (RX 1). He is a board-certified radiologist and a certified B-reader. His area of expertise is thoracic imaging. He testified that CWP is typically an upper zone predominant process. He testified that determining the profusion, or extent of lung involvement, is the most difficult component of the

classification system. He testified that profusion classification varies from 0/0 (normal) to 3/+ (the most abnormal). He testified that film quality is very important. He testified that specific occupational lung diseases are described by specific opacity types, and that the distribution of dust exposures depends on the particles involved. Small particles like silica and coal are upper-zone predominant due to the lymphatic drainage of the lungs.

Dr. Meyer testified that the distinction between 1/0 vs 0/1 is a critical component of the B-reader exam and trips up most radiologists. The syllabus emphasizes that it is one of the most challenging distinctions made in radiology. He testified that Petitioner's chest x-ray was quality 2 because of improper position, edge enhancement, and mottle. There were no findings of CWP.

Under cross-examination, he testified that reviewing treatment records would only change his opinions if there were findings that could be explained by treatment. He testified that it is better objectively to read the films without any subjective bias of prior treatment. He testified that when CWP is extensive it can extend down to the lower lobes of the lungs. He testified that he has never seen it proven in literature that coal and small nodules can begin in the lower lobes. He agreed that mild simple CWP is generally asymptomatic. He testified that the radiographic technique depends on the body habitus of the patient. A different technique is used for an obese person compared to a thinner person. He testified that they receive films from institutions where the radiographic setting might not have been appropriate for the patient, so it is the B-reader's job to interpret the quality and decide if the films are adequate for an interpretation of CWP.

Dr. Meyer testified that when CWP is more severe it is diffuse and involves all lung zones. He testified that a 0/1 means the radiologist decided the exam was normal but considered marking it abnormal. A 1/0 means the radiologist decided there was enough abnormality to consider it an abnormal exam, but it was borderline enough that they at least entertained the idea that it might be a normal exam. He agreed that individual nodules are generally too small to be seen on chest x-rays and testified that most nodules seen on the x-rays are summation shadows—multiple coal macules superimposed on one another form a shadow large enough to be seen. Dr. Meyer agreed that it is possible that even though he interpreted the x-ray as negative, Petitioner could have CWP. Dr. Meyer testified:

> …any pulmonologist or occupational lung physician has less familiarity with the technology than a radiologist. We obviously do this all the time, and I'm involved when we put in a new piece of equipment making sure that the way the images present are appropriate…we work with the physicists and…the technical engineers that install the equipment. That's something that is part of a radiologist's job…So I'm familiar with those entities because of my particular specialty, and it may be that it's something that is less apparent to pulmonologists or occupational lung physicians.

(RX 1 at 59-60).

Under further questioning, he testified that simple CWP typically will not progress once exposure ceases. He testified that if a physician who is not a B- or A-reader or a radiologist says an x-ray shows CWP, one does not know if the interpretation meets the criteria that the ILO has

established for that diagnosis.

Dr. James Lockey—Respondent's Section 12 Examiner

Dr. Lockey reviewed medical records on behalf of Respondent and authored a narrative report dated September 29, 2021. (RX 2 at Exh. B). He also reviewed Petitioner's July 30, 2019, chest x-ray. Respondent provided a substantial number of records to the doctor with the earliest record dated April 13, 1998. He included a detailed summary of the medical records he reviewed. Dr. Lockey wrote that Petitioner had a long history of seasonal rhinosinusitis that over the years was treated with various nasal sprays, antihistamines, antibiotics, and intermittent systemic steroids. He wrote that Petitioner stopped smoking in 2016 after smoking for 15-18.5 pack years. Petitioner also suffered from several comorbidities including sleep apnea, marked obesity, high blood pressure, and high cholesterol.

Dr. Lockey opined that Petitioner's July 2019 chest x-ray demonstrated no changes consistent with CWP, profusion category 0/0. After reviewing Dr. Smith's narrative report, he wrote, "The minimal changes recorded by Dr. Smith indicating small round opacities (p/p) involving the middle and lower lung fields, at profusion 1/0, were not identified by me and are not the typical location of early changes consistent with coal and/or rock dust exposure." *Id*. He opined that Petitioner's medical history does not meet the clinical criteria for CWP. Dr. Lockey opined that there was no indication of chronic bronchitis, emphysema, or evidence of airway obstruction based on the most recent pulmonary function test results. He compared the results of the spirometry administered on August 17, 2020, with those of the spirometry administered on October 12, 2020. He wrote that Petitioner's reported symptoms to Dr. Istanbouly of a chronic cough occasionally producing sputum for several years was not substantiated by the past medical records, including the most recent records from May 11, 2021. Finally, he wrote, "[Petitioner] does not demonstrate objective evidence of pulmonary impairment based on AMA Guides for the Evaluation of Permanent Impairment, 6th edition Chapter 5, table 5-4. The results are also above the Federal Standards for total disability." *Id*.

Dr. Lockey testified on Respondent's behalf via evidence deposition on June 10, 2022. (RX 2). He is board-certified in internal medicine as well as pulmonary medicine and occupational medicine. He is also a certified B-reader. He previously served on the task force for redoing the B-reading training program. He also performs research regarding occupational and environmental lung disease. He testified that from a clinical perspective, a profusion of 0/1 is considered normal and a profusion of 1/0 is considered mildly abnormal. He served on the review committee that rewrote the training syllabus for interpreting films using the ILO classification system.

He interpreted Petitioner's film side by side with the standard ILO film. He testified that once exposure ceases, it is very unlikely that CWP will progress. He testified that Petitioner's chest x-ray did not reveal emphysema. He denied that chest imaging is a factor, particularly not a key factor, in determining impairment pursuant to the AMA Guides, 6th Edition regarding the pulmonary system. He agreed with the AMA Guides that correlation of chest interpretation and physiologic measurements of impairment is poor. He testified that Petitioner's diffusion capacity of 120% revealed by the October 2020 spirometry indicates there is no type of fibrosis present involving the alveolar capillary membrane that would interfere with gas exchange.

Dr. Lockey agreed that most coal workers do not develop CWP. He testified that the most recent pulmonary function testing for Petitioner in October 2020 was normal. He testified that after converting the results, Petitioner's FVC was 96% predicted, FEV1 was 97% predicted, and FEV1-FVC ratio was 78% predicted. Those testing results fall into category 0 under the AMA Guides. He testified that the October 2020 results were significantly better than the August 2020 results. He testified: "It means on 10/12/20, he took a more maximal inspiratory effort, and so the values that we use would be the 10/12/20 values of his normal pulmonary function tests' parameters." (RX 2 at 24). He testified that CWP doesn't wax and wane. Instead, it is a "…fixed disease of the lung from a pulmonary function perspective. The values remain stable." *Id*. Dr. Lockey denied that the October 2020 results revealed any evidence of obstruction or restriction. He agreed that the best way to determine whether there is any restriction is to measure lung volumes.

Dr. Lockey testified that according to the American Thoracic Society, chronic bronchitis is defined by a productive cough usually four to five times a week for three consecutive months for two years. He denied that Petitioner was ever diagnosed with chronic bronchitis in the medical records he reviewed. He testified that a cough is a nonspecific problem and is not an objective determinant of pulmonary impairment. He denied that a history of a daily cough, mostly dry and occasionally productive, meets the definition of chronic bronchitis. He testified that there was no evidence of a permanent aggravation of Petitioner's rhinosinusitis or workplace exposures. He testified that Petitioner hit his target heart rate and had a normal response to exercise in September 2019. He testified that the longer Petitioner smoked, he would eventually develop symptoms consistent with chronic bronchitis or emphysema.

Under cross-examination, Dr. Lockey agreed that in susceptible individuals, CWP can be an interstitial lung disease which is when pulmonary impairment becomes evident. He testified that if scar tissue is interfering with the alveolar capillary membrane, it will interfere with the exchange of oxygen and carbon dioxide. He agreed there is no cure for CWP and that the scarring is permanent. He testified that CWP can progress with additional exposure, particularly if the worker has a mixed-dust pneumoconiosis or was exposed to dust with a high silica content.

Dr. Lockey agreed that one can have shortness of breath and still have a normal pulmonary function study. He testified that shortness of breath can be due to aging, deconditioning, obesity, cardiovascular disease, or pulmonary disease. He agreed that one can have CWP and have normal pulmonary function. He agreed that one could have focal areas of pulmonary impairment in their lungs but the overall global function could be normal. He agreed that he did not interview or examine Petitioner, and did not speak to any of his doctors. He agreed that one could have CWP and still have a normal physical exam.

Conclusions of Law

Petitioner has the burden of proving both that he suffers from an occupational disease, and the disease is causally related to his employment. *Freeman United Coal Mining Co. v. Ill. Workers' Comp. Comm'n*, 2013 IL App (5th) 120564WC at ¶ 21. After carefully considering the totality of the evidence, the Commission finds Petitioner failed to meet his burden of proving he suffers from an occupational disease due to his job as a coal worker.

In determining Petitioner proved he suffers from CWP and chronic bronchitis due to his job duties, the Arbitrator relied on the opinions of Drs. Smith and Istanbouly. However, the Commission views the evidence quite differently. Drs. Smith, Istanbouly, Meyer, and Lockey are all respected experts in their fields. However, the opinions of both Drs. Smith and Istanbouly are weakened by the credible evidence.

The doctors agree that not all coal miners, even those with decades of exposure such as Petitioner, will develop CWP. A worker will only develop the disease if they are a suitable host. Drs. Smith, Meyer, and Lockey—all certified B-readers—agree that reading chest films for the presence of CWP is a skill that requires rigorous specialized training. They credibly testified that their training and skills are unique even compared to those of a very experienced pulmonologist. Their training includes skills and techniques that other radiologists and doctors do not learn. Certified B-readers undergo specialized training to assess the quality of the films and whether or not opacities are present. Dr. Meyer testified that B-readers must also consider a patient's body habitus because that can affect the technique used when the x-rays are performed. Dr. Meyer credibly testified regarding the federal regulations that govern the specifications of the equipment B-readers must use when interpreting films.

Dr. Smith, a very experienced B-reader, testified that Petitioner's chest x-ray showed evidence of CWP and associated lung damage. However, Dr. Smith testified that he is unfamiliar with the specifications identified in the relevant federal code regarding the equipment B-readers use. While he testified that his monitors were the highest grade available by Dell, he was unable to verify whether his equipment meets the DICOM standard. The Commission finds this uncertainty undercuts the persuasiveness of Dr. Smith's opinions. After all, he testified that the opacities he believed were present on the chest x-rays had a profusion of 1/0—the "..least abnormal that you're going to run into." (PX 2 at 34). Dr. Meyer testified that the syllabus for the B-reader examination emphasizes that the distinction between a profusion of 1/0 and 0/1 is one of the most challenging distinctions made in radiology. In a case where the presence of very small opacities is the critical issue, the possibility that Dr. Smith's equipment does not meet the necessary specifications significantly undermines his interpretation of the July 2019 chest x-rays.

Similarly, the opinions of Dr. Istanbouly are undermined by several factors. While Dr. Istanbouly is a board-certified pulmonologist, he is not a certified B-reader. Thus, he lacks the specialized training and skills of the other doctors who interpreted Petitioner's chest x-ray. There is also no evidence that Dr. Istanbouly's equipment meets the specifications identified in the relevant federal regulations and/or the DICOM standards. Thus, the Commission finds his opinion that the x-rays show the presence of CWP less persuasive.

Dr. Istanbouly's opinions are also significantly weakened by his reliance solely on the history Petitioner provided and the August 2020 spirometry results. Unfortunately, Petitioner has proven to be an unreliable witness regarding his respiratory complaints, smoking history, and even his comorbidities. Petitioner testified and also told Dr. Istanbouly that he stopped smoking in 2016; however, this is directly contradicted by the credible evidence. Respondent submitted an extensive number of records from Petitioner's primary care provider. Those records show that as recently as October 4, 2022, just a month before the arbitration hearing, Petitioner confirmed during a visit with NP Franklin that he continued to smoke up to a half a pack of cigarettes every two days.

Petitioner also testified that he had never been diagnosed with sleep apnea. However, he admitted to Dr. Istanbouly that he was diagnosed with obstructive sleep apnea in 2012 or 2013. The medical records also indicate that Petitioner has used a CPAP device since at least 2008.

Petitioner told Dr. Istanbouly that he has experienced a moderately intense daily cough for several years prior to his August 2020 examination. He reported that his cough was aggravated by strenuous activities and occasionally produced sputum. Petitioner also testified that his doctor gave him an inhaler that he uses only as needed for his breathing issues. However, the medical records contradict this history and testimony. Petitioner regularly followed up with NP Franklin, his primary care provider, regarding his several chronic conditions over the years. Despite countless visits and numerous complaints, he never complained of general shortness of breath, coughing, or difficulty breathing. He certainly never complained of suffering from a daily cough that at times produced sputum, and never complained of difficulty breathing due to activity. Instead, the medical records show that except for a complaint of shortness of breath and wheezing due to anxiety and panic attacks, and a respiratory infection in 2016, Petitioner never told his providers that he had even intermittent respiratory symptoms. Likewise, there is no evidence that any doctor prescribed an inhaler for Petitioner to use due to ongoing breathing difficulties. Instead, he was prescribed an inhaler in the past to use as needed due to his seasonal allergies.

Over the years, Petitioner consistently denied suffering from respiratory or cardiovascular symptoms such as coughing, difficulty breathing, and shortness of breath during his office visits. His providers consistently documented normal chest and lung examinations and Petitioner's oxygen saturation levels were never lower than 97%. Perhaps the best example of the stark contrast between Petitioner's testimony and reports to Dr. Istanbouly regarding his respiratory complaints is revealed in the July 31, 2019, office visit note. On that date, he attended his annual physical with NP Franklin. Petitioner reported that he exercised three to four times each week and had no complaints. He notably denied suffering any respiratory symptoms including coughing, decreased exercise tolerance, difficulty breathing, and difficulty breathing with exertion. It is clear that Dr. Istanbouly's opinion that Petitioner suffers from any respiratory condition including chronic bronchitis is not supported by Petitioner's medical records.

The Commission finds the opinions of Drs. Meyer and Lockey most persuasive in this matter. Both doctors are certified B-readers and testified credibly regarding their credentials and expertise. Both doctors also testified that their equipment meets the relevant federal requirements. The Commission finds Dr. Lockey's opinions particularly persuasive as he was the only doctor who reviewed Petitioner's medical records. Thus, he was privy to Petitioner's complaints, diagnoses, and treatment from April 1998 through May 2021. Dr. Lockey reviewed and compared the results of the spirometry testing administered in August 2020 and October 2020. He credibly testified that Petitioner's results were markedly improved in October 2020, and testified that a person with CWP would not have such drastically improved pulmonary function results two months after the prior tests. He credibly testified that the October 2020 spirometry results did not reveal any evidence of obstruction or restriction in Petitioner's pulmonary function. Dr. Lockey also credibly testified that the best way to determine whether a patient has a restriction is to measure lung volumes. The results of the October 2020 spirometry were within normal limits. Dr. Istanbouly examined Petitioner before the October 2020 spirometry was administered, and thus was unaware of Petitioner's improved results.

After considering the credible evidence, the Commission finds Petitioner does not suffer from CWP or chronic bronchitis. Instead, Petitioner's most recent tests revealed he had normal pulmonary function. Any shortness of breath with exertion or other related symptoms Petitioner may experience can be explained by other conditions. After all, Drs. Istanbouly and Lockey testified that shortness of breath, daily coughing, and even the occasional production of sputum can also be caused by obesity, a history of smoking, and one's deconditioned state. All three of these possible causes apply to Petitioner.

For the foregoing reasons, the Commission denies benefits because Petitioner failed to prove he suffers from an occupational disease arising out of and in the course of his employment.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 21, 2023, is reversed in its entirety and all benefits are denied.

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 12, 2024

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AHS/jds
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/s/ *Maria E. Portela*
Maria E. Portela

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

DISSENT

I respectfully dissent from the opinion of the majority and would affirm the well-reasoned Decision of the Arbitrator. After carefully considering the totality of the evidence, I believe Petitioner met his burden of proving he sustained an occupational disease and that his CWP condition is causally connected to his exposure in the employ of Respondent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	10WC017060
Case Name	Vicky L. Scaccianoce v. Addison School District 4
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	24IWCC0532
Number of Pages of Decision	6
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Thomas Giacobbe
Respondent Attorney	Matthew Sheriff

DATE FILED: 11/12/2024

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VICKY SCACCIANOCE,

Petitioner,

vs. Nos. 10 WC 17060

ADDISON SCHOOL DISTRICT,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT TO §8(a) and §19(h)

This matter comes before the Commission on Petitioner's §8(a) Petition filed on November 16, 2016, seeking additional medical benefits. Petitioner re-filed this motion on June 10, 2024.

On February 4, 2016, the Arbitrator awarded Petitioner permanent partial disability of 35% loss of use of the left leg for injuries arising out of and in the course of her employment. Petitioner filed a Petition for Relief pursuant to §8(a) on November 16, 2016, requesting authorization and payment for Supartz injections. Commissioner Tyrell held a hearing on the matter on November 17, 2017. At the close of the hearing, the proofs remained open for submission of additional medical records and bills. There was no follow-up date set for the closing of proofs at the time of hearing. No additional medical records or bills were submitted to trigger the setting of new date for closure of proofs. On June 10, 2024, Petitioner refiled their Petition for Relief pursuant to §8(a). Respondent filed a Response to Petitioner's §8(a) Petition. The matter appeared before Commissioner Simonovich on October 8, 2024, for closure of proofs. No additional documentation was submitted.

FINDINGS OF FACT

Petitioner was a 65-year-old physical education teacher at the time of the injury on November 14, 2005. T.7. On the date of her injury, she was supervising her class, when two students who were playing basketball ran into the back of her hitting her left knee. T.8. After the initial injury, she treated with Dr. Daryl Luke at Barrington Orthopedic Specialists, who determined the injury had caused a torn meniscus and cartilage damage. T. 9. Petitioner had

surgery to repair the tear and clean up her left knee. *Id*. She did a course of physical therapy and returned to work. *Id*.

Petitioner continued to have issues with pain and range of motion. Dr. Luke recommended a series of Supartz injections. T.10. The injections were intended to cushion and lubricate the knee joint. *Id*. Dr. Luke noted these were recommended to prolong the inevitable of a total knee replacement. PX2, p.122.

She had her first injection around June 2006. T.11. After the series of injections, the pain went away, her range of motion increased, and flexibility increased. *Id*. Petitioner testified that her walking, bending, stooping and moving "definitely improved". *Id*.

Since June of 2006 she had been getting the Supartz injections approximately every six months with Dr. Luke and then Dr. Cirrincione at Barrington Orthopedic Specialists. However, she noted that several times the injections were denied by the insurance company. T.12-13. She testified Respondent would ask for additional information and sometimes send her for a second opinion evaluation, but the injections would be approved eventually and then she would get the shots. *Id*.

Petitioner attended a Section 12 examination at the request of the Respondent with Dr. Zillmer on April 29, 2009. (Arbitration RX1). Dr. Zillmer recommended one additional round of viscosupplementation. He indicated that if it was determined that Petitioner had pre-existing degenerative changes prior to the injury in 2000, he would say she had reached maximum medical improvement for the exacerbation of her pre-existing problem. If she did not have degenerative joint disease, he recommended she be managed up to and including a total knee replacement sometime in the future.

Petitioner was seen for a follow up Section 12 examination with Dr. Zillmer on May 14, 2010. (Arbitration RX2). Dr. Zillmer noted that since the last evaluation, Petitioner had undergone two additional series of Supartz injections. She had finished the last round approximately one month prior to the evaluation. Dr. Zillmer opined Petitioner would benefit from a further series of viscosupplementation injections, limiting them to no more than two per year. Dr. Zillmer felt the injections would be beneficial indefinitely until the Petitioner had reached the point when a total knee replacement was indicated based upon symptoms and radiographic findings.

Dr. Zillmer opined Petitioner had not returned to her pre-accident status, despite the finding of degenerative joint disease at the time of her arthroscopy in 2000. Dr. Zillmer noted that Petitioner had functioned well up until her repeat injury in 2005. She felt that Petitioner required ongoing treatment, as the exacerbation of her preexisting status had not gone back to baseline. Dr. Zillmer noted that as the effects of the viscosupplementation injections and/or steroid injections wore off, Petitioner became less functional and had significant pain. Dr. Zillmer found she required treatment to maintain her high level of function and ability to do her work.

Petitioner underwent an additional Section 12 examination on July 31, 2013, this time with Dr. David J. Raab. (Arbitration RX4). Dr. Raab opined Petitioner's current condition of ill-being was secondary to the natural progression of degenerative arthritis of the Petitioner's left knee. He

noted it was clearly documented that she had osteoarthritis of the knee at the time of the arthroscopy in 2001 (*sic*), as well as significant degenerative changes at the time of the knee arthroscopy in 2005, which he opined were preexisting and predated the work-related injuries of November 14, 2005.

Dr. Raab noted that viscosupplementation was indicated for osteoarthritis. He did not believe the necessity of continued viscosupplementation in the Petitioner's knee was a result of her injury on November 14, 2005, but was due to the natural progression of her degenerative arthritic condition. He noted that Petitioner was a 6' tall, 235 lb female with a longstanding history of being extremely active. He opined the 2005 knee arthroscopy was indicated for her work-related injury, as well as a 6-12 month period of treatment following the knee arthroscopy.

Dr. Raab opined that ongoing treatment after that period was for the treatment of the osteoarthritis in her knee, not due to the work-related injury she sustained. The intermittent viscosupplementation and cortisone injections were reasonable, as she functioned extremely well and was working full duty. He did not think a knee replacement was indicated at the time of the exam.

Dr. Raab opined that future treatment would be due to the natural progression of arthritis in her knee and not causally related to her work injury.

A hearing was held before Arbitrator Granada on January 26, 2016. (Arbitration T.4). The parties agreed on the record that the only issue to be decided was that of the nature and extent of the injury, however, on the Request for Hearing Stipulation Sheet there was a notation by Petitioner indicating outstanding medical bills from Barrington Orthopedic in the amount of $1,975.66. (AX1, p.1). This was not marked as a disputed issue. *Id*. Medical records from Petitioner's treatment at St. Alexius Medical Center, Bloomingdale Open MRI and at Barrington Orthopedic reflecting treatment provided from January 2, 2001 to April 2010 were submitted by Petitioner. (Arbitration PX1-3). Unpaid medical bills for treatment rendered at Barrington Orthopedic from April 10, 2015 to January 5, 2016 were contained in PX4. Respondent submitted the above reports of Dr. Zillmer and Dr. Raab, as well as a UR opinion from 2012, which found Petitioner had not reached maximum medical improvement. (Arbitration RX1-4). While the only issue at hearing was nature and extent, the Arbitration Decision noted necessary medical services and temporary compensation benefits had been provided by the Respondent. Respondent was also ordered to pay Petitioner the sum of $1,979.66 for out-of-pocket expenses. This appears to have been based upon the dollar figure on the Request for Hearing form, which listed unpaid Barrington Orthopedic bills in the amount of $1,979.66. The Decision was not reviewed.

A Petition for Section 8(a) Relief was subsequently filed by Petitioner on June 16, 2016. The Petition contained no allegations claiming non-payment of the award.

At the time of the original Commission hearing on November 17, 2017, Petitioner testified she had tried to get additional injections approved starting in July 2016, but the injections were denied again. T.16-17. Due to her ongoing pain, Petitioner testified she finally put the treatment through her private insurance carrier, Aetna. T.17. Petitioner testified she had completed the last set of injections from August 8, 2017 to September 8, 2017. T.13.

Petitioner testified that Aetna had covered the injections and she had spent approximately $1,495 out of pocket. *Id*. She also spent approximately $43 worth of medicine (anti-inflammatories for the knee), bringing the total out of pocket to $1,538. T.17-18. She testified she had receipts for three (3) out of the five (5) visits, but the others were still in insurance limbo. T.18. Petitioner's counsel requested submission of clearer documentation of the charges at a later date, which was agreed to by Respondent's counsel. T.18-19. The proofs were to remain open until that time. *Id*.

No medical records were introduced at the time of the hearing before Commissioner Tyrell. The only medical bills submitted were the resubmitted PX4 bills from the original hearing. This exhibit documented bills for treatment rendered from April 10, 2015 through January 5, 2016. No further medical records or bills were submitted.

Petitioner refiled the Petition for 8(a) Relief on June 10, 2024. The matter was set for a closure of proofs on October 8, 2024 before Commissioner Simonovich. At the time of the October 8, 2024, hearing, no further medical records or bills were submitted.

CONCLUSIONS OF LAW

Pursuant to §8(a) of the Act, Petitioner is entitled to all necessary care to cure or relieve the effects of her work-related injuries. 820 ILCS 305/8(a). Upon establishment of a causal nexus between the injury and Petitioner's current condition of ill-being, Respondent is liable for all medical care reasonably required in order to diagnose, relieve, or cure the effects of his work injuries. *Plantation Mfg. Co. v. Industrial Comm'n,* 294 Ill. App. 3d 705, 709 (2d Dist. 1997). An employer's liability for medical services under §8(a) of the Act is continuous so long as the services are required to relieve the injured employee from the effects of the injury. *Efengee Elec. Supply Co. v. Industrial Comm'n,* 36 Ill. 2d 450, 453 (1967).

Petitioner contends that her ongoing complaints are related to her February 1, 2019 work accident. Per her Petition, she seeks authorization and payment for all reasonable and related medical care, including, but not limited to the Supartz injections post 2013. Petition, p.2, para. 9 and Prayer. Respondent disputes the treatment and claims it is unrelated to the work accident, but rather due to a natural progression of her degenerative arthritic condition. (Respondent's Response to Petitioner's §8(a) Petition). Respondent relies upon the opinions of Dr. Raab from the IME on January 31, 2013 to support their position. (Arbitration RX4).

Medical bills submitted prior to the Arbitration hearing were awarded. No review of the award was made by either party. Despite the Petitioner's indication that the Respondent was provided with all requested medical records in paragraph 10 of Petitioner's Petition for Relief pursuant to 8(a), no additional medical records or bills post-Arbitration were submitted to the Commission. The last medical record submitted was from April 2010. Petitioner testified she had continued to treat at Barrington Orthopedic after Dr. Luke left the practice, switching her treating physician to Dr. Cirrincione. However, no medical records or bills for this treatment were submitted. While the Commission notes the Respondent is liable to provide and pay for all reasonable and related medical bills as long as the services are required to relieve the injured

employee from the effects of the injury, there has been no submission of medical records or bills since the original Arbitration hearing. The Commission cannot make a determination on the reasonable and related nature of medical treatment when no supporting medical records or bills have been submitted.

Petitioner has not met her burden of showing entitlement to reasonable and related medical expenses pursuant to 8(a), primarily because Petitioner has not provided proof of any medical expenses or treatment post-Arbitration hearing. The Commission hereby denies said Motion.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's §8(a) Petition for additional medical benefits is denied.

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 12, 2024
r: 10/8/24
AHS/kjj
51

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC015017
Case Name	Latoya Robinson v. Superior Ambulance Service
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0533
Number of Pages of Decision	23
Decision Issued By	Carolyn Doherty, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Matthew Jones
Respondent Attorney	Adam Rettberg

DATE FILED: 11/12/2024

/s/Carolyn Doherty,Commissioner
Signature

DISSENT: /s/Marc Parker,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LATOYA ROBINSON,

Petitioner,

vs. NO: 21 WC 15017

SUPERIOR AMBULANCE,

Respondent.

19(b) DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Respondent, Superior Ambulance, herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses, and prospective medical treatment, and being advised of the facts of law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

I. Causal Connection

The Commission initially notes that Petitioner's work accident on February 1, 2021 was not disputed at trial nor on review. Relying on Petitioner's testimony and the opinions of Dr. Pelinkovic, the Arbitrator concluded that Petitioner's current condition of ill-being of the lumbar spine is causally related to the work accident on February 1, 2021. However, after a review of the record in its entirety, the Commission views the evidence differently and concludes that Petitioner's condition of ill-being of the lumbar spine is causally related to the February 1, 2021

work accident through August 11, 2021, the date she was discharged from care by treating physician, Dr. Lipov.

The interpretation of medical testimony is particularly within the province of the Commission. *A. O. Smith Corp. v. Indus. Comm'n*, 51 Ill. 2d 533, 536-37 (1972). A finder of fact is not bound by an expert opinion on an ultimate issue but may look 'behind' the opinion to examine the underlying facts. Not only may the Commission decide which medical view is to be accepted, it may attach greater weight to the opinion of the treating physician. *International Vermiculite Co. v. industrial Comm'n* , 77 Ill.2d 1, 31 Ill.Dec. 789, 394 N.E.2d 1166 (1979); *AHA Services. Inc. v. Industrial Comm'n* , 226 Ill. App. 3d 225, 168 Ill. Dec. 756, 590 N.E. 2d. 78 (1992); *Danielle Henderson-Ryan v. Edward Hospital*, 2020 Ill. Wrk. Comp. LEXIS 1070, *32.

In this case, the Commission finds the treating medical records to be the most significant and determinative evidence relating to the issue of causal connection. The medical records demonstrate that after the work accident on February 1, 2021, Petitioner treated conservatively with Dr. Bayran, Dr. Najera, and Dr. Lipov. She underwent a lumbar MRI, an EMG, lumbar spine injections and was prescribed medications. Petitioner was discharged from care and released to full duty work by Dr. Bayran on April 13, 2021 after reporting 70% relief from the first injection. Despite testifying that it was her understanding that "they" were not going to approve any additional care or benefits following the June 21, 2021 Section 12 exam, Petitioner continued to treat and received additional conservative treatment from treating physicians Dr. Najera (EMG on July 2, 2021) and Dr. Lipov (lumbar ESI on July 30, 2021). Surgery was never recommended. On August 11, 2021, Dr. Lipov discharged Petitioner from care after she reported 80% relief and 1/10 pain after the second ESI injection. Dr. Lipov also stated Petitioner could continue regular work duties.

After being discharged from care for a second time on August 11, 2021 by her treating physician, Petitioner did not return to work for Respondent. Petitioner testified that she was "let go" by Respondent. Petitioner then found new seasonal employment as a mail processing clerk for the post office starting in October 2021 through December 2021. Petitioner testified she worked in the bulk mail center and her job duties included picking up boxes from the assembly line and throwing the boxes into bins with the correct zip code. Petitioner also testified that over the next few months, while working for the post office, the same pain began to return. While it was Petitioner's testimony that either in December 2021, January 2022, or "maybe" February 2022, she contacted "the doctor" for more injections, the Commission finds no support in the medical records to substantiate her testimony. Moreover, when asked by her attorney whether her requested treatment was "approved" at that time, Petitioner responded "no." Again, the Commission finds nothing in the medical records or the record as a whole to support Petitioner's testimony that she actually requested treatment and that her request was denied. The Commission finds it significant that Petitioner did not seek any treatment, nor was she refused any treatment by her treating doctors for any condition or complaint from August 12, 2021 through August 30, 2022, resulting in a one-year gap in treatment.

Furthermore, the Commission notes that after the year-long gap in treatment, Petitioner in fact returned to Dr. Lipov and received treatment on August 31, 2022. At that visit, Dr. Lipov documented in his note that he had last seen Petitioner on August 11, 2021, at which time she

reported the lumbar radiculopathy and lower back pain had resolved and that he had discharged Petitioner from care. Thereafter, Petitioner was evaluated by Dr. Pelinkovic for the lumbar spine on December 16, 2022, which the Commission notes to be nearly two years after the work accident and 1-1/3 years after her full duty discharge from care. Petitioner testified that she did not inform Dr. Pelinkovic that she was first discharged from care in April 2021, did not recall if she told Dr. Pelinkovic that she had been discharged from care a second time in August 2021, and did not tell Dr. Pelinkovic about the year-long gap in treatment. Dr. Pelinkovic testified that he did not review the prior treating records, was not aware of a gap in treatment, and relied only on Petitioner's history and the radiographic findings in forming his opinions. As such, the Commission is not persuaded by Dr. Pelinkovic's opinions that the current condition of the lumbar spine and recommended lumbar surgery are related to the February 1, 2021 accident.

Based on the August 11, 2021 full duty release from treatment and the year-long gap in treatment thereafter, the Commission finds that Petitioner did not meet the burden of proof necessary to prove the lumbar condition after August 11, 2021 is causally related to the February 1, 2021 work accident. Therefore, the Commission finds that Petitioner's condition of ill-being relating to the lumbar spine is causally related to the February 1, 2021 work accident through Dr. Lipov's discharge from treatment on August 11, 2021 and not thereafter.

II. Temporary Total Disability

For the reasons discussed above, the Commission concludes that Petitioner's condition of ill-being of the lumbar spine is causally related to the February 1, 2021 work accident through August 11, 2021 and not thereafter. Accordingly, the Commission vacates the award temporary total disability benefits for the period of November 22, 2022 through December 27, 2023. The Commission thus awards temporary total disability benefits of $417.09 for 20 weeks for the periods of February 2, 2021 through April 13, 2021 and June 4, 2021 through August 11, 2021. The Commission also orders that Respondent be given a credit of $4,230.45 for temporary total disability benefits paid.

III. Medical Expenses

For the reasons discussed above, the Commission concludes that Petitioner's condition of ill-being of the lumbar spine is causally related to the February 1, 2021 work accident through August 11, 2021 and not thereafter. Accordingly, the Commission vacates the award of reasonable and necessary medical services incurred after August 11, 2021. The Commission orders Respondent shall pay reasonable and necessary medical services incurred on or before August 11, 2021 as provided in Sections 8(a) and 8.2 of the Act. The Commission also orders that Respondent is entitled to a credit for any medical benefits that have already been paid.

IV. Prospective Medical Treatment

Having concluded that Petitioner's condition of ill-being of the lumbar spine is causally related to the February 1, 2021 work accident through August 11, 2021 and not thereafter, the

Commission vacates the Arbitrator's award of prospective medical treatment relating to the lumbar spine.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated May 2, 2024, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's condition of ill-being of the lumbar spine is causally related to the February 1, 2021 work accident through August 11, 2021 and not thereafter.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay temporary total disability benefits of $417.09 a week for the periods of February 2, 2021 through April 13, 2021 and June 4, 2021 through August 11, 2021, for a total of 20 weeks.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of temporary total disability benefits for the period of November 22, 2022 through December 27, 2023 is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical expenses incurred through August 11, 2021, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall have credit for amounts paid.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of all prospective medical treatment relating to the lumbar spine prescribed by Dr. Pelinkovic is hereby vacated.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $33,700.00. 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 12, 2024

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

O: 03/02/23
CMD/jjm
045

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

DISSENT

I respectfully dissent from that portion of the Majority's Decision, which found causal connection for Petitioner's injuries only through August 11, 2021. I would have affirmed and adopted the Arbitrator's extremely well-reasoned Decision in its entirety. In modifying the Arbitrator's Decision, the Majority relies, almost exclusively, on the fact that Petitioner was released from care on two separate occasions after having positive responses to injections, and the fact that following her second injection and subsequent release from care on August 11, 2021, Petitioner did not receive treatment for over a year. I believe the Majority's reliance on these facts, to deny Petitioner the surgery that she so desperately needs, is misplaced.

The petitioner never had back or leg complaints or treatment before her work accident. Immediately after her fall, she had right-sided low back pain radiating down her right leg to her foot. Within days, an MRI revealed a herniated disc at the L4-5 level. An EMG performed a few months later was positive for right-sided radiculopathy. As Dr. Pelinkovic noted, a herniated disc is a permanent structural change to Petitioner's spine. While Petitioner received and had positive responses to injections which allowed her to attempt to return to work, the structural damage to her spine remained. Her pain intensified after each return to work.

The Majority relies heavily on the fact that Petitioner had no treatment between August of 2011 and August of 2022. In so relying, it ignores the fact that Respondent fired the Petitioner in July of 2021 after receiving its Section 12 report, and ignores the fact that Petitioner sought additional injections but was told further treatment was not authorized. Regardless, a gap in treatment, no matter how long, does not disprove causation of a structural defect in the spine.

The Majority is also critical of Dr. Pelinkovic's opinions. It suggests that he did not have sufficient information to opine that Petitioner's current condition is related to the accident. I strongly disagree. He was aware that Petitioner: had no prior back or leg issues, suffered a fall, had two MRIs showing a herniated disc, had an EMG showing right-sided radiculopathy, and received two injections which provided temporary relief of her symptoms. Dr. Pelinkovic had more than enough information to render his opinions. For the forgoing reasons, I respectfully dissent.

DATED:
o: 10/25/24
MP
045

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC015017
Case Name	Latoya Robinson v. Superior Ambulance Service
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	***Corrected Decision***
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Matthew Jones
Respondent Attorney	Adam Rettberg

DATE FILED: 5/2/2024

/s/Jacqueline Hickey, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 30, 2024 5.165%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)
CORRECTED

Latoya Robinson
Employee/Petitioner

v.

Superior Ambulance Co.
Employer/Respondent

Case # **21** WC **015017**

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 **Jacqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **December 27, 2023.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the accident date, **2/1/21** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**32,532.76**; the average weekly wage was $**625.63.**

On the date of accident, Petitioner was **43** years of age, **single** with **2** dependent children.

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

Respondent shall be given a credit of $**4,230.45** for TTD, $**0** for TPD, $**0** for maintenance, and **$0** for medical, and **$0** for other benefits, for a total credit of $**4,230.45.**

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

ORDER

Temporary Total Disability

Respondent shall pay to Petitioner and petitioner's counsel, the temporary total disability benefits of $417.09 for 77 and 2/7 weeks, commencing February 2, 2021 through April 13, 2021; June 4, 2021 through August 11, 2021; and November 22, 2022 through December 27, 2023, as provided in Section 8(b) of the Act.

Medical Benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of Illinois Orthopedic Network, $18,042.80; Metro Anesthesia Consultants, $2,973.26; Midwest Specialty Pharmacy, $5,148.81; Ingalls Memorial Hospital, $1,266.08; Suburban Orthopaedics, $3,792.00; Metro Continued Care, $11,388.00; Preferred Imaging, $2,100.00; Pain Center of IL, $5,822.00.

Prospective Medical

The Arbitrator orders Respondent to authorize the L4-L5 hemilaminectomy microdiscectomy and associated care as recommended by the treating physician, Dr. Pelinkovic.

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

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

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

Jacqueline C. Hickey

Signature of Arbitrator

May 2, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Latoya Robinson,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21 WC 015017
Superior Ambulance Service,	)	
	)	
	)	
Respondent.	)	

RIDER TO DECISION
(CORRECTED)

This matter proceeded to hearing on December 27, 2023, in Chicago, Illinois before Arbitrator Jacqueline Hickey on Petitioner's Petition for Immediate Hearing under Sections 19(b) and 8(a). The issues in dispute were causal connection, medical expenses, temporary total disability benefits, and prospective medical care. Arbitrator's Exhibit 1 (Ax1).

FINDINGS OF FACT

Job Duties & Accident

Petitioner testified that she was working for Respondent, Superior Ambulance, on February 1, 2021 and had been employed with Respondent for around two years. Tx10. Petitioner was a Medi-Car driver, which included transporting patients in a van between medical appointments and assisting the patients to get in and out of the vehicle. Id. at 11. Petitioner testified that on February 1, 2021, Petitioner was working for Respondent assisting a patient with slick conditions outside from a snowfall. Id. at 12. Petitioner testified that she reached out both hands to assist a patient, when the patient fell into Petitioner. Id. When the patient fell into Petitioner, Petitioner fell backwards onto the street hitting her lower back. Id. Petitioner testified that she felt pain in her lower back down with pain traveling down her right leg to her foot. Id. at 13.

Petitioner testified that after the fall, she called her manager to report the accident and went home. Id. at 13-14. Petitioner testified that she went to the emergency room the following day after she continued to have pain in her lower back on the right side. Id. at 14.

Summary of Medical Records

On February 2, 2021, Petitioner presented to Ingalls Memorial Hospital with low back pain and pain radiating to the right glute down the right leg and a history consistent with the medical records. Petitioner testified that she went home after that visit and as she continued to feel pain, she went back to the emergency room two days later. Tx15, Px1. On February 4, 2021, Petitioner presented to Ingalls Memorial Hospital where she was sent to the occupational health clinic. Px1. On physical examination, it was noted Petitioner had reduced ROM of the lumbar spine and positive straight leg on the right. Id. Petitioner was diagnosed with a right hip sprain, lumbar spine sprain, placed on light duty, and recommended physical therapy. Id. Petitioner testified that she started physical therapy at Ingalls, which did not help. Tx15-16.

Petitioner was then referred to Dr. Bayran at Pain Center of Illinois on February 16, 2021. Px6. At this visit, Petitioner complained of low back pain with radiation into the right hip and leg and a history consistent with the testimony at trial. Id. On physical examination to the lumbar spine, Dr. Bayran noted tenderness, reduced range of motion, numbness in distribution L3-S1, and straight leg raise on the right causing back pain. Id. Dr. Bayran placed Petitioner on sedentary work, recommended physical therapy and an MRI of the lumbar spine. Id.

On February 19, 2021, Petitioner underwent the MRI of her lumbar spine which showed: (1) L4-L5 4 mm disc bulge with moderate bilateral foraminal stenosis; and (2) L5-S1 4 mm broad posterior disc protrusion and associated small annular tear without stenosis. Px2. Petitioner followed up with Dr. Bayran on March 2, 2021 where he indicated the lumbar MRI showed a disc protrusion with bilateral neural foraminal narrowing at L4-L5 and a lumbar disc protrusion with annular tear at L5-S1. Px6. Petitioner's subjective complaints were right side low back pain with radiation into her right thigh down to the right knee. Id. Dr. Bayran noted a similar physical examination and recommended an injection for Petitioner's back. Id.

Petitioner underwent the lumbar injection for her back in late March. Tx17. Following the injection, Petitioner presented to Dr. Bayran on April 13, 2021 with significant improvement (70%) from the injection. Px6. Due to the improvement, Dr. Bayran placed Petitioner at maximum medical improvement (MMI) and released Petitioner full duty. Px6.

After Petitioner returned to work, she sought a second medical opinion with Dr. Najera at Illinois Orthopedic Network on June 4, 2021. Px2. At this visit, Petitioner complained of 10/10 low back pain radiating into the right hip to the right foot with associated numbness/tingling and a history consistent with the testimony at trial. Id. On physical examination of the lumbar spine, Dr. Najera noted tenderness (worse on right), pain with flexion, straight leg raise positive on the right, and decreased sensation in the right L4, L5, S1 dermatomes. Id. Dr. Najera recommended an EMG and placed Petitioner off work. Id. On June 16, 2021, Petitioner underwent the EMG of her bilateral lower extremities which showed evidence of right L5 lumbar spine radiculopathy. Id.

Section 12 Exam

On June 21, 2021, Petitioner underwent an IME with Dr. Mekhail at the request of the Respondent. Rx2. At the IME, Petitioner had subjective complaints of 6-10/10 low back pain, radiating pain down the right buttock and intermittently going down the right leg. Id. On physical examination, Dr. Mekhail noted straight leg raise on right causing back pain. Id. Dr. Mekhail diagnosed Petitioner with back strain and right hip contusion that had resolved. Id. Dr. Mekhail opined that Petitioner's mechanism of injury was not the cause of her MRI findings and that Petitioner required no further treatment. Id.

On September 13, 2021, Dr. Mekhail authored an addendum to his IME report after he reviewed the EMG. Rx3. Dr. Mekhail opined that he did not believe the EMG substantiated the L5 nerve root involvement in any significant way as it did not show any evidence of muscle denervation that "we should be concerned about." Id.

Petitioner followed up with Dr. Najera on July 2, 2021 where he recommended a L4-L5 epidural injection. Id. Petitioner underwent the L4-L5 epidural injection on July 30, 2021. Id. Following the injection, Petitioner presented to Dr. Lipov on August 11, 2021 with 80% improvement from the injection. Id. Dr. Lipov discharged Petitioner and indicated if the pain returns, he would recommend another epidural injection. Id.

On August 31, 2022, Petitioner presented to Dr. Lipov with the return of her symptoms in her lower back and radiating pain down the right leg with tingling/numbness in the leg. Id. On physical examination of the lumbar spine, Dr. Lipov noted positive straight leg raise on the right and pain with extension. Id. Dr. Lipov recommended Petitioner restart physical therapy. Id. Petitioner completed a course of physical therapy at Metro Continued Care from October 4, 2022 through October 29, 2022. Px4. Petitioner followed up with Dr. Lipov on September 29, 2022 and October 19, 2022 with similar subjective complaints and physical examination findings. Px2. Dr. Lipov recommended an updated lumbar MRI. Id.

On November 8, 2022, Petitioner underwent the updated lumbar spine MRI, which showed: (1) L4-L5 low-grade canal encroachment by small HNP, moderate right low-grade left foraminal encroachment by small right larger than left laterally protruding discs, anteriorly protruding posterior element DJD in combination with loss of disc height, with compression of exiting right L4 nerve root; (2) Posterior elements DJD: L4-L5, L5-S1 low-grade DJD; and (3) DDD: L4-L5 moderate, L5-S1 low to moderate grade preferential posterior DDD. Id. Petitioner followed up with Dr. Lipov on November 22, 2022 where he referred Petitioner for a spine orthopedic evaluation. Id.

On December 16, 2022, Petitioner presented to Dr. Pelinkovic at Suburban Orthopaedics for a spine evaluation. Id. Petitioner's subjective complaints were low back pain with radiating pain down the right leg in the posterior aspect to the right heel. Id. On physical examination to the lumbar spine, Dr. Pelinkovic noted tenderness, sensation decreased in the right L4-L5, and straight leg positive on the right at L4-L5. Id. Dr. Pelinkovic reviewed the MRI and diagnosed Petitioner with right L4-L5 radiculopathy and right L4-L5 disc herniation. Id. Dr. Pelinkovic placed Petitioner off work and recommended a hemilaminectomy. Id.

Second Section 12 Exam
On February 13, 2023, Petitioner underwent a second IME with Dr. Mekhail. Rx4. At the IME, Petitioner had subjective complaints of 10/10 low back pain with intermittent radiating symptoms down the right leg. Id. On physical examination, Dr. Mekhail noted axial back pain with straight leg raise testing and rotation. Id. Dr. Mekhail diagnosed Petitioner with a back strain, found symptom magnification, and opined Petitioner was at MMI as of April 13, 2021 when Dr. Bayran discharged her. Id. Dr. Mekhail opined that Petitioner had pre-existing degenerative changes at L4-L5 and L5-S1, but they are not responsible for her current condition. Id.

Petitioner followed up with Dr. Pelinkovic on January 20, 2023, March 3, 2023, April 7, 2023, and May 19, 2023 with continued significant back and right leg pain and similar physical examination findings. Id. Dr. Pelinkovic disagreed with Dr. Mekhail's IME in that Petitioner sustained more than a lumbar strain. Id. Dr. Pelinkovic opined that Petitioner's MRI showed disc protrusions at L4-L5 and correlating foraminal stenosis on the right that was confirmed on exam with positive straight leg raise as well as the EMG. Id. Dr. Pelinkovic further noted that Petitioner had no back symptoms prior to the work accident. Id.

On July 7, 2023, Petitioner presented to Dr. Pelinkovic with stiffness throughout the right leg, sensation of "water" going down her right leg to the right Achilles. Id. On physical examination of the lumbar spine, Dr. Pelinkovic noted decreased ROM, sensation decreased right L4-L5, positive straight leg raise on the right. Id. Dr. Pelinkovic continued to recommend the decompressive surgery. Petitioner followed up with Dr. Pelinkovic on August 18, 2023, September 1, 2023, October 20, 2023, and December 1, 2023, with similar subjective complaints and physical examination findings. Id. Throughout those visits, Dr. Pelinkovic continued Petitioner off work and recommended surgery. Id.

Testimony of Petitioner

Petitioner testified that she was placed off work or on light duty from her initial visit at Ingalls. Tx15-16. Petitioner testified that Respondent was unable to accommodate her light duty restrictions. Id. at 16. Petitioner testified that before the injection in March of 2021, she had excruciating pain in her right low back down her right leg. Tx18. Petitioner testified that after the injection, she felt improvement. Id. Petitioner testified that when she returned back to work after the injection, she was not pain-free and over the next couple of months, she continued to feel pain in her right low back down her right lower extremity. Id. at 19. Petitioner testified that after her injection on July 30, 2021, her back and right leg pain felt better. Id. at 21-22. Petitioner testified that she was not completely pain-free but felt much better. Id. at 22.

Petitioner testified that after she was discharged by Dr. Najera in August of 2021, she was seen by Dr. Mekhail. Id. at 22-23. Petitioner testified that it was her understanding no additional care was going to be authorized. Id. at 23-24. Petitioner testified that she was subsequently terminated by Respondent and found new employment at the post office in October of 2021 as a mail processing clerk. Id. at 24. As a mail processing clerk, Petitioner testified that she would take packages off an assembly line and place them into bins with the correct zip codes. Id. at 24.

Petitioner testified that the months following the injection, the pain started to come back in her lower back, buttocks and down her right leg. Id. at 24. Petitioner testified that she did not have a new injury or accident, and that her job with the post office was medium demand job. Id. at 25.

Petitioner testified that she tried to go back to the doctor in early 2022 but the visits were denied. Id. at 25. Petitioner testified that she stopped working for the post office on December 30, 2021 because it was seasonal. Id. at 26. Petitioner testified that she was not able to find employment thereafter. Id. Petitioner testified that she then presented to Dr. Lipov in August of 2022. Id. at 26. Petitioner testified that her pain remained the same, down her buttocks into her calf and down the heel of her right leg. Id. at 27. Petitioner testified that she never had problems with her left side of her low back or leg. Id. at 28.

Petitioner testified that she wants to proceed with the surgery recommended by Dr. Pelinkovic. Id. at 28-29. Petitioner testified that if she undergoes the surgery, she wishes to go back to work. Id. at 32. Petitioner testified that prior to the work accident, she did not have any issues with her low back nor any treatment. Id. at 32. Petitioner testified that she did not have right leg symptoms prior to the work accident. Id. at 32.

On cross examination, Petitioner testified that she was honest with her physicians. Id. at 33. Petitioner testified that after the injection, her pain was better but not zero. Id. at 35. Petitioner testified that her pain started to return in late December of 2021 when she was no longer working for Respondent or the post office. Id. at 36-37.

Testimony of Dr. Pelinkovic (Treating Physician)

On August 25, 2023, Dr. Pelinkovic testified regarding his opinions and treatment of Petitioner. Px7. Dr. Pelinkovic testified that during his initial visit with Petitioner, Petitioner had decreased sensation on the right at L4-L5, which followed the specific dermatome down the right outer thigh, anterior thigh, outer leg, and anterior leg. Id. at 13-14. Dr. Pelinkovic testified that Petitioner also had a positive straight leg raise on the right which indicates that a nerve could be pinched. Id. at 14-15. Dr. Pelinkovic testified that he reviewed the November of 2022 lumbar MRI and found there to be a right-sided disk herniation at L4-L5 compromising the exiting nerve root. Id. at 16. Dr. Pelinkovic testified that the February of 2021 MRI was consistent with his read of the November of 2022 MRI. Id.

Dr. Pelinkovic testified that Petitioner's subjective complaints correlated with the objective findings by stating:

> [Petitioner] has a significant amount of lower back pain, back pain, and pain shooting down her right lower extremity on the outer leg and thigh, which we call L4-5 dermatomal. She has compromise on the right-side correlating with her symptoms. She had a compromise at the L4-5 level…so her history of present illness and physical exam and radiographic findings correlate with each other and are concordant.

Id. at 16-17

Dr. Pelinkovic testified that the EMG test findings of right L5 lumbar spine radiculopathy correlated with Petitioner's clinical picture. Id. Dr. Pelinkovic testified that he recommended a decompressive surgery for Petitioner as she had failed conservative treatment, had difficulty with activities of daily living, and the correlation of her symptoms with the objective findings. Id. at 18. Dr. Pelinkovic testified the surgery is intended to take the pressure off the particular nerve root which is irritated. Id. at 19.

Dr. Pelinkovic testified that with Petitioner's condition, it makes sense that the injections provided temporary relief and that the injections did not take care of the structural change from the work accident. Id. at 20. Dr. Pelinkovic opined that Petitioner's work accident caused Petitioner's condition as she was asymptomatic prior to the fall and that a fall can cause a disk herniation. Id. at 21. Dr. Pelinkovic testified that he disagreed with Dr. Mekhail's opinions from the June 21, 021 IME report as Dr. Pelinkovic found a correlation between Petitioner's subjective complaints and physical examination findings. Id. at 24. Dr. Pelinkovic testified that he did not note symptom magnification during his treatment of Petitioner. Id. Dr. Pelinkovic testified that the EMG objectively confirmed Petitioner's symptoms. Id. at 25.

Dr. Pelinkovic testified that he indicated in his January of 2023 note that Petitioner's injury was more than a lumbar strain, that it was clearly a permanent aggravation of the stenosis. Id. at 25. Dr. Pelinkovic testified that after having relief from an injection, it is reasonable to try to go back to work and see if there is a permanent resolution to the symptoms, but there is longitudinal follow-up after pain management. Id. at 27. Dr. Pelinkovic testified that Petitioner's treatment was reasonable, necessary, and causally related to the work accident. Id. at 27. Dr. Pelinkovic testified that there is a good prognosis for Petitioner's radiating pain from the surgery and then about 70 to 80 percent decrease of back pain. Id. at 28.

On cross examination, Dr. Pelinkovic testified regarding causation that a recurrence of symptoms a year after an injection by stating:

> [i]t depends if she had truly the same symptoms at the initial date of onset and comes with the same symptoms to me. . . .on the [MRI] report that's here by the radiologist diagnosed her 2/19/2021 with a . . . disk bulge extending in the foramina. . . and that is present later on as well. So I would say it's the same pathology.

Id. at 32-33.

Dr. Pelinkovic testified that he did not note a significant interval change from the 2021 MRI to the 2022 MRI. Id. at 34. Dr. Pelinkovic testified that his view of Petitioner's 10/10 pain rating is that Petitioner had significant pain affecting her daily life and ability to be gainfully employed. Id. at 35. Dr. Pelinkovic testified that Petitioner's ability to improve her walking was assisted by her medications. Id. at 37-38.

On redirect examination, Dr. Pelinkovic testified that patients have different understandings of the pain scale when asked about Petitioner's reporting of 10 out of 10 to Dr. Mekhail. Id. at 39.

Testimony of Dr. Mekhail (Section 12 Examiner)

On September 21, 2023, Dr. Mekhail testified regarding his examinations of Petitioner and subsequent reports. Rx5. Dr. Mekhail testified regarding his June 21, 2021 IME report. Id. at 7. Dr. Mekhail testified that in his review of Petitioner's medical records, he noted that Petitioner's consistent complaints were her right hip and back. Id. at 12-13. Dr. Mekhail testified that it was not until six or seven weeks later that Petitioner had a positive straight leg raise on the right. Id. at 13. Dr. Mekhail testified that he reviewed the February 19, 2021 MRI which showed small central annular tears at L4-5 and l5-S1 without neural compression and a foraminal bulge at L4-5 on the left side without any neural compression on the right side. Id. at 14-15. Dr. Mekhail testified that Petitioner's physical examination was consistent except that Petitioner had back pain with straight leg raising. Id. at 16. Dr. Mekhail testified that he diagnosed Petitioner with a back strain and right hip contusion and that it resolved within weeks after the accident. Id. at 17-18. Dr. Mekhail testified that the mechanism of injury would have only caused a back injury if she twisted her back when she fell. Id. at 18. Dr. Mekhail testified that Petitioner was at maximum medical improvement. Id. at 19.

Dr. Mekhail testified regarding his September 13, 2021 addendum report in which he reviewed the EMG and stated that the EMG would not change Petitioner's treatment nor changed his opinions. Id. at 21. He also did not agree with the doctor ordering an EMG.

Dr. Mekhail testified regarding his February 13, 2023 IME report which Petitioner was complaining of back pain and intermittent right leg pain. Id. at 23. Dr. Mekhail testified that he noted a bilateral positive straight leg raise, which is a sign of symptom magnification. Id. at 25-26. Dr. Mekhail testified that he reviewed the November 8, 2022 MRI which showed L4-5 and L5-S1 degeneration of the disc and some disc protrusion. Id. at 26. Dr. Mekhail testified the "degeneration of the discs are just incidental finding" which were not the cause of Petitioner's symptoms. Id. at 26-27. Dr. Mekhail testified that the year gap in treatment was significant because Petitioner had resolution of symptoms and the amount of time between visits. Id. at 29. Dr. Mekhail testified that if a patient has 10/10 pain, he would expect the patient to see a doctor. Id. at 30.

Dr. Mekhail testified that he did not believe the surgery was indicated because he did not appreciate an L4-5 herniated disc causing neural compression and that Petitioner's symptoms were mostly back pain. Id. at 30. Dr. Mekhail testified Petitioner's subjective complaints did not correlate with the objective findings. Id. at 31-32. Dr. Mekhail testified that Petitioner only complained of radiculopathy to Dr. Najera and Dr. Pelinkovic. Id. at 32. Dr. Mekhail testified that Petitioner was still at MMI from the work accident and that Petitioner did not require work restrictions. Id. at 34.

On cross examination, Dr. Mekhail testified that Petitioner first having a positive straight leg raise on June 4, 2021 was one of the factors he based his opinions on. Id. at 35. Dr. Mekhail testified that it would be significant if earlier on in Petitioner's treatment, she had positive straight leg raises and pain going down her leg. Id. at 38-39. Dr. Mekhail testified that he is familiar with Dr. Bayran as he used to work at Parkview Orthopaedics with him. Id. at 39. Dr.

Mekhail testified that Dr. Bayran is a "very qualified pain management doctor" and he would rely on Dr. Bayran's expertise for performing an injection on Petitioner. Id. at 41-42.

Dr. Mekhail testified that having a positive response to an epidural injection means there is irritation of the nerve root. Id. at 42. Dr. Mekhail testified that an epidural injection can be temporary or permanent. Id. at 43. Dr. Mekhail testified that if a patient has temporary relief from an injection, the patient is not necessarily at MMI. Id. at 43. Dr. Mekhail testified that if the pain comes back, the stenosis is still there. Id. at 44. Dr. Mekhail testified that falling could aggravate a lumbar condition if the person twisted their back. Id. at 45. Dr. Mekhail testified that a pain going down the right leg and a positive straight leg raise test could be consistent with an L4-5 herniated disc. Id. at 45.

Dr. Mekhail testified that people have different levels of pain tolerances. Id. at 49. On redirect examination, Dr. Mekhail testified that he would consider a year of relief from an injection as permanent relief. Id. at 54.

CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission*, 44 Ill. 2d 214 (1969). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks*, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. Petitioner was composed and spoke clearly. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the records as a whole. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. None of the treating physicians who examined her noted any symptom magnification despite Dr. Mekhail's opinion that there was symptom magnification. She does not appear to be a sophisticated individual and

any possible inconsistencies in her testimony are not attributed to an attempt to deceive the finder of fact.

The Arbitrator finds Dr. Pelinkovic and Dr. Mekhail (IME) to be credible witnesses however, finds Dr. Pelinkovic to be more persuasive in his testimony regarding Petitioner's current condition of ill being, causation and need for surgery among other issues. See below for futher analysis.

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

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989).

Causation between the work-related accident and condition of ill-being can be established by showing prior history of good health, followed by a work-related accident in which petitioner is unable to perform his physical duties. *Kawa v. Illinois Workers' Comp. Comm'n*, 991 N.E.2d 430, 448 (2013).

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).

The Arbitrator finds Dr. Bayran, Dr. Najera, Dr. Lipov, and Dr. Pelinkovic (testimony via deposition) to have been credible in their opinions in the medical records regarding the nature of Petitioner's injuries and their causal relationship to the claimed injury at work for the Respondent on 2/1/21. The Arbitrator specifically finds Dr. Pelinkovic credible in his testimony regarding the nature of her lumbar spine injury and its relationship to the claimed injury at work for the Respondent. The Arbitrator does not find the opinions of Dr. Mekhail as persuasive on this issue.

On February 1, 2021, Petitioner fell backwards onto pavement with ice and snow when she was trying to assist a patient while working for Respondent, injuring her low back. The Arbitrator notes that accident was not at issue and that Petitioner's testimony regarding accident is unrebutted and consistent with the medical records.

Following the accident, Petitioner went to the emergency room at Ingalls Memorial Hospital with low back pain and pain radiating into the right glute and down the right leg. Petitioner followed up with Ingalls Memorial Hospital a few more times with back pain until she was referred to Dr. Bayran at Pain Center of Illinois on February 16, 2021. Petitioner treated with Dr. Bayran from February of 2021 through April 13, 2021. Throughout Petitioner's treatment with Dr. Bayran, Petitioner had

subjective complaints with low back pain and pain radiating down her right lower extremity including her right thigh. Dr. Bayran noted positive straight leg raises on the right on February 16, 2021 and March 2, 2021. On February 19, 2021, Petitioner underwent a lumbar MRI which showed a disc protrusion with bilateral foraminal stenosis at L4-L5 and annular tear at L5-S1. Due to Petitioner's low back pain with radiating pain down the right lower extremity, positive physical examination findings, and MRI pathology, Dr. Bayran performed a lumbar epidural injection on Petitioner. As the April 13, 2021 note indicates, Petitioner had significant improvement from the injection (70%) with 3/10 pain, so Dr. Bayran placed Petitioner at MMI and returned her to full duty.

Petitioner's pain returned, and she presented to Dr. Najera on June 4, 2021 with low back pain radiating down her right lower extremity. Petitioner treated with pain management with Dr. Najera and Dr. Lipov from June of 2021 through August 11, 2021. Throughout Petitioner's treatment with Dr. Najera and Dr. Lipov, Petitioner complained of low back pain with pain radiating down her right lower extremity and physical examination findings of positive right straight leg raise and sensation decreased down her right L4, L5, and S1 dermatomes. Petitioner underwent an EMG which showed evidence of right L5 radiculopathy on June 16, 2021. Dr. Najera recommended a second epidural injection, which Petitioner underwent on July 30, 2021. Following the injection, Petitioner had 80% improvement with 1/10 pain, so Dr. Lipov discharged Petitioner on August 11, 2021.

Petitioner then underwent an IME with Dr. Mekhail, which Dr. Mekhail placed Petitioner at MMI and indicated no further treatment was required. Petitioner attempted to go back for treatment in early 2022 but the treatment was denied based on Dr. Mekhail's report. As Petitioner testified to and the medical records corroborate, Petitioner's pain never completely resolved. Petitioner was eventually able to present to Dr. Lipov on October 19, 2022 where she treated with until November 22, 2022. During those visits, Petitioner had complaints of low back pain with radicular pain down the right lower extremity. Further, Dr. Lipov noted positive right straight leg raises and sensation decreased in the right L5 dermatome.

On November 8, 2022, Petitioner then underwent a second lumbar MRI which showed a right-sided protruding discs at L4-L5 with compression on the nerve root. Petitioner was then referred for a spinal consultation with Dr. Pelinkovic on December 16, 2022 whom she treated with until December 1, 2023. Throughout Petitioner's treatment with Dr. Pelinkovic, Petitioner had consistent complaints of low back pain with right-sided lower extremity radicular pain. Further, Petitioner had positive physical examination findings such as positive straight leg raise on the right and sensation decreased on the right at L4-L5 dermatome. Dr. Pelinkovic recommended surgical intervention in the form of a microdiscectomy and hemilaminectomy.

Petitioner's subjective complaints appear to have been consistent throughout her treatment from her first medical visit on February 2, 2021 at Ingalls through her last visit with Dr. Pelinkovic on December 1, 2023; low back pain with right lower extremity pain. Petitioner had two MRIs, both which showed disc protrusions or disc herniation at L4-L5, with compression of the nerve root (stenosis). An EMG showed evidence of L5 radiculopathy. Furthermore, Petitioner's treating physicians consistently found a positive straight leg raise on the right which, as Dr. Pelinkovic opined, is indicative of a compressed nerve root. Dr. Pelinkovic concluded that Petitioner's subjective complaints correlated with her physical examination findings and the objective tests. Dr. Pelinkovic was able to further opine that a fall directly onto one's back can cause or aggravate a disc herniation, which is the exact mechanism of injury for Petitioner.

Respondent relies upon their IME physician, Dr. Mekhail, who opined that Petitioner was at MMI following her last visit with Dr. Bayran on April 13, 2021. This was after Petitioner underwent first epidural injection which provided Petitioner significant relief. Both Dr. Mekhail and Dr. Pelinkovic agree that a purpose of an epidural injection is for diagnostic and therapeutic purposes. Dr. Mekhail testified that if there is a positive response by an epidural injection, this means there was irritation of the nerve root. Thus, the Arbitrator finds that Petitioner's improvement in symptoms from the injections supports that Petitioner was suffering from radiculopathy and or some sort of pathology at L4-L5.

However, the injections clearly did not provide complete relief of Petitioner's symptoms. On review of the April 13, 2021 note, Petitioner had improved, but still had 3/10 pain, indicating that Petitioner's pain was not completely resolved. For the injection on July 30, 2021, Petitioner once again had significant improvement, but still reported pain when she was discharged. This coincides with Petitioner's testimony that her pain had improved following the injections, but the pain never completely subsided. The Arbitrator finds there is no break in causation, despite the gap in treatment, as Petitioner's testimony and medical records substantiate that Petitioner's symptoms never fully subsided after the injections. Further, Petitioner's symptoms do not change from after she is discharged and when she returns for more treatment i.e. low back pain with right leg radicular pain. Dr. Pelinkovic testified that this affirms the opinion that Petitioner's accident is the cause of her current symptoms as the symptoms remained consistent due to the same pathology. The Arbitrator finds there is no break in causation as Petitioner's pain did not completely resolve following the injections which is supported by the medical records and testimony. Further the arbitrator notes there is no evidence of any prior injuries or accidents to Petitioner's lumbar spine nor any subsequent or intervening injuries or accidents during the gap in time that Petitioner did not receive treatment. Additionally, Petitioner attempted to return for treatment in early 2022, however, as Dr. Mekhail had opined that Petitioner required no further treatment, her treatment was denied.

Dr. Mekhail also opined that Petitioner did not have a positive straight leg raise until June 4, 2021, which he testified was a factor in rendering his opinion. However, Petitioner had positive straight leg raises with Dr. Bayran on February 16, 2021 and March 2, 2021. Dr. Mekhail stated that he trusts Dr. Bayran's expertise and would rely upon his opinions. Thus, Dr. Mekhail's opinions that Petitioner did not have radiculopathy prior to June 4, 2021 are based on an incomplete review of Petitioner's medical records which he acknowledged could change his opinion.

Petitioner had two MRIs which both radiologists and Dr. Pelinkovic indicate showed disc protrusions or herniations at L4-L5 with compression of the nerve root. This was further supported by Petitioner's EMG showing radiculopathy. Thus, Dr. Mekhail is the lone physician who did not appreciate pathology at L4-L5 on the MRIs and to completely discount the EMG.

Finally, Petitioner testified that she was asymptomatic and had no prior back or radicular complaints before the accident. There was no evidence or medical records submitted into evidence that points to the contrary. Thus, the Arbitrator notes that the Petitioner's onset of low back pain with right lower extremity radicular complaints started following her work accident on February 1, 2021.

Based on the above, Arbitrator finds that Petitioner's current condition of ill-being of her lumbar spine is causally related to the work accident.

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

Section 8(a) of the Act states a Respondent is responsible …"for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n* 409 Ill. App. 3d 258, 267 (1st Dist., 2011). Based upon the Arbitrator's finding with respect to casual connection, reasonable and necessary treatment for the lumbar spine that has been incurred thus far, would be casually related.

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary for the February 1, 2021 accident. This is supported by Petitioner's medical records from Dr. Bayran, Dr. Najera, Dr. Lipov, and Dr. Pelinkovic. The Arbitrator finds that the medical opinions and treatment plans set forth in the medical records from Dr. Bayran, Dr. Najera, Dr. Lipov, and Dr. Pelinkovic are both credible and appropriate for her work-related injuries. As Petitioner's treating physicians that saw Petitioner on several occasions, they were the most equipped physicians to diagnose Petitioner and recommend treatment based on Petitioner's subjective complaints and their own objective findings. The Arbitrator once again relies on the medical opinions testified to by Dr. Pelinkovic.

Respondent has not paid for all medical charges incurred thus far. As such, the Arbitrator orders Respondent to pay Petitioner and Petitioner's Counsel for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act from:

- Illinois Orthopedic Network, $18,042.80
- Metro Anesthesia Consultants, $2,973.26
- Midwest Specialty Pharmacy, $5,148.81
- Ingalls Memorial Hospital, $1,266.08
- Suburban Orthopaedics, $3,792.00
- Metro Continued Care, $11,388.00
- Preferred Imaging, $2,100.00
- Pain Center of IL, $5,822.00

Respondent shall be given a credit for any medical benefits that have already been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

The Arbitrator adopts the above findings of fact and conclusions of law and incorporates them by reference as though fully set forth herein. The Arbitrator finds that Petitioner has not reached maximum medical improvement. Petitioner continues to require medical care to cure and relieve her from her related condition of ill-being for the lumbar spine.

Petitioner seeks prospective care in the form of the L4-L5 hemilaminectomy microdiscectomy as recommended by Dr. Pelinkovic. Respondent maintains that Petitioner failed to establish causation as to the need for this surgery. The Arbitrator has previously found in Petitioner's favor on the issue of causation. With respect to the lumbar spine, the Arbitrator awards prospective care in the form of the surgery recommended by Dr. Pelinkovic. The Arbitrator finds that Petitioner is entitled to the L4-L5 hemilaminectomy microdiscectomy as recommended by Dr. Pelinkovic. Petitioner attempted all treatment available to her including medication, physical therapy, and injections. Due to the persistence in Petitioner's symptoms and the confirmed pathology on the MRIs and EMG, Dr. Pelinkovic recommended the decompressive surgery. Dr. Pelinkovic testified that the decompressive surgery is to alleviate Petitioner's nerve pain and also assist with the back pain. Dr. Pelinkovic opined that without the surgery, Petitioner's pain complaints most likely will persist. The Arbitrator was not persuaded by Dr. Mekhail that petitioner merely suffered a lumbar strain and could not have hurt her back to the extent claimed because she did not "twist" when she fell. The explanations give by Dr. Pelinkovic and all the medical opinions given by the 4 treating physicians, better explain the

As the Arbitrator found that Petitioner's current condition of ill-being related was caused by the February 1, 2021 work-related accident, the Arbitrator once again relies on the opinions of Dr. Pelinkovic, in finding that Respondent is liable to pay for L4-L5 hemilaminectomy microdiscectomy.

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n*, 372 Ill.App.3d 527, 542 (1st Dist. 2007). In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

To be entitled to TTD benefits, it is the claimant's burden to prove not only that he did not work but also that he was unable to work. *Holocker v. Illinois Workers' Compensation Comm'n,* 2017 IL App (3d) 16036WC, P35 (3rd Dist., 2017). The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force. *Id.* When determining whether an employee is entitled to TTD benefits, the test is whether the employee

remains temporarily totally disable as a result of a work-related injury and whether the employee is capable of returning to the work force. *Id*. The touchstone for determining whether claimant is entitled to TTD is whether the claimant's conditions had stabilized to the extent that they are able to reenter the workforce. *Id*. at P40.

It is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, i.e., whether the claimant has reached maximum medical improvement. *Westin Hotel v. Industrial Comm'n*, 372 Ill.App.3d 527, 542, 310 Ill.Dec. 18, 865 N.E.2d 342 (2007); *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 594, 296 Ill.Dec. 26, 834 N.E.2d 583 (2005); *F & B Manufacturing Co. v. Industrial Comm'n*, 325 Ill.App.3d 527, 531, 259 Ill.Dec. 173, 758 N.E.2d 18 (2001). See also *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill.2d 107, 118, 149 Ill.Dec. 253, 561 N.E.2d 623 (1990).

Petitioner was initially placed off work by his treating physicians on February 2, 2021 and was off work or on work restrictions by Dr. Bayran until her initial discharge on April 13, 2021. Petitioner then returned for treatment with Dr. Najera on June 4, 2021 where she was placed off work until her subsequent discharge on August 11, 2021. Petitioner was then placed off work starting on November 22, 2022 until date of trial, pending her spine surgery as recommended by Dr. Pelinkovic.

Having found for Petitioner on the issue of causation, any periods of temporary total disability incurred would be the responsibility of Respondent. The following time periods for which TTD is owed and further awarded are: February 2, 2021 through April 13, 2021; June 4, 2021 through August 11, 2021; and November 22, 2022 through December 27, 2023, as provided in Section 8(b) of the Act. The Arbitrator finds Respondent liable for 77 and 2/7 total weeks of TTD benefits at a weekly rate of $417.09, to be paid directly to Petitioner and Petitioner's Counsel. Respondent has already paid TTD benefits in the amount of $4,230.45 and is given a credit for the same.

For the reasons stated above, Petitioner is entitled to an award of benefits under The Illinois Workers' Compensation Act consistent with the findings herein.

It is so ordered:

Jacqueline C. Hickey

Arbitrator

4/29/24
Date

May 2, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021245
Case Name	Leonard Carnie, III v. Northern Continental Heating & Cooling, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0534
Number of Pages of Decision	25
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas Lake
Respondent Attorney	Daniel Egan

DATE FILED: 11/13/2024

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LEONARD CARNIE, III,

Petitioner,

vs. NO: 22 WC 21245

NORTHERN CONTINENTAL
HEATING & COOLING, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, temporary total disability (TTD) benefits and evidentiary issues, and being advised of the facts and applicable 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 hereby remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

The Commission affirms the Arbitrator's Decision regarding causal connection and medical benefits but modifies the Arbitrator's award of TTD benefits which covered the period from July 3, 2022 through July 3, 2023. By the Request for Hearing form, the parties stipulated that Petitioner was entitled to TTD benefits commencing July 3, 2022, but Respondent disputed any additional benefits after November 27, 2022. Respondent relied on its Section 12 examiner, Dr. Jesse Butler, who opined that Petitioner could return to work without restrictions by November 27, 2022. However, as of this date, Dr. Gregory Brebach, Petitioner's treating physician, had Petitioner off work until further notice.

On December 20, 2022, Dr. Brebach allowed Petitioner to return to work with restrictions of no lifting more than 20 pounds and no working more than eight hours a day, four days a week.

Petitioner was still awaiting authorization for surgery to his lumbar spine and had not been released from treatment or determined to be at maximum medical improvement (MMI). Petitioner thus claims entitlement to TTD benefits from July 3, 2022 through July 3, 2023, the date of arbitration.

The Commission finds that although Petitioner's work-related condition had not yet stabilized and he was not at MMI, Petitioner still had the burden of showing not only that he was not working, but that he could not work. *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 148 (2010). There is no testimony or evidence that Petitioner provided Respondent with notice of his light duty restrictions so as to give Respondent the opportunity to accommodate his restrictions or otherwise respond. The evidence further demonstrated that as of January 10, 2023, Petitioner had found work within his restrictions with another company, Rellaire. Petitioner was not only able to work but was actually working approximately through June 30, 2023, nearly the entirety of the claimed TTD period. Petitioner failed to meet his burden of proof with respect to the claimed TTD period and the Commission therefore finds that he is only entitled to TTD benefits from July 3, 2022 through December 20, 2022.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 26, 2024 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $540.95 per week for 24 3/7 weeks, from July 3, 2022 through December 20, 2022, that being the period of temporary total incapacity for work under Section 8(b) of the Act.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

November 13, 2024
CAH/pm
O: 10/24/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021245
Case Name	Leonard Carnie, III v. Northern Continental Heating & Cooling, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	22
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Thomas Lake
Respondent Attorney	Daniel Egan

DATE FILED: 1/26/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 23, 2024 5.02%

/s/Gerald Napleton, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Leonard Carnie, III
Employee/Petitioner

v.

Northern Continental Heating and Cooling, Inc.
Employer/Respondent

Case # **22** WC **021245**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald W. Napleton**, Arbitrator of the Commission, in the city of **Waukegan**, on **July 3, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **5/24/2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**42,194.36**; the average weekly wage was $**811.43**.

On the date of accident, Petitioner was **43** years of age, ***married*** with **1** dependent child.

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

Respondent shall be given a credit of $**25,424.65** for TTD, $**729.86** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**26,154.51**.

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

ORDER

Respondent shall authorize and pay for the lumbar surgery recommended by Dr. Brebach along with reasonable and related medical services required thereto.

Respondent shall pay Petitioner TTD benefits of $540.95/week for 52 1/7 weeks for the time period of 07/03/2022 to 07/03/2023. Respondent is entitled to a credit for TTD in the amount of $25,424.65 and for TPD in the amount of $729.86. Additionally, Respondent is entitled to a credit based on the part time earnings by Petitioner while working at Rellaire.

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

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

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

/s/ Gerald Napleton
Signature of Arbitrator

JANUARY 26, 2024

ICArbDec19(b)

ILLINOIS WORKERS' COMPENSATION COMMISSION

LEONARD CARNIE, III,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 22 WC 021245
	)	
NORTHERN CONTINENTAL HEATING & COOLING, INC.,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner's Testimony

Petitioner sustained an accidental injury that arose out of and in the course of his employment with Respondent on May 24, 2020. Petitioner started working for Respondent in March of 2020. Tx. 6. He was initially hired as an office worker and became a field technician in October of 2020. Tx. 8. (Tx. 8). Petitioner was involved in a motor vehicle accident on May 24, 2020 while driving a work van.

Petitioner testified that prior to working for Respondent, he experienced occasional back issues but nothing that required him to miss work (Tx. 8). Prior to working for Respondent, he was able to do any activity that he wanted to do with no restrictions (Tx. 9). As a service technician, Petitioner would visit customers' homes and clean their furnaces, walk up and down stairs which required a lot of bending, squatting, twisting and turning. He would also install new parts such as blowers, motors, and capacitors if needed. Tx. 9. On occasion, he would engage in installation work, if needed due to shorthandedness or a busy installation schedule. Tx. 10.

Petitioner testified that installation work consisted of having to disconnect an old furnace, occasionally go on a roof, cut the roof jack, use a dolly or two people to carry a furnace, and move it to the correct spot. Tx. 11. The furnaces could weigh up to a couple hundred pounds with some reaching over 250 pounds Tx. 11. The installation did not happen often and when asked to elaborate, the Petitioner estimated that his involvement in installation work was about two times per month on average. Tx 12. Petitioner testified that he would occasionally help move large air conditioning units which weighed between 175 and 500 pounds. Tx.16. This would occur with similar frequency to his installation duties of approximately two or three times per month. Tx. 16. He worked with a coworker on these the majority of the time.

Prior to his work accident, he had no problems performing the tasks of installing or moving the air conditioning units or furnaces. Tx. 18. Petitioner stated that his pre-existing back issues never interfered with his ability to perform tasks involving furnaces or compressors/air conditioning units Tx.19. He never had prior work restrictions because of his back (Trans. p. 19).

Petitioner testified that the motor vehicle accident on May 24, 2022 involved a heavy impact and rendered the car he was driving undrivable. Tx 21-22. He felt immediate pain in his back, neck and upper chest as well as his knees at the scene. He was taken by ambulance to Northern Illinois Medical Center and came under the care and treatment of doctors at Illinois Bone & Joint Institute. Tx. 25. While at Illinois Bone & Joint, he came under the care and treatment of Dr. Gregory Brebach Tx. 26. Through Illinois Bone & Joint he received a cortisone injection to his lumbar spine and two

rounds of physical therapy. Tx. 27. His low back condition did not improve and has remained relatively constant from the date of accident. Tx. 27. His low back feels like knives and a burning sensation with shooting pain down the right leg to the top of his foot. Tx. 27-28. He complains of shooting pains on his left leg as well. Tx. 28. During the course of his treatment at Illinois Bone & Joint he experienced problems with bowel movements and would, on occasion, soil himself. Tx. 28. He reported that he never had these problems before his May 24, 2022 accident. Tx. 28. Before the accident, Petitioner stated he felt great and could do anything. Tx. 29. Prior to the work accident, he was never recommended by any doctor to have any sort of lumbar surgery. Tx. 29.

The Petitioner would like to have the surgery recommended by Dr. Brebach. He is currently restricted to lifting no more than 20 pounds and no work more than 32 hour a week. Petitioner stated that his current work restrictions prevent him from performing his full duties for Respondent. Tx. 34-35.

Petitioner was sent for a functional capacity evaluation at ATI where he stated that he gave his full effort despite being in pain. Tx. 36-38. He does not know whether they could complete the functional capacity assessment. Tx. 38. If he felt pain, he would express it to the evaluator during the functional capacity assessment and took direction from the evaluator. Tx. 38.

He last saw Dr. Brebach in February of 2023. At that time, he was placed on work restrictions of no lifting more than 20 pounds and no working more then 8 hours per day, 4 days per week. At the last visit with Dr. Brebach lumbar surgery was recommended. Tx. 39-40.

The photos identified as Petitioner's Exhibit 6 are those of the vehicle he was operating at the time of the work accident. Tx. 40-41. Petitioner's Exhibit 9 is a printout of the last TTD check he received from Respondent which pay him through May 29, 2023. Tx. 42.

On cross-examination, Petitioner stated that Respondent's Exhibit No. 6 were photos that identified damage to his car from the accident. Tx. 49. He acknowledged seeing Dr. Jesse Butler at the request of the Respondent. Tx. 51. He also acknowledged working at Ace Heating & Cooling a/k/a Rellaire and has worked there since January 10, 2023. Tx. 53. He believes he told the workers' compensation nurse that he was working at Rellaire. Tx 54. The last time he worked at Rellaire was a week prior to the hearing date or Friday June 30, 2023. Tx. 57. He was laid off by the office and will no longer be working at Rellaire. Tx. 57. Petitioner described his job as a "helper." Tx. 57.

A break was taken between Respondent's cross-examination and Petitioner's re-direct examination. Respondent objected to the substance of the re-direct as Petitioner and his counsel had conferred and discussed his testimony regarding his work at Rellaire. The Arbitrator reserved ruling on Respondent's objection. See conclusions of law below for further discussion.

Testimony of Cheryl Thorson

Ms. Thorson works at Northern Continental Heating & Cooling as an office manager/bookkeeper. Tx. 68. She identified Respondent's Exhibit No. 3 as a job description for technicians. Tx. 68. As an office worker, she is not out in the field and

has never been out in the field watching Petitioner work. Tx. 70-71. She believes that air conditioning units can weigh over 100 pounds and that installing these units could take several people. In 2022 there were only 4 technicians for Respondent. Tx. 75. She acknowledges that technicians would, on occasion, help move the heavier furnaces and air conditioning units. Tx. 76. She acknowledged that technicians like Petitioner could help with the physical moving of furnaces and air conditioning units. Tx. 76-77. Prior to his work accident, Respondent never missed any time from work due to a low back condition. Tx. 77.

Testimony of David Thorson

David Thorson is the owner of Respondent Company. Tx. 78. During the course of his employment, Petitioner started as an officer worker but eventually became a "clean and check" man for Respondent and denied that Petitioner performed installation work. Tx. 81. He testified that after a few months on the job Petitioner mentioned having issues with his back. Tx. 80.

Mr. Thorson identified Respondent's Exhibit No. 4 as the physical requirements Petitioner was required to perform. Tx. 82-83. He stated that the maximum lifting requirement for Petitioner's job would be 30lbs. Tx. 83. He denied having Petitioner aid in installations. Tx. 85. Mr. Thorson and two other installers would handle installations.

Mr. Thorson acknowledged that no certification is required to physically move air conditioning. Tx. 89-90. He stated that there were occasions where technicians such as Petitioner would physically handle and move furnace units, but he is unsure whether

or not they would move air conditioning units. Tx. 92. It is also likely that technicians would physically move air conditioning units. Tx. 92-93. Petitioner was never reprimanded for moving furnaces or AC units. Tx. 93. He would observe Petitioner perform his work duties roughly once every two weeks. Tx. 96. Mr. Thorson acknowledged that Petitioner reported to the office in December of 2022 but did not recall the purpose of his visit nor deal with him directly. Tx 86-87. AC units would not fit in the van Petitioner would drive. Tx. 95.

Testimony of Brett Furlong

Witness Brett Furlong is employed by the Robison Group as a field investigator. Tx. 98-99. Mr. Furlong performed field surveillance of Petitioner in September 2022, May 2023, and June 2023. Tx. 100-101. Mr. Furlong identified Petitioner as the subject of his surveillance videos. Tx. 101. The field surveillance video depicting Petitioner was identified as Respondent's Exhibit 12.

Functional Capacity Assessment

Petitioner underwent a functional capacity assessment at ATI Physical Therapy on March 29, 2023 as requested by Dr. Brebach. PX5. The FCA notes a "validity determination" of a "valid" effort. PX5. The FCA's notes Petitioner's job requires standing, walking, bending/stooping, reaching/grabbing, pulling/pushing, crouching, squatting, lifting of equipment/supplies, and use of ladders. It notes infrequent lifting up to 20lbs, occasional lifting up to 10lbs. PX5. It notes "must be able to rarely lift/carry

up to 100lbs or greater, infrequently lift up to 20lbs, and occasionally lift up to 10lbs. PX5. The evaluator noted Petitioner's occupational physical demand level was "very heavy" and that the demonstrated physical demand level was "medium." The evaluator stated that the Petitioner's capabilities fell below the listed work requirements and self-stated work requirements. PX5.

The functional capacity assessment was challenged by Respondent through a letter report from Joe Castronovo dated May 15, 2023 which was attached to Dr. Jesse Butler's deposition as Exhibit 5. Mr. Castronovo attacked the credibility as well as the testing and methodology utilized by ATI Physical Therapy during the functional capacity assessment. In rebuttal, the Petitioner introduced the narrative report of Tom Werner, a key assessment specialist with ATI Physical Therapy. Mr. Werner's report was submitted as Petitioner's Exhibit 10 and addresses the points raised by Mr. Castronovo in his narrative report. Both Dr. Brebach and Dr. Butler commented on the FCA from ATI Physical Therapy.

Testimony of Dr. Gregory Brebach

Dr. Brebach is a board-certified orthopedic surgeon specializing in spine surgery (Pet. Ex. 7, pp. 4-5). One hundred percent of his medical practice involves spine surgery (Pet. Ex. 7, p.6). He performs approximately 215 spine surgeries per year (Pet. Ex. 7, p. 6). In addition to his own treatment of Petitioner, he also notes this his colleagues, Dr. Harpeet Basran and Dr. David Schneider treated the Petitioner (Pet. Ex. 7, p. 7). Petitioner first came to his practice, Illinois Bone & Joint Institute, on June 9, 2022

following his May 24, 2022 work motor vehicle accident. He understands that Petitioner is an HVAC technician (Pet. Ex. 7, p. 8). Petitioner's initial complaints included low back pain, right leg radicular pain that was sharp, throbbing and burning (Pet. Ex. 7, p. 9). An MRI was performed which identified a Grade II spondylolisthesis and spondylolysis of the L-4 pars with resulting stenosis at L-5/S-1 (Pet. Ex. 7, p. 11). He interprets this as a slip of L-5/S-1 vertebrae (Pet. Ex. 7, p. 12). The MRI abnormalities identified what was causing Petitioner's nerve impingement which were namely the L-5 nerves bilaterally (Pet. Ex. 7, p. 12). It is likely that the spondylolisthesis was pre-existing but felt that it was primarily asymptomatic before the accident (Pet. Ex. 7, p. 12). A lot of people live with this condition and have no idea that they have the condition until they have some sort of trauma (Pet. Ex. 7, p. 12).

Dr. Schneider with Illinois Bone & Joint Institute referred the Petitioner to Dr. Brebach for a surgical consult (Pet. Ex. 7, p. 14). During his treatment of Petitioner, he provided steroid lumbar injections (Pet. Ex. 7, p. 14) as well as physical therapy. He ordered a second lumbar injection (Pet. Ex. 7, p. 27). During his treatment of Petitioner, he noted that Petitioner suffered both fecal and urinary incontinence (Pet. Ex. 7, p. 26). It is Dr. Brebach' s opinion that the work motor vehicle accident exacerbated his pre-existing lumbar condition which is now causing intractable low back pain and leg pain which requires lumbar fusion surgery (Pet. Ex. 7, p. 29). As a result, Petitioner requires Norco, Celebrex and Gabapentin (Pet. Ex. 7, pp. 30-31). His last visit with Petitioner was February 28, 2023 at which time Petitioner was complaining of low back pain, right leg radicular pain and increased pain with activity (Pet. Ex. 7, p. 30). He believed that

Petitioner requires posterior lumbar interbody fusion, surgery at the L-5/S-1 level (Pet. Ex. 7, p. 21). It is his opinion to a reasonable degree of medical certainty that the proposed lumbar fusion surgery was a direct result and related to the May 24, 2022 work motor vehicle accident (Pet. Ex. 7, p. 22). He noted that the Petitioner did not have significant low back pain and did not miss significant time from work prior to the accident (Pet. Ex. 7, pp. 23-24). He believes that Dr. Butler's opinions are absurd and absolutely counter-productive (Pet. Ex. 7, p. 25). It is his opinion that Petitioner is not able to return to full duty work as an HVAC technician due to his work-related lumbar condition (Pet. Ex. 7, p. 31). Up to his last appointment he believes that Petitioner received reasonable and related medical treatment to the motor vehicle work accident which included the injections, physical therapy and MRI's (Pet. Ex. 7, p. 32). He doubts that Petitioner will be able to return to full duty HVAC work without the surgery (Pet. Ex. 7, pp. 33-34). As of his last visit on February 28, 2023 he placed work restrictions on Petitioner of no lifting more than 20 pounds, 8 hours per day and 4 days per week (Pet. Ex. 7, p. 35). These restrictions will likely be permanent without surgery (Pet. Ex. 7, p. 36). He does believe that Petitioner's Exhibit 6 does identify what he considers to be a high energy automobile accident (Pet. Ex. 7, pp. 39-40).

Dr. Brebach acknowledged that Petitioner did not tell him about having prior back issues before his car accident but explained that his review of Dr. Schneider's notes suggested no significant spinal issues and that spondylolisthesis and spondylosis without significant pain may not be considered significant. PX7, 49-51. Dr. Brebach acknowledged not reviewing medical records from prior to Petitioner's accident date.

PX7, 47. Dr. Brebach acknowledged that he would generally recommend a fusion when a patient complains of radicular symptoms and has objective findings of Grade I listhesis and a pars defect but that would be a generalization and that every patient is different. PX7, 62.

Testimony of Dr. Jesse Butler

Dr. Butler is a board-certified orthopedic surgeon and saw Petitioner on two occasions. RX 7, pp. 6-9). Dr. Butler testified that he agrees that after studying Petitioner's records and films that Petitioner suffers from spondylolisthesis at L-5/S-1 as well as lumbar radiculopathy. RX7, 17. He believes that there is a causal relationship between the complaints of Petitioner's subjective complaints to the motor vehicle accident of May 24, 2022. RX7, 17. Where he differs with Dr. Brebach concerns the future treatment. He does not believe Petitioner is a surgical candidate (Resp. Ex. 7, p. 19). He believes that as of November 27, 2022 Petitioner could return to full duty work (Resp. Ex. 7, p. 20).

Dr. Butler stated that based upon his review, including the May 27, 2022 MRI, he saw no evidence of right sided stenosis, and no left sided complaints that matched the MRI, leading Dr. Butler to conclude that the left side was asymptomatic. Dr. Butler expressed concern that sensory loss on the right in the L4-5 dermatome had no objective basis. He noted an elevated pain score inconsistent with blood pressure readings on exam. He noted the history of smoking raised concern for the reasonableness of surgery and increased the risk of poor outcome from surgery. He opined Petitioner could return

to work without restriction by November 27, 2022. In the meantime he felt Petitioner could work with a 25-pound lifting restriction.

Dr. Butler requested the functional capacity assessment but opined that the FCA done at ATI Physical Therapy was not valid. RX7, 26. He disagrees with the evaluator from ATI Physical Therapy on Petitioner's ability to return to work. He prefers functional capacity evaluations over functional capacity assessment. He concedes his own patients have likely undergone FCA's with ATI Physical Therapy (Resp. Ex. 7, pp. 40-41). Other than this particular case, there is not one single case he can recall where he has been critical of an FCA performed by ATI Physical Therapy (Resp. Ex. 7 pp. 43-44. He concedes that he is critical of both functional capacity evaluations as well as FCA's (Resp. Ex. 7, p. 44). He refers his own patients to ATI for physical therapy and finds that ATI is very reputable therapy institution (Resp. Ex. 7, p. 44). He concludes that reasonably well-qualified spine surgeons can differ on whether they believe FCA's are effective and reliable (Resp. Ex. 7, p. 45).

Dr. Butler testified that as a basis for the opinions he expressed, he refuses to believe that Petitioner engages in the physical movement of furnaces and air conditioning units as part of their installation (Resp. Ex. 7, p. 35). Furthermore, he agrees that reasonably well qualified surgeons can differ on whether someone like Petitioner would require lumbar surgery given his complaints (Resp. Ex. 7, p. 45-46). He believes that a motor vehicle accident can aggravate a pre-existing spondylolisthesis that could bring about radicular symptoms (Resp. Ex. 7, p. 48). He found no symptom magnification expressed by the Petitioner upon his examinations (Resp. Ex. 7, p. 49).

He has no reason to dispute the lumbar and radicular complaints expressed by Petitioner at his examinations (Resp. Ex. 7, p. 49). He agrees that spondylolisthesis can cause impingement of nerves (Resp. Ex. 7, p. 53). He believes that the Petitioner has received reasonable and necessary medical treatment to date, all of which he relates to the work-related motor vehicle accident (Resp. Ex. 7, p. 54).

Dr. Butler testified that 75% of his practice, Spine Consultants LLC, is devoted to patients where his surgical practice performs about 200 surgeries per year. RX7, 8. He also has a medical-legal practice where he performs about 250 Section 12 examinations per year, over 90 percent of which are for Respondents. RX7, 8. In this particular case, he has earned almost $10,000.00 for the work he performed. RX7, p. 30.

Other Exhibits

The medical records demonstrate that Petitioner was diagnosed with spondylolysis and spondylolisthesis on October 11, 2011. X-rays from 2015 note a pars defect seen on prior studies but no acute findings. The records do not reflect any recommendation for restricted duty or surgical intervention. In February 2015, medical records demonstrate chronic right-sided lower back pain radiating to the right leg/knee. RX9. In 2018, after a fall, Petitioner sought medical treatment and received a CT scan which showed similar findings. RX8.

Respondent's Exhibit 11, the payroll summary from Rellaire, reflect that Petitioner began work with them on January 10, 2023. He was paid at the rate of $22.00 per hour. Correspondence notes Petitioner was hired as a parts runner/helper due to his

medical restrictions. RX11. RX11 notes from January 1, 2023 to December 31, 2023 (noting that the record was printed on June 15, 2023) Petitioner worked a total of 525.75 hours which included 20.25 overtime hours.

Respondent tendered 2 hours and 7 minutes of surveillance via Respondent's Exhibit 12, along with a surveillance report (RX10) from the Robison Group. Surveillance was conducted on September 24th, 2022; May 26th, 29th, and 30th, 2023; and June 16th, 19th, and 20th, 2023. The surveillance from May 2023 shows Petitioner performing the duties of an HAVE helper or HVAC tech. The Petitioner was shown servicing AC units and the surveillance showed Petitioner walking, squatting, bending, and some light lifting. The remainder of the surveillance was not probative.

CONCLUSIONS OF LAW

Two evidentiary matters arose during the hearing. The first is that Respondent claims it is entitled to an adverse inference against Petitioner by way of Petitioner not offering his physical therapy records into evidence. Respondent cites *Ciborowski v. Phillip Dressler & Associates* on that basis. 110 Ill. App. 3d 981 (1st Dist., 1982). The Arbitrator does not find an adverse inference is warranted here. The physical therapy records were equally available to both parties via subpoena. Secondly, neither the physical therapy records nor any therapist or custodian of records were controlled by Petitioner. Lastly, there is nothing in the record to suggest that the physical therapy records, custodian of records, or any treating therapist would likely favor Petitioner over Respondent. Accordingly, no adverse inference is warranted.

The second evidentiary issue deals with Respondent's objection to the re-direct examination of Petitioner after a break. After cross examination of the Petitioner was complete, Petitioner's counsel declined a redirect and asked for a brief recess. Upon reconvening, Petitioner stated that redirect was sought. Tx. 59. Respondent objected to the redirect noting that Petitioner and his counsel had the chance to confer regarding testimony which counsel acknowledged. Tx. 60. The Arbitrator sustains Respondent's objection and strikes the redirect testimony. The payroll record of Petitioner's time with Rellaire speaks for itself.

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

Based on the Petitioner's testimony and the medical records introduced by Petitioner, as well as the medical testimony of Dr. Gregory Brebach and Dr. Jesse Butler, the Arbitrator finds that there is a causal connection between the work accident and the Petitioner's present low back condition. The Arbitrator relied upon the testimony of Petitioner, the medical records identifying a clear and concise injury to the lumbar spine, Petitioner's ongoing complaints, and the testimony of Dr. Brebach.

Dr. Brebach' s opinion is more credible than that of Dr. Butler. Both doctors are board-certified spine surgeons, of course. Both opine that Petitioner's car accident caused Petitioner's initial condition. Both doctors also diagnosed spondylolisthesis and spondylolysis with radiculopathy. Both doctors believe that Petitioner's

spondylolisthesis and spondylolysis existed prior to his accident. Their opinions then diverge drastically.

Dr. Brebach believes that this condition was likely pre-existing as it was predominantly asymptomatic prior to the work accident and was very clear in stating that the motor vehicle work accident caused an aggravation to this condition which led to the pain and discomfort that Petitioner is experiencing. As a basis, he noted that the Petitioner did not have significant back pain before the accident and did not miss significant work time prior to the accident due to any lumbar condition.

Respondent's expert, Dr. Butler, testified that he found absolutely no symptom magnification expressed by Petitioner. He has no reason to dispute the lumbar radicular complaints Petitioner has made. He agrees that the spondylolisthesis condition he has is a competent cause of nerve impingement. Despite this, Dr. Butler testified that Petitioner's complaints do not correlate with his findings.

The Arbitrator does not find Dr. Butler's testimony concerning the surveillance to carry enough weight to overcome Petitioner's testimony and Dr. Brebach' s opinion. Dr. Brebach stated that Petitioner could work restricted duty. The surveillance does not show Petitioner working beyond Dr. Brebach' s restrictions. The Arbitrator does not expect a Petitioner with restrictions to cease the activities of daily living while he or she is treating for an injury.

The Arbitrator finds, based on a preponderance of the evidence, that Petitioner's pre-existing lumbar issues were aggravated by his accident and that the objective test results and Dr. Brebach's opinions support a finding that Petitioner's condition at

present is related to his automobile accident. Based on the foregoing, the Arbitrator finds a causal connection between the work accident and Petitioner's current condition of illbeing with respect to his lumbar spine.

Regarding Issue (O), whether Petitioner is entitled to prospective medical treatment, the Arbitrator finds as follows:

Having found in favor of Petitioner on the issue above and having reviewed the testimony of Dr. Brebach and Dr. Butler, the Arbitrator finds that Petitioner is entitled to prospective medical treatment pursuant to Section 8(a) the Act including the posterior lumbar interbody fusion at L-5/S-1 and any related treatment required thereto.

Dr. Brebach testified that Petitioner had undergone significant conservative workup including physical therapy and lumbar injections. Despite this treatment, Petitioner's pain continued. Petitioner testified that he was recommended lumbar surgery by both Dr. Schneider and Dr. Brebach. In order to address the work-related injury and symptoms, he proposed a posterior lumbar interbody fusion at the L-5/S-1 levels. It is his hope that the surgery will eliminate or reduce the low back pain as well as the leg pain. Dr. Brebach suggests that the surgery should enable Petitioner to return to unrestricted work. It was also noted without contention that Petitioner briefly suffered both fecal and urinary incontinence due to the lumbar condition. Without the surgery, Dr. Brebach believes that the Petitioner would not be able to return to full, unrestricted work. Without surgery, he does not believe that these symptoms will dissipate.

Accordingly, the Arbitrator finds that the Petitioner is entitled to future medical treatment consisting of the surgery proposed by Dr. Brebach, which is a posterior lumbar interbody fusion surgery at L-5/S-1 and any reasonable and related corresponding treatment required.

Regarding Issue (K), the temporary benefits in dispute, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner is entitled to temporary total disability payments pursuant to Section 19(b) of the Act from July 3, 2022 through July 3, 2023 representing 52 1/7 weeks of TTD. Respondent is entitled to any credits for TTD already paid and furthermore entitled to credit for money Petitioner earned while working as a technician at Rellaire.

As reflected in Petitioner's Exhibit 2, he began seeing doctors at Illinois Bone & Joint on June 9, 2022. At tat time, Dr. Harpreet Basran provided work restrictions of desk seated work, no lifting greater than 10 pounds. Petitioner was not able to perform his usual and customary duties as an HVAC technician given those restrictions. As reflected in Petitioner's Exhibit 6, the work restrictions continued through the last visit with Dr. Brebach on February 28, 2023 petitioner was placed on work restrictions of no lifting more than 20 pounds, 8 hours a day and 4 days a week. Petitioner testified to his job duties which, on occasion, did require physical handling of furnaces and air conditioning units that could weigh upwards of 200 pounds. The Arbitrator notes that while Petitioner was not technically an "installer" of furnaces and air conditioning units,

the credible evidence reflect that there are occasions where he is required to physically handle these units which are well outside of his stated work restrictions.

Petitioner also underwent a functional capacity assessment at ATI Physical Therapy on March 29, 2023 (Pet. Ex. 5.) The evaluator for ATI felt that Petitioner's capabilities fell below the listed work requirements and self-stated work requirements (Pet. Ex. 5, p. 1). Based on this evaluation, there is clearly a mismatch between Petitioner's physical abilities and his work requirements. Respondent introduced what they believe is a job description (Resp. Ex. 3 and 4). The Arbitrator notes that there was much constellation and dispute regarding the FCA at ATI Physical Therapy. Respondent retained the services of Joe Castronovo who criticized he results, testing methods and methodology of the FCA. Petitioner submitted as Exhibit 10, a narrative report from Tom Werner supporting the validity of the testing result of the FCA. The Arbitrator notes that ATI is one of the bigger and more prominent physical therapy institutions in the State of Illinois and oftentimes administers functional capacity assessments. The Arbitrator further finds that the FCA identified as Petitioner's Exhibit 5 is valid and reliable and demonstrates that Petitioner is not capable of performing his job duties. Dr. Brebach testified that the FCA is valid. Even the Respondent's medical expert, Dr. Butler, implied that his own patients have likely undergone functional capacity assessments at ATI Physical Therapy. In fact, Dr. Butler further testified that this was the first time he can recall ever criticizing ATI's functional capacity assessment methodology. He could not recall even one single case in the past where he was critical of ATI for their FCA. Dr. Butler refers his own patients to ATI

and finds that ATI is a reputable institution. He concludes that both functional capacity evaluations and functional capacity assessments have their limitations and reasonably well-qualified spine surgeons can differ on whether an FCA is effective and reliable.

Lastly, Respondent proffered the testimony of two witnesses, Cheryl and David Thorson. Neither witness testified that Petitioner did not advise them of his restrictions. Respondent's Exhibit 4, completed and signed by David Thorson, may comport with Petitioner's job duties but the record does not contain testimony that Petitioner was offered a job within his restrictions.

Based on the foregoing, the Arbitrator finds that Petitioner is entitled to temporary total disability for the period listed above and that Respondent is entitled to credits for all TTD paid and for the income Petitioner earned at Rellaire.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC021751
Case Name	Michael P Murphy v. Ruan Transportation & U S Foods
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	24IWCC0535
Number of Pages of Decision	4
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Steven Miller, Jason Jording

DATE FILED: 11/13/2024

/s/Marc Parker,Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael P Murphy

Petitioner,

vs. NO: 15 WC 21751

Ruan Transportation

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of whether the Commission has the authority to reconsider or modify a superior court order on remand, and being advised of the facts and the law, reverses the Decision of the Arbitrator, and vacates the consolidation of the above cases.

PROCEDURAL HISTORY

In July 2018, case 15 WC 21751 was set for trial before Arbitrator Steffan. On the trial date, Petitioner moved to consolidate the case with 16 WC 26857. Arbitrator Steffen denied the consolidation but continued the trial. In October 2018, Petitioner filed a second motion to consolidate in front of Arbitrator Watts and it too was denied.

In April 2019, Arbitrator Soto set case 15 WC 21751 for trial. Petitioner again filed a motion to consolidate. Arbitrator Soto heard arguments and issued an order consolidating the cases on May 14, 2019.

Respondent filed a petition for review appealing the consolidation. On July 27, 2021, the Commission dismissed Respondent's review after concluding that Arbitrator Soto's order was a non-final interlocutory order.

Respondent appealed to the Circuit Court of DuPage County ("Circuit Court"). The Circuit Court set aside the Commission's decision and reinstated Arbitrators Steffan and Watts' prior orders denying the consolidation consistent with Section 9030.10(e). The Circuit Court granted reassignment of both cases to Arbitrator Friedman per Section 9030.10(d).

Following the Circuit Court order, on May 19, 2023, the Commission remanded the cases to the Wheaton docket to be assigned to an Arbitrator because Arbitrator Friedman was no longer assigned to that docket.

On June 29, 2023, Petitioner filed a Motion to Reassign both cases in front of Arbitrator Glaub and join the cases for trial. Arbitrator Glaub consolidated the cases for trial on December 28, 2023.

Respondent filed a Petition for Review appealing Arbitrator Glaub's order granting consolidation of the cases for trial.

CONCLUSIONS OF LAW

The Commission is charged with following the orders of the circuit court. *Noonan v. Ill. Workers' Comp. Comm'n*, 2016 IL App (1st) 152300WC, 65 N.E.3d 530, 534 (1st Dist. 2016). The *Noonan* court noted "where a cause is remanded by a court of review to a lower court with directions to enter a certain order or decree, the latter court has no discretion but to enter the decree as directed." 65 N.E. 3d at 534 (citing *People ex rel. Campo v. Matchett*, 394 Ill. 464, 469, 68 N.E.2d747,749(1946)).

In this instance, the Circuit Court's order dated September 22, 2022, denied consolidation of these cases. It provided in part:

> "For the reasons stated on the record, the Illinois Workers' Compensation Commission's decision is set aside, and consistent with Section 9030.10(e), and as justified by law, the prior Orders denying consolidation in this matter are reinstated."

In addition to the denial, the Circuit Court remanded to the Commission to reassign both cases to the same Arbitrator per Section 9030.10(d) and for further proceedings consistent with the order. The Circuit Court's order was not appealed. Under *Noonan,* the Commission has no authority to reconsider or modify the Circuit Court's order. 65 N.E. 3d 530, 534. Therefore, Arbitrator Glaub's consolidation order is reversed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated December 28, 2023, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that both cases be remanded to the Wheaton docket and reassigned to the same Arbitrator, but not consolidated for purposes of trial, under Section 9030.10(d).

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 13, 2024

MP:ns
o 10/24/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC026857
Case Name	Michael P Murphy v. US Foods
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	24IWCC0536
Number of Pages of Decision	4
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Kenneth Lubinski
Respondent Attorney	Steven Miller, Jason Jording

DATE FILED: 11/13/2024

/s/Marc Parker,Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael P Murphy

Petitioner,

vs. NO: 16 WC 26857

US Foods,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of whether the Commission has the authority to reconsider or modify a superior court order on remand, and being advised of the facts and the law, reverses the Decision of the Arbitrator, and vacates the consolidation of the above cases.

PROCEDURAL HISTORY

In July 2018, case 15 WC 21751 was set for trial before Arbitrator Steffan. On the trial date, Petitioner moved to consolidate the case with 16 WC 26857. Arbitrator Steffen denied the consolidation but continued the trial. In October 2018, Petitioner filed a second motion to consolidate in front of Arbitrator Watts and it too was denied.

In April 2019, Arbitrator Soto set case 15 WC 21751 for trial. Petitioner again filed a motion to consolidate. Arbitrator Soto heard arguments and issued an order consolidating the cases on May 14, 2019.

Respondent filed a petition for review appealing the consolidation. On July 27, 2021, the Commission dismissed Respondent's review after concluding that Arbitrator Soto's order was a non-final interlocutory order.

Respondent appealed to the Circuit Court of DuPage County ("Circuit Court"). The Circuit Court set aside the Commission's decision and reinstated Arbitrators Steffan and Watts' prior orders denying the consolidation consistent with Section 9030.10(e). The Circuit Court granted reassignment of both cases to Arbitrator Friedman per Section 9030.10(d).

Following the Circuit Court order, on May 19, 2023, the Commission remanded the cases to the Wheaton docket to be assigned to an Arbitrator because Arbitrator Friedman was no longer assigned to that docket.

On June 29, 2023, Petitioner filed a Motion to Reassign both cases in front of Arbitrator Glaub and join the cases for trial. Arbitrator Glaub consolidated the cases for trial on December 28, 2023.

Respondent filed a Petition for Review appealing Arbitrator Glaub's order granting consolidation of the cases for trial.

CONCLUSIONS OF LAW

The Commission is charged with following the orders of the circuit court. *Noonan v. Ill. Workers' Comp. Comm'n*, 2016 IL App (1st) 152300WC, 65 N.E.3d 530, 534 (1st Dist. 2016). The *Noonan* court noted "where a cause is remanded by a court of review to a lower court with directions to enter a certain order or decree, the latter court has no discretion but to enter the decree as directed." 65 N.E. 3d at 534 (citing *People ex rel. Campo v. Matchett*, 394 Ill. 464, 469, 68 N.E.2d747,749(1946)).

In this instance, the Circuit Court's order dated September 22, 2022, denied consolidation of these cases. It provided in part:

> "For the reasons stated on the record, the Illinois Workers' Compensation Commission's decision is set aside, and consistent with Section 9030.10(e), and as justified by law, the prior Orders denying consolidation in this matter are reinstated."

In addition to the denial, the Circuit Court remanded to the Commission to reassign both cases to the same Arbitrator per Section 9030.10(d) and for further proceedings consistent with the order. The Circuit Court's order was not appealed. Under *Noonan,* the Commission has no authority to reconsider or modify the Circuit Court's order. 65 N.E. 3d 530, 534. Therefore, Arbitrator Glaub's consolidation order is reversed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated December 28, 2023, is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that both cases be remanded to the Wheaton docket and reassigned to the same Arbitrator, but not consolidated for purposes of trial, under Section 9030.10(d).

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 13, 2024

MP:ns
o 10/24/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC000118
Case Name	Christopher Sullivan v. City Of Calumet Fire Department
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0537
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Joseph P. Brancky
Respondent Attorney	Nicole Breslau

DATE FILED: 11/14/2024

/s/Carolyn Doherty,Commissioner
Signature

DISSENT: /s/Christopher Harris,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Christopher Sullivan,

Petitioner,

vs. NO: 23 WC 000118

City of Calumet Fire Department,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 22, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

November 14, 2024

O: 10/24/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

DISSENT

The testimony and evidence in this claim does not sufficiently support the Majority's finding that Petitioner sustained a work accident on December 21, 2022 while at the scene of a car fire. Petitioner's testimony was that Firefighter Wolfe had "inadvertently blasted me in the side of the head" with the water hose stream and was thrown off balance. He then tripped over the hose and fell to the ground. Petitioner testified that he felt a pop and twisted his left knee. He did not yell for help. Petitioner further stated that he had no idea whether anyone at the scene saw him fall and there was no testimony or evidence indicating any witnesses to Petitioner's alleged work accident.

Petitioner reported the accident to Lieutenant Sosnowski who was at the scene. He reported getting hit with the nozzle stream and tripping over the hose, but did not describe injuring his knee, falling or feeling his knee pop. Lieutenant Sosnowski testified that Petitioner appeared normal (after allegedly being blasted in the head with water) and they continued with small talk and clean-up work. Upon returning to the fire station, Petitioner informed Lieutenant Sosnowski that he had injured his left knee when he tripped earlier. Lieutenant Sosnowski testified that he did not observe Petitioner with any signs of physical injury and he declined medical attention. Petitioner did, however, clear his locker of his personal belongings and fire gear that day.

Petitioner attended a follow-up examination with Dr. Newhalfen with whom he had been previously treating. The December 22, 2022 record noted Petitioner's return to work and that he was experiencing worsening complaints in his right ankle after doing a lot of lifting and climbing.

The visit note also mentioned that Petitioner had left knee discomfort that was at a 5 out of 10 level, occurred approximately 50% of the time, and that the discomfort was the same *since the last visit* [emphasis added]. It is further noted that the assessment included aggravation of the left knee even though Petitioner had also reported that his condition had not changed. Petitioner testified that he informed Dr. Newhalfen about his work injury to the left knee but the visit note contradicts his testimony. The record did not specifically attribute Petitioner's left knee condition to any cause and did not indicate that his left knee condition was due to a work accident as Petitioner described at arbitration. Dr. Newhalfen took Petitioner off work. Petitioner never returned to work and retired in March 2023.

Petitioner's alleged work accident coincidentally occurred on his first date back to work. He had been on leave from work for an unrelated injury that was set to expire on the accident date. Petitioner had requested a leave extension through March 2023, at which time he was going to retire, but his request was denied and he was required to report to work on December 21, 2022 or face termination. He admitted at arbitration that he was not happy about returning to work.

I find the facts recited herein undermine Petitioner's claim that he suffered a work accident on December 21, 2022. Dr. Newhalfen's office visit note, the day after the alleged accident date, was vague and ambiguous as to Petitioner's left knee condition and did not mention the work accident. Secondly, Petitioner's physical actions and demeanor on the alleged accident date, as observed and described by Lieutenant Sosnowski, also undercuts his claim about a work injury on December 21, 2022, as does the temporal relationship between Petitioner's alleged accident and his retirement. For all these reasons, I dissent.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC000118
Case Name	Christopher Sullivan v. City Of Calumet Fire Department
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Joseph P. Brancky
Respondent Attorney	John Fassola

DATE FILED: 3/22/2024

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 19, 2024 5.13%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Christopher Sullivan
Employee/Petitioner

v.

City of Calumet Fire Department
Employer/Respondent

Case # **23** WC **000118**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **October 26, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **December 21, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**110,273.28**; the average weekly wage was $**2,120.64**.

On the date of accident, Petitioner was **51** years of age, ***single*** with **1** dependent children.

Respondent shall be given a credit of $**21,450.80** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**21,450.80**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,413.76 per week for 44-1/7 weeks, commencing December 22, 2022, through October 26, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services as detailed in Petitioner's Exhibits 5, 7 and 10, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care in the form of a total left knee arthroplasty as recommended by Dr. Forsythe, pursuant to Sections 8(a) and 8.2 of the Act.

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

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

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

Signature of Arbitrator

ICArbDec19(b) **March 22, 2024**

FINDINGS OF FACT

This matter proceeded to hearing on October 26, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Petition for Immediate Hearing under Section 19(b)/8(a). The issues in dispute were accident, causation, medical expenses, temporary total disability benefits, and prospective medical care. Arbitrator's Exhibit 1 (AX1).

Testimony

I.) Petitioner

Petitioner testified he began working for Respondent on April 1, 1994. (T. 6) He testified he was most recently employed as an engineer and paramedic. (T. 7)

In performing the job of an engineer, Petitioner would drive the vehicle, connect a hose to a fire hydrant once at a fire scene, and supply the crew with various equipment including ladders, SCBA bottles, extrication equipment, and different hand tools. *Id.* He testified that SCBA bottles weigh 50 pounds. *Id.* The paramedic portion of the job can vary from call to call and involves carrying the defibrillator and the bag with all the medical supplies and carrying patients in and out of buildings. *Id.*

When Petitioner was approximately 19 years old, he injured his left knee and had arthroscopic surgery. (T. 8) He was able to perform his full duty job for Respondent subsequent to that time. (T. 9) He had a second left knee procedure approximately 14 years ago. *Id.* He returned to his full duty job, and had no more treatment since that time. *Id.* He stated that his left knee function after these surgeries was approximately 80% that of the right knee. (T. 10)

Petitioner testified that prior to the accident he treated for his right ankle. *Id.* Petitioner had right ankle surgery in March 2022 with Dr. Adam Schiff, and therapy thereafter with Dr. Robert Newhalfen. (T. 11) He was off work completely while rehabbing the ankle. *Id.* He sustained no injuries to the left knee during the rehab. *Id.* Petitioner testified he had been off work for a year prior to returning on December 21, 2022. (T. 32) He testified that some of this time had been treatment for a blood clot. *Id.* Petitioner testified he was told if he did not return to work December 21, 2022, he would be subject to termination. *Id.* Petitioner testified he had argued with his boss, Chief Bachert, about whether or not his time off work for the past year had been solely for the ankle, or for treatment of a blood clot. (T. 35)

Petitioner was released back to full duty work for the ankle in December 2022 by Drs. Schiff and Newhalfen. (T. 12) He testified that per his work contract he had a full physical exam with a doctor appointed by his employer before his return to work. (T. 12-13) He also testified he had to undergo a physical assessment at a rehab facility where he had to wear a backpack full of weights, climb a ladder, ascend and descend stairs, and walk around a track. (T. 13)

Petitioner's fitness was assessed by Training Officer Sam Vegan upon his return to work on December 21, 2022. (T. 14) He testified he had to dress and remove his gear, including an SCBA tank, in a certain amount of time and also drag a charged (full of water) hose back and forth. *Id.* It was determined that Petitioner was able to do his full duty job. *Id.*

Petitioner was working as an engineer/paramedic for Respondent on December 21, 2022, when he was called to the scene of a car fire at a fast-food restaurant. *Id.* He noticed the hose blocking the exit for the drive through, requiring cars to drive over the hose. (T. 14-15) This caused damage to the pump, so Petitioner went to

move the hose and as he picked up the hose, a co-worker inadvertently struck him in the head with a stream of water from the hose. (T. 15) This threw Petitioner off balance, and he tripped over the hose, twisting his left knee and exacerbating his right ankle. *Id.* Petitioner testified he felt a pop in his left knee. *Id.* He reported the injury on the scene to Lieutenant Todd Sosnowski. (T. 16) He testified his lieutenant completed a Form 45 and OSHA Form 301 once they returned to the station. (T. 17) Petitioner testified he initially filled out and brought the Form 45 to Lt. Sosnowski because that was the way things had been done in the past. (T. 41) He continued working that day, and testified there were no more calls that shift. (T. 18) Petitioner testified he removed some of his personal items from his locker that day, but not all. (T. 49)

The next morning, December 22, 2022, Petitioner saw Dr. Newhalfen for a previously scheduled appointment for his right ankle and reported the left knee injury from the previous day. (T. 18) He testified he had not previously treated with Dr. Newhalfen for his knee. (T. 19) He testified that Dr. Newhalfen referred him to Dr. Nickless for his knee, and to return to Dr. Schiff for his ankle. *Id.*

Petitioner saw Dr. Nickless on January 17, 2023, who injected his left knee. (T. 20) Petitioner testified that the injection did not help his knee pain. (T. 21) Dr. Nickless placed work restrictions on Petitioner which he provided to his employer in January 2023. (T. 23) Respondent did not provide Petitioner an accommodated duty position. (T. 20-21) Petitioner testified that he did not experience lasting relief from the series of injections provided by Dr. Nickless in the spring of 2023. (T. 23)

Petitioner testified that he received his regular salary while off work from December 22, 2022, through March 30, 2023. (T. 27) Petitioner retired on March 30, 2023. *Id.* Petitioner testified that had he continued to work until April 1, 2023, he would have been employed beyond 29 years on the job. (T. 28) If he worked past his 29-year anniversary, he would receive a 20 percent reduction in his pension. *Id.* Petitioner testified that he did not believe his knee condition would allow him to return to his regular job at that time. *Id.* He testified his retirement benefits are less than his regular salary. (T. 29)

Petitioner testified that Dr. Forsythe referred him to Dr. Della Valle because Dr. Forsythe only does partial replacements, not full replacements. (T. 27) Petitioner testified he would not be able to perform his regular job with the 50-pound restriction Dr. Forsythe gave him. (T. 25) Petitioner testified he has looked for work since his retirement within his restrictions, but that he has not been hired due to his restrictions and lack of varied work experience. (T. 29)

Petitioner testified his knee pain is currently 7 out of 10. (T. 30) He testified his left knee function is now 20% of that of the right. *Id.* He testified it currently feels as if he has gravel behind his kneecap, and that something is catching in the interior of the knee. *Id.* Petitioner testified that he wants the surgery recommended by Dr. Forsythe so he can return to normal, which includes playing basketball with his 14-year-old son. (T. 31)

II.) Chief Glenn Bachert

Chief Glenn Bachert testified that Petitioner had been off work since December 21, 2021, for a right ankle condition. (T. 54) Chief Bachert testified an employee for Respondent can be terminated if they are unable to return after being off work for one year. *Id.* Chief Bachert testified that Section 11.9 of the CBA indicates an employee can be off work a maximum of 365 days, and that the Chief has discretion to extend that period an additional 3 months upon a showing that the employee will be able to return within that additional 3 months. (T. 69)

Chief Bachert testified that Petitioner would send him doctor's notes every two to three months while he was off in 2021-2022. (T. 55) Chief Bachert testified he received work notes from Petitioner while he was off

in 2021-2022 that were for a blood clot issue, and not his ankle. (T. 65) He testified he considered this to be a separate health condition from the ankle. (T. 66) Chief Bachert testified he had reviewed Petitioner's medical records in 2021, and there was nothing indicating treatment for the left knee. (T. 70)

Chief Bachert testified he met with Petitioner on October 13, 2022, to discuss his need to return to work, and that Petitioner and his interaction with Petitioner was fine that day. (T. 59) Chief Bachert testified he told Petitioner that if he did not return to work on December 21, 2022, he could be terminated. (T. 60) Chief Bachert testified Petitioner felt Respondent was playing games by demanding he return to work by December 21, 2022, as the department had not forced other employees to do so in the past. (T. 56)

Chief Bachert testified any position on the fire department must show they are physically fit in an evaluation with a City of Calumet doctor before they can return to work. (T. 70-71) The examination is to determine if they are able to perform their full duty job. (T. 71) He testified he sends people to Dr. Michael Fragen. *Id.* Chief Bachert testified that upon returning to work, an employee would also have return-to-work training that involved performing tasks to see if the returning employee was physically fit to perform the job. (T. 72) Chief Bachert testified that Petitioner was physically capable of performing his full duty job as of December 21, 2022, and that the City of Calumet Fire Department would not return someone to work who was not able to perform the full duty job. (T. 73)

Chief Bachert testified that Petitioner returned to work on December 21, 2022. (T. 61) Chief Bachert testified that as Petitioner returned to work within 365 days of being off for the ankle, he was not in violation of Section 11.9. (T. 70)

Chief Bachert testified that at the end of a firefighter's career, their retirement benefits can change based on longevity. (T. 63-64) He testified that at the start of a firefighter's 29th year, they can retire with 40% benefits, but if they do not retire by the end of the 29th year, the benefits will be reduced to 27%. *Id.*

Chief Bachert testified he did not personally receive Petitioner's work restrictions, but that Respondent's personnel director, Deston Dorchak, could have received Petitioner's 50-pound lifting restrictions. (T. 64)

III.) Lieutenant Todd Sosnowski

Lieutenant Todd Sosnowski testified he was Petitioner's supervisor as of December 2022. (T. 78) He testified Petitioner was working on December 21, 2022, and that prior to the accident he observed Petitioner work with full function and no evidence of a left knee injury. (T. 79, 90) He testified that earlier in the shift, Petitioner assisted in a call that involved lifting a 250-pound injured individual. (T. 79) He testified that after that there was another call to a car fire. (T. 80) They were called to a Wendy's restaurant parking lot. (T. 81) Lieutenant Sosnowski testified that he, Petitioner, and Firefighter Bryan Wolfe are a three-man company. *Id.* He testified Petitioner drove and parked the vehicle and charged the one-hundred-foot hose for the others to extinguish the car fire. *Id.* After the fire was extinguished, Petitioner told Lieutenant Sosnowski he had been struck with the hose stream and tripped over the hose. (T. 82-83) Lieutenant Sosnowski explained that he did see Petitioner's accident, but did not discount that it was very possible it had happened. (T. 84) He testified that upon returning to the fire station Petitioner presented him with a Form 45 he had filled out for the accident. (T. 86) He testified that Respondent's policy had been to have the injured employee complete the Form 45 and present it to the supervisor, but that it had changed over the past year while Petitioner had been out so that the supervisor actually filled it out. (T. 87, 90) He testified he completed and signed the Form 45 and the OSHA form. (T. 91-92) Following the car fire, there were no other calls that day. (T. 92-93).

Summary of Medical Records

On December 13, 2022, Petitioner had a visit at Motus Integrative Health regarding his right ankle. (PX2, pgs. 17-18) Petitioner did not report any issue with his left knee.

Petitioner returned to Motus Integrative Health record on December 22, 2022, and reported pain and swelling in the right ankle and left knee after returning to work. (PX2, pg. 21) Dr. Newhalfen opined Petitioner had suffered an exacerbation of the right ankle and an aggravation of his left knee, referred Petitioner to a surgeon and took Petitioner off work. (PX2, pgs. 24, 25 & RX3)

Petitioner saw Dr. Schiff at Loyola on January 17, 2023, for his right ankle. (PX3, pgs. 5-6) Dr. Schiff noted that the day Petitioner returned to work, he believed he stretched the ankle too far and noted increased soreness and swelling. Dr. Schiff also noted that Petitioner had an incident where he hurt his left knee.

Petitioner saw Dr. John Nickless on January 17, 2023. (PX4, pg. 51-60) Petitioner reported he had been off work for a year and upon his return to work on December 21, 2022, he sustained a left knee injury when he was inadvertently sprayed with a fire hose. The water knocked him off balance and he tripped over the hose and twisted his left knee. Dr. Nickless diagnosed Petitioner as having osteoarthritis of the left knee joint, administered a left knee steroid injection, provided a wraparound hinged knee support, ordered physical therapy and an MRI, and restricted Petition to sedentary work. Dr. Nickless explained that it was likely that Petitioner irritated his left knee osteoarthritis when he sustained his injury. Petitioner underwent physical therapy at Athletico, starting January 31, 2023. (PX8)

Petitioner returned to Dr. Nickless on March 1, 2023. (PX4, pgs. 39-43) Petitioner reported that the injection provided partial relief for about a week and the continued to have catching type sensation in the anterior knee. Petitioner also reported he would be retiring at the end of the month and might consider surgical intervention. Dr. Nickless again ordered an MRI and kept Petitioner restricted to sedentary work.

Petitioner underwent a left knee MRI on March 24, 2023, the results of which showed tricompartmental osteoarthritis, worst at the patellofemoral compartment. (PX6, pgs. 67-68)

Petitioner continued to follow up with Dr. Nickless throughout April and May of 2023. (PX6) On April 4, 2023, Dr. Nickless reviewed the MRI and recommended viscosupplementation. (PX6, pgs. 34-38) On April 18, 2023, Dr. Nickless recommended a series of TriVisc injections to the left knee and administered the first injection. (PX6, pgs. 32-33) On April 25, 2023, and May 2, 2023, Dr. Nickless administered an additional TriVisc injections. (PX6, pgs. 19-28) On May 5, 2023, Petitioner completed the authorized physical therapy sessions. (PX9, pgs. 1-3) The physical therapist noted that Petitioner's progression was limited due to his right ankle injury.

Petitioner returned to Dr. Nickless on June 9, 2023. (PX6, pgs. 14-18, 98). Dr. Nickless noted that Petitioner did not receive any relied from the TriVisc injections and that he continued to have left knee pain and problems. Dr. Nickless referred Petitioner to one of his partners, Dr. Brian Forsythe, in order to discuss the possibility of arthroscopic knee surgery.

Petitioner saw Dr. Forsythe on July 24, 2023. (PX6, pgs. 8-13) Dr. Forsythe reviewed the MRI, examined Petitioner and opined that Petitioner sustained a fall at work on December 21, 2023, that resulted in the permanent aggravation of his left knee arthritis beyond its natural course. Dr. Forsythe recommended a total knee arthroplasty or patellofemoral unicompartmental arthroplasty which might ultimately require a revision to a total knee arthroplasty. Dr. Forsythe kept Petitioner off work.

On July 26, 2023, Petitioner underwent a Section 12 examination (IME) with Dr. Ryon Hennessy at Respondent's request. (RX1) Dr. Hennessy reviewed Petitioner's medical records and MRI and noted Petitioner had complained of contralateral left knee pain in a pre-op visit with Dr. Schiff on April 12, 2022. He noted no subsequent reports of left knee pain in the records prior to December 21, 2022. Petitioner provided a history of being stuck by a stream of water at work on December 21, 2022, causing him to trip over a hose and twist his left knee. Dr. Hennessy noted at the time of his exam Petitioner had ongoing pain and swelling in his left knee that had not improved with conservative care. He noted Petitioner had previously been able to play basketball with his 13-year-old son, but was no longer able to do so. Dr. Hennessy diagnosed Petitioner as having left knee grade 4 chondromalacia of the medial joint line and patellofemoral joint, but opined that it was not related to the December 21, 2022, accident. Dr. Hennessy explained that he believed Petitioner was being treated for left knee pain immediately prior to December 21, 2022. Dr. Hennessy concluded that based on the contemporaneous notes surrounding December 20, 2022, there was no documentation of a specific work accident that increased Petitioner's pain. Dr. Hennessy felt the treatment Petitioner had undergone was reasonable and necessary, that Petitioner required a knee replacement, and that Petitioner had work restrictions.

On August 28, 2023, Petitioner returned to Dr. Forsythe and reported that the function of his left knee had been 80% prior to the injury and was now at 40-50%. (PX6, pgs. 3-7) Dr. Forsythe noted progression of Petitioner's medial sided knee pain, felt Petitioner may require a total knee arthroplasty, but released him to return to work with a 50-pound lifting restriction pending surgical approval. On October 9, 2023, Dr. Forsythe again noted ongoing left knee pain and referred Petitioner to Dr. Della Valle for consideration of a total knee arthroplasty. (PX8, pgs. 1-4)

Additional Documents

Petitioner's Exhibit 11 is Section 11.9 of the CBA, which indicates that after being absent from regular duty for one year due to the same injury, an employee must file an application for disability, or the Chief may file charges seeking their dismissal. The Chief has the discretion to extend that period of time for 3 additional months upon a showing of a physician's evaluation, acceptable to the Fire Chief, that the employee will be able to return to full duty work within the extended period. (PX11)

A September 2022 email exchange between Chief Bachert and Petitioner indicates a disagreement about when Petitioner's leave began, whether it was solely for the ankle, and whether the 365-day period referenced in Section 11.1 would be extended. (RX2)

An October 13, 2022, letter from Chief Bachert to Petitioner advises that if Petitioner did not return to work on December 21, 2022, charges would be filed for his dismissal. (RX6) The letter indicates Petitioner would not be returned to work at that time unless he: 1) provided a note from his doctor clearing him to work and perform firefighter duties; 2) was cleared by Respondent's own doctor to perform firefighting duties; and 3) ensured his paramedic certification was in good standing.

A November 30, 2022, letter from Chief Bachert to Petitioner indicates he would file charges to seek Petitioner's discharge if he did not provide documentation per Section 11.9 regarding a return to work by December 21, 2022. (RX7) The letter was signed by Petitioner, under duress according to Petitioner, as received.

An OSHA Form 301 Injury and Illness Incident Report was completed on December 21, 2022, by Lieutenant Sosnowski. (PX1) It indicates Petitioner began work at 7:45 a.m. that day, and that while moving firehoses was struck in the face with a water stream and tripped over a hose, twisting his left knee.

CONCLUSIONS OF LAW

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

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Petitioner was working as an engineer/paramedic for Respondent on December 21, 2022, when he was called to the scene of a car fire at a fast-food restaurant. Petitioner testified that when he was hit by a stream of water from a fire hose, he was thrown off balance, tripped over the hose and twisted his left knee and exacerbated his right ankle. The OSHA report completed that day once back at the firehouse described the accident essentially the same as how Petitioner testified it happened. The Arbitrator further notes that the medical records from Athletico, Dr. Nickless, Dr. Forsythe and Dr. Hennessy provide an a substantially similar history of the December 21, 2022, accident.

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010). The Arbitrator observed Petitioner during trial and found him to be credible. Further, Petitioner's testimony regarding the December 21, 2022, work accident was corroborated by the contemporaneous accident report and the overall histories contained in the medical records.

Based on the above, the Arbitrator finds that Petitioner's work accident arose out of and in the course of his employment with Respondent on December 21, 2022.

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

Chain of events which demonstrate a previous condition of good health, an accident, and a subsequent injury resulting in disability sufficient to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 442 N.E. 2d 908(1982). Additionally, when a worker's physical structures give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of the employment. *Sisbro v. Indus. Comm'n*, 207 Ill.2d 193, 205 (2003). The work-related task need not even be the sole or principal causative factor of the injury, as long as the work is a causative factor. *See Sisbro*, 207 Ill.2d at 205. Thus, even if the claimant had a pre-existing degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causation factor. *Id*. at 205. A claimant may establish causal connection in such cases if he can show that a work-related injury played a role in aggravating his pre-existing condition. *Mason & Dixon Lines, Inc. v. Indus. Comm'n.*, 99 Ill. 2d 174, 181 (1983).

The Arbitrator notes that Petitioner had a left knee injury and surgery 14 years ago. He admitted his left knee from that point forward had only 80% of the function of the right. The Arbitrator further notes that, upon his return to work on December 21, 2022, Petitioner had no ongoing left knee treatment or restrictions and was working full duty. The last treatment record pre-dating the accident, the December 13, 2022, Motus record, referenced only right ankle problems with no left knee pain or issues. Additionally, Petitioner was cleared to

return to full duty work by his doctors, Respondent's doctor, and in an in-person exam conducted the day of the accident. Chief Bachert testified that Petitioner did not have any left knee injury prior to December 21, 2022, and was capable of working full duty on December 21, 2022. Based on the testimony and the medical records, the Arbitrator concludes that Petitioner's left knee was asymptomatic prior to the December 21, 2022, accident and he was in a condition of good health when he began work that day.

Following the December 21, 2022, work accident, Petitioner has continued to have pain and problems with the left knee. The MRI revealed tricompartmental osteoarthritis, worst at the patellofemoral compartment, however, as noted above, this condition was asymptomatic prior to the December 21, 2022, work accident. Dr. Forsythe opined that the December 21, 2022, work accident resulted in a permanent aggravation of Petitioner's left knee arthritis. The Arbitrator notes that Dr. Hennessy did not find Petitioner's left knee condition was related to the December 21, 2022, work accident due to prior current left knee treatment. However, the Arbitrator notes that Dr. Hennessy's claim of prior current left knee treatment is inconsistent with the pre-accident records and his own review of the prior treatment records showing no treatment. Dr. Hennessy also claimed there was no reference to a specific incident prior to January 12, 2023, which is also inconsistent with the OSHA injury report. As such, the Arbitrator does not find the findings and opinions of Dr. Hennessy persuasive.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the December 21, 2022, work accident.

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

The Arbitrator notes her finding above that Petitioner's condition of ill-being is causally related to the December 21, 2022, work accident. The Arbitrator also notes that while Dr. Hennessy did not feel that Petitioner's left knee condition was causally related to the December 21, 2022, work accident, he did acknowledge that the treatment Petitioner had undergone for his left knee was reasonable and necessary.

Based on the above, the Arbitrator finds that Petitioner's treatment following the December 21, 2022, work accident has been reasonable and necessary. The Arbitrator further finds that Respondent shall pay outstanding medical bills as detailed in Petitioner's Exhibits 5, 7 and 10, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes her finding above that Petitioner's condition of ill-being is causally related to the December 21, 2022, work accident. Additionally, the Arbitrator notes that Petitioner has undergone considerable conservative care, including physical therapy and injections, which have failed to provide relief. Dr. Forsythe noted Petitioner's ongoing left knee pain, the failure of conservative measures, ordered a total left knee arthroplasty and referred Petitioner to Dr. Della Valle for consideration of a total knee arthroplasty. The Arbitrator further notes that DR. Hennessy agreed that Petitioner requires a left knee replacement.

Based on the above, the Arbitrator finds Petitioner is entitled to prospective medical care. Respondent shall approve and pay for prospective medical care in the form of a total left knee arthroplasty as prescribed by Dr. Forsythe, as provided in Section 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes her finding above that Petitioner's condition of ill-being is causally related to the December 21, 2022, work accident. The Arbitrator further notes that following the December 21, 2022, work accident, Petitioner did not return to work. Dr. Newhalfen took Petitioner off work on December 22, 2022. He placed Petitioner on restricted duty, which were not accommodated on January 17, 2023. Petitioner retired on March 1, 2023, but had not reached maximum medical improvement (MMI) for the condition of ill-being caused by the December 21, 2022, work accident. It is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, i.e., whether the claimant has reached maximum medical improvement. *Westin Hotel v. Industrial Comm'n*, 372 Ill.App.3d 527, 542, 310 Ill.Dec. 18, 865 N.E.2d 342 (2007); *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 594, 296 Ill.Dec. 26, 834 N.E.2d 583 (2005); *F & B Manufacturing Co. v. Industrial Comm'n*, 325 Ill.App.3d 527, 531, 259 Ill.Dec. 173, 758 N.E.2d 18 (2001). See also *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill.2d 107, 118, 149 Ill.Dec. 253, 561 N.E.2d 623 (1990) (TTD compensation is provided for in section 8(b) of the Workers' Compensation Act, which provides, "[W]eekly compensation * * * shall be paid * * * as long as the total temporary incapacity lasts," which this court has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit).

On July 24, 2023, Dr. Forsythe took Petitioner off work. On August 28, 2023, Dr. Forsythe provided a 50-pound lifting restriction. Petitioner testified he would not be able to perform his regular job with the 50-pound lifting restriction. Petitioner also testified he has looked for work since retirement within his restrictions, but that he has not been hired due to his restriction and lack of varied work experience. Petitioner has not yet reached MMI.

Based on the above, the Arbitrator finds Petitioner is entitled to temporary total disability benefits from December 22, 2022, through October 26, 2023, as provided in Section 8(b) of the Act.

Respondent has paid temporary total disability benefits in the amount of $21,450.80.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC020103
Case Name	Prudencio Hernandez v. PF Chang's
Consolidated Cases	20WC019731;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0538
Number of Pages of Decision	10
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Mario Encinas
Respondent Attorney	Daniel Artman

DATE FILED: 11/14/2024

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Prudencio Hernandez,

Petitioner,

vs. NO: 19 WC 020103

P.F. Chang's,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and nature and extent, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 7, 2023 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $12,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 14, 2024
o101524
MEP/yp
049

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC020103
Case Name	Prudencio Hernandez v. PF Chang's
Consolidated Cases	20WC019731;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Mario Encinas
Respondent Attorney	Daniel Artman

DATE FILED: 12/7/2023

/s/ Rachael Sinnen, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 5, 2023 5.19%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Prudencio Hernandez
Employee/Petitioner

v.

P.F. Chang's
Employer/Respondent

Case # **19** WC **20103**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **September 7, 2023.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **May 12, 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 $***52,910.87***; the average weekly wage was $***1,017.52***.

On the date of accident, Petitioner was ***28*** years of age, ***married*** with ***0*** dependent children.

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

Respondent shall be given a credit of $***1,647.00*** for TTD, $***0*** for TPD, $***0*** for maintenance, and $***0*** for other benefits, for a total credit of $***1,647.00.***

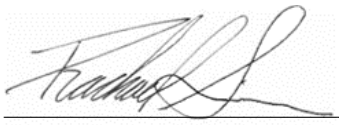
Respondent is entitled to a credit of $***0.00*** under Section 8(j) of the Act.

ORDER

The Arbitrator makes an award of 4.5% loss of use of the person as a whole under Section 8d2 which corresponds to 22.5 weeks of permanent partial disability benefits at a weekly rate of $610.51. See Conclusions of Law for Arbitrator's considerations under §8.1b(b) of the Act.

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

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



Signature of Arbitrator

December 7, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Prudencio Hernandez,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 19WC20103
P.F. Chang's,	)	*consolidated with*
	)	Case No. 20WC019731
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on September 7, 2023 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing under the Illinois Workers' Compensation Act "Act." For Case No. 19WC20103 (date of accident May 12, 2019), issues in dispute include causation and the nature and extent of the injury (AX1). For Case No. 20WC019731 (date of accident August 14, 2020), issues in dispute include causation, unpaid medical bills, temporary total disability "TTD" and prospective medical (AX2).

Although the instant case is consolidated with Case No. 20WC019731 (date of accident August 14, 2020), a separate Findings of Fact and Conclusions of Law will be issued.

Job Duties & Accident of May 12, 2019

Petitioner testified that he was working as a sous chef for Respondent on the dates of accident, May 12, 2019, and August 14, 2020. As a sous chef, he is a food preparation expert who assists the head chef. He manages kitchen operations, staff, inventory, and supplies.

On May 12, 2019, Petitioner was lifting a heavy pot filled with batter weighing more than fifty pounds when he injured his lumbar spine (PX1).

Summary of Medical Records

On May 17, 2019, Petitioner initially presented to Advocate Condell and was diagnosed with an acute myofascial strain. Petitioner was told to apply ice and heat, was given Advil 200 mg, metaxalone 800 mg, and a Medrol Dosepak. He was recommended for light duty work and prescribed physical therapy. Petitioner started physical therapy around June 18, 2019 at Advocate Condell (PX 1).

Petitioner presented to Fullerton Drake Medical Center on July 8, 2019. Petitioner was referred for an MRI, was given light duty work and recommended pain medication and a TENS unit. Petitioner continued physical therapy there from July 17, 2019 through April 8, 2020. (PX2).

An MRI was performed at Vista Medical Center on August 13, 2019 and showed findings of a "moderate size protruding disc at L5-S1 with central spinal stenosis" (PX3).

Petitioner underwent an EMG/NCV on August 15, 2019 on Spine M.D. Limited which demonstrated "mild acute right L4 radiculopathy" (PX4).

On August 26, 2019, Petitioner presented to Dr. Mohiuddin from Illinois Orthopedic Network (ION). He recommended a right paramedian L5-S1 lumbar injection, continued physical therapy, light duty work status and medications (PX5).

On October 3, 2019, Dr. Murtaza from ION performs a lumbar epidural steroid injection with intralaminar approach at L5-S1. He recommended Petitioner return to work with restrictions of no lifting more than 20 pounds effective October 7, 2019 (PX5).

On November 1, 2019, Petitioner was seen by Dr. Templin at ION who noted that the injection provided "significant relief" as Petitioner rated his pain level at a 3/10 with no complaints of weakness or numbness nor leg pain. Dr. Templin noted that there was no need for surgery and recommended continued physical therapy and work restrictions (PX5).

On November 22, 2019, Petitioner was seen by Dr. Mohiuddin at ION who documented that the injection along with therapy and medication has provided a "complete resolution of radicular symptoms and significant improvement with functionality. He recommended continued physical therapy, medications, and work restrictions (PX5).

Petitioner was placed at MMI and discharged to work full duty on April 14, 2020 (PX2). Petitioner testified that when he was declared at MMI in April 2020 he had no more radicular pain, no numbness, and no localized pain in his low back. He felt ready to go back to work without restrictions. Petitioner testified that he went back to work for Respondent at his previous position of sous chef, performing the same duties as before the accident in a full duty capacity.

Petitioner sustained a second work injury on August 14, 2020, which is the subject of Case No. 20WC019731 for which a separate Findings of Fact and Conclusions of Law was issued. At the date of hearing, Petitioner testified that his pain remains at a 6-7/10. His lumbar and radicular pain affect his activities of daily life and he is seeking prospective surgery.

In support of his claim for prospective treatment in his other case, Dr. Salehi (Petitioner's own Section 12 examiner) compared "The May 12, 2019 accident most likely resulted in acute disc herniations at L4-5 and L5-S1, and the accident of August 14, 2020 resulted in further aggravation and worsening of the herniations at L4-5 and L5-S1" (PX11). Dr. Salehi had both MRI films that he reviewed in person. Regarding the two (2) MRIs, Dr. Salehi stated "[c]omparison of the two MRIs clearly shows worsening of the disc herniation at both L4-5 and L5-S1" (PX11).

CONCLUSIONS OF LAW

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

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

There was no evidence of any relevant prior medical history before the May 12, 2019 work accident. Petitioner testified that he was working full duty prior to his work accident. Petitioner credibly testified to an accident occurring on May 12, 2019 and the medical records clearly establish a subsequent injury to his low back that resolved on April 14, 2020 when Petitioner was placed at MMI and returned to work full duty.

Petitioner sustained another work injury to his low back on August 14, 2020. Petitioner's own Section 12 examiner, Dr. Salehi, opined that the "May 12, 2019 accident most likely resulted in acute disc herniations at L4-5 and L5-S1, and the accident of August 14, 2020 resulted in further aggravation and worsening of the herniations at L4-5 and L5-S1" (PX11).

Overall, the Arbitrator finds that, as a result of the May 12, 2019 accident, Petitioner sustained acute disc herniations at L4-5 and L5-S1 that were treated successfully with physical therapy and an injection. Petitioner's condition resolved as of his discharge on April 14, 2020

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the injury.

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

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." 820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959. "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b).

Under Section 8.1b(b)(i), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to

submit an impairment rating. It only requires that the Commission consider such a report if in evidence and regardless of which party submitted it. See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 140445WC, ¶ 17, 43 N.E.3d 556. Therefore, this factor is irrelevant, and the Arbitrator gives it no weight.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner is a sous chef whose job duties can include lifting items around 50 lbs. Petitioner returned to his work full duty following the May 12, 2019 accident. The Arbitrator therefore gives moderate weight to this factor to the benefit of Petitioner.

Under Section 8.1b(b)(iii), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 28 years old at the time of the accident and has many working years before him. The Arbitrator gives great weight to this factor to the benefit of Petitioner.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Petitioner returned to work with Respondent full duty following the May 12, 2019 accident and there was no evidence of diminished earing capacity. The Arbitrator gives little weight to this factor to the benefit of Respondent.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treating medical records, the Arbitrator gives moderate weight to this factor to the benefit of Petitioner. Petitioner's August 13, 2019 MRI showed findings of a "moderate size protruding disc at L5-S1 with central spinal stenosis" (PX3) and Dr. Salehi opined that the May 12, 2019 accident most likely resulted in acute disc herniations at L4-5 and L5-S1 (PX11). Petitioner underwent physical therapy and an injection. When Petitioner saw Dr. Mohiuddin on November 22, 2019 who noted that Petitioner had a "complete resolution of radicular symptoms and significant improvement with functionality" (PX5). Petitioner was placed at MMI and discharged to work full duty on April 14, 2020 (See PX2). Petitioner testified when he was released, he had no more radicular pain, no numbness, and no localized pain in his low back.

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 4.5% loss of the Man as Whole pursuant to §8(d)2 of the Act which corresponds to 22.5 weeks of permanent partial disability benefits at a weekly rate of $610.51

It is so ordered:

Arbitrator Rachael Sinnen

December 7, 2023

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC019731
Case Name	Prudencio Hernandez v. P.F. Chang's
Consolidated Cases	19WC020103;
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0539
Number of Pages of Decision	13
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Mario Encinas
Respondent Attorney	Daniel Artman

DATE FILED: 11/14/2024

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PRUDENCIO HERNANDEZ,

Petitioner,

vs. NO: 20WC019731

P.F. CHANG'S,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes a clarification as outlined below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

We clarify that the award of reasonable preoperative care includes the MRI prescribed by Dr. Salehi. Therefore, the Order section and the first paragraph on page 7 are modified to read:

> Respondent shall approve and pay for prospective medical care including the MRI prescribed by Dr. Salehi and the two level right sided lumbar microdiscectomies at L4-5 and L5-S1 including any necessary and reasonable pre-operative and post-operative care as prescribed by Dr. Rerri as provided in Section 8(a) and 8.2 of the Act.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 7, 2023 is hereby affirmed and adopted with the clarification noted above.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

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

November 14, 2024

SE/
O: 10/15/24
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/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC019731
Case Name	Prudencio Hernandez v. P.F. Chang's
Consolidated Cases	19WC020103;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Mario Encinas
Respondent Attorney	Daniel Artman

DATE FILED: 12/7/2023

/s/ Rachael Sinnen, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 5, 2023 5.19%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Prudencio Hernandez
Employee/Petitioner

v.

P.F. Chang's
Employer/Respondent

Case # **20** WC **19731**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **9.7.23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **8.14.20,** Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**52,910.87**; the average weekly wage was $**1,017.52**.

On the date of accident, Petitioner was **30** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**42,057.08** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**42,057.08**.

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

ORDER

Respondent to pay Petitioner directly for outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act, from Fullerton Drake Medical Center $25,643.93; Spine M.D. Limited $3,250.00; River North Pain Management $30,000.00; Lakeshore Surgery Physicians $3,000.00; and Delaware Physicians $825.00.

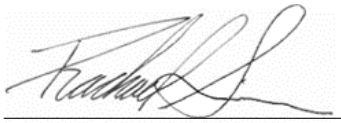
Respondent shall approve and pay for the two level right sided lumbar microdiscectomies at L4-5 and L5-S1 including any necessary and reasonable pre-operative and post-operative care as prescribed by Dr. Rerri as provided in Section 8(a) and 8.2 of the Act.

Respondent to pay Petitioner directly for 159 6/7 weeks of TTD benefits (August 15, 2020 through September 7, 2023) at a weekly rate of $678.35. The parties stipulated that Respondent is entitled to a credit of $42,057.08 in TTD benefits already paid.

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

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

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



Signature of Arbitrator

December 7, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Prudencio Hernandez,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 20WC019731
P.F. Chang's,	)	*consolidated with*
	)	Case No. 19WC20103
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on September 7, 2023 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing pursuant to Sections 19b/8a under the Illinois Workers' Compensation Act "Act." For Case No. 20WC019731 (date of accident August 14, 2020), issues in dispute include causation, unpaid medical bills, temporary total disability "TTD" and prospective medical. Arbitrator's Exhibit "Ax" 2.

Although the instant case is consolidated with Case No. 19WC20103 (date of accident May 12, 2019), a separate Findings of Fact and Conclusions of Law will be issued.

Job Duties

Petitioner testified that he was working as a sous chef for Respondent on the dates of accident, May 12, 2019, and August 14, 2020. As a sous chef, he is a food preparation expert who assists the head chef. He manages kitchen operations, staff, inventory, and supplies. His duties also include receiving deliveries of meat which sometimes come in frozen in boxes weighing up to 80 pounds.

Prior Medical Condition

Petitioner had previously suffered a low back injury on May 12, 2019 lifting a heavy pot at work, which is the subject of Case No. 19WC20103 for which a separate Findings of Fact and Conclusions of Law will be issued. An MRI showed "moderate size protruding disc at L5-S1 with central spinal stenosis" and Petitioner underwent a lumbar epidural steroid injection with intralaminar approach at L5-S1. (PX3,5). On November 22, 2019, Dr. Mohiuddin at ION documented that treatment provided "complete resolution of radicular symptoms" and Petitioner was placed at MMI and discharged to return to work full duty on April 14, 2020 (PX2, 5). Petitioner testified that when he was declared at MMI in April 2020 he had no more radicular pain,

no numbness, and no localized pain in his low back. He returned to work for Respondent as a sous chef in a full duty capacity without issue.

Accident of August 14, 2020

Petitioner was unloading a heavy box of frozen meat. He was holding it with both hands, moving it from one place to another. As he was twisting, moving the box, the box broke and as he was trying to catch the falling meat, he twisted and felt a sharp pain in his low back.

Summary of Medical Records

On the same day of the accident, August 14, 2020, Petitioner presents to Northshore University Hospital and is diagnosed with acute right sided low back pain with sciatica. He was prescribed RICE (rest, ice, compression, and elevation), over the counter medications, Medrol Dosepak, Flexeril and he told to follow up with a doctor (PX3A).

On August 17, 2020, Petitioner presents to Fullerton Drake Medical Center and is diagnosed with a lumbar spine sprain. Petitioner was referred for an MRI, taken off of work, prescribed physical therapy, a back brace, and TENS/EMS for pain control (PX4A). Petitioner begins physical therapy at Fullerton Drake Medical Center on August 30, 2020. (PX4A).

On September 13, 2020, Petitioner underwent an MRI that showed: "1. Shallow disc osteophyte complex with a large superimposed posterior central/right paracentral disc extrusion at L5-S1 causing moderate central and bi-foraminal stenosis with compression of right S1 traversing nerve root and contacting of left S1 nerve root; 2. Shallow disc osteophyte complex with smaller superimposed right paracentral disc extrusion and facet arthropathy at L4-L5 causing mild multifactorial central and bi-foraminal stenosis and compression of traversing right L5 nerve root." (PX5A).

On September 17, 2020, Petitioner underwent an EMG/NCV at Spine M.D. Limited showing moderately severe acute right L5 and S1 radiculopathy (PX6).

On September 24, 2020, Petitioner presented to Dr. Axel Vargas at River North Pain Management who recommends physical therapy, bracing, cryotherapy, NSAIDS, analgesics, muscle relaxers, keeps Petitioner off of work and recommends a series of bilateral L4-5, L5-S1 transforaminal epidural steroid injections/selective nerve root blocks due to radicular complaints (PX7). The injections/blocks are performed by Dr. Vargas on October 2, 2020 and November 20, 2020. (PX7, 8, 9).

On December 3, 2020, Petitioner returns to Dr. Vargas who diagnoses Petitioner with L4-5, L5-S1 herniated discs and lower back pain syndrome. Petitioner reported his pain at level 6-7/10 along with radicular complaints. Dr. Vargas recommends a third and final bilateral L4-5, L5-S1 transforaminal selective nerve root blocks, physical therapy, medications and off of work status (PX7). This third injection/block is performed by Dr. Vargas on December 18, 2020. (PX7, 8, 9).

On January 14, 2021, Petitioner returns to Dr. Vargas and documents no tangible improvement after three (3) transforaminal epidural injections/selective nerve root blocks. Dr. Vargas recommends physical therapy, medications, off work status, and refers for surgical consultation (PX7).

Petitioner continues physical therapy at Fullerton Drake Medical Center. (PX4A).

On April 7, 2021, Petitioner presented to Dr. Bernard Rerri at Delaware Physicians who diagnoses Petitioner with right sided extruded discs at L4-5 and L5-S1 with lumbar radiculopathy. He recommends continued medication, off work status, physical therapy, and a right L4-5 and right L5-S1 hemilaminectomy and decompression. Petitioner returns to Dr. Rerri on February 23, 2022 and his recommendation remain the same. (PX10).

Medical records from Fullerton Drake Medical Center show that Petitioner attended physical therapy through March 2, 2022. (PX4A).

Medical Opinions of Dr. Sean Salehi

On October 17, 2022, Petitioner presented to Dr. Sean Salehi as Petitioner's own Section 12 examiner. Dr. Salehi diagnosed Petitioner with a moderate to large right L4-5 herniation and a large central to right paracentral herniation at L5-S1 (PX11). He goes on to say that "it appears that the patient had significant improvement with the appropriate conservative treatment from the accident of May 12, 2019. This resolved his leg pain and decreased his lower back pain to a significant degree so that he was able to return to his regular job duties" (PX11). Prior to the May 12, 2019 accident there was no history of a pre-existing condition (PX11). "The May 12, 2019 accident most likely resulted in acute disc herniations at L4-5 and L5-S1, and the accident of August 14, 2020 resulted in further aggravation and worsening of the herniations at L4-5 and L5-S1" (PX11). Dr. Salehi had both MRI films that he reviewed in person. Regarding the two (2) MRIs, Dr. Salehi stated "[c]omparison of the two MRIs clearly shows worsening of the disc herniation at both L4-5 and L5-S1" (PX11). A record review shows that Petitioner has received conservative treatment in the form of physical therapy, medications, home exercise program and a series of three lumbar injections without providing relief of symptoms. "The medical work-up and treatments to date have all been medically reasonable and necessary" (PX11).

Dr. Salehi's treatment recommendations for Petitioner's condition were that "patient requires a two level right sided lumbar microdiscectomies at L4-5 and L5-S1 given the partial foot drop and significant radicular complaints. He does require a new MRI before any surgery" (PX11). After the recommended surgery is performed, Petitioner would begin physical therapy no sooner than 3 weeks post-op for a period of 4-6 weeks (PX11). After finishing the physical therapy, Petitioner would be able to work light duty with no lifting over 20 pounds, no pushing or pulling over 35 pounds, no repetitive bending or twisting at the waist, and alternating between sitting and standing every 45 minutes (PX11). Petitioner would then begin a work conditioning program lasting from 2-4 weeks, 5 days a week followed by a functional capacity evaluation to be completed no sooner than 4 months post-operatively (PX11). Petitioner would be at maximum medical improvement upon completion of the FCE (PX11).

Medical Opinions of Dr. Julie Wehner

Petitioner was examined on April 14, 2021 by Dr. Julie Wehner as Respondent's Section 12 examiner. For her initial report dated April 14, 2021, Dr. Wehner did not have any medical records from the May 2019 accident with the exception of the MRI report from Vista Medical Center dated August 13, 2019. (RX2, Exh 2, p. 2). Dr. Wehner diagnosed Petitioner with "back pain and right leg pain with some numbness and tingling with associated disc abnormalities of herniations at L4-L5 and L5-S1." Dr. Wehner was unable to state whether or not the work injury of August 14, 2020 was causally connected to Petitioner's current condition without reviewing the prior medical records (RX2). She could not state whether or not this accident aggravated a pre-existing condition or not due to not having the prior records and prior MRI disc to review. (RX2, Exh 2, p. 4).

Dr. Wehner was given additional medical records and she authored an addendum report of A August 16, 2021. She was still not given the actual MRI disc of the August 13, 2019 lumbar spine MRI. In her report, her diagnosis changed to "chronic low back pain, that being back pain over six months. He had some questionable radicular complaints, but on my exam was noted to have bilateral leg pain and negative straight leg raising, not indicative of a disc herniation as the cause of his specific pain" (RX2, Exh 3, p. 2).

Regarding causation, Dr. Wehner notes that "[b]ased on the information I have available today, he had a preexisting back pain and radicular pain and had been treated with injection treatment and physical therapy prior to this. I have not been able to review the exact records to discern the entirety of his previous treatment" (RX2, Exh 3, p. 2).

Dr. Wehner did not recommend surgical intervention noting that Petitioner was morbidly obese and would be at significant risk for complications related to the surgery such as DVT and PE's. She further noted that Petitioner's "negative straight leg raising would portend towards a poor result for any type of treatment for a herniated disc" (RX2, Exh 3, p. 3).

With regards to past treatment, Dr. Wehner opined that 6 months of physical therapy without any documentation of evidence of progress was not medical necessary nor was the EMG. Dr. Wehner did opine that the injection was reasonable. (RX2, Exh 2).

Regarding Petitioner's work status, Dr. Wehner noted "[b]ased on a work incident of 08/14/20, he is able to return to work at full duty" (RX2). "The work incident of 08/14/20 was a manifestation of his preexisting condition. There was no work injury of 08/14/20 that requires any type of restrictions" (RX2, Exh 3, p. 3).

Medical Opinions of Dr. Carl Graf

Dr. Carl Graf performed a record review on behalf of Respondent and never actually saw the Petitioner in person. He diagnoses the Petitioner with "a lumbar disc herniation at L4/5 and L5/S1. He had initial improvement with conservative care and was released after the initial work injury in 2019. It does appear that he had a subsequent exacerbation of pain and MRI findings consistent with another disc herniation following the second date of injury on 8/14/20" (RX3).

Dr. Graf's causation opinion was that "given the medical records provided, Mr. Hernandez did not have any care or treatment for approximately 6 weeks following the claimed injury in question" (RX3). "There is a question if he initially went to the ER following the claimed injury, but I do not have those medical records. Given the records provided with no care and treatment 6 weeks following the claimed injury in question, I am unable to causally connect the above diagnosis to the claimed injury in question" (RX3).

Regarding treatment, Dr. Graf states "in my opinion the care and treatment has been prolonged in nature. Further, Mr. Hernandez was recommended a new MRI, which in my opinion would be considered reasonable" (RX3). "Depending on the results of this MRI, the proposed lumbar surgery may be warranted, though a personal evaluation and physical examination would be preferred" (RX3). Regarding work, Dr. Graf states "given my causation opinion, Mr. Hernandez has no work-related restrictions" (RX3). Finally, regarding MMI, Dr. Graf states "in my opinion, given my causation opinion, MMI is not applicable" (RX3).

Surveillance Footage & Report

The length of the video is "25 minutes and 20 seconds of which 18 minutes and 1 second of which depict claimant activity" (RX1). At 0:28 Petitioner is seen standing at a car with the door open; he then shuts the door and walks to the back of the car. At the back of the car, he opens the trunk, places an item from his left hand into the car and shuts the truck. That sequence ends at 0:50 (22 seconds have elapsed). Starting at 0:50, Petitioner is seen sitting inside of the vehicle. At 3:15, Petitioner drives away (2 minutes and 25 seconds have elapsed). From 5:28 to 22:44 (17 minutes and 16 seconds) Petitioner is seen crouching, bending, standing, walking. Petitioner is painting a brake caliper. He uses a spray can in order to degrease the caliper and then to paint it. He is seen walking to the back of the car, opening the trunk, grabbing a small box.

Petitioner's Current Condition

Petitioner testified that the medical treatment that he has received from the date of accident to the present has not resolved his complaints. His pain remains at a 6-7/10. His lumbar and radicular pain affect his activities of daily life. He has difficulty sleeping, bathing, dressing, etc. His wife handles most of the household chores. Petitioner and his wife live with Petitioner's stepson who provides the income for the household. When asked about the proposed surgery, Petitioner stated that he would like to proceed with the surgery to help resolve his symptoms.

CONCLUSIONS OF LAW

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

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

The Arbitrator relies on the opinions of Petitioner's treaters as well as Dr. Salehi. Dr. Salehi, who had both MRI films gives credible and persuasive opinions regarding Petitioner's diagnosis, causation, reasonableness of treatment to date, work status and need for prospective medical care. Dr. Salehi's opinions are corroborated by the opinions of Petitioner's treaters including those of Dr. Rerri. Respondent's experts, Drs. Graf and Wehner had incomplete information and, as a result, the Arbitrator does not find their opinions to be reliable.

The surveillance video that Respondent introduced of Petitioner does not defeat his claim. Petitioner is never seen lifting anything heavy, is not seated or standing for longer than a few minutes. When Petitioner is seen walking, he walks approximately a six-to-ten-foot distance and is seen with an altered gain and limping.

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the injury.

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

Having found causal connection for Petitioner and having found the opinions of Drs. Rerri and Salehi to be more credible than the opinions of Drs. Wehner and Graf, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to Sections 8(a) and 8.2 of the Act and Perez v. Illinois Workers' Compensation Comm'n, 2018 IL App (2d) 170086WC, ¶ 17, 96 N.E.3d 524.

- Fullerton Drake Medical Center $25,643.93;
- Spine M.D. Limited $3,250.00;
- River North Pain Management $30,000.00;
- Lakeshore Surgery Physicians $3,000.00; and
- Delaware Physicians $825.00

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Having found causal connection for Petitioner and having found the opinions of Drs. Rerri and Salehi to be more credible than the opinions of Drs. Wehner and Graf, the Arbitrator finds that Petitioner is entitled to prospective medical care.

Respondent shall approve and pay for the two level right sided lumbar microdiscectomies at L4-5 and L5-S1 including any necessary and reasonable pre-operative and post-operative care as prescribed by Dr. Rerri as provided in Section 8(a) and 8.2 of the Act.

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

The parties stipulate that Petitioner is entitled to TTD benefits from August 15, 2020 through October 22, 2021. Respondent disputes TTD from October 23, 2021 through date of trial (September 7, 2023) and ongoing. AX2. Having found causal connection for Petitioner and having found the opinions of Drs. Rerri and Salehi to be more credible than the opinions of Drs. Wehner and Graf, the Arbitrator finds Respondent liable for 159 6/7 weeks of TTD benefits (August 15, 2020 through September 7, 2023) at a weekly rate of $678.35 to be paid directly to Petitioner. The parties stipulated that Respondent is entitled to a credit of $42,057.08 in TTD benefits already paid. AX2.

It is so ordered:

Arbitrator Rachael Sinnen

December 7, 2023

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	05WC056531
Case Name	Peggy Evans v. Gibson Electric & Technology Solutions
Consolidated Cases	
Proceeding Type	***Remand from the Appellate Court***
Decision Type	Commission Decision
Commission Decision Number	24IWCC0540
Number of Pages of Decision	4
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Stuart Galesburg, David Menchetti
Respondent Attorney	Paul Coghlan

DATE FILED: 11/15/2024

/s/Amylee Simonovich,Commissioner

Signature

24IWCC0540

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Peggy A. Evans,

Petitioner,

vs. NO: 05 WC 56531

Gibson Elec. & Tech. Solutions,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission following the remand order of the Illinois Appellate Court First District instructing the Commission to address the issue of maintenance benefits from November 2, 2006, through April 29, 2007. The Commission, after considering the issue of maintenance benefits, modifies the Decision of the Arbitrator, and modifies its June 30, 2021, Decision and Opinion on Review (21 IWCC 331) for the reasons stated below.

Findings of Fact

I. Procedural History

The Arbitrator filed an Arbitration Decision on February 21, 2017. The Arbitrator found a compensable accident occurred on July 14, 2004. The Arbitrator further found Petitioner's condition of ill-being is causally related to the work accident, and determined Petitioner reached maximum medical improvement (MMI) on November 2, 2006. The Arbitrator awarded temporary total disability (TTD) benefits from July 15, 2004, through April 29, 2007, a period of 145-4/7 weeks. Finally, the Arbitrator determined Petitioner sustained a 5% loss of the right and left hands and 40% loss of the whole person due to the work accident.

Petitioner filed a Petition for Review. In its June 30, 2021, Decision, the Commission clarified that Petitioner did not sustain a psychological injury due to the work accident. The Commission also corrected the Arbitrator's calculation of the permanency award regarding Petitioner's hands. The Commission otherwise affirmed the Arbitration Decision. Petitioner then filed for administrative review of the Commission Decision in the Circuit Court, and the judge confirmed the Decision in its entirety.

Petitioner then appealed to the Appellate Court. In its October 23, 2023, order, the Appellate Court vacated the award of TTD benefits after November 1, 2006. The court also ordered the Commission to determine whether Petitioner is entitled to maintenance benefits from November 2, 2006, through April 30, 2007. The Appellate Court otherwise affirmed the Commission Decision.

II. Facts

The facts of the case were thoroughly addressed in the Arbitration Decision and the Appellate Court's order. The Commission adopts the previously established findings of fact, including those regarding Petitioner's job search efforts from November 2, 2006, through April 30, 2007.

III. Conclusions of Law

Based on the above, and pursuant to the order of the Appellate Court, the Commission modifies its June 30, 2021, Decision. The Commission finds Petitioner has proven her entitlement to maintenance benefits from November 2, 2006, through April 29, 2007, a period of 25-4/7 weeks.

Pursuant to Section 8(a) of the Act, an employer must pay for treatment, instruction, and training necessary for the "physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental hereto." However, an employer must pay maintenance benefits only while the claimant engages in vocational rehabilitation. *See, e.g., W.B. Olson, Inc. v. Ill. Workers' Comp. Comm'n*, 2012 IL App (1st) 113129WC. Vocational rehabilitation may include services such as counseling for job searches, supervised job search programs, and vocational retraining programs. Illinois courts have determined that a claimant's self-directed job search may also constitute vocational rehabilitation. *See Euclid Bev. v. Ill. Workers' Comp. Comm'n*, 2019 IL App (2d) 180090WC at ¶ 30.

Petitioner did not submit any job search logs or other physical evidence regarding her job search activities. However, the credible evidence shows Petitioner engaged in a meaningful job search during the relevant period. While Petitioner obtained her license to sell real estate in May 2004, she did not work as a real estate agent before the work accident. It is undisputed that Petitioner did not work from July 14, 2004, through April 29, 2007. The credible evidence shows that after reaching MMI on November 2, 2006, Petitioner searched for work as a realtor. While her independent job search is not documented, the independent contractor agreement Petitioner entered into with Schleder Realty on April 30, 2007, is evidence of her successful job search. Petitioner also testified that she agreed to work as an independent contractor for KG Realty in 2007. Petitioner's orthopedic doctor confirmed that Petitioner was physically capable of working as a realtor. Given the totality of the evidence, the Commission finds Petitioner is entitled to maintenance benefits from November 2, 2006, through April 29, 2007, a period of 25-4/7 weeks.

Pursuant to the Appellate Court's order, Petitioner is entitled to $110,880.00 in TTD benefits from July 15, 2004, through November 1, 2006, a period of 120 weeks. The parties stipulated that Respondent previously paid $124,734.41 in TTD benefits. Thus, Respondent is entitled to a credit for an overpayment of TTD benefits in the amount of $13,854.41. This overpayment shall be applied toward the maintenance benefits awarded herein.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $924.00/week for 120 weeks, commencing July 15, 2004, through November 1, 2006, as provided in Section 8(b) of the Act. Per stipulation by the parties, Respondent previously paid $124,734.41 in TTD benefits. The $13,854.41 overpayment in TTD benefits shall be applied to the award of maintenance benefits.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner maintenance benefits of $924.00/week for 25-4/7 weeks, commencing November 2, 2006, through April 29, 2007, as provided in Section 8(a) of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $9,900.00. 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 15, 2024
d: 9/24/24
AHS/jds
51

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC019627
Case Name	William Ruble v. The American Coal Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0541
Number of Pages of Decision	18
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Julie Webb, Kenneth Werts

DATE FILED: 11/15/2024

/s/Carolyn Doherty,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ 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

William Ruble,

Petitioner,

vs. NO: 19 WC 19627

The American Coal Company,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, occupational disease, permanent partial disability, and legal error, evidentiary error, disablement under Section 1(d) – Section 1(f), and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 26, 2024 is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the

Commission. 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 15, 2024

O: 11/07/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC019627
Case Name	William Ruble v. The American Coal Company
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Kenneth Werts

DATE FILED: 3/26/2024

/s/William Gallagher, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 26, 2024 5.105%

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

William Ruble
Employee/Petitioner

v.

The American Coal Company
Employer/Respondent

Case # 19 WC 19627

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on February 13, 2024. 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 Sections 1(d)-(f) of the Occupational Diseases Act

FINDINGSFS

On August 18, 2017, Respondent was operating under and subject to the provisions of the Act.

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

On this date, Petitioner did not sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $63,761.88; the average weekly wage was $1,226.19.

On the date of accident, Petitioner was 57 years of age, married with 0 dependent child(ren).

Petitioner claims no medical.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

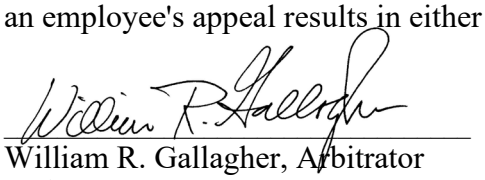
Respondent is entitled to a credit of $0.00 paid under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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

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



William R. Gallagher, Arbitrator
ICArbDec p. 2

March 26, 2024

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an occupational disease to his lungs, heart, pulmonary system and respiratory tracts. The Application alleged a date of last exposure of August 18, 2017, and that Petitioner sustained the occupational disease as a result of inhalation of coal mine dust including, but not limited to, coal dust, rock dust, fumes & vapors for a period in excess of 16 years.

At the time of trial, Petitioner was 63 years old. Petitioner was a high school graduate. Petitioner worked for approximately 16 years in coal mining with all of that time being underground. Petitioner's last day in the coal mine was August 18, 2017, for Respondent at the New Future Portal. Petitioner testified that his job classification was examiner. He testified that he was exposed to coal dust on that date. Petitioner testified that in addition to coal dust he was also exposed to roof bolting glue fumes during his coal mining career. Petitioner testified that he did not have any employment after coal mining.

Petitioner started his coal mining career around 1991 with Black Beauty which was taken over by Peabody. He was hired as a general laborer. His job duties included shoveling coal that had fallen off the belts back on to the belts. He testified that same was a dusty job. He also worked in timbering, which meant he built supports to hold up the roof with large timbers. Petitioner also ran the continuous miner machine, roof bolter and ram car. He testified that the miner cuts the coal out of the face of the mine. He testified that same was a dusty job. The ram car takes the coal from the face of the mine and hauls it to the belt. Petitioner was also a roof bolter. In that job he would drill a hole in the roof of the mine and put in glue and a bolt to help support the roof of the mine. He testified that glue tubes were put into the hole first and then the bolt was inserted and as it was spun into place it mixed the glue so it would set. He testified that when the glue tube broke, it had an odor. Petitioner worked as a laborer for about four years and then he got his examiner papers. As an examiner he walked the mine everywhere and made sure everything was in order and that it was safe. His responsibility was to make sure the mine would pass inspections. He was an examiner for the rest of his mining career. He was in all areas of the mine and was exposed to all the different exposures that a mine would have. He worked at Black Beauty for five or six years. The company then opened a different portal by a different name and he worked there until around 1997. Petitioner testified that he took a break from mining. He drove a truck for a while delivering to restaurants for Sygma. Petitioner returned to coal mining in 2002 for Respondent as an examiner. His job as an examiner at Respondent was similar to what he described at Black Beauty. He stayed there until he left the mine on August 18, 2017.

Petitioner testified that it was a good question as to when he first noticed shortness of breath in the mines. He testified that he would get to huffing and puffing. He testified that from the time he first noticed those problems by the time he left the mine, his problems got worse. He testified that since leaving the mine and up until the time of arbitration his problems have kept getting worse. Petitioner testified that he could walk on level ground at a normal pace for a block and a half before becoming short of breath. Petitioner testified that he does not like stairs. He testified that he has a wired up back and his back also affects his activities. Petitioner testified that his breathing was affecting his daily living. He testified that his wife mows the yard. Petitioner testified that he used to cut wood all winter long because he heats with wood. He testified that because of his breathing problems he would not even try cutting wood now. He testified that the last time he tried cutting wood was probably eight or

ten years ago. Petitioner testified that he piddles around a little bit with gardening, but it is nothing major because of his breathing. He testified that he does not ride a bicycle anymore because of his shortness of breath and also because he has had two major surgeries on his back. He testified that for his breathing he treats with Tamara Copeland. He testified that she gives him a prescription to help his breathing and he is also tested every six months to see how he is deteriorating. Petitioner testified that Ms. Copeland has prescribed Symbicort and Albuterol. He testified that he also sees a heart doctor in Mt. Vernon. He testified that he is seeing a doctor a few days after arbitration because he has an aneurysm in his aorta. Petitioner testified that he takes two puffs of the Symbicort twice a day and that he never leaves home without the Albuterol. Petitioner testified that he uses the emergency inhaler.

Petitioner testified that he is a very light smoker. He testified that he can make a pack of cigarettes last three to four days. He has been smoking since he was 18 to 20 years old. He testified that he has always smoked at about that level. Petitioner testified that he has had two hernia surgeries and two major back surgeries. He has also had five eye surgeries including removing cataracts. Petitioner testified that he takes losartan for high blood pressure, a heart pill and pantoprazole for acid reflux.

Petitioner testified that the mine where he worked for Respondent was closed down when he left work at Respondent on August 18, 2017. He did not look for work after he left coal mining and has not worked since then. He testified that he would have reported for his next shift at the coal mine if they had not closed. Petitioner testified that he collected unemployment as long as he could after he left coal mining. Petitioner testified that his primary care physician is at Christopher Rural Health.

Petitioner testified that over the years when he was employed as a coal miner he had an opportunity to undergo chest x-ray screening by NIOSH for black lung. He testified that he underwent such screening quite a few times. He testified that they did it at least every five years. He testified that after they did the chest x-ray, they would send him a report. He testified that he never really paid that much attention to it. He did not bring any of those reports with him to Arbitration. Petitioner testified that in November 2020 he had a fusion from L3 to S1. In that same timeframe he also had surgery on his back where they went in from his side and added two inches to his back. He testified that presently he spends a lot of his day watching TV. He testified that he tries to exercise every day. He tries to walk every day. He testified that he walks around the block and makes it so far and then stops and talks with his buddy and then walks home again. He testified that he might ride around a little bit in the car just to get out of the house. He testified that he goes up town and drinks coffee with the boys. He testified that he and his wife do not travel. He testified that his only hobby is collecting die cast cars.

Dr. Suhail Istanbouly is a physician who specializes in pulmonary, critical care and sleep medicine. Dr. Istanbouly worked in southern Illinois from April, 2003 until April, 2019. During his time in southern Illinois, he worked at the Black Lung Clinic. Dr. Istanbouly maintains a satellite clinic in southern Illinois and is there once a month for 2 days (Petitioner's Exhibit 1, pp 4-5). Dr. Istanbouly testified that when he was in southern Illinois between inpatient and outpatient 10% to 20% of his practice was the care and treatment of miners or former coal miners. Dr. Istanbouly testified that he performed and interpreted pulmonary function tests. He also interpreted chest x-rays himself. Dr. Istanbouly testified that he is not a B-reader. Dr. Istanbouly presently practices at Hines VA in Chicago (Petitioner's Exhibit 1, pp 4-6).

Dr. Istanbouly examined Petitioner on September 16, 2019. Dr. Istanbouly saw Petitioner one time at his attorney's request for a workup for his state black lung claim. Dr. Istanbouly testified that for many years he performed five to seven such examinations a month always at the request of a claimant's attorney. He still comes to Southern Illinois for two days each month and he sets aside one of those days to perform the type of examinations he performed on Petitioner (Petitioner's Exhibit 1, pp 7, 22-23).

Dr. Istanbouly testified that Petitioner worked as a coal miner for a total of 16 years, all of them underground. In his last year of employment Petitioner was a mine examiner. Petitioner had mild breathing problems, exertional dyspnea in the last year of his coal mine employment, but he quit because the mine shut down. He had planned to work for one to two more years. Petitioner did not recall being diagnosed with asthma or COPD in the past although he had been treated with inhaled bronchodilators in the past but nothing recently (Petitioner's Exhibit 1, pp 8-9).

According to Dr. Istanbouly's report, Petitioner had been coughing on a daily basis for years. The cough was moderate in intensity and sometimes severe. The cough was more prominent in the morning. The cough was triggered by strenuous activities. The cough was productive of abundant thick white-yellowish sputum, half a cup average per day. Petitioner complained of nocturnal dyspnea on an average of twice per week, which had been going on for a few years. He also reported exertional dyspnea. He would get short of breath by walking a half a block or less. There had been no significant change over the prior 6 months. Petitioner also complained of chest tightness and wheezing. He complained of runny nose which was perennial rather than seasonal (Petitioner's Exhibit 1, pp 9-10).

Dr. Istanbouly testified that the spirometry performed as part of his examination revealed moderately severe obstructive defect and an FEV1 of 2.32 liters (59% of predicted), FVC of 5.05 liters (98% of predicted) and an FEV1/FVC of 46%. Dr. Istanbouly reviewed a chest x-ray taken on June 7, 2019, which revealed mild bilateral interstitial changes involving the mid and lower lung zones with a profusion of 1/0 per the B-reader, Dr. Henry Smith. Dr. Istanbouly noted that Petitioner was a smoker. At that time he was smoking six to eight cigarettes per day and he smoked the same average for a total of 30 years. He had no history of alcohol abuse or drug abuse (Petitioner's Exhibit 1, pp 10-11).

Dr. Istanbouly testified that on examination Petitioner's lungs had reduced air entry bilaterally. There was no wheezing or rales. Dr. Istanbouly's assessment was simple coal worker's pneumoconiosis related to long term coal dust inhalation and chronic obstructive pulmonary disease/chronic bronchitis GOLD Stage II related equally to long term coal dust inhalation and smoking. Dr. Istanbouly testified that Petitioner's long term coal dust inhalation was a significant contributing factor to his chronic respiratory symptoms, cough, sputum production, wheezing and exertional and nocturnal dyspnea in addition to the abnormality on his pulmonary function testing and chest x-ray. Dr. Istanbouly testified that it was advisable for Petitioner to avoid any further coal dust inhalation to prevent the progression of his pulmonary diseases (Petitioner's Exhibit 1, pp 11-12).

Dr. Istanbouly testified that if COPD, chronic cough and difficulty breathing were in the treatment record as a diagnosis that would be consistent with his findings. He testified that he did not test for reactive airways disease or asthma (Petitioner's Exhibit 1, p 17). Dr. Istanbouly testified that he could not say that all miners with 30 or so years of exposure get coal worker's pneumoconiosis, but a

significant percentage of them will get some degree of coal worker's pneumoconiosis. Dr. Istanbouly testified that a miner could have radiographic abnormalities of coal worker's pneumoconiosis on his chest x-ray, but just not have enough to be positive for coal worker's pneumoconiosis. He testified that a negative chest x-rays is not enough to rule out coal worker's pneumoconiosis (Petitioner's Exhibit 1, p 20).

Dr. Istanbouly testified that Petitioner reported to him no past history of respiratory disease. He was not sure if Petitioner related mild breathing problems. Petitioner did have exertional dyspnea and would get short of breath walking a half a block or less. That was not mild according to Dr. Istanbouly (Petitioner's Exhibit 1, p 23). Dr. Istanbouly testified that Petitioner did not tell him that he left mining due to an inability to complete the duties of his job or the diagnosis of respiratory disease. Dr. Istanbouly testified that Petitioner related to him cough more prominent in the morning. He testified that such cough is sometimes referred to as smoker's cough. The only trigger that Petitioner could identify for his cough was exertion, not smoke, dust or fumes (Petitioner's Exhibit 1, pp 23-24).

Dr. Istanbouly testified that Petitioner had a significant smoking history. He testified that such a history can be associated with cough, sputum, dyspnea on exertion and COPD. Dr. Istanbouly testified that persisting in a smoking habit would likely cause a progression of Petitioner's symptoms and his disease. Dr. Istanbouly testified that according to the history he obtained from Petitioner of smoking six to eight cigarettes per day for a total of 30 years, his smoking history was less than 20 pack years. Dr. Istanbouly testified that this was the history Petitioner provided to him on the day of his examination. Dr. Istanbouly has not reviewed any treatment records regarding Petitioner (Petitioner's Exhibit 1, pp 24-25). Dr. Istanbouly testified that Petitioner's smoking history would not be considered significant because it is less than 20 packs per years. He testified that Petitioner's smoking history is definitely a contributing factor to his cough, sputum, dyspnea on exertion and COPD. Dr. Istanbouly testified that if Petitioner continued to smoke it would be injurious to his health (Petitioner's Exhibit 1, pp 24-25). Dr. Istanbouly testified that he would expect a decline in Petitioner's pulmonary function over time if he continued to smoke. Dr. Istanbouly testified that he questioned Petitioner about his alcohol consumption and whether he suffered from alcohol abuse. He testified that alcohol consumption would not cause any lung damage. Dr. Istanbouly testified that he recorded that there was no alcohol abuse based upon what Petitioner told him. Dr. Istanbouly testified that for him to consider it alcohol abuse there would need to be heavy alcohol consumption. He would describe heavy as being on a daily basis, binge drinking more than 3 drinks per day. Dr. Istanbouly testified that more than 3 drinks a day would be heavy alcohol use (Petitioner's Exhibit 1, pp 26-27).

Dr. Istanbouly testified that Petitioner suffered from perennial runny nose. He testified that same could be a contributing factor to Petitioner's cough. Dr. Istanbouly testified that there are causes for dyspnea on exertion other than respiratory disease. He testified that those would include heart disease and deconditioning. Dr. Istanbouly was not sure what Petitioner had done since he left the coal mine to stay physically fit (Petitioner's Exhibit 1, pp 27-28). Dr. Istanbouly testified that the reference to GOLD standard in spirometry stands for Global Initiative on Obstructive Lung Disease. Dr. Istanbouly testified that he was not sure whether the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition* followed the GOLD guideline for respiratory impairment (Petitioner's Exhibit 1, pp 28-29).

Dr. Istanbouly testified that when he met with Petitioner he reviewed the chest x-ray taken on June 7, 2019, along with the interpretation of that study by Dr. Henry K. Smith. Dr. Istanbouly has not seen any other chest imaging or interpretation of chest imaging other than the one film and Dr. Smith's interpretation. Dr. Istanbouly is neither an A nor B-reader of films. Dr. Istanbouly does not provide profusion ratings on the films he interprets for black lung. When he interprets a film for black lung, he determines whether the film is positive or negative for same, and if it is positive, he classifies what he sees as mild or early pneumoconiosis, moderate or severe. He characterized what he saw on Petitioner's chest x-ray as mild to early pneumoconiosis. Dr. Istanbouly could not say whether the chest x-ray he reviewed had a profusion of 1/0 or 0/1. Dr. Istanbouly did not do a side-by-side reading of that film using the standard ILO films (Petitioner's Exhibit 1, pp 29-30). Dr. Istanbouly testified that one must be a susceptible host to develop coal worker's pneumoconiosis. Dr. Istanbouly testified that not all coal miners develop coal worker's pneumoconiosis (Petitioner's Exhibit 1, p 30).

Dr. Henry K. Smith interpreted Petitioner's chest x-ray of June 7, 2019. He interpreted same as positive for pneumoconiosis with profusion 1/0 with P/P opacities in the mid and lower lung zones bilaterally. Dr. Smith is a board certified radiologist and NIOSH B-reader (Petitioner's Exhibit 2).

Dr. Cristopher Meyer reviewed a chest x-ray of Petitioner dated June 7, 2019, from Harrisburg Medical Center. He also reviewed a chest x-ray dated September 10, 2020, from Franklin Hospital. Dr. Meyer reviewed a chest CT scan from Barnes-Jewish Hospital dated May 25, 2016. Dr. Meyer testified that both chest radiographs were Quality 1 (Respondent's Exhibit 1, p 40). Dr. Meyer testified that there is no formal diagnostic quality scale for CT scans of the chest. He testified that this particular CT was done at relatively thin sections. It was 3 millimeter slice thickness and 2 millimeter increments. Dr. Meyer testified that same was not quite high resolution, but it was sufficient for determining the presence or absence of coal worker's pneumoconiosis (Respondent's Exhibit 1, pp 40-41). Dr. Meyer testified that the x-ray of June 7, 2019, was essentially normal. The lungs were clear and there were no radiographic findings of coal worker's pneumoconiosis. With regard to the follow up examination of September 10, 2020, there was no change from the June 7, 2019, chest x-ray. The September 20, 2020, exam was also normal with no radiographic findings of coal worker's pneumoconiosis. Dr. Meyer testified that the chest CT was also normal. He testified that there were no centrilobular or perilymphatic nodules. There were no large opacities. The lungs were clear without emphysema or pleural abnormalities and there was no adenopathy. Dr. Meyer's impression was no CT findings of coal worker's pneumoconiosis (Respondent's Exhibit 1, pp 41-42). Dr. Meyer testified that CT scans of the chest are diagnostic for parenchymal changes and are more sensitive, meaning they are able to detect lesser amounts of disease than chest radiographs. He testified that currently in working up any type of interstitial lung disease, chest CTs are the gold standard (Respondent's Exhibit 1, p 90).

Dr. Meyer has been board certified in radiology since 1992 (Respondent's Exhibit 1, p 7). Dr. Meyer was asked to take the B-reading exam by Dr. Jerome Wiot who was part of the original committee that designed the teaching course which is called the B-reader program (Respondent's Exhibit 1, p 19-21). Dr. Meyer testified that there are several ways to study for the B-reader examination. He testified that there is a course module that contains a whole series of films that NIOSH will send or the American College of Radiology runs a B-reading course (Respondent's Exhibit 1, p 31). Dr. Meyer has participated in the course previously in studying for the examination and was recently asked to have a more active academic role in creating the new syllabus, and designing the new B-

reader exam. Dr. Meyer is currently co-director of the ACR B-reader course. He testified that as a member of the ACR Pneumoconiosis Task Force, he helped complete a new syllabus for the course as well as the test that was delivered to NIOSH in 2017 (Respondent's Exhibit 1, pp 31-32).

Dr. Meyer testified that the B-reading training course is a weekend training course in which there are a series of lectures describing the B-reading classification system. The course participants will then review a series of practice examples with mentors overseeing the practice examples. Dr. Meyer testified that the faculty for the course is typically experienced senior level B-readers who have been involved in the process for quite some time (Respondent's Exhibit 1, pp 32-33). Dr. Meyer testified that typically after one takes the B-reading course, he takes the B-reading exam. He testified that the certifying exam is six hours long with 120 chest x-rays to be categorized. The pass rate for that examination ran roughly 60%. The current exam is 24 multiple choice questions and 72 cases in five hours (Respondent's Exhibit 1, pp 33-34). Dr. Meyer testified that generally radiologists have about 10% higher pass rate than other specialties. In Dr. Meyer's opinion radiologists have a better sense of what the variation of normal is. Dr. Meyer testified that one of the most important parts of the B-reading training and examination is making the distinction between a film with profusion of 0/1 which is a normal examination from 1/0 which is an almost normal but slightly abnormal examination. Dr. Meyer testified that making that distinction is a critical component of the B-reader examination and is a point of emphasis in the B-reading course as well (Respondent's Exhibit 1, pp 34-35).

Dr. Meyer testified that the B-reader looks at the lungs to decide whether there are any small nodular opacities and based on the size and appearance of the small opacities they are given a letter score (Respondent's Exhibit 1, p 22). Dr. Meyer testified that specific occupational lung diseases are described by specific opacity types. Coal workers' pneumoconiosis is characteristically described as small round opacities. Diseases that cause pulmonary fibrosis, like asbestosis, are described as small linear opacities (Respondent's Exhibit 1, p 28). The distribution of the opacities is also described because different pneumoconioses are seen in different regions of the lung. Coal workers' pneumoconiosis is typically an upper lung zone predominant process. Idiopathic pulmonary fibrosis or asbestosis is a basilar or linear process. The last component of the interpretation is the extent of the lung involvement or so-called profusion (Respondent's Exhibit 1, pp 22-23). Dr. Meyer testified that very rarely will opacities from pneumoconiosis be found in the mid and lower lung zones and not the upper lung zones (Respondent's Exhibit 1, p 77). Dr. Meyer testified that profusion is basically trying to describe the concentration of the small opacities in the lung (Respondent's Exhibit 1, p 29).

Dr. Meyer testified that when he wants to determine the existence of lung disease, the gold standard is pathologic review of the tissue itself rather than radiology (Respondent's Exhibit 1, p 47). Dr. Meyer testified that when he does B-readings, he just wants to look at the film and answer the simple question: Is there anything on there that is consistent with the abnormalities of coal workers' pneumoconiosis. He testified that his assumption when he is asked to do a B-reading is that the worker has an appropriate exposure history to warrant having the chest x-ray (Respondent's Exhibit 1, pp 47-48). Dr. Meyer testified that one of the issues with interpreting a chest x-ray for pneumoconiosis is making sure the individual who is interpreting the study has ample experience reading them to be able to sort out what the background variation is for normal. Dr. Meyer testified that part of trying to figure out whether or not there is an abnormality in the lung is recognizing the large spectrum of normal which is why someone like Dr. Meyer spends his entire career as a chest radiologist devoted to looking at chest radiographs day in and day out to establish that spectrum of normal (Respondent's

Exhibit 1,p p. 49-50). Dr. Meyer testified that on average he performs 150 to 250 B-readings per month. Depending on the month, he reads between 10 and 20 CT scans for the purpose of determining the presence, absence or severity of an occupational lung disease (Respondent's Exhibit 1, pp 66-67).

Dr. Meyer testified that there are studies that show that at autopsy 50% or more of long term coal miners have coal macules that can be diagnosed by pathology that have not reached the degree of severity to be seen on chest x-ray. Dr. Meyer testified that if he reads an x-ray as positive and the worker had a sufficient history to cause coal workers' pneumoconiosis, that would warrant a finding of coal workers' pneumoconiosis. He testified that if he finds a chest x-ray negative, that would not necessarily rule out that the miner may have pneumoconiosis pathologically (Respondent's Exhibit 1, p 88). Dr. Meyer testified that it would be fair to say that all long term coal miners are going to come out with some dust deposit trapped in their lungs, however, the majority of those will not have changes in their lungs that qualify for coal workers' pneumoconiosis (Respondent's Exhibit 1, p 53). Dr. Meyer testified that it is not possible to have coal workers' pneumoconiosis without having a tissue reaction to the coal dust. In category 1 pneumoconiosis there would be some change in the function of the lung at the very site of the tissue reaction which probably could not be measured (Respondent's Exhibit 1, pp 55-56). Dr. Meyer testified that simple pneumoconiosis typically will not progress once exposure ceases (Respondent's Exhibit 1, p 91).

Respondent tendered into evidence a voluminous amount of medical records for treatment Petitioner sought prior to August, 2017. Petitioner was previously treated for a variety of medical issues which included breathing/respiratory problems (Respondent's Exhibits 3, 4, 5, 6, 7, and 8).

At the direction of Respondent, Petitioner's prior medical records and x-rays were reviewed by Dr. David Rosenberg, an internal medicine, pulmonary disease and occupational medicine specialist. Dr. Rosenberg also reviewed medical reports prepared subsequent to August, 2017. Dr. Rosenberg's report of September 8, 2021, wherein he abstracted/summarized the medical record/x-rays he reviewed was received into evidence at trial, as well as his deposition testimony (Respondent's Exhibit 2; Deposition Exhibit B).

Dr. Rosenberg was deposed on October 23, 2023, and his deposition testimony was received into evidence at trial. Dr. Rosenberg has been board certified in internal medicine since 1977. After graduating from medical school Dr. Rosenberg did a pulmonary fellowship at the National Institute of Health in Bethesda, Maryland. Dr. Rosenberg received his board certification in pulmonary disease in 1980 (Respondent's Exhibit 2, p 5). Dr. Rosenberg testified that he received his board certification in occupational medicine in 1995 (Respondent's Exhibit 2, p 6). Dr. Rosenberg has been a B-reader since July 2000. He is a member of the American Thoracic Society and American College of Chest Physicians (Respondent's Exhibit 2, pp 7-8). Dr. Rosenberg has lectured by invitation on a number of subjects through the years. These topics include interstitial lung disease, chronic obstructive lung disease, pulmonary stress testing, pulmonary function testing, exercise testing and occupational lung disease (Respondent's Exhibit 2, p 10). Dr. Rosenberg has patients in his clinical practice who have black lung (Respondent's Exhibit 2, p 11).

Dr. Rosenberg reviewed a chest x-ray of Petitioner dated June 7, 2019, taken at Harrisburg Medical Center. He testified that the film was profusion 0/0 without any evidence of parenchymal changes of pneumoconiosis. He testified that emphysema was observed. Dr. Rosenberg reviewed a chest x-ray

taken at Franklin Hospital on September 10, 2020. He testified that this film also was 0/0 profusion without parenchymal changes of pneumoconiosis and similar to the previous film, emphysema was observed (Respondent's Exhibit 2, p 30). Dr. Rosenberg testified that for a proper reading of a chest x-ray for pneumoconiosis, the reader first assesses the quality of the film. The reader classifies whether there are parenchymal changes present. If there are, the reader classifies the shape of the opacities as rounded or linear. Next, the reader outlines the zones where the opacities are present. Finally, the reader outlines the degree of profusion, which Dr. Rosenberg described as the density of the findings present. The reader also notes whether there are large opacities. Dr. Rosenberg testified that the reader compares the target film he is given to interpret to the standard ILO films. He testified that the target film is interpreted side by side with the standard films. He testified that this is what he did in this case (Respondent's Exhibit 2, pp 31-32).

Dr. Rosenberg testified that the distinction between a Category 1 pneumoconiosis and a film that is 0/1 is the boundary between a film that is positive for pneumoconiosis or negative for pneumoconiosis. He testified that a 1/0 profusion is the lowest profusion to be positive and the 0/1 is the highest profusion that would be negative (Respondent's Exhibit 2, p 32). Dr. Rosenberg testified that the distinction between a film that is positive for pneumoconiosis or negative for pneumoconiosis is a fine one and is a point of emphasis in the B-reader syllabus, course and exam (Respondent's Exhibit 2, pp 32-33). Dr. Rosenberg testified that the use of profusion ratings avoids imprecise descriptive terms of what is seen on the film such as mild or early pneumoconiosis. He testified that what mild or early means to one person may not be the same as what mild or early is to another. He testified that all A or B-readers know exactly what is meant by a profusion of 1/0. Dr. Rosenberg testified that he saw hyperinflation on Petitioner's films and he marked that in Section 4B under the symbol EM. Dr. Rosenberg did not see that symbol marked on any of the other B-reading forms (Respondent Exhibit 2, p 33). Dr. Rosenberg testified that CTs of the chest are a better diagnostic tool for detecting pneumoconiosis or emphysema than plain films of the chest. Dr. Rosenberg testified that it is unlikely for simple pneumoconiosis to progress once the exposure ceases. Dr. Rosenberg agrees with the position taken by the American Thoracic Society that an older worker with a mild pneumoconiosis may be at low risk for working in currently permissible dust levels in the mine until he reaches retirement age (Respondent's Exhibit 2, p 35).

Dr. Rosenberg testified that one must be a susceptible host to develop coal worker's pneumoconiosis. He testified that most will not develop same. He testified that NIOSH has compiled statistics on the prevalence of coal worker's pneumoconiosis in the mining community. He testified that those statistics were based upon chest x-ray screening from NIOSH in its so-called Coal Workers' X-Ray Surveillance Program. Dr. Rosenberg testified that the prevalence of coal worker's pneumoconiosis in the mining community in the United States has been averaging around 3% for decades (Respondent's Exhibit 2, pp 25-26). Dr. Rosenberg testified that the duration or intensity of the exposure for the individual does not have any importance so far as development of pneumoconiosis if that individual is not a susceptible host. The films for those individuals will likely have a 0/0 profusion or no opacities (Respondent's Exhibit 2, p 26).

Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment. He testified that if one wants to know whether an individual suffers from pulmonary impairment, he looks to valid pulmonary function test results to determine same. Dr. Rosenberg is familiar with the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition*, Chapter

Five, The Pulmonary System. He testified that the Guides follow, for the most part, the American Thoracic Society/European Respiratory Society Guidelines for the interpretation of spirometry. He testified that these guidelines are not the same as the GOLD guidelines which stands for Global Initiative on Obstructive Lung Disease (Respondent's Exhibit 2, pp 24-25). Dr. Rosenberg testified that chest imaging under the AMA Guides is not a factor, let alone a key factor, in the assessment of pulmonary impairment (Respondent's Exhibit 2, p 25).

Dr. Rosenberg reviewed results of pulmonary function testing performed on Petitioner on February 25, 2011, and March 17, 2020. He testified that those tests used different heights and different prediction equations for Petitioner. Dr. Rosenberg testified that if he controlled those two tests and used 72 inches and used the NHANES III prediction equation for both, those tests would be approximately the same. He testified that if anything, the results would be a little better in the most recent test (Respondent's Exhibit 2, pp 26-27). Dr. Rosenberg testified that the results from spirometry performed by Dr. Istanbouly were not valid. He testified that the flow volume curves revealed that the efforts were not maximal and greater effort could have been provided. Dr. Rosenberg testified that Petitioner did not have the pattern of complete efforts that is required by the American Thoracic Society. Dr. Rosenberg testified that the ATS, in its interpretative strategy for spirometry, requires not only the raw numbers achieved be compared, but also the flow volume loops. He testified that when one looks at the pattern of the flow-volume curves, there was not a complete effort evident (Respondent's Exhibit 2, pp 26-27). Dr. Rosenberg also reviewed spirometry that was performed by Dr. Riar about 6 months after Dr. Istanbouly's testing. He testified that Dr. Riar's testing was valid and the numbers were greater than achieved by Petitioner six months prior. Dr. Rosenberg attributed that improvement to better effort. Dr. Rosenberg testified that an individual who suffers from pulmonary impairment due to the scarring of the lung from dust exposure develops a fixed impairment. He testified that he would not expect improvement over time with that type of disease (Respondent's Exhibit 2, p 28). Dr. Rosenberg testified that if he applied the results obtained in the testing performed by Dr. Riar on March 17, 2020, to Table 5-4 of the *AMA Guides*, Petitioner would fall in Class 0 impairment (Respondent's Exhibit 2, pp 28-29).

Dr. Rosenberg testified that continued tobacco use by Petitioner would be injurious to his health. Dr. Rosenberg agreed with Dr. Istanbouly who testified that continued tobacco use will result in an increase in symptoms for Petitioner over time and a decline in his pulmonary function. Dr. Rosenberg testified that there is not any clinical significance to subradiographic pneumoconiosis. Dr. Rosenberg testified that Petitioner's diffusion capacity of 94% supported the fact that the alveolar capillary bed within his lungs was intact. He testified that when an individual develops scarring of the lung that causes an impairment in pulmonary function, it would show up with a reduced diffusion capacity because of scarring of the capillary bed (Respondent's Exhibit 2, pp 29-30). Dr. Rosenberg testified that based upon the most recent valid results that he had from pulmonary function testing on Petitioner, from a respiratory standpoint, Petitioner would be capable of heavy manual labor (Respondent's Exhibit 2, p 30).

Dr. Rosenberg testified that Petitioner has hypertension previously treated with Lisinopril. Dr. Rosenberg testified that when this medication was stopped, Petitioner's cough was eliminated. Dr. Rosenberg testified that Petitioner's valid pulmonary function tests were associated with no obstruction. His x-rays did not reveal parenchymal changes of the pneumoconiosis which was confirmed by CT scan findings (Respondent's Exhibit 2, pp 35-36). Dr. Rosenberg testified that

Petitioner had a long and continued smoking history, as well as the use of marijuana, which would explain any described cough and sputum production (Respondent's Exhibit 2, p 36). Dr. Rosenberg concluded that Petitioner did not have a coal mine dust related disorder and was not disabled from a pulmonary perspective (Respondent's Exhibit 2, p 37). Dr. Rosenberg's finding that Petitioner fell in Class 0 impairment according to Table 5-4 of the *Guides* was based on his FVC and FEV1 being equal to or greater than 80% predicted, his diffusing capacity measurement being greater than or equal to 75% of predicted and the FEV1/FVC ratio being greater than 75% of predicted. Dr. Rosenberg testified that Petitioner's NHANES predicted FEV1/FVC ratio was 75.88%, with the measured value being 62%. Thus, the percent predicted value was 81.7% (Respondent's Exhibit 2, pp 36-37).

Dr. Rosenberg testified that a tissue reaction to trapped coal mine dust is required either in the airways or in the parenchyma to have coal worker's pneumoconiosis. He testified that this tissue reaction can be called scarring or fibrosis (Respondent's Exhibit 2, p 51). Dr. Rosenberg testified that the scar tissue of coal worker's pneumoconiosis does not perform the function of normal, healthy lung tissue. He testified that most patients with simple disease have preserved lung function (Respondent's Exhibit 2, p 52). Dr. Rosenberg testified that for determining coal worker's pneumoconiosis between radiographic study and pathologic review, pathology is the gold standard. He testified that a person can have coal worker's pneumoconiosis pathologically with a negative chest x-ray (Respondent's Exhibit 2, p 77).

Conclusion of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner did not sustain an occupational disease arising out of and in the course of his employment and that his current condition of ill-being is not causally related to an occupational exposure.

In support of these conclusions the Arbitrator notes the following:

All of the retained physicians interpreted the chest x-ray of Petitioner dated June 7, 2019. In addition, Dr. Meyer and Dr. Rosenberg reviewed a chest x-ray dated September 10, 2020. Dr. Rosenberg described the protocol for a proper reading of a chest x-ray for pneumoconiosis. Dr. Rosenberg testified that profusion tells the reader the intensity of the findings of opacities in the lungs and is the measure by which determination is made as to whether or not the x-ray is positive or negative for pneumoconiosis. Dr. Istanbouly did not follow this protocol and did not know the profusion of the film that he reviewed.

Dr. Meyer testified to the training and examination required to become a B-reader. Although one does not have to be an A or B-reader to interpret films for the presence of coal worker's pneumoconiosis, such certification lends credibility to a physician's interpretation. Dr. Istanbouly testified that when he interprets a film for black lung, he determines whether it is positive or negative and if it is positive, he classifies it as mild, moderate or severe. He classified what he saw on Petitioner's chest x-ray as early pneumoconiosis. Dr. Rosenberg testified that the use of profusion ratings avoids imprecise descriptive terms of what is seen on the films such as mild or early pneumoconiosis. Dr. Rosenberg testified that what early or mild means to one person may not be the same as what mild or early means

to another person. He testified that all A or B-readers would know exactly what is meant by a profusion of 1/0. Based on the above, the Arbitrator gives no weight to Dr. Istanbouly's interpretation of Petitioner's June 7, 2019, chest x-ray.

Dr. Smith interpreted the chest x-ray of June 7, 2019, as positive for pneumoconiosis, profusion 1/0 with P/P opacities in the bilateral mid and lower lung zones. He noted no opacities in the upper lung zones on his B-reading form. Drs. Meyer and Rosenberg interpreted the same chest x-ray as negative for pneumoconiosis. Dr. Meyer testified that coal worker's pneumoconiosis is typically an upper lung zone predominant process and very rarely is coal worker's pneumoconiosis found in the mid and lower lung zones and not in the upper lung zones. No evidence was introduced to contradict Dr. Meyer's testimony. Dr. Smith's interpretation was not consistent with the general presentation or progression of coal worker's pneumoconiosis. Dr. Meyer and Dr. Rosenberg also interpreted a chest x-ray of September 10, 2020, as negative for pneumoconiosis. Dr. Meyer reviewed a CT scan of Petitioner's chest dated May 25, 2016. Dr. Meyer testified that the CT scan was normal with no findings of coal worker's pneumoconiosis. Dr. Meyer testified that his interpretation of the CT scan was in agreement with the original report of the treating radiologist. Drs. Meyer and Rosenberg testified that CT scans of the chest are more sensitive than chest radiographs for detecting interstitial lung disease.

The Arbitrator notes the testimony of Dr. Meyer and Dr. Rosenberg that a negative chest x-ray would not rule out that Petitioner could have coal worker's pneumoconiosis pathologically. The Arbitrator concludes that said testimony is not the same as saying that Petitioner, in fact, suffers from the disease.

Dr. Istanbouly also diagnosed Petitioner with chronic obstructive pulmonary disease/chronic bronchitis related equally to long term coal dust inhalation and smoking. Dr. Istanbouly also opined that Petitioner's long term coal dust inhalation was a significant contributing factor to his chronic respiratory symptoms, cough, sputum production, wheezing and exertional and nocturnal dyspnea in addition to the abnormality on his pulmonary function testing and chest x-ray. Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment. Dr. Rosenberg testified when Petitioner's use of Lisinopril was stopped, his cough was eliminated. He testified that Petitioner had a long and continued smoking history, as well as the use of marijuana, which explained any described cough and sputum production. Dr. Rosenberg testified that the pulmonary function test from Dr. Istanbouly's examination were not valid and cannot be used as a representative measure of his actual respiratory impairment. Dr. Rosenberg testified that the results of Petitioner's most recent valid pulmonary function test from March 17, 2020, demonstrated no significant obstruction. Dr. Istanbouly and Dr. Rosenberg agreed that Petitioner's continued tobacco use would result in an increase in symptoms over time and a decline in Petitioner's pulmonary function. The Arbitrator concludes the history of chronic coughing and sputum production provided to Dr. Istanbouly is not corroborated by the treatment records which were reviewed by Dr. Rosenberg and admitted into evidence. The Arbitrator concludes Petitioner does not suffer from an occupational disease related to his employment.

The Arbitrator finds the testimony of Dr. Meyer and Dr. Rosenberg to be more persuasive than that of Dr. Smith and Dr. Istanbouly.

In regard to disputed issues (L) and (O) the Arbitrator makes the following conclusion of law:

The Arbitrator makes no conclusion of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issues (C) and (F).

William R. Gallagher, Arbitrator

March 26, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC026690
Case Name	Brian Kesler v. State of Illinois - Southern Illinois University - Carbondale
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0542
Number of Pages of Decision	13
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Stephen Stone
Respondent Attorney	Kenton Owens

DATE FILED: 11/15/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ 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

Brian Kesler,

Petitioner,

vs. NO: 22 WC 26690

State of Illinois -
Southern Illinois University - Carbondale,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 11, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

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

November 15, 2024

O: 11/07/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC026690
Case Name	Brian Kesler v. State of Illinois - Southern Illinois University - Carbondale
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Stephen Stone
Respondent Attorney	Kenton Owens

DATE FILED: 3/11/2024

/s/William Gallagher, Arbitrator
Signature

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

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

March 11, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Brian Kesler
Employee/Petitioner

Case # 22 WC 26690

v.

Consolidated cases: n/a

SIU-C
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on February 13, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, July 21, 2022, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $35,172.53; the average weekly wage was $676.39.

On the date of accident, Petitioner was 46 years of age, single with 4 dependent child(ren).

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

Respondent shall be given a credit of $25,059.92 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $25,059.92.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize and pay for prospective medical treatment including, but not limited to, cervical disc replacement surgery as recommended by Dr. Matthew Gornet.

Respondent shall pay Petitioner temporary total benefits of $450.93 per week for 78 2/7 weeks, commencing August 14, 2022, through February 13, 2024, as provided in Section 8(b) of the Act.

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

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

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

William R. Gallagher, Arbitrator
ICArbDec19(b)
March 11, 2024

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on July 21, 2022. According to the Application, Petitioner was "Cleaning outside windows using a Tucker pole" and sustained an injury to the "Person as a whole" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment. Respondent stipulated Petitioner sustained a work-related accident, but disputed liability on the basis of causal relationship (Arbitrator's Exhibit 1).

In respect to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of 78 2/7 weeks, commencing August 14, 2022, through February 13, 2024 (date of trial). Respondent claimed Petitioner was entitled to temporary total disability benefits of 55 3/7 weeks, commencing August 14, 2022, through September 6, 2023. In respect to Petitioner claiming he was entitled to prospective medical treatment, the prospective medical treatment sought by Petitioner was four level disc replacement surgery in the cervical spine, as recommended by Dr. Matthew Gornet, an orthopedic surgeon (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a custodian and his job duties included washing windows of student residence facilities located at Thompson Point on the SIU campus. The residence buildings at Thompson Point are three stories tall. To wash the windows, Petitioner used a “Tucker pole" which he described as being a telescopic device which, when extended, was approximately 40 feet. The end of the pole had a brush head in the pole contained two waterline/hoses which allowed water to be pumped up through the length of the pole to the brush heads.

On July 21, 2022, Petitioner was washing the windows of Felts Hall, one of the student residence halls. Petitioner was using the "Tucker pole" which was fully extended with both hoses full of water. As Petitioner was washing the third floor windows, he had to extend his neck upward to observe the work he was performing. Petitioner had to push the pole up/down the window while applying pressure to scrub the glass. Petitioner stated the brush heads on the end of the pole were broken so they would swivel even though they were not supposed to do so.

Petitioner testified that while he was washing a third floor window, part of the pole got stuck on an air conditioning unit. When this occurred, Petitioner forcibly pushed/pulled on the pole to free it from the air conditioning unit. When he did so, he felt what he described as a "…bolt of something go right through him.” Petitioner's supervisor, Blake Anderson, was present and Petitioner informed him that he thought he had hurt himself.

When Petitioner was questioned about the weight of the pole, he testified he never weighed the pole; however, he stated that when the pole was 30 feet in the air and filled with water, it felt like it weighed 100 pounds. He said it could have been more or less than that, but that is what it felt like.

Petitioner did not initially seek medical treatment following the accident and continued to work; however, in the days/weeks that followed, Petitioner's neck pain worsened and extended into his left shoulder as well as his left hand/fingers.

Petitioner first sought medical treatment on August 13, 2022, at the ER of Memorial Hospital. At that time, Petitioner complained of neck and left shoulder pain which he attributed to working on windows with a heavy pole. A CT scan of the cervical spine was performed which revealed multilevel degenerative disc disease as well as foraminal stenosis (Petitioner's Exhibit 3).

On August 15, 2022, Petitioner was evaluated by Dr. Benjamin Collie, for various health issues, including neck pain. At that time, Petitioner advised he was seen in the ER two days prior, but the pain had gotten worse shooting down his arms and legs. Dr. Collie opined Petitioner had cervical radiculopathy and noted that an MRI scan of Petitioner's cervical spine had been ordered (Petitioner's Exhibit 2).

The MRI of the cervical spine was performed on September 26, 2022. According to the radiologist, the MRI revealed degenerative disc disease at multiple levels of the cervical spine, especially at C5-C6 with moderate/severe spinal stenosis and severe C6 foraminal stenosis (Petitioner's Exhibit 3).

Petitioner was subsequently treated at Southern Illinois Healthcare by Michael Bryant, a Physician Assistant, and Dr. Gordon Chu, a neurosurgeon. PA Bryant reviewed the MRI scan and his interpretation of it was consistent with that of the radiologist. Dr. Chu evaluated Petitioner on October 7, 2022, and opined the MRI revealed degenerative disc disease at multiple levels of the cervical spine as well as a disc protrusion at C3-C4 (Petitioner's Exhibit 8).

Petitioner received conservative treatment which consisted of medication, physical therapy, and injections, but his symptoms did not improve. When Petitioner was seen by Dr. Collie on February 8, 2023, Petitioner advised his neck pain was worse and his left arm was weak. At that time, Dr. Collie referred Petitioner to Dr. Matthew Gornet (Petitioner's Exhibit 2).

Dr. Gornet evaluated Petitioner on March 13, 2023. At that time, Petitioner advised Dr. Gornet of the accident of July 21, 2022, and the medical treatment he received thereafter. Petitioner complained of neck pain, bilateral trapezial pain, frequent headaches, pain between his shoulder blades and significant left arm pain and tingling into his fingertips as well as some right sided symptoms. Dr. Gornet opined the accident aggravated an underlying foraminal stenosis of C5-C6 and C6-C7 as well as causing a disc injury. He opined Petitioner's symptoms and need for treatment were related to the accident of July 21, 2022 (Petitioner's Exhibit 5).

At Dr. Gornet's direction, an MRI scan of Petitioner's cervical spine was performed on April 10, 2023. According to the radiologist, there were annular tears, protrusions, disc bulges, and canal/foraminal stenosis at multiple levels of the cervical spine (Petitioner's Exhibit 4).

Dr. Gornet saw Petitioner on April 10, 2023, and reviewed the MRI scan. Dr. Gornet's interpretation of the MRI was consistent with that of the radiologist. Dr. Gornet recommended Petitioner undergo cervical disc replacement surgery at C3-C4, C4-C5, C5-C6, and C6-C7. He continued to authorize Petitioner to remain off work (Petitioner's Exhibit 5).

At the direction of Respondent, Petitioner was examined by Dr. Timothy VanFleet, an orthopedic surgeon, on August 11, 2023. In connection with his examination of Petitioner, Dr. VanFleet reviewed

medical records and diagnostic studies provided to him by Respondent. According to Dr. VanFleet's report of that date, Petitioner informed him of the accident of July 1, 2022 (not July 21, 2022), and that he was using a "Tucker pole" to wash windows which could weigh up to 100 pounds. Dr. VanFleet noted he researched "Tucker poles" on the internet and determined the weight to be four to six pounds. Dr. VanFleet also stated Petitioner informed him that he was a single father with four children and that Respondent was going to change his work hours to the night shift which he did not want to do because it would interfere with his duties/activities as a single father (Respondent's Exhibit 2).

Dr. VanFleet opined Petitioner had degenerative disc disease and spinal canal stenosis which predated the accident. Based on his research regarding the "Tucker pole", Dr. VanFleet opined it would not have weighed 100 pounds and that Petitioner's statement he had to forcefully pull on the pole to dislodge it was not believable. He also stated that Petitioner continued to work and did not seek medical treatment until he learned he was going to be moved to working the night shift. Based on the preceding, Dr. VanFleet opined Petitioner's cervical spine condition was not work-related (Respondent's Exhibit 2).

In regard to the four level cervical disc replacement surgery recommended by Dr. Gornet, Dr. VanFleet opined this was not medically necessary. However, Dr. VanFleet did opine Petitioner would require a four level cervical fusion procedure (Respondent's Exhibit 2).

Dr. Gornet was deposed on October 23, 2023, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Gornet's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. In respect to causality, Dr. Gornet testified that the accident sustained by Petitioner in which the top of the pole became stuck requiring Petitioner to push/pull had caused a mechanical load on his arms which caused disc injuries in the cervical spine (Petitioner's Exhibit 9; pp 10-11).

Dr. Gornet testified the four level cervical disc replacement surgery was superior to fusion surgery. Specifically, he stated that with disc replacement surgery there was better patient satisfaction, earlier return to work, less reoperation and a higher level of function. He testified the fusion procedure had less efficacy and higher complication rates than cervical disc replacement surgery (Petitioner's Exhibit 9; pp 8-9).

Respondent provided additional medical treatment records and diagnostic tests to Dr. VanFleet for his review. Dr. VanFleet prepared a supplemental medical report dated October 23, 2023. In that report, Dr. VanFleet opined there was nothing in the medical records he reviewed to cause him to change any of his prior opinions. He again opined Petitioner would be an appropriate candidate for a fusion procedure from C3 to T1 (Respondent's Exhibit 3).

Dr. VanFleet was deposed on January 31, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. VanFleet's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. In regard to causality, Dr. VanFleet testified Petitioner's cervical spine condition was not related to the accident of July 21, 2022. This was based on the fact Petitioner had pre-existing spinal canal stenosis and degenerative disc disease. Dr. VanFleet also testified that his causality opinion was based on Petitioner's description of the accident,

his research regarding the Tucker pole and its weight, Petitioner's continuing to work subsequent to the accident, not seeking medical treatment for a lengthy period of time thereafter, and Petitioner not wanting to transfer to the night shift. Based on the preceding, Dr. VanFleet stated Petitioner was not "altogether believable" (Respondent's Exhibit 7; pp 26-28).

When questioned about Dr. Gornet's recommendation Petitioner undergo a four level disc replacement procedure, Dr. VanFleet testified that placing "a motion preserving device" in the middle of a stenotic canal would not be appropriate. He stated Petitioner needed a four level fusion procedure, but that the need for same was not related to the accident at work (Respondent's Exhibit 7; pp 28-29).

On cross-examination, Dr. VanFleet was interrogated at length regarding his opinion as to causality. He initially stated it was his belief Petitioner did not sustain an injury at work. When questioned about his causality opinion, Dr. VanFleet stated Petitioner did not want to be transferred to the night shift and that is why he deferred seeking medical treatment. Dr. VanFleet repeatedly stated that this is what the Petitioner told him. This series of cross-examination questions consisted of several pages in the deposition transcript. When asked the question whether Petitioner told him that he only sought treatment because of the shift change, Dr. VanFleet responded "That's exactly what I'm saying" (Respondent's Exhibit 7; pp 31-35).

Blake Anderson testified at the request of Petitioner's counsel. Anderson stated he was a building service subforeman and was present when Petitioner sustained the accident on July 21, 2022. He stated that while Petitioner was working on the third floor windows, he "winced" in pain and thought he had pulled a muscle. He noted Petitioner's condition worsened over the days/weeks that followed and it had a negative impact on Petitioner's ability to work.

On cross-examination, Respondent's counsel questioned Anderson about the Tucker pole and showed him a document which had pictures of Tucker poles (Respondent's Exhibit 8). Anderson described the Tucker pole as being a telescopic pole which was used to clean windows and, when extended, was 40 to 50 feet tall.

Charles Hanner testified on behalf of Respondent. Hanner stated he worked for Respondent as the Assistant Superintendent of Building Services. Hanner was not present at the time Petitioner sustained the accident. He stated he had a conversation with Petitioner on August 11, 2022, at which time he informed Petitioner that he was going to be transferred to the night shift and Petitioner was not happy about it. He stated Petitioner said nothing about having been injured. Hanner identified the document which showed pictures of Tucker poles. He stated, based on his experience, the pole weighed 20 pounds. On cross-examination, Hanner agreed the pole would weigh more when filled with water and it would require greater force to lift it 30 feet rather than 10 feet.

Scott Taylor testified on behalf of Respondent. Taylor was the Deputy Director of Facilities. Taylor also look at the document showing pictures of Tucker poles which was tendered and introduced into evidence at that time (Respondent's Exhibit 8). In respect to the Tucker pole, Taylor testified he weighed it and it weighed 15 pounds. On cross-examination, Taylor agreed the poll would weigh more with water in it. He also agreed it would require more force to lift it 30 feet than to lift it 10 feet.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner's current condition of ill-being is causally related to the accident of July 21, 2022.

In support of this conclusion the Arbitrator notes following:

There was no dispute Petitioner sustained a work-related accident on July 21, 2022.

While Petitioner continued to work subsequent to the accident and did not seek medical treatment until August 15, 2022, his testimony that subsequent to the accident his neck condition worsened was credible. Further, Petitioner's testimony his neck condition worsened following the accident was corroborated by Blake Anderson, Respondent's subforeman, who was also present when Petitioner sustained the accident.

Respondent's Section 12 examiner, Dr. VanFleet, opined Petitioner did not sustain a work-related accident. Obviously, this is contrary to the fact that, at trial, Petitioner and Respondent stipulated Petitioner sustained a work-related accident. Further, the determination of whether Petitioner sustained a work-related accident is for the Arbitrator to determine, not Respondent's Section 12 examining physician.

Dr. VanFleet opined Petitioner's cervical spine condition was not related to the accident of July 21, 2022, but this opinion was based primarily on his not believing Petitioner's description of the accident, the purported weight of the Tucker pole, and Petitioner's delay in seeking medical treatment until he was informed of his being transferred to the night shift. The preceding are factual determinations to be made by the Arbitrator, not Respondent's Section 12 examining physician.

When cross-examined about his opinion regarding causality, the Arbitrator finds Dr. VanFleet's responses to be evasive and nonresponsive. Dr. VanFleet finally agreed that it was his opinion Petitioner only sought medical treatment because of the shift change. Again, this was a factual determination to be made by the Arbitrator, not Respondent's Section 12 examining physician.

Dr. Gornet credibly testified Petitioner's cervical spine condition was causally related to the accident of July 21, 2022.

Given the preceding, the Arbitrator finds the opinion of Dr. Gornet to be more persuasive than that of Dr. VanFleet in respect to causality.

Petitioner testified that when the Tucker pole was 30 feet in the air, filled with water and he was working with that, it felt like it weighed 100 pounds.

Respondent tendered into evidence testimony in respect to the weight of the Tucker pole as well as pictures of Tucker poles. Charles Hanner testified he weighed the Tucker pole and it weighed 20 pounds; however, this weight was without water in the hoses. Both Charles Hanner and Scott Taylor

(who also testified on behalf of Respondent) agreed it would require more force to lift the Tucker pole 30 feet in the air rather than 10 feet in the air.

Given that Respondent stipulated to Petitioner having sustained a work-related accident, the preceding evidence regarding Tucker poles and their weight, must be limited to the issue of causal relationship.

The Arbitrator notes Petitioner sustained the accident while lifting and attempting to maneuver the Tucker pole while it was 30 feet in the air and contained water. Petitioner had his arms overhead and his neck in an awkward position. While the Tucker pole did not weigh 100 pounds, Petitioner stated it felt like it did. As aforestated, Respondent's witnesses conceded it would take more force to lift the Tucker pole 30 feet than to life it 10 feet.

Based on the preceding, the Arbitrator finds the evidence tendered by Respondent in respect to the Tucker pole to have minimal or no probative value.

The Arbitrator is likewise not persuaded by the suggestion that the basis for Petitioner seeking medical treatment for his neck condition at the time he chose to do so was because of his transfer to the night shift.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

Based upon the Arbitrator's conclusion of law in disputed issue (F), the Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to prospective medical treatment including, but not limited to, the four level cervical disc replacement surgery as recommended by Dr. Matthew Gornet.

In support of this conclusion the Arbitrator notes the following:

It was undisputed Petitioner requires four level cervical disc spine surgery because Dr. Gornet opined Petitioner should undergo a four level cervical disc replacement surgery and Dr. VanFleet opined Petitioner should undergo a four level cervical fusion.

Dr. Gornet testified the four level cervical disc replacement surgery was superior to fusion surgery and testified that cervical disc replacement surgery had better patient satisfaction, an earlier return to

work, less re-operations and a higher level of function. He also stated it has less complication than a fusion procedure.

Dr. VanFleet questioned placing what he described as a "motion preserving device" in middle of a stenotic canal and that a fusion was the appropriate surgical procedure.

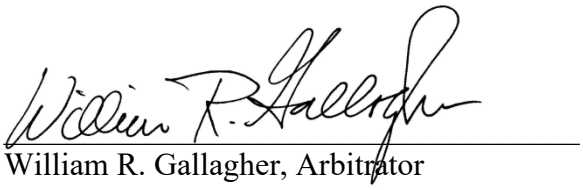
The Arbitrator finds the opinion of Dr. Gornet to be more persuasive than that of Dr. VanFleet in respect the appropriate prospective medical treatment for Petitioner.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 78 2/7 weeks, commencing August 14, 2022, through February 13, 2024.

In support of this conclusion the Arbitrator notes the following:

When last seen by Dr. Gornet, Petitioner was authorized to remain off work. Petitioner remains totally disabled from working at his regular job for Respondent.



William R. Gallagher, Arbitrator

March 11, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC024032
Case Name	Kevin Miller v. Knight Hawk Coal
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0543
Number of Pages of Decision	12
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Gregory Keltner

DATE FILED: 11/15/2024

/s/Carolyn Doherty,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kevin Miller,

Petitioner,

vs. NO: 21 WC 24032

Knight Hawk Coal,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, and prospective medcial care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 22, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $36,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 15, 2024

O: 11/07/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC024032
Case Name	Kevin Miller v. Knight Hawk Coal
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Gregory Keltner

DATE FILED: 5/22/2024

/s/William Gallagher, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MAY 21, 2024 5.16%

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Kevin Miller
Employee/Petitioner

Case # 21 WC 24032

v.

Consolidated cases: n/a

Knight Hawk Coal
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on March 29, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, August 17, 2021, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $68,913.00; the average weekly wage was $1,325.25.

On the date of accident, Petitioner was 57 years of age, single with 0 dependent child(ren).

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, limited to his bilateral knee condition, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit for amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize and pay for prospective medical treatment including, but not limited to, left knee surgery and ongoing treatment to his right knee, as recommended by Dr. Matthew Bradley.

Respondent shall pay Petitioner temporary total disability benefits of $883.50 per week for seven and three-sevenths (7 3/7) weeks, commencing February 6, 2024, through March 29, 2024, as provided in Section 8(b) of the Act.

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

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

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

William R. Gallagher May 22, 2024

William R. Gallagher, Arbitrator ICArbDec19(b)

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on August 17, 2021. According to the Application, Petitioner "Stepped out of equipment onto uneven terrain & twisted) and sustained an injury to "Bi-lateral knees" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment. Respondent stipulated Petitioner sustained a work-related injury on August 17, 2021, but disputed liability on the basis of causal relationship (Arbitrator's Exhibit 1).

In regard to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of seven and three-sevenths (7 3/7) weeks, commencing February 6, 2024, through March 29, 2024 (date of trial). The prospective medical treatment sought by Petitioner was left knee surgery and ongoing treatment for Petitioner's right knee for which surgery was previously performed, as recommended by Dr. Matthew Bradley, an orthopedic surgeon (Arbitrator's Exhibit 1). Petitioner subsequently sustained another work-related accident in which he injured his right arm/shoulder on October 12, 2021, for which an Application for Adjustment of Claim was filed, 21 WC 29551. As noted herein, following the accident to his right arm/shoulder, Petitioner was also treated by Dr. Bradley. However, this case did not proceed to trial on March 29, 2024.

Petitioner worked for Respondent as a laborer/coal miner. Petitioner testified that on August 17, 2021, he was driving a coal hauler. When he exited the coal hauler to change a battery, he stepped on uneven terrain. When he did so, Petitioner twisted/turned and both of his knees "popped." Petitioner stated that, prior to the accident of August 17, 2021, he had not sustained any injuries or sought any medical treatment for his knees. Petitioner denied having experienced any catching, popping or locking in his knees prior to the accident. Petitioner testified that he did previously experience occasional stiffness and aching and his knees, especially at the end of a long work day.

Petitioner was initially evaluated by Dr. Bradley on August 24, 2021. At that time, Petitioner informed Dr. Bradley of the accident of August 17, 2021. Petitioner complained of pain in both knees, with the right being "significantly worse" than the left. Petitioner stated he experienced catching and instability in both knees. Petitioner advised Dr. Bradley that, prior to the accident, he had occasional stiffness/achiness, but that the instability had been new having occurred subsequent to the accident of August 17, 2021. Petitioner advised he had been a coal miner for over 17 years (Petitioner's Exhibit 3).

Dr. Bradley examined both of the Petitioner's knees and noted there was bilateral medial pain and right sided pain with compression testing. X-rays were obtained of both knees which revealed significant narrowing of the medial compartment and bone on bone disease in respect to both knees. Dr. Bradley opined Petitioner had pre-existing degenerative disease, but noted the catching/instability was not present until after the accident of August 17, 2021. Dr. Bradley administered a steroid injection into both knees and ordered MRI scans. He opined the accident of

August 17, 2021, caused an exacerbation of underlying degenerative disease with a possible acute tear of the meniscus (Petitioner's Exhibit 3).

MRIa of Petitioner's knees were performed on August 24, 2021. According to the radiologist, the MRI of Petitioner's right knee revealed advanced degenerative changes in the medial compartment, full thickness chondral erosion, subchondral changes/spurring and a tear of the posterior horn of the medial meniscus. According to the radiologist, the MRI of Petitioner's left knee revealed advanced osteoarthritis of the medial compartment with areas of bone on bone appearance and a tear/degeneration of the posterior horn and medial body of the medial meniscus (Petitioner's Exhibit 4).

Petitioner was subsequently seen by Dr. Bradley on October 11, 2021. At that time, Dr. Bradley reviewed the MRI scans. His interpretation of the MRI scans was consistent with that of the radiologist. Because conservative treatment had failed to provide relief, Dr. Bradley recommended Petitioner undergo surgery to both knees consisting of a medial unicompartmental arthroplasty (Petitioner's Exhibit 3).

As previously noted herein, Petitioner sustained a work-related injury to his right arm/shoulder on October 12, 2021, for which he was also treated by Dr. Bradley. Petitioner first sought Dr. Bradley in connection with his right arm/shoulder injury on October 18, 2021. Petitioner's right arm/shoulder condition was the primary condition for which he was treated by Dr. Bradley through October, 2023. Dr. Bradley performed surgery on Petitioner's right elbow and right shoulder on November 3, 2021, and September 21, 2022, respectively (Petitioner's Exhibit 3).

At the direction of Respondent, Petitioner was examined by Dr. Matthew Collard, an orthopedic surgeon, on July 13, 2023. Dr. Collard examined Petitioner in respect to both of his workers' compensation cases. In connection with his examination of Petitioner, Dr. Collard reviewed medical records and diagnostic studies provided to him by Respondent. In respect to his bilateral knee condition, Petitioner informed Dr. Collard of the accident of August 17, 2021, and the treatment he received thereafter, but because of his right arm/shoulder condition, Petitioner had not received any treatment in regard to his knees for over a year. When seen by Dr. Collard, Petitioner complained of significant pain in respect to both knees, right more than left, even with routine activities such as walking and getting up from a seated position (Respondent's Exhibit 2; Deposition Exhibit 2).

Dr. Collard examined Petitioner's knees and reviewed the MRI scans. He opined the MRI scans revealed severe degenerative changes in the medial compartment of both knees which he opined was long standing and pre-existed the accident of August 17, 2021. He opined this was not related to the accident of August 17, 2021, and the mechanism of injury described by Petitioner and his knees popping was consistent with "normal activities" and was not a "significant injury" and not different than activities of daily living (Respondent's Exhibit 2; Deposition Exhibit 2).

Dr. Collard further opined Petitioner was not in need of any further medical treatment as related to the accident of August 17, 2021. However, because of Petitioner's advanced arthritic condition, he opined Petitioner could require total knee arthroplasty or unicompartmental knee replacement for both knees (Respondent's Exhibit 2; Deposition Exhibit 2).

Dr. Bradley saw Petitioner in respect to his bilateral knee condition on June 13, 2023, and noted Petitioner had recovered from his right arm surgeries but was still experiencing bilateral knee symptoms. When Dr. Bradley again saw Petitioner on January 15, 2024, he noted Petitioner's knee condition has progressed to the point to where it was difficult for Petitioner to engage in activities of daily living without being in severe pain. Petitioner advised he wanted to proceed forward with the surgery (Petitioner's Exhibit 3).

On February 6, 2024, Dr. Bradley performed surgery on Petitioner's right knee. The procedure consisted of a unicompartmental arthroplasty and partial patellectomy (Petitioner's Exhibit 14). When Dr. Bradley last saw Petitioner on February 26, 2024, Petitioner was in physical therapy/rehabilitation. Dr. Bradley noted Petitioner was "doing great" and Petitioner was "very happy" with the outcome (Petitioner's Exhibit 3).

Dr. Collard was deposed on September 21, 2023, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Collard's testimony was consistent with his medical report of July 13, 2023, and he reaffirmed the opinions contained therein. Specifically, in respect to causality, Dr. Collard testified that the arthritic condition in Petitioner's knees was so severe that getting out of the hauler could not have contributed to the onset of pathology that was present. This was Dr. Collard's opinion in respect to both the right and left knees (Respondent's Exhibit 2; pp 16-19).

Dr. Collard testified Petitioner was in need of additional medical treatment including knee replacement surgery. However, Dr. Collard stated that the need for surgery would not be because of the accident (Respondent's Exhibit 2; pp 32-33).

On cross-examination, Dr. Collard agreed he did not have any medical records for treatment Petitioner sought for knee problems prior to the accident of August 17, 2021. Dr. Collard did not know if Petitioner had experienced any mechanical symptoms like catching or whether Petitioner had any instability in his knees prior to August 17, 2021. He also agreed that an individual could be asymptomatic or have minimally symptomatic pathology which became symptomatic after a traumatic event (Respondent's Exhibit 2; pp 42-50).

Dr. Bradley was deposed on October 25, 2023, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Bradley's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. Dr. Bradley testified that when he initially examined Petitioner on August 24, 2021, Petitioner informed him of the accident of August 17, 2021, and that he had bilateral knee pain afterward. He also testified Petitioner informed him that, prior to the accident of August 17, 2021, he experienced occasional stiffness or achiness especially after a long day at work, but not the catching and instability that he had experienced afterward (Petitioner's Exhibit 15; pp 10-11).

Dr. Bradley testified he had reviewed Dr. Collard's report and he disagreed with Dr. Collard's opinion that there was not a causal relationship between Petitioner's knee condition and the accident of August 17, 2021. He specifically noted that, prior to the accident, Petitioner was able to perform his job at full duty. Dr. Bradley testified he could not agree with Dr. Collard's opinion

that there was no acceleration or aggravation of the pre-existing condition (Petitioner's Exhibit 15; pp 45-47).

On cross-examination, Dr. Bradley agreed Petitioner had some knee symptoms associated with activity prior to the accident. He also conceded that Petitioner had degenerative changes in the knees which predated the accident (Petitioner's Exhibit 15; pp 59-61).

At trial, Petitioner testified that, prior to undergoing surgery on his right knee, the pain was unbearable. Petitioner stated he was able to function, but only to a very limited extent. Petitioner stated that after the surgery, the right knee was much better, but he had not been able to return to work because he had not been released to do so by Dr. Bradley. Petitioner continues to experience left knee symptoms and wants to proceed with surgery on the left knee as well.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner's current condition of ill-being in respect to his bilateral knee condition is causally related to the accident of August 17, 2021.

In support of this conclusion the Arbitrator notes the following:

There was no dispute Petitioner sustained a work-related accident on August 17, 2021.

Petitioner's testimony regarding the accident of August 17, 2021, was credible, unrebutted, and consistent with the histories contained in the medical records.

Petitioner had degenerative changes in both knees which pre-existed the accident of August 17, 2021. Petitioner testified that, prior to the accident of August 17, 2021, he experienced occasional stiffness/achiness in his knees; however, Petitioner did not experience catching and instability in his knees until after the accident of August 17, 2021. Further, prior to the accident of August 17, 2021, Petitioner did not lose time from work and did not have any medical treatment or diagnostic tests performed for his bilateral knee condition.

Dr. Bradley, Petitioner's primary treating physician, opined that the accident of August 17, 2021, did not cause the arthritic condition in his knees, but the accident exacerbated the condition and the type of injury Petitioner described was consistent with one which would cause a meniscal tear. Dr. Bradley noted that Petitioner informed him that, prior to the accident, he experienced occasional stiffness/achiness after a long day at work, but not the catching/instability he experienced afterward.

Dr. Collard, Respondent's Section 12 examining physician, opined that Petitioner's bilateral knee condition was not related to the accident of August 17, 2021. This opinion was based, to a large extent, on Dr. Collard's opinion that the mechanism of injury as described by Petitioner was consistent with "normal activities" and was not a "significant injury." Dr. Collard testified

Petitioner's arthritic condition was so severe that Petitioner getting out of the hauler could not have contributed to the onset of pathology which was present.

On cross-examination, Dr. Collard agreed he did not have any medical records for treatment Petitioner sought prior to August 17, 2021, and he did not know if Petitioner had symptoms of catching/instability in his knees prior to the accident of August 17, 2021. Further, Dr. Collard agreed that an individual could have an arthritic condition which was asymptomatic or minimally symptomatic which could become symptomatic after a traumatic event.

Based on the preceding, the Arbitrator finds the opinion of Dr. Bradley to be more persuasive than that Dr. Collard in respect to causality.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner in regard to his bilateral knee condition was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1 for Petitioner's bilateral knee condition, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit for amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of this conclusion the Arbitrator notes the following:

Dr. Bradley performed surgery on Petitioner's right knee and Petitioner had a good surgical outcome.

Dr. Collard agreed Petitioner was in need of bilateral knee surgery, but that the need for surgery was not related to the accident of August 17, 2021.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to prospective medical treatment including, but not limited to, left knee surgery and ongoing treatment to the right knee, as recommended by Dr. Matthew Bradley.

In support of this conclusion the Arbitrator notes the following:

As aforestated, there was no dispute Petitioner needed medical treatment in respect to his bilateral knee condition.

Dr. Bradley performed surgery on the right knee and Petitioner had a good surgical outcome.

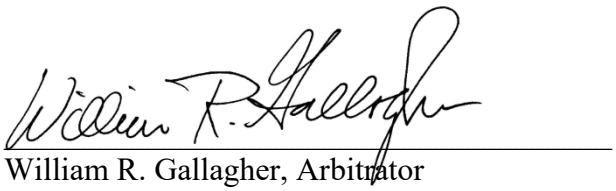
Dr. Bradley has recommended surgery on the left knee and Petitioner wants to proceed with same.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of seven and three-sevenths (7 3/7) weeks, commencing February 6, 2024, through March 29, 2024.

In support of this conclusion the Arbitrator notes the following:

Dr. Bradley performed surgery on Petitioner's right knee on February 6, 2024. Petitioner remains under Dr. Bradley's care and has not been authorized to return to work.



William R. Gallagher, Arbitrator

May 22, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC033578
Case Name	Ryan Moore v. State of Illinois - Chester Mental Health Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0544
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 11/15/2024

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☐ 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

RYAN MOORE,

Petitioner,

vs. NO: 21WC033578

SOI / CHESTER MENTAL HEALTH CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses and temporary total disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but corrects a scrivener's error as outlined below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

We correct the Findings section on the second page to indicate that the date of accident was "October 24, 2021" (not 2023).

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 29, 2023 is hereby affirmed and adopted with the correction noted above.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

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

November 15, 2024

SE/

O: 10/29/24

49

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC033578
Case Name	Ryan Moore v. SOI/Chester Mental Health Center
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 9/29/2023

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 26, 2023 5.31%

/s/ Edward Lee, Arbitrator

Signature

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

September 29, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Ryan Moore
Employee/Petitioner

v.

SOI/Chester Mental Health Center
Employer/Respondent

Case # **21** WC **033578**

Consolidated cases: **None**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Herrin, IL**, on **August 2, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **October 24, 2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**56,467.20**; the average weekly wage was $**1,085.91**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **3** dependent children.

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

Respondent is entitled to a credit for any medical bills paid through the employer's group health insurance under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as detailed in Petitioner's Group Exhibit #5, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $716.70/week for 45 4/7 weeks, commencing September 17, 2022 through August 2, 2023, as provided in Section 8(b) of the Act.

Respondent shall authorize and approve the medical treatment currently recommended by Dr. Matthew Gornet, Petitioner's treating physician.

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

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

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

Edward Lee_____ **SEPTEMBER 29, 2023**
Signature of Arbitrator

FINDINGS OF FACT

The parties presented for arbitration pursuant to Section 19(b) of the Act. The Petitioner alleges to have suffered a work injury to his back on October 24, 2021. The Respondent disputes liability for benefits herein based upon accident and causal connection.

The Petitioner testified he was a forty-seven-year-old Security Therapy Aide at Chester Mental Health Center. Chester Mental Health Center is a maximum-security mental health facility. Security Therapy Aides at Chester Mental Health Center are responsible for supervising the patients through their daily activities. They are also responsible for keeping the facility safe for the patients and fellow staff. The patients are free to move around their assigned "module" during the daytime hours.

On October 24, 2021, the Petitioner was supervising approximately 25 patients in the gymnasium for activity therapy. One patient was lying on the floor blocking an exit door. Petitioner's co-working instructed the patient to vacate the area and cease blocking the exit. The patient refused and became angry. A heated discussion ensued, and the patient chest-bumped the Petitioner and spit in Petitioner's face. The Petitioner attempted then to place the patient in a physical hold. A struggle ensued and all parties ended up falling to the ground. This incident was witnessed by multiple patients and a co-worker. Further staff were summoned to assist the Petitioner.

The Petitioner was seen at the facility by the facility medical staff following the injury. The Petitioner also completed reporting requirements following the incident. The Petitioner sought further medical treatment with his primary-care physician, Dr. Molnar, at Chester Clinic. Eventually, the Petitioner was referred for MRI examination at Cedar Court Imaging. Following MRI, the Petitioner was referred to an orthopedic surgeon by Dr. Molnar.

The Petitioner has been under the care and treatment of Dr. Matthew Gornet, an orthopedic surgeon, since that time until present. Dr. Gornet has recommended the Petitioner undergo physical therapy, injections, a second MRI, and a CT discogram. Dr. Gornet is now recommending surgery, and the Petitioner is ready and willing to undergo the surgery currently recommended by Dr. Gornet in an effort to alleviate his back pain.

The Petitioner was working full duty at Chester Mental Health Center prior to his work injury on October 24, 2021. Petitioner was hired by Respondent in 2014. The Petitioner did not miss any extended periods of work due to injury from 2014 to October 2021. The Petitioner has never had a prior surgery on his spine.

On cross examination, the Petitioner was told Amy Bastian completed a report of the incident indicating the patient was placed in a physical hold and handcuffs were placed on recipient. He was then escorted and placed into full lateral restraints. Another report indicated the recipient was fighting staff to a point where staff had to lay him on the floor. The Petitioner testified they went to the floor in a wrestling contest with the patient lunging and thrashing around.

The Petitioner also acknowledged receiving chiropractic massage prior to his work injury but denied any chiropractic manipulation.

The medical records entered into evidence indicate the Petitioner presented to Chester Clinic for medical treatment on October 25, 2021 reporting a worker's compensation injury that occurred while working at Chester Mental Health Center on October 24, 2021 (Px. 1). A patient attacked the Petitioner, and they wrestled to the

ground (Px1). The Petitioner noted he injured his ribs and low back and has significant low back pain from the incident. The low back was tight and achy and radiated into the buttock on both sides (Px 1).

When Petitioner followed-up on November 2, 2021, the rib pain was improving but the back pain was ongoing (Px. 1). The Petitioner reported sharp pain in his low back with pain into the buttocks and down his legs (Px 1). Dr. Molnar recommended X-rays and noted the Petitioner "has provocative testing concerning for ruptured disc in his back" (Px. 1). On November 9, 2021, the Petitioner reported low back pain with parasthesia down the right legt (Px. 1). Dr. Molnar recommended MRI (Px. 1). On December 7, 2021, Dr. Molnar reviewed the MRI and referred the Petitioner to neurosurgery (Px. 1).

The Petitioner first saw Dr. Matthew Gornet on February 10, 2022. He reported pain in his low back central to both sides, both buttocks, both hips, right worse than left and predominantly in his right lower leg (Px. 3). He admitted prior low back pain treatment he had in 2007 but had been working full duty for the last eight years for Chester Mental Health Center (Px. 3). Dr. Gornet read the MRI films noting a disc protrusion at L5-S1, and an annular tear at L4-5 (Px. 3). Dr. Gornet recommended steroid injections at L4-5 and L5-S1 (Px. 3). Dr. Gornet stated "I do believe his current symptoms, at least in their level of severity, relate to the accident of 10/24/21 and our working diagnosis is disc injury L4-L5 and L5-S1 and aggravation of an underlying asymptomatic degenerative condition" (Px. 3).

The Petitioner underwent a right L4-L5 epidural steroid injection on March 8, 2022 (Px. 3). The Petitioner also underwent a right L5-S1 epidural steroid injection on March 29, 2022 (Px. 3).

Following these injections, the Petitioner followed-up with Dr. Gornet who recommended a second MRI (Px. 3). Dr. Gornet felt that, given the fact the Petitioner had trial and failed conservative measures, his recommendation would be a CT discogram for L3-4 and L4-5 (Px. 3). It was already obvious the L5-S1 would need to be treated (Px. 3).

Petitioner underwent CT discogram on September 28, 2022 which revealed a non-provocative disc at L3-4, but a provocative disc at L4-5 (Px. 3). Following the CT discogram, Dr. Gornet recommended surgery in the form of anterior lumbar disc replacement at L4-5 and anterior fusion at L5-S1 (Px. 3). Dr. Gornet was also shown an Independent Medical Evaluation from Dr. Timothy Van Fleet which he reviewed and disagreed with (Px. 3). Dr. Gornet noted "this is clearly causally related to his incident as described and again, stating that he has a preexisting disc degeneration has no relevance given the fact that he was involved in a significant altercation assault" (Px. 3).
Dr. Matthew Gornet testified, via evidence deposition, on March 16, 2023, and the transcript was received into evidence at arbitration. Dr. Gornet testified he was a board-certified orthopedic surgeon with a practice devoted to spine surgery (Px. 3). Dr. Gornet received his undergraduate degree from Washington University where he graduated Summa Cum Laude, Phi Beta Kappa and was a commencement Marshall (Px. 3). He attended medical school at Johns Hopkins University School of Medicine and completed his residency at Johns Hopkins Hospital (Px. 3). Dr. Gornet has published many articles regarding spine surgery and participates in large scale clinical trials for neck and back pain and authored the largest FDA clinical trial ever looking at surgical treatment for structural back pain (Px. 3). Dr. Gornet performs between five and ten spine surgeries per week, depending upon complexity, and will see approximately 100 to 120 patients per week (Px. 3).

Dr. Gornet testified consistent with his treatment records regarding Ryan Moore (Px. 3). He reviewed the MRI films and could point to the exact image of each film series to identify the injured levels of Petitioner's spine (Px. 3). Dr. Gornet opined the Petitioner's current condition was causally related to his work injury of October 24, 2021 (Px. 3). Dr. Gornet based his opinion on evaluating and treating structural back pain over the last 30 years having lectured on the subject throughout the United States and around the world and written numerous articles on structural back pain and where it emanates (Px. 3). Dr. Gornet also based his opinion on the objective pathology seen on Petitioner's studies (Px. 3). Dr. Gornet felt there was clear pathology consistent with

structural back pain and/or leg symptoms at L5-S1 and L4-5 which was seen not only by his interpretation of the films but also interpreted by the radiologist at Cedar Court Imaging (Px. 3).

On cross-examination, Dr. Gornet noted the Petitioner has disc degeneration at L1-2 and L3-4, but L2-3 did not show any significant issues (Px. 3). Dr. Gornet felt the L3-4 level might also be related to the Petitioner's injury but was not symptomatic so he would not be treating that level (Px. 3). Dr. Gornet noted that any of the movements Petitioner had to engage in during his altercation with a patient could have served as the mechanism of injury (Px. 3). Dr. Gornet noted the Petitioner filled out a patient questionnaire at his first visit indicating low back pain which radiated down both legs (Px. 3).

The Respondent solicited a Section 12 evaluation with Dr. Timothy VanFleet. Dr. VanFleet testified, via evidence deposition, on May 17, 2023, and the transcript was received into evidence at arbitration. Dr. VanFleet testified he was a board-certified orthopedic surgeon who performs about 10 to 15 surgeries per week (Rx. 3). Dr. VanFleet performs the majority of his surgeries on the spine (Rx. 3). Dr. VanFleet also performs about 3 to 4 independent medical evaluations per week as part of his practice (Rx. 3). The evaluations are "mostly for the defense" (Rx. 3).

Dr. VanFleet saw the Petitioner on September 2, 2022 (Rx. 3). He spent about fifteen to twenty minutes with the Petitioner (Rx. 3). He also reviewed medical records and took a history from the Petitioner (Rx. 3). Dr. VanFleet also conducted a physical examination of the Petitioner which included non-organic pain manifestations (Rx. 3). Dr. VanFleet also reviewed the MRI films and diagnosed the Petitioner with multi-level chronic lumbar disc disease (Rx. 3). Dr. VanFleet opined the Petitioner's current condition was not related to his work injury (Rx. 3). Dr. VanFleet felt the changes seen on MRI were longstanding, and the Petitioner was malingering (Rx. 3). Dr. VanFleet put the Petitioner at MMI as of September 2, 2022 (Rx. 3).

On cross-examination, Dr. VanFleet testified he did not review any chiropractic records or any medical records which predated the Petitioner's work injury (Rx. 3). Dr. VanFleet reported the Petitioner had an abundance of chiropractic care preceding his work injury but could not testify as to how many times the Petitioner was seen for chiropractic care in 2021 nor during any of the previous five years leading up to 2021 (Rx. 3).

Dr. VanFleet testified he always performs a physical examination on patients and will always look for symptom magnification on any patient during that physical exam (Rx. 3). He will look at a patient's mannerisms and facial expressions during his physical examination (Rx. 3). Dr. VanFleet testified he "is a trained observer. I'm a professional. I've been doing this for a long time, you know" (Rx. 3).

Dr. VanFleet didn't know how long the Petitioner had been working for Chester Mental Health Center (Rx. 3). Dr. VanFleet also didn't know if the Petitioner had ever suffered a work injury prior to this one (Rx. 3). Dr. VanFleet also didn't know what level of security facility Chester Mental Health Center maintained (Rx. 3).

Dr. VanFleet testified he spends about fifteen minutes with the patient in the room for the typical IME (Rx. 3). He felt he could spot queues of malingering within a minute (Rx. 3).

CONCLUSIONS OF LAW

C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

The Arbitrator concludes the Petitioner suffered an accident arising out of and in the course of his employment with the Respondent. In support of this Conclusion, it is noted the Petitioner credibly testified to his job duties and the assault which took place on October 24, 2021. The Petitioner's job sometimes requires directing a patient when they are not abiding by the rules of the facility. In this case, the patient was lying in an exit from

the gymnasium. The Petitioner instructed the patient to move. The patient became angry and spit in Petitioner's face and instigated an altercation. During the said altercation, the Petitioner was required to restrain the patient. The patient and Petitioner wrestled to the ground during the restraint. The Petitioner was injured. The incident was witnessed.

The Respondent brought forth no evidence to rebut the testimony of the Petitioner. Accordingly, Petitioner sustained his burden regarding accident herein.

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator concludes the Petitioner's current condition of ill-being is causally related to the injury. In support of this Conclusion, it is noted the opinions of Dr. Matthew Gornet are more persuasive than those of Dr. VanFleet. Dr. VanFleet examined the Petitioner for a total of fifteen minutes and felt the Petitioner might be malingering within a minute. Dr. VanFleet had no idea what kind of job Petitioner had before opining he could go back to work full duty. Dr. VanFleet stated the Petitioner had "an abundance of chiropractic treatment" prior to his work injury but could not cite to one record or state how many times the Petitioner had ever been to the chiropractor.

Dr. Gornet's testimony was much more persuasive. He had seen the Petitioner on several occasions, reviewed the MRI films (pointing to the exact film in the series where the injuries were to be found), and reviewed the CT discogram. Furthermore, Dr. Gornet rightly pointed out the Petitioner was able to work full duty in this maximum-security environment for several years prior to the work injury. The injury caused him to cease working for Respondent.

The Petitioner's medical records are also persuasive. The Petitioner consistently reported low back pain into both buttocks and right greater than left leg pain to every physician he saw. The medical treatment began following the work injury and has been consistently demonstrating the Petitioner is currently suffering from a work-related low back injury.

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☒ Is Petitioner entitled to any prospective medical care?

L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD

The Respondent disputed liability for incurred medical bills, TTD and prospective medical treatment. The Respondent disputed these benefits based upon their belief there was no causal connection or accident. Based upon the Arbitrator's conclusions regarding accident and causal connection herein, the Arbitrator hereby concludes the Respondent shall pay reasonable and necessary medical services as detailed in Petitioner's Group Exhibit #5, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall also pay Petitioner temporary total disability benefits of $716.70/week for 45 4/7 weeks, commencing September 17, 2022 through August 2, 2023, as provided in Section 8(b) of the Act.

Respondent shall authorize and approve the medical treatment currently recommended by Dr. Matthew Gornet, Petitioner's treating physician.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012531
Case Name	Troy Gonzalez v. Aaron's Auto Center & Quick Lube
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0545
Number of Pages of Decision	21
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Paul Rademacher
Respondent Attorney	Jane Ryan

DATE FILED: 11/15/2024

/s/Carolyn Doherty,Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Troy Gonzalez,

Petitioner,

vs. NO: 22 WC 12531

Aaron's Auto Center & Quick Lube,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission writes additionally only to clarify that the prospective care awarded by the Arbitrator refers to the three-level cervical disc replacement surgery recommended by Dr. Gornet and the necessary and reasonable attendant care thereafter.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 13, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of

expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $500.00. 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 15, 2024

O: 11/07/24
CMD/kcb
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012531
Case Name	Troy Gonzalez v. Aaron's Auto Center & Quick Lube
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Paul Rademacher
Respondent Attorney	Jane Ryan

DATE FILED: 5/13/2024

/s/ Bradley Gillespie, Arbitrator

Signature

INTEREST RATE WEEK OF MAY 7, 2024 5.155%

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
19(B)ARBITRATION DECISION

Troy Gonzalez
Employee/Petitioner

v.

Aaron's Auto Center & Quick Lube
Employer/Respondent

Case # **22 WC 012531**

Consolidated cases: **None**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **April 3, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **January 5, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**29,676.40**; the average weekly wage was $**570.70**.

On the date of accident, Petitioner was **43** years of age, respectively, ***married*** with 0 dependent children.

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

Respondent is entitled to any and all credits under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule totaling $**420.00,** equating to **$420.00** due and owing to MFG Spine, LLC, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care as recommended by Dr. Gornet, as provided in Sections 8(a) and 8.2 of the Act.

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

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

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

Bradley D. Gillespie

Signature of Arbitrator, Bradley Gillespie

MAY 13, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TROY GONZALEZ,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	**Case. No.: 22 WC 012531**
	)	
AARON'S AUTO CENTER & QUICK LUBE	)	
	)	
Employer/Respondent.	)	

19(b) DECISION OF ARBITRATOR

FINDINGS OF FACTS

The stipulations and record reflect that on January 5, 2021, Petitioner was employed as a mechanic at Aaron's Auto Center & Quick Lube in Marion, Illinois when he was injured in a work-related incident. This claim came before Arbitrator Bradley Gillespie for trial in Herrin, Illinois on April 3, 2024. The issues in dispute were accident, notice of the incident, causal connection, past medical expenses, and prospective medical care. All other issues have been stipulated.

TESTIMONY AND MEDICAL RECORDS

Petitioner testified that he worked for Aaron's Auto Center on January 5, 2021, as the lead mechanic and that he had been employed in that position since August of 2006. (Tr. 15). Petitioner's role as lead mechanic changed to shop manager sometime near the middle of 2021. (Tr. 15). Petitioner's job duties were to perform vehicle maintenance and repair ranging from swapping transmissions and motors to diagnosing mechanical failures. (Tr. 16). With respect to his injury, Petitioner testified that he was involved in an accident at work on January 5, 2021, when working on a Ford Ranger pick-up truck. (Tr 16-17). Petitioner was working alongside the shop owner, Jim Aaron, in order to remove a fuel tank before removing and replacing a fuel pump under said Ford Ranger. (Tr. 17). Petitioner and Jim Aaron then picked up opposite sides of the fuel tank and stood upwards together. (Tr. 17-18). Petitioner testified that the fuel tank held about 20 gallons of fuel and was quite heavy. (Tr. 18). As Petitioner and Mr. Aaron rose upwards and towards the underside of the Ford Ranger, Petitioner struck the very top of his head on the bottom of a spare tire affixed to the vehicle. (Tr. 18). Petitioner testified that his neck made a crunching or "straight Rice Krispie sound" that went all the way through his neck. (Tr. 18). The impact to the top Petitioner's head caused Petitioner to fall back down to the floor with the fuel tank and to his knees. (Tr. 18-19).

Petitioner testified that Jim Aaron, the owner of the business that employed Petitioner, was on the other side of the fuel tank and witnessed Petitioner strike his head on January 5, 2021. (Tr. 19). The whole truck shook when Petitioner struck his head and Petitioner testified that Mr. Aaron put his hand on Petitioner's shoulder and asked Petitioner if he was alright. (Tr. 19). Petitioner was adamant that Mr. Aaron witnessed his injury occur. (Tr. 19). Following his injury, Petitioner

recalled that Mr. Aaron and another mechanic finished the job Petitioner had been working on and Petitioner was unable to finish his work that day. (Tr. 19-20). Petitioner recalled that two other mechanics were present on January 5, 2021, and witnessed the accident – Kyle Aaron and Shaun Wagley. (Tr. 20). Petitioner further testified that Jim Aaron knew he was injured because Petitioner complained to him directly "every day" that he couldn't perform certain aspects of the job. (Tr. 40). Petitioner recalled that he complained to Jim Aaron about his injury within a week or two of January 5, 2021. (Tr. 40).

Mr. Shaun Wagley testified that he had been employed by Jim Aaron at Aaron's Auto Center since 2001 and that he had worked alongside Petitioner about twelve to fifteen years. (Tr. 63-64). Mr. Wagley explained that the auto shop is separated into "bays" and that Petitioner's Bay was about ten to twelve feet from where Mr. Wagley worked on a daily basis. (Tr. 64). Mr. Wagley recalled that Petitioner's neck was injured at Aaron's Auto Center. (Tr. 64). With respect to the accident, Mr. Wagley recalled hearing a thud that caused him to look towards Petitioner's Bay where he noticed that the vehicle Petitioner was working on was shaking on its rack. (Tr. 65). This led Mr. Wagley to believe that whatever Petitioner had hit, "he hit it hard." (Tr. 65). Further, Mr. Wagley noticed that Petitioner was on the ground and, based on Mr. Wagley's experience as a mechanic, he believed Petitioner had hit his head pretty hard. (Tr. 66). Mr. Wagley further explained that, in all the time he had known Petitioner, Petitioner had not complained of neck pain until after the incident. (Tr. 67). Mr. Wagley testified that Petitioner was different after the incident and that Petitioner couldn't perform work under vehicles if it required looking up or movement of the neck. (Tr. 67). Although Mr. Wagley couldn't not recall the exact date Petitioner was injured at work, Mr. Wagley did recall that Petitioner's job title changed. (Tr. 68). After the incident, Mr. Wagley noticed that Petitioner was not the same technician he had been, and that Petitioner would get dizzy or lose his balance. (Tr. 69). Mr. Wagley recalled that Petitioner "tried to tough it out" in order to keep working after the incident. (Tr. 69). Mr. Wagley recalled that Petitioner did complain to Jim Aaron about his neck pain after the incident, but Mr. Wagley did not recall the date. (Tr. 70).

Mr. Kyle Aaron testified that he had been employed by Jim Aaron at Aaron's Auto Center since approximately 2014. (Tr. 76). For the approximate ten years that Kyle Aaron worked at Aaron's Auto Center, Kyle Aaron testified that he had worked alongside Petitioner. (Tr. 76). Kyle Aaron testified that he witnessed Petitioner's injury at Aaron's Auto Center. (Tr. 76) Kyle Aaron explained that he saw Petitioner "getting up and hitting his head on a spare tire and falling straight to the ground and pretty well put him in big ole daze." (Tr. 77). Kyle recalled that Petitioner struck the top of the back of Petitioner's head. (Tr. 79). After the injury, Kyle Aaron testified that Petitioner complained about his neck pain, but could not recall the exact date of Petitioner's injury. (Tr. 77-78). Kyle Aaron recalled that Jim Aaron and Shaun Wagley were in the vicinity of Petitioner when Petitioner's injury occurred. (Tr. 78). Kyle Aaron further testified that his father, Jim Aaron, had been working alongside Petitioner when the injury occurred. (Tr. 79). Kyle Aaron further explained that Petitioner had not complained of neck pain prior to the incident but did complain of neck pain frequently after the incident. (Tr. 80). Kyle Aaron testified that he witnessed Petitioner struggle to perform his job duties after the incident and further testified that were some jobs Petitioner simply could not perform after the incident. (Tr. 80-81). However, Kyle Aaron did recall that Petitioner tried to continue performing as a mechanic "for a good while after the injury." (Tr. 82). Kyle Aaron then testified that his father, Jim Aaron, promoted Petitioner to shop

supervisor "[m]ainly because he just could not be 'mechanicing' effectively because of the injury." (Tr. 82).

In terms of medical care, Petitioner testified that he recalled seeking chiropractic care from Dr. Bradley on January 19, 2021. (Tr. 22). Petitioner called that he told Dr. Bradley about his injury at work and believed he had explained the injury events to him. (Tr. 22-23). Petitioner further recalled that he told Dr. Bradley that he felt like every bone in his neck had been jammed and that he felt neck pain that radiated into his right shoulder. (Tr. 23). Petitioner testified that he next saw Dr. Bradley the following day on January 20, 2021. (Tr. 24). Petitioner testified that he remembered explaining to Dr. Bradley that he felt better but that he did still have neck pain on January 20, 2021. (Tr. 24). After January 20, 2021, Petitioner recalled treatment with Dr. Bradley in May of 2021 when Petitioner indicated pain in his right fingertips. (Tr. 25). Petitioner testified that he indicated pain in his right fingertips in May of 2021 because of pain and numbness that sometimes caused him to feel like his right fingers were going to explode. (Tr. 25-26). In August of 2021, Petitioner recalled that he sought treatment with his primary care provider, Dr. Javed because Dr. Bradley had explained that Petitioner required orthopedic care. (Tr. 26). Dr. Javed ultimately referred Petitioner to an orthopedic doctor, Dr. Jeff Jones. (Tr. 26-27). Petitioner testified that Dr. Jones ordered an MRI of his neck and recommended he undergo a cervical fusion surgery. (Tr. 27-29). Petitioner next recalled that Dr. Jones sought approval of the cervical fusion, but Petitioner was ultimately referred to Dr. Gornet in St. Louis for further medical care. (Tr. 29). Petitioner recalled that Dr. Gornet ordered and reviewed imaging of his neck before ultimately recommending that Petitioner undergo a three-level cervical disc replacement. (Tr. 30-32).

Petitioner testified that he has never undergone a neck surgery. (Tr. 32). Petitioner further explained that he did not have any medical care for his neck or neck pain prior to January 5, 2021. (Tr. 32-33). With respect to the timeline of his medical care, Petitioner testified that he did not seek active medical care towards the beginning of his treatment secondary to his desire to "tough it out" and a desire to protect the business of Respondent from workers compensation claims and the associated costs. (Tr. 33-34).

The medical records from Dr. Michael Bradley, NeuroCare Medical Group, indicate that Petitioner presented for treatment on January 19, 2021. (PX 3). According to the records, Petitioner reported that he was injured on "1/5/21" while walking underneath a vehicle when hit his head and jammed his neck. (PX 3). The injury reportedly occurred while Petitioner read a clipboard and jammed his neck. (PX 3). It was recorded that Petitioner jammed every bone in his neck that caused him to suffer neck pain that radiated into his right arm. (PX 3). The physical exam performed on January 19, 2021, demonstrated reduced range of motion in Petitioner's cervical spine which Dr. Bradley felt was an acute manifestation of an injury that occurred on January 5, 2021. (PX 3)

Petitioner returned to Dr. Bradley on January 20, 2021. It was noted that Petitioner reported improvement in his symptoms following the January 19, 2021, treatment. (PX 3). Despite improvements, Petitioner continued to report stiffness in his cervical spine as well as pain that radiated from his cervical spine into his right shoulder. (PX 3). Petitioner continued to have reduced range of motion in his cervical spine on physical exam. (PX 3). Dr. Bradley again noted that Petitioner suffered an acute manifestation in his cervical spine with symptoms that began on January 5, 2021. (PX 3).

Petitioner next sought medical care on May 26, 2021, at Bradley Chiropractic Clinic. (PX 3). It was noted that Petitioner primarily sought medical care related to lower back pain. (PX 3). However, when completing a pain diagram for Dr. Bradley on May 26, 2021, Petitioner encircled his right hand and fingers and indicated an aching in his right fingertips. (PX 3). Petitioner rated his right fingertip symptoms at a 5 out of 10. (PX 3).

Petitioner next sought medical care from his primary care provider, Dr. Khalid Javed, on August 2, 2021. (PX 4, p. 15). Petitioner complained of bilateral hand numbness and was seeking a referral to a surgeon. (PX 4, p. 15). Dr. Javed noted that Petitioner "may have been injured during his work when he hit his head" six months prior. (PX 4, p. 15). As a result, Dr. Javed diagnosed Petitioner with neck pain and bilateral hand numbness. (PX 4, p. 16). Dr. Javed further recommended an MRI of Petitioner's neck and a nerve conduction study of Petitioner's wrists.

An August 6, 2021, nerve conduction study was performed and interpreted by Dr. Terrence Glennon on August 6, 2021. (PX 4, p. 48). Said nerve conduction study was normal with no evidence of neuropathy at Petitioner's wrists or elbows. (PX 4, p. 48-50).

On August 16, 2021, Petitioner sought medical treatment from Dr. Javed. (PX 4, p. 4). Dr. Javed noted that Petitioner sought treatment to discuss next steps regarding his bilateral hand numbness. (PX 4, p. 4). It was noted that Petitioner's health insurance denied the request for an MRI of Petitioner's neck. (PX 4, p. 4). The history that date noted that Petitioner suffered a neck injury six months ago and started having bilateral hand/finger numbness. (PX 4, p. 4). Petitioner reported that his chiropractor had recommended an MRI and surgical consult. (PX 4, p. 4). Dr. Javed recommended that he would refer Petitioner to Dr. Jeff Jones for further treatment. (PX 4, p. 6).

Petitioner presented to physician assistant, Angela Arnold, at the Orthopedic Institute of Southern Illinois on August 30, 2021. (PX 5, p. 8). It was noted that Petitioner reported neck pain with bilateral hand numbness and that he had hit his head while under a vehicle in February of 2021. (PX 5, p. 10). Petitioner reported that his pain had worsened since hitting his head. (PX 5, p. 10). In order to ascertain the nature of the injury and to determine further treatment, PA Arnold ordered an MRI of Petitioner's cervical spine. (PX 5, p. 11).

Petitioner next returned to Dr. Bradley on August 30, 2021. (PX 3). Petitioner reported that he was still suffering from neck pain that began on January 5, 2021, after he had hit his head underneath a car. (PX 3). Petitioner reported that his neck pain radiated bilaterally into his arms and fingertips of his third, fourth and fifth digits. (PX 3). Petitioner sought chiropractic care secondary to recently being treated by Dr. Jeff Jones who recommended Petitioner undergo traction treatment to his neck. (PX 3). Dr. Bradley Petitioner sought medical care that day but that his symptoms started on January 5, 2021. (PX 3).

On September 1, 2021, Petitioner sought medical care from Dr. Bradley. (PX 3). Petitioner reported bilateral arm and finger numbness that he rated at a 5 out of 10. (PX 3) The radicular symptoms were noted to go down Petitioner's arms and into his fingers. (PX 3). On September 3, 2021, Petitioner returned to Dr. Bradley for further treatment. (PX 3). Petitioner indicated that his

neck pain had been improved the day prior but that a strenuous day and work caused his neck to become sore. (PX 3). As a result, Petitioner reported numbness in his fingers bilaterally and neck pain when looking down to read. (PX 3). On September 7, 2021, Petitioner was treated by Dr. Bradley for pain primarily unrelated to his neck. (PX 3). However, Petitioner noted that his neck pain had improved somewhat, but that he still had neck pain and radicular arm pain. (PX 3).

The MRI of Petitioner's neck was performed on September 15, 2021, and interpreted by Dr. Harold Halfhill. (PX 5, p. 12-13). Said MRI revealed that Petitioner suffered from: (1) central disc protrusion at C2-C3; (2) mild degenerative disc disease with mild osteophyte complex that caused mild central stenosis and mild-to-moderate foraminal stenosis at C4-C5; (3) degenerative disc disease with a broad-based disc osteophyte complex causing moderate central stenosis and facet overgrowth causing moderate bilateral foraminal narrowing at C5-C6; and (4) broad-based disc osteophyte complex to the left resulting in mild ventral flattening and moderate central stenosis as well as moderate-to-severe foraminal stenosis at C6-C7. (PX 5, p. 12-13).

Petitioner returned to the Orthopedic Institute of Southern Illinois on October 26, 2021, after undergoing the cervical MRI. (PX 5, p. 14). PA Arnold noted that the MRI of Petitioner's cervical spine showed cervical spondylosis with decreased cervical lordosis and a congenitally narrow canal with degenerative changes and central stenosis noted but worse at levels C5-C6 and C6-C7. (PX 5, p. 16). In light of the MRI findings, PA Arnold indicated that Dr. Jeff Jones recommended that Petitioner undergo an anterior cervical fusion at C5-C7. (PX 5, p. 16). PA Arnold noted the intent to proceed with said surgery following approval and scheduling (PX 5, p. 16).

On February 2, 2022, Petitioner returned to the Orthopedic Institute of Southern Illinois. It was noted that Mr. Gonzalez presented with complaints of pain, numbness, paresthesia, and weakness. (PX 5, p., 28). Mr. Gonzalez reported that his symptoms had been acute traumatic and began on January 5, 2021, when he hit his head under a vehicle. (PX 5, p., 28). Mr. Gonzalez further reported that his injury occurred at work and that he was on Workers Comp. (PX 5, p., 28). PA Arnold noted that Mr. Gonzalez had previously been recommended to undergo an anterior cervical fusion, but that said surgery had "not yet been approved through Workman's compensation." (PX 5, p., 30). PA Arnold recommended that Petitioner follow up pending approval and noted that they would continue to work on approval for the recommended cervical ACDF. (PX 5, p., 31).

The medical records at the Orthopedic Institute of Southern Illinois demonstrate a number of communications regarding Petitioner's medical care from February 16, 2022, through April 14, 2022. (PX 5, p., 35-37). Said messages indicate that Petitioner continued to follow up with the Orthopedic Institute of Southern Illinois regarding his cervical pain and the awaited approval for his neck surgery. (PX 5, p., 37).

On October 17, 2022 Petitioner was treated by Dr. Matthew Gornet for the first time. (PX 6). Petitioner was referred to Dr. Gornet by Dr. Jones (TR. 60) Dr. Gornet noted that Petitioner was a 47-year-old man with complaints of neck pain to the base of his neck with frequent headaches, bilateral trapezial pain that stopped at his shoulder and then tingled from his elbows to his fingertips bilaterally (PX 6). Petitioner reported that he was injured at work while working with

his boss and while hoisting a fuel tank up. (PX 6). Petitioner reported he stood up and his head was jammed on a tire with the load coming straight down. (PX 6). Dr. Gornet performed a physical exam which demonstrated that Petitioner suffered pain in his neck and into his shoulders bilaterally that caused mild decreased range of motion in his neck. (PX 6). Dr. Gornet then reviewed an MRI of Petitioner's cervical spine performed that day at MRI Partners of Chesterfield. (PX 6). Based upon Dr. Gornet's interpretation, Petitioner suffered from (1) large central bilobular herniations at C4-C5, C5-C6 and C6-C7; (2) cord changes present at C5-C6; (3) foraminal herniations at C4-C5 and C5-C6. (PX 6). Dr Gornet concluded that Petitioner suffered multilevel disc injuries at C4-5, C5-6 and C6-7. (PX 6). He requested that Petitioner provide him with previous medical records as well as the IME Report before discussing his conclusion that Petitioner's pain, symptoms and treatment related to an accident that occurred on "1/5/20 with an axial load."

Petitioner was last treated on January 9, 2023, by Dr. Gornet. (PX 6). The medical record reflects that Petitioner provided Dr. Gornet with medical records that Dr. Gornet requested for review. (PX 6). Dr. Gornet noted that Dr. Jeff Jones had previously recommended a two-level cervical fusion at C5-6 and C6-7; however, Dr. Gornet discussed that Petitioner's MRI clearly showed structural disc injury at C4-5 which required surgical intervention to cure and relieve the effects of Petitioner's work-related injury. (PX 6). Dr. Gornet then discussed an IME Report authored by Dr. Michael Chabot. (PX 6). Dr. Gornet noted that Dr. Chabot had not reviewed the prior MRI at Orthopedic Institute of Southern Illinois, nor had Dr. Chabot reviewed the MRIs performed at MRI Partners of Chesterfield. (PX 6). Dr. Gornet disagreed with Dr. Chabot's opinion of only a "temporarily aggravated" preexisting disease and noted that Petitioner's symptoms would have resolved if his injury only caused a temporary aggravation. (PX 6). Dr. Gornet also disagreed that Petitioner's differing symptoms between January of 2021 and August of 2021 were inconsistent with a work-related injury. (PX 6). Dr. Gornet opined that Petitioner's presentation and change in disease process was normal and it would be inconsistent with reality to believe that Petitioner's symptoms would remain unchanged during that time period. (PX 6). Dr. Gornet continued to seek approval of a three-level disc replacement surgery on behalf of Petitioner. (PX 6).

The evidence deposition of Dr. Matthew Gornet was taken on May 8, 2023, and was admitted into evidence. (PX 1). Dr. Gornet testified that he has been a board-certified orthopedic surgeon devoted to spine surgery for over 30 years and that he performed approximately 5 to 10 spine surgeries per week. (PX 1, p. 7-10). In addition, Dr. Gornet maintains a clinical practice wherein he treats 100 to 120 patients per week. (PX 1, p. 8). Dr. Gornet testified that his first treatment of Petitioner occurred on October 17, 2022, and Petitioner complained of neck pain, frequent headaches, and bilateral perineal pain that stopped at Petitioner's shoulders and tingled into Petitioner's arms to his fingertips. (PX 1, p. 14). Dr. Gornet related that the history provided by Petitioner was that of a work injury that began on or about 1/5/2020 when Petitioner was working for Aaron's Auto Center and Petitioner struck the top of his head on a tire. (PX 1, p. 14-15). Dr. Gornet noted that the force from the tire came straight down onto Petitioner's head and that Petitioner's neck did not flex. (PX 1, p 14-15). Dr. Gornet then clarified on the record that the date of 1/5/2020 was "probably a typo" and that, based on the notes and medical records and IME, the date should be "2021." (PX 1, p. 16). Dr. Gornet next testified that MRIs he reviewed with Petitioner on October 17, 2022 demonstrated clear structural disc pathology at C4-5, C5-6 and C6-7. (PX 1, p. 16-18). Dr. Gornet then testified to the many disc herniations throughout Petitioner's

MRIs before he noted that the disc pathology shown on the MRI was "fairly classic of what we would call 'jamming your neck' where it puts an axial load straight down on your spine." (PX 1, p. 19). Dr. Gornet additionally testified that the pathology found on Petitioner's MRI was "related to the 1/5/2021 disc injury." (PX 1, p. 22-23). Dr. Gornet discussed that the axial loading suffered by Petitioner would cause "any disc that's inherently weak to blow out." (PX 1, p. 19). Axial loading, according to Dr. Gornet, is a "sudden load straight up or down your spine" which causes a disc to give way and suffer injury. (PX 1, p. 26). Dr. Gornet further testified that the pathology found on the cervical MRI correlated well with Petitioner's subjective complaints. (PX 1, p. 20). Dr. Gornet testified that he believed Petitioner suffered a three-level disc injury at C4-5, C5-6 and C6-7 based on his review of the MRIs, physical examination, and Petitioner's history. (PX 1, p. 20). Dr. Gornet testified that he last saw Petitioner on January 9, 2023, and that Petitioner had brought a set of medical records and the Independent Medical Exam for Dr. Gornet to review and go over with Petitioner. PX 1, p. 20-21). Dr. Gornet explained that Dr. Jeff Jones felt neck surgery at C5-6 and C6-7 was necessary for Petitioner, but Dr. Gornet believed that C4-5 should be included in order to ensure the treatment cures and relieves the effects of Petitioner's work-related injury. (PX 1, p. 21). Dr. Gornet then testified that Dr. Chabot's opinion regarding a temporary aggravation of a pre-existing disease was incorrect. (PX 1, p. 22). Dr. Gornet's findings were "much more specific" as he found disc injuries at C4-5, C5-6 and C6-7 which the MRI conclusively showed. (PX 1, p. 22). Dr. Gornet further testified that Petitioner did not have significant treatment of his neck in the past and that Petitioner suffered a mechanism of injury that "could clearly cause the disc to be injured." (PX 1, p. 22). Finally, Dr. Gornet testified that Dr. Chabot's assessment of only a temporary aggravation was incorrect given Petitioner continued to be symptomatic following the injury. (PX 1, p. 22). Dr. Gornet discussed that Petitioner likely did have some amount of pre-existing disease prior to 1/5/2021 but that said pre-existing disease could not be said to be the cause of his injury because it existed prior to 1/5/2021 and Petitioner was asymptomatic. (PX 1, p. 23). The "more likely explanation" was the Petitioner suffered a disc injury given he had weaker discs prior to January 5, 2021. (PX 1, p. 23-24). Ultimately, Dr. Gornet recommended cervical disc replacement for Petitioner at C4-5, C5-6 and C6-7 and testified that said surgery was reasonable, necessary and related to Petitioner's January 5, 2021 work injury. (PX 1, p. 25). Dr. Gornet did not believe that Petitioner demonstrated any signs of malingering or symptom magnification during his treatment of Petitioner. (PX 1, p. 27).

On cross-examination, Dr. Gornet testified Petitioner's reported history to Dr. Bradley on January 19, 2021, differed slightly in terms of whether he was walking or standing up when Petitioner struck his head on a tire. (PX 1, p. 32). However, the described history did not change Dr. Gornet's opinions because it was irrelevant to Dr. Gornet whether Petitioner stood straight up or walked into a tire given the "sudden mechanical load" would remain the same. (PX 1, p. 33). Dr. Gornet additionally pointed out that Petitioner's reported injury of "I feel like I jammed every bone in my neck," supported an axial loading of Petitioner's spine. (PX 1, p. 33). Ultimately, Dr. Gornet testified that Petitioner suffered an axial loading and axial injury to his spine whether he struck his head walking or standing. (PX 1, p. 35). Dr. Gornet further testified that Petitioner likely did have degenerative disc disease but that said degenerative disease is a normal part of life and clarified that Petitioner was asymptomatic prior to his work-related injury. (PX 1, p. 36-37).

On re-direct examination, Dr. Gornet testified that it would be inappropriate to treat singular dates of Petitioner's treatment as a microcosm when the important question was where

the disease process was heading. (PX 1, p. 39-40). Dr. Gornet further testified that it would be inappropriate to expect Petitioner's symptoms to remain unchanged from his original injury to years later because injuries "always change over time." (PX 1, p. 40).

Dr. Michael Chabot conducted a Section 12 examination of Petitioner on May 19, 2022 (RX 1). Dr. Chabot testified that he is a board-certified orthopedic surgeon practicing in St. Louis since 1994. (RX 1, p. 7). Dr. Chabot's practice specializes in spinal conditions wherein he performs approximately 5 to 7 surgeries per week. (RX 1, p. 7). Dr. Chabot additionally handles approximately six IMEs on behalf of Missouri and Illinois employers each week. (RX 1, p. 8). He additionally performs "some" record reviews each month. (RX 1, p. 8). He believes that 90% of his practice is caring for patients. (RX 1, p. 8). Dr. Chabot agreed that he performed an IME regarding Petitioner and subsequently authored three reports. (RX 1, p. 9-10). Dr. Chabot testified that during the IME, Petitioner explained to him that he had been injured on January 5, 2021, while he was pulling a fuel pump out of a truck, stood up and hit his head against a tire. (RX 1, p. 10-11). Dr. Chabot likewise agreed that Petitioner told him that Petitioner felt a "crunching type sensation" in his neck. (RX 1, p. 11). It was Dr. Chabot's recollection that Petitioner's symptoms worsened following the January 5, 2021, incident until Petitioner sought treatment from a chiropractor, Dr. Bradley. (RX 1, p. 11). Dr. Chabot testified that Petitioner was symptomatic in May of 2022 and complained of sharp, electrical-type pain that involved the posterior of Petitioner's neck as well as bilateral paresthesia in both of Petitioner's fingertips. (RX 1, p. 11-12). Dr. Chabot testified that Petitioner's physical examination of his neck was "essentially normal" and attributed Petitioner's reduced motion in his neck to degeneration. (RX 1, p 16). Dr. Chabot testified that he was able to review "x-rays of the cervical spine" performed in Dr. Chabot's office." (RX 1, p. 17). Dr. Chabot diagnosed Petitioner with only a cranial contusion based upon "essentially his history." (RX 1, p. 18). Dr. Chabot testified that Petitioner's January 5, 2021, injury was unlikely severe because injured persons typically seek treatment immediately whereas Petitioner deferred his care for two weeks. (RX 1, p. 19). Dr. Chabot found it significant that Petitioner did not seek medical care between January 19, 2021, and August of 2021 because he believed "a person doesn't seek treatment because he doesn't have symptoms." (RX 1, p. 20). Ultimately, Dr. Chabot believed that Petitioner's cervical spine condition was only degenerative in nature "because of the studies reviewed revealed evidence of chronic degenerative changes…from C4 to C7." (RX 1, p. 22). Dr. Chabot likewise did not believe that Petitioner's preexisting condition was aggravated by the January 5, 2021, incident because Dr. Chabot did not find Petitioner had active radiculopathy. (RX 1, p. 23).

On cross-examination, Dr. Chabot testified that he charges $1,500.00 per IME and performs six IMEs per week. (RX 1, p. 35). Dr. Chabot additionally detailed the charges associated with his examination, subsequent addendum reports and his deposition fees. (RX 1, p. 36-38). Dr. Chabot conceded that he had not received or reviewed a single medical record associated with Dr. Gornet's treatment of Petitioner. (RX 1, p. 38). Dr. Chabot likewise conceded that he had not reviewed the most recent cervical MRI Petitioner underwent at MRI Partners on October 17, 2022. (RX 1, p. 38). Dr. Chabot additionally testified that he did not receive or review any CT scans of Petitioner's cervical spine. (RX 1, p. 38). Dr. Chabot acknowledged that Petitioner did not have medical records prior to January 5, 2021, with complaints of neck pain reported. (RX 1, p. 39). Dr. Chabot agreed that he did not receive or review prior medical records of Petitioner wherein Petitioner reported neck pain. (RX 1, p. 39). However, Dr. Chabot mistakenly testified that he did

not have prior medical records from Dr. Bradley, when in fact, he did have said prior medical records dating back to September of 2017. (RX 1, p. 39-40). Upon review, Dr. Chabot likewise agreed that Petitioner did not complain of neck pain in his prior medical records maintained at Dr. Bradley's chiropractic clinic. (RX 1, p. 40). Dr. Chabot testified that a majority of adults over the age of 30 have some form of degenerative disc disease in their spine and that it is possible for those individuals to be asymptomatic. RX 1, p. 40-41). Dr. Chabot further testified that it is possible for an asymptomatic individual to become symptomatic as a result of an acute injury, including a "traumatic contusion." (RX 1, p. 41). With respect to axial loading, Dr. Chabot testified that the most common injury would be "something like a blow to the cranium." (RX 1, p. 42). Dr. Chabot acknowledged that, if Petitioner was under a vehicle and stood up striking the top of his head, that would indicate an axial loading of his spine. (RX 1, p. 43). Dr. Chabot likewise agreed that, if Petitioner was looking down at a clipboard and struck his head on a tire, this would indicate an axial loading of his spine. (RX 1, p. 43). Dr. Chabot testified that it was possible that Petitioner's January 5, 2021, injury aggravated a preexisting condition in Petitioner's neck and that the medical records supported that conclusion. (RX 1, p. 47). However, Dr. Chabot maintained that Petitioner did not suffer an aggravation of a preexisting condition. (RX 1, p. 46). Dr. Chabot again testified to possibilities when agreeing that it was possible that Petitioner suffered a cervical strain on January 5, 2021. (RX 1, p. 47). Dr. Chabot conceded that he did not examine Petitioner at the time of his injury and noted that Petitioner's chiropractic records suggested Petitioner sustained a cervical strain. (RX 1, p. 48). Dr. Chabot believed that Petitioner's neck pain improved following his chiropractic care and was critical of the presentation of symptoms in August of 2021 compared to January of 2021. (RX 1, p. 48). Per Dr. Chabot, Petitioner's symptoms in August of 2021 were "somewhat totally different" compared to January of 2021. (RX 1, P. 48). It was Dr. Chabot's opinion, that Petitioner's cervical spine had degenerative conditions that long pre-dated, by a decade or more, his January 5, 2021, injury. (RX 1, p. 53-54). However, Dr. Chabot was unwilling to agree that Petitioner was asymptomatic prior to January 5, 2021, because "that's making an assumption" Dr. Chabot had a full medical history. (RX 1, p. 54). Dr. Chabot went on to testify that he wanted to see other medical records from Petitioner's providers because Petitioner sought chiropractic care and Dr. Chabot believed chiropractic patients seek care frequently. (RX 1, p. 54). Finally, Dr. Chabot conceded that there were no indications in Petitioner's medical history of neck complaints prior to January 5, 2021. (RX 1, p. 55).

CONCLUSIONS OF LAW

The Arbitrator finds Petitioner was credible at the time of trial. In supporting of this finding was the testimony by Mr. Shaun Wagley, Mr. Kyle Aaron, the treating physician and the Section 12 examiner as well as Petitioner's testimony being consistent with the medical records admitted into evidence. Therefore, the Arbitrator finds as follows:

ISSUE (C) & (D): Did an accident occur that arose out of and in the course of Petitioner's employment?

What was the date of accident?

The claimant in a workers' compensation proceeding has the burden of proving by a preponderance of the credible evidence that the injury arose out of and in the course of employment

and that involves an element of a causal connection between the accident and the condition of the claimant. *Cassens, Transp. Co. v. Industrial Comm'n*, 262 Ill.App.3d 324, 330, 33 N.E.2d 1344, 199 Ill. Dec. 353 (2nd Dist. 1994).

Initially, the Arbitrator notes that Respondent disputes an accident occurred as alleged by Petitioner. However, the Arbitrator acknowledges that, prior to hearing, Respondent conceded on the record that it does not dispute that an accident occurred at its workplace which may have led to Petitioner's injury, but rather Respondent disputes the accident date given by Petitioner's in light of reported histories and dates provided in the medical records.

Petitioner's unrebutted testimony indicated that he was injured on January 5, 2021 while working on a pickup truck with his boss and employer, Jim Aaron. Notably, Mr. Jim Aaron is the owner of Aaron's Auto Center & Quick Lube. Petitioner testified further on direct examination that he was injured on January 5, 2021, when he and Jim Aaron stood up with a fuel tank in between them causing Petitioner to strike the top of his head on a spare tire. This event caused Petitioner to fall to his knees due to the pain. Importantly, Petitioner then presented to Dr. Bradley's office on January 19, 2021, and reported a similar history wherein Petitioner described striking his head on a tire on January 5, 2021.

Petitioner's testimony regarding the factual circumstances of the accident was further bolstered by testimony of his co-workers, Shaun Wagley and Kyle Aaron. Mr. Wagley testified that Petitioner struck his head with sufficient force while at work that Mr. Wagley witnessed the truck shake on the rack before he found Petitioner on the ground. Although Mr. Wagley could not recall the exact date of the injury, Mr. Wagley's testimony provides circumstantial evidence which supports a finding that Petitioner struck his head while performing his job duties at Aaron's Auto Center & Quick Lube and in the factual manner described by Petitioner. The testimony of Jim Aaron's son, Kyle Aaron further bolsters Petitioner's testimony. Mr. Kyle Aaron testified that he personally witnessed the events described by Petitioner. Kyle Aaron testified that he saw Petitioner hit his head on a spare tire and fall straight to the ground in a daze. Kyle Aaron believed that Petitioner's injury occurred two-to-three years prior to the trial but could not recall the exact date. Taken as a whole, both Shuan Wagley and Kyle Aaron's testimony supported Petitioner's recollection of events that Petitioner testified occurred on January 5, 2021. The Arbitrator additionally finds it persuasive that Respondent offered no testimony or weighty rebuttal evidence to indicate that Petitioner injured himself in some other manner or on a date different that January 5, 2021.

Respondent additionally disputes accident and takes issue with the differing factual histories regarding whether Petitioner was walking with a clipboard or lifting a fuel pump in the medical records. However, the Arbitrator is persuaded by the fact that Petitioner described an incident at work that occurred on January 5, 2021, and involved a blow to Petitioner's head. The Arbitrator finds it compelling that Petitioner's co-workers, Shaun Wagley and Kyle Aaron, each testified to their independent recollection of events and that each witnesses' testimony supported Petitioner's history of events on January 5, 2021. When asked about the history relied upon by Respondent to dispute accident, Petitioner was unsure why a clipboard was mentioned and maintained that he was injured while lifting a fuel pump alongside Jim Aaron on January 5, 2021. Petitioner further testified that he did not recall telling Dr. Bradley he was injured while reading a

clipboard and explained that Dr. Bradley often was not the best listener. However, the ultimate issue for determination here is whether or not an accident occurred on January 5, 2021, and the medical records indicate that, in fact, an accident wherein Petitioner struck his head did occur on January 5, 2021.

Respondent next disputes accident based upon a seemingly errant date contained in Petitioner's medical records at the Orthopedic Institute of Southern Illinois. (RX 6). According to the document, Petitioner indicated an injury date or onset of symptoms on February 17, 2021, when he hit his head on a tire working on a car. (RX 6). Petitioner further indicated on said document that his injury was reported to Jim Aaron but that an accident report was not completed. (RX 6). Said document is dated August 30, 2021. (RX 6). When asked about February 17, 2021, at trial Petitioner recognized that the document was in his handwriting but maintained that the February 17, 2021, date was incorrect. Petitioner further explained "I've done mentioned once I'm terrible at dates." Notably, Respondent did not inquire if Petitioner suffered a second, unreported injury on February 17, 2021, and Petitioner maintained that he suffered one work injury that occurred on January 5, 2021. Further Respondent did not call any witnesses on its behalf and did not offer testimony that an injury occurred on February 17, 2021.

On this issue, the Arbitrator further notes that the medical records corroborate Petitioner's reported injury date of January 5, 2021, rather than February 17, 2021. On January 19, 2021, Petitioner presented to Dr. Bradley and specifically reported an injury date of January 5, 2021, in his history. Despite the intake form relied upon by Respondent to dispute accident, the medical records at the Orthopedic Institute of Southern Illinois overall support that Petitioner reported a specific accident date of January 5, 2021, in his oral history. When treating with Angela Arnold on August 30, 2021, the medical records noted only an approximation of February of 2021 when discussing Petitioner's history. However, the medical records are much more specific when Petitioner is treated on February 2, 2022, at the Orthopedic Institute of Southern Illinois in that Petitioner again reports a specific accident date of January 5, 2021. Likewise, Petitioner reported January 5, 2021, to Dr. Gornet's office upon seeking treatment. Thus, the majority of Petitioner's reported histories contained in Petitioner's medical records corroborate an accident of January 5, 2021.

The Arbitrator additionally finds it compelling that there is contemporaneous medical treatment in close proximity to January 5, 2021, whereas there is no medical care in proximity to February 17, 2021. The fact that Petitioner reported an accident of January 5, 2021, when seeking treatment within two weeks of said accident date but reported a different date approximately seven months later would indicate that the passage of time between said reports lends more credibility to the contemporaneously reported date of January 5, 2021.

While certainly there is variation contained in the medical records regarding the exact accident date, the Arbitrator finds that the salient detail consistently documents in the medical records is an onset of symptoms after Petitioner struck his head on a tire while working for Respondent on January 5, 2021. Therefore, the Arbitrator finds Petitioner has met his burden of proof and finds Petitioner suffered an accident that arose out his employment with Respondent on January 5, 2021.

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

Respondent additionally disputes notice. However, it is again noted that Respondent clarified on the record that notice was disputed by Respondent in conjunction with accident secondary to Respondent's perception of differing histories in the medical records. Respondent further clarified that said dispute was a legal dispute rather than a factual dispute.

The testimony of Petitioner. Mr. Wagley, and Mr. Kyle Aaron establish that Petitioner gave Respondent timely notice, as required by § 6 of the Act.

Petitioner unequivocally testified that he was working alongside his boss and supervisor, Jim Aaron, on January 5, 2021. On said date, Petitioner testified that he and Mr. Jim Aaron raised up together while holding a fuel tank on opposite sides when Petitioner struck his head on a tire and fell to his knees. Petitioner testified that Jim Aaron witnessed the event. After Petitioner struck his head, Respondent noticed he was hurt and put his hand on Petitioner's shoulder to ask if Petitioner was all right. Petitioner additionally testified that Respondent knew he was injured after January 5, 2021, secondary to Petitioner complaining about activities he could and could not perform due to petitioner's neck pain. Ultimately, Petitioner testified that he complained to Respondent within two weeks of the accident. It is apparent to the Arbitrator that Petitioner's unrebutted testimony would indicate to any reasonable person that Respondent, Jim Aaron, witnessed Petitioner strike his head and fall to the ground.

Further, the testimony of Mr. Kyle Aaron, Jim Aaron's son, tends to further support that Respondent witnessed the event and received timely notice. In discussing the event, Kyle Aaron testified that his father, Jim Aaron, was present and working with Petitioner when Petitioner's injury occurred. Thus, the facts and circumstances surrounding the accident, lend themselves to a finding that Respondent had notice that Petitioner was injured on January 5, 2021.

The Arbitrator finds and concludes that Petitioner has met his burden of proof that Petitioner provided notice of accident/injury to Respondent.

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

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident and decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill.2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96-97, 197 Ill.Dec. 502, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 666 Ill.Dec.347, 442 N.E.2d 908 (1982).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of normal degenerative process of the preexisting condition." *Elizabeth's*

Hospital v. Workers' Comp. Comm'n, 371 Ill.App.3d 882, 864 N.E.2d 266, 272-273 (2007). Accidental injury need only be a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 797 N.E.2d 665, 672 (2003) (emphasis added). Even when a preexisting condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 797 N.E.2d 665, 672 (2003). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 359 Ill.App.3d 582, 834 N.E.2d 583 (2005).

Employers are to take their employees as they find them *A.C. & S. v. Indus. Comm'n*, 304 Ill.App.3d 875, 710 N.E.2d 837 (1999) citing *General Electric Co. v. Indus. Comm'n*, 89 Ill.2d 432, 433 N.E.2d 671, 672 (1982). The law is clear that if a preexisting condition is aggravated, exacerbated or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Const. v. Indus. Comm'n*, 37 Ill.2d 123, 227 N.E.2d 65, 67-68 (1967); see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill.2d 234, 362 N.E.2d 339 (1977). A compensable aggravation occurs when a claimant's need for surgery is accelerated. *Judith Wheaton v. State of Illinois/Choate Mental Health Center*, 13 I.W.C.C. 0467; *Bowman v. Gateway Reg'l Med. Ctr.*, 14 I.W.C.C. 1022; *Clutterbuck v. UPS*, 15 I.W.C.C. 0046; *Howard v. St. Clair Hwy. Dept.*, 16 I.W.C.C. 0187, modified 16 MR 106.

The Arbitrator finds Petitioner's current condition of ill being in his cervical spine is causally related to the accident that occurred on January 5, 2021. The medical evidence supports Petitioner's cervical spine was asymptomatic prior to January 5, 2021. There is no evidence to suggest Petitioner was actively treating a neck issue leading up to his work injury. Immediately after his injury, Petitioner complained of neck pain, and sought medical care for his neck pain within two weeks of January 5, 2021. He continues to have these neck symptoms at the time of trial and there is no other plausible explanation offered by the parties for his continued neck pain other than the January 5, 2021, accident.

Dr. Gornet and Dr. Chabot agreed that Petitioner sustained some variety of a cervical trauma on January 5, 2021. The disagreement between Dr. Gornet and Dr. Chabot is simply one of extent or severity with Dr. Gornet opining that Petitioner suffered a disc injury while Dr. Chabot opined petitioner suffered only a possible cervical sprain/strain. Dr. Gornet and Dr. Chabot further agreed that the mechanism involved in Petitioner's January 5, 2021, injury was one capable of providing an axial loading to Petitioner's cervical spine, with Dr. Chabot opining that a cranial contusion was the most likely injury to cause an axial load to the cervical spine. Dr. Gornet testified similarly in that he often treated coalminers for similar injuries to Petitioner due to stones directly impacting their heads. Ultimately, the Arbitrator finds Dr. Gornet's testimony to be more credible than the testimony of Dr. Chabot. Dr. Chabot's diagnosis of a cranial contusion and a possible, temporary aggravation of a degenerative condition in Petitioner's neck is not supported by the fact that Petitioner failed to return to baseline after January 5, 2021. Petitioner's medical records from the onset of neck pain to present support that Petitioner has consistently, if infrequently, complained of neck pain and radicular symptoms into Petitioner's hands since January 5, 2021. The Arbitrator likewise finds it compelling that Petitioner's neck condition was entirely asymptomatic prior to January 5, 2021. Dr. Gornet's testimony and the cervical MRI report relied upon by Dr. Gornet is compelling as they objectively showed herniated discs at C4-5, C5-6 and

C6-7 that accounted for Petitioner's ongoing symptoms. Equally compelling is the fact that Dr. Chabot did not review a single medical record associated with Dr. Gornet's medical treatment of Petitioner, which included both the most recent MRI and CT scan of Petitioner's cervical spine. The Arbitrator also concludes that the Petitioner's mechanism of injury of receiving a blow to the top of Petitioner's head was sufficient to cause the issues shown on the cervical MRIs and Petitioner's current symptoms. The fact that Dr. Chabot did not know specific information about Petitioner's medical treatment with Dr. Gornet significantly undercuts his causation opinion. Dr. Chabot's causation opinion was further undercut by his willingness to assume Petitioner had prior medical treatment for his neck before January 5, 2021 despite any evidence in the record to support this assumption. This speaks to Dr. Chabot's bias and inclination to support Respondent's case given no medical records supported Dr. Chabot's assumption.

It is likewise difficult to understand why Dr. Chabot was willing to acknowledge that Petitioner had long standing and asymptomatic degenerative disc disease in his neck prior to January 5, 2021,and that an acute event occurred on January 5, 2021 capable of aggravating that condition, but maintained that Petitioner did not suffer a cervical injury as it related to Petitioner's present-day symptoms. Consistent with Dr. Gornet's testimony, the only reasonable explanation is that Petitioner's cervical spine pathology as shown on MRI is the etiology of Petitioner's ongoing neck symptoms. There is no evidence to suggest these disc injuries were symptomatic or present prior to January 5, 2021. Thus, pursuant to *Sisbro, Inc.*, and its progeny, the issue is whether the accident involved in this case is a causal factor in Petitioner's current cervical condition and need for surgery. The Arbitrator believes the preponderance of the evidence supports the accident as being at least a factor in Petitioner's cervical condition and need for surgery.

Therefore, the Arbitrator finds Petitioner has met his burden of proof and finds Petitioner's current condition of ill-being in his cervical spine is causally related to the work accident of January 5, 2021.

ISSUE (J) & (K): 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?

Is Petitioner entitled to any prospective medical care?

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mrg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d 13, 229 Ill.Dec. 77 (Ill. 2000). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co., v. Indus. Comn'n*, 785 N.E.2d 18 (1st Dist. 2001). Specific procedures or treatments that have been prescribed by a medical service provider are "incurred" within the meaning of section 8(a) even if they have not been performed or paid for. *Dye v. Illinois Workers' Comp. Comm'n*, 2021 IL App (3d) 110907WC, ¶ 10, 981 N.E.2d 1193, 1198.

The Arbitrator concludes that Petitioner's medical services to date have been reasonable and necessary for his cervical spine. Based on the above findings as to causal connection, the

Arbitrator finds the Petitioner is entitled to past and prospective medical benefits concerning the cervical spine because Petitioner continues to suffer the ill effects of his work-related injury and has not exhausted all diagnostic tests and care options. Respondent shall therefore pay the expenses contained in Petitioner's Exhibit 9 as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall be given a credit for any amount previously paid under Sections 8(a) or 8(j) of the Act for medical benefits.

Petitioner has yet to undergo certain care as discussed by Dr. Gornet in the medical records as well as during Dr. Gornet's deposition (i.e., pre-surgical imaging, medical clearance, and surgical intervention). Since Petitioner's conservative care to date has not relieved the ill effects of his work injury and he has not reached maximum medical improvement, Respondent shall authorize such care as recommended by Dr. Gornet concerning the cervical spine.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC018922
Case Name	Dustin Pendergraft v. State of Illinois - Southwestern Correctional Cntr
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0546
Number of Pages of Decision	16
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Caitlin Fiello, Aaron Wright

DATE FILED: 11/15/2024

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DUSTIN PENDERGRAFT,

Petitioner,

vs. NO: 20 WC 18922

STATE OF ILLINOIS,
SOUTHWESTERN CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed February 21, 2024, is hereby affirmed and adopted.

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

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

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

November 15, 2024

O: 11/7/24
CAH/tdm
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC018922
Case Name	Dustin Pendergraft v. State of Illinois/Southwestern Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Caitlin Fiello

DATE FILED: 2/21/2024

/s/ Jeanne AuBuchon, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 21, 2024 5.10%

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

February 21, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **MADISON**)
20

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DUSTIN PENDERGRAFT
Employee/Petitioner

v.

STATE OF IL/SOUTHWESTERN IL C.C.
Employer/Respondent

Case # **20** WC **18922**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **January 19, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **7/18/20**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**57,285.78**; the average weekly wage was $**1,101.65**.

On the date of accident, Petitioner was **28** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**ANY PAID** for TTD, $**-** for TPD, $**-** for maintenance, and $**-** for other benefits, for a total credit of $**ANY PAID**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's group exhibit, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $660.99/week for 150 weeks, because the injuries sustained caused the 30% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

Jeanne L. AuBuchon
Signature of Arbitrator

 February 21, 2024

PROCEDURAL HISTORY

This matter proceeded to trial on January 19, 2024. The issues in dispute are: 1) the causal connection between the accident and the Petitioner's cervical spine condition, specifically related to the need for a second cervical disc replacement surgery; 2) liability for medical bills after September 30, 2021; and 3) the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 28 years old, was employed by the Respondent as a correctional officer at Southwestern Illinois Correctional Center. (AX1, T. 11) On July 18, 2020, the Petitioner was taking what he thought was an empty water jug off a shelf. (T. 12) The jug, which was actually full, "handcuffed" him and "brought him down." (Id.) He felt pain in his right shoulder that radiated between his shoulder and the base of his neck, and his hands were tingling. (T. 13-14)

Petitioner first sought treatment on July 21, 2020, at HSHS Convenient Care, where he complained of aching right shoulder pain. (PX3) The Petitioner was diagnosed with acute pain of the right shoulder and was given a 15-pound weight restriction with no overhead lifting for work. (Id.) He was to use ice, ibuprofen, and Tylenol as needed. (Id.) It was noted he had an appointment with an orthopedist. (Id.)

On July 29, 2020, Petitioner saw Dr. George Paletta, an orthopedic surgeon at The Orthopedic Center of St. Louis. (PX5) Following a physical examination, X-rays and an MRI that showed normal findings, Dr. Paletta prescribed an oral steroid, an anti-inflammatory and physical therapy. (Id.) On October 23, 2020, Petitioner returned to Dr. Paletta and reported he Had pain deep within the shoulder and into the upper arm, numbness and tingling particularly in the ulnar distribution and tightness in his shoulder particularly with use of the arm overhead. (Id.)

Dr. Paletta recommended a cervical MRI to rule out a cervical source for his complaints. (Id.) The MRI was performed on November 25, 2020. (PX6) Dr. Paletta reviewed the MRI on December 22, 2020, and found a central annular tear with a disc bulge at C6-7 and an associated disc bulge at C5-6 with mild foraminal stenosis. (PX5) Dr. Paletta recommended that the Petitioner consult with Dr. Matthew Gornet, a spine specialist in his practice. (Id.) Dr. Paletta released the Petitioner at maximum medical improvement for his shoulder. (Id.)

The Petitioner saw Dr. Gornet on January 26, 2021. (PX7) Dr. Gornet took a history, performed an examination and reviewed X-rays and the MRI. (Id.) On the MRI, Dr. Gornet saw central disc protrusions at C3-4, 4-5, 5-6, and 6-7. (Id.) He believed the Petitioner's symptoms correlated best with the C6-7 herniation and recommended an injection at C6-7. (Id.)

The Petitioner received a right C6-7 interlaminar epidural steroid injection on February 9, 2021. (PX8) He saw Dr. Gornet on March 22, 2021, and reported the injection provided substantial relief for two weeks, then his pain returned. (PX7) Dr. Gornet recommended another injection, stating that if the Petitioner's pain did not improve, he would consider a single level disc replacement at C6-7. (Id.)

The second injection at C6-7 occurred on April 6, 2021. (PX8) The Petitioner saw Dr. Gornet on July 19, 2021, and Dr. Gornet noted the second injection did not provide the relief for which they hoped. (PX7) He recommended a single-level disc replacement at C6-7 with the understanding the Petitioner may also require treatment at C3-4, C4-5, and C5-6. (Id.)

On September 15, 2021, Dr. Gornet performed a disc replacement at C6-7. (PX7, PX11) The Petitioner returned to Dr. Gornet on September 30, 2021, and reported a dramatic difference in his pain but said he was still having some tingling in his fingers. (PX7) At additional follow-up visits, the Petitioner continued to report improvement in his neck, right shoulder and right

trapezius but tinging in his hands. (Id.) On January 3, 2022, Petitioner reported continued improvement but that he had some soreness in his bilateral trapeziuses, right greater than left, with some pain in his right elbow and tingling in his hands. (Id.) Dr. Gornet recommended physical therapy and return to work full duty beginning February 14, 2022. (Id.) The Petitioner started physical therapy on January 12, 2022, at HSHS Holy Family Hospital Physical Therapy. (PX12)

The Petitioner testified that prior to the surgery, his hands were numb, pain radiated down his arm, his neck hurt, and he had trouble sleeping. (T. 17) He said the surgery improved his symptoms, but they got worse again. (Id.) He said that once he started physical therapy, he started to hurt pretty bad. (Id.) He said he was in an intense amount of pain, his hands were numb, he had sharp pains, he couldn't sleep, and he had migraines. (T. 17-18)

On February 26, 2022, the Petitioner sought treatment at HSHS Convenient Care for painful movement and loss of range of motion in his neck with some numbness and tingling to his fingers on both hands. (PX3) It was recommended that he follow up with Dr. Gornet. (Id.)

The Petitioner saw Dr. Gornet on February 28, 2022. (PX7) Dr. Gornet noted that the Petitioner had been back to work for two weeks and noticed a slow progression of increasing symptoms in his neck, both trapezius, both shoulders, and arms and paresthesia down into both arms and into his hands. (Id.) Dr. Gornet was concerned the Petitioner may have disc-related pain from the adjacent segments at C3-4, C4-5, and C5-6. (Id.) He recommended the Petitioner continue working full duty, additional physical therapy, and an MRI. (Id.) Dr. Gornet noted if the Petitioner continued to have a problem, the best option would be to fix the entire problem. (Id,)

On March 19, 2022, the Petitioner returned to Dr. Gornet with continued neck pain, headaches, pain to both sides, both trapeziuses, both shoulders, and right side greater than left with paresthesias down both arms into his fingertips. (Id.) Dr. Gornet reviewed the Petitioner's new

MRI and saw central disc pathology at C3-4, C4-5, and C5-6. (Id.) The Petitioner did not believe physical therapy provided much benefit. (Id.) Dr. Gornet recommended proceeding with cervical disc replacements at C3-4, C4-5, and C5-6. (Id.)

The Petitioner continued with physical therapy through April 15, 2022, and returned to Dr. Gornet on May 26, 2022, with continued significant headaches and neck pain that radiated into his bilateral trapeziuses and shoulders, right side worse than left, as well as numbness and tingling down his arms bilaterally into his fingertips. (Id.) Dr. Gornet again recommended disc replacements. (Id.) On June 14, 2022, Dr. Gornet performed a three-level disc replacement at C3-4, C4-5, and C5-6. (PX7, PX11) Intraoperative findings included a central tear slightly to the left at C5-6, a central tear at C4-5 and a central tear at C3-4 (Id.)

Petitioner followed up with Dr. Gornet on June 27, 2022, and reported a dramatic difference in his neck pain and headaches as well as improvement in the pain in his bilateral trapeziuses and shoulders. (PX7) On July 28, 2022, he reported that he continued to feel a dramatic difference in his pain and symptoms when compared to his preoperative status. (Id.)

On August 1, 2022, the Petitioner underwent a Section 12 examination by Dr. Michael Chabot, an orthopedic surgeon at Orthopedic Specialists. (RX5) Dr. Chabot took a history from the Petitioner, reviewed medical records from the time of the injury until March 19, 2022, reviewed diagnostic studies and performed a physical examination. (Id.) On the November 25, 2020, MRI, Dr. Chabot noted: evidence of disc desiccation at C2-7; minimal disc bulging at C3-4, C4-5 and C5-6 without evidence of disc herniation; and asymmetric bulging at C7 on the right. (Id.) He did not have the most recent X-rays, CT scan or MRI from Dr. Gornet. (Id.) Dr. Chabot opined that the Petitioner needed upper extremity electromyography and nerve conduction study (EMG/NCS) to clarify his persisting complaints. (Id.)

On September 26, 2022, Dr. Gornet found the Petitioner continued to do well. (PX7) He recommended physical therapy and allowed him to return to work without restrictions beginning November 28, 2022. (Id.)

Dr. Gornet testified consistently with his records at a deposition on April 3, 2023. (PX13) He stated that the mechanism of injury and symptoms reported by the Petitioner were consistent with a cervical spine or disc injury. (Id.) He said that after the Petitioner went back to work, he noted a slow progression of increasing symptoms in his neck and both trapezius, shoulders and arms as well as headaches. (Id.) He said the MRI findings showing structural disc pathology at C3-6 were consistent with the Petitioner's symptoms. (Id.) He said with the Petitioner still being symptomatic after 12 weeks of physical therapy, he felt the second surgery was necessary. (Id.) Dr. Gornet stated that the Petitioner was on a course to progress and become even more disabled between the first and second surgeries. (Id.) He said he did not address the other three levels during the first surgery because he felt the symptoms were more radicular in origin, and the more conservative approach of performing one disc replacement gave the Petitioner the best chance of getting back to work quicker. (Id.) He said he did not order EMG/NCS because the studies are not considered reliable and would not be beneficial because he diagnosed axial neck pain rather than radiculopathy. (Id.)

At additional follow-up visits with Dr. Gornet, the Petitioner continued to report improvement. (PX7) On June 19, 2023, the Petitioner reported some tingling in his hands that Dr. Gornet believed was more related to peripheral entrapment and placed the Petitioner at maximum medical improvement for his neck. (Id.) The Petitioner testified that the second surgery improved his symptoms. (T. 18)

Dr. Chabot issued another report on January 10, 2024, after reviewing additional medical records. (RX6) On the March 19, 2022, MRI, Dr. Chabot saw: a broad-based asymmetric disc bulge to the right at C3-4 resulting in right greater than left foraminal narrowing; central disc bulging at C4-5 resulting in left greater than right foraminal narrowing; a small focal bulge at C5-6 not resulting in any neural compression with mild left foraminal narrowing; and no evidence of central or foraminal stenosis or disc herniation at C7-T1. (Id.) He opined that the changes at C3-4, C4-5 and C5-6 were chronic degenerative changes unrelated to any acute injury. (Id.) He diagnosed history of neck strain, status post total disc replacement at C6-7, findings consistent with carpal tunnel disease involving the right greater than left wrist and status post total disc replacement at C3-4, C4-5 and C5-6. (Id.)

In explaining his causation opinion, Dr. Chabot stated that the Petitioner's present complaints were diffuse and non-specific and that the origin of the complaints was poorly defined. (Id.) He recommended a cervical CT myelogram and upper extremity EMG/NCS to try to clarify the origin of the Petitioner's present complaints. (Id.) In response to the written question of whether the medical treatment to date was reasonable and necessary, Dr. Chabot stated that he would not have performed the cervical disc replacements at C3-6. (Id.) He said the MRI performed before the second surgery revealed evidence of only mild changes, none of which he opined were related to the injury. (Id.) He said the origin of the Petitioner's complaints was poorly defined prior to the second surgery. (Id.) He said the Petitioner's prognosis was not very good, given the persistence of the complaints following the second surgery, and it was highly likely the Petitioner would continue to have persisting complaints. (Id.) He opined that the Petitioner was not at maximum medical improvement and recommended work restrictions with a lifting limit of 20 pounds. (Id.) Dr. Chabot did not testify.

At the time of arbitration, the Petitioner was a correctional sergeant at Graham Correctional Center. (T. 10-11) He said he still has sudden, sharp bursts of pain if he moves wrong and sometimes feels weak. (T. 18-19) He said he does not have full range of motion yet, so performing shakedowns, moving property, putting restraints on inmates and turning keys wears on him a little bit. (Id.) He takes Tylenol and ibuprofen three to five times a week. (T. 19-20) He said he used to golf quite a bit, bowl and play sand volleyball but does not perform these activities as often because he is sore afterwards. (T. 20) He said he experiences pain when checking his blind spot while driving sometimes. (Id.) He said the soreness occurs mainly in his shoulders and the base of his neck. (T. 21)

CONCLUSIONS OF LAW

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

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n,* 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.,* 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982).

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Industrial. Comm'n*, 77 Ill. 2d 469, 471-472, 397 N.E.2d 834, 34 Ill.Dec. 162 (1979); *Gano Elec. Contracting v. Industrial Comm'n*, 260

Ill.App.3d 92, 96–97, 631 N.E.2d 724, 197 Ill.Dec. 502 (4th Dist. 1994); *International Harvester v. Industrial Com.*, 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 66 Ill.Dec. 347 (1982).

Dr. Chabot opined that the Petitioner's cervical spine showed mild changes that were not caused by the accident. He said the Petitioner's complaints were diffuse and non-specific and that the origin of the complaints was poorly defined. The Petitioner's complaints following the first surgery included headaches and neck pain that radiated into his bilateral trapezius, shoulders and arms. These complaints are not diffuse or non-specific. Dr. Gornet said the MRI findings showing structural disc pathology at C3-6 were consistent with the Petitioner's symptoms, characterizing the Petitioner's neck pain as axial. The Arbitrator gives greater weight to Dr. Gornet's opinions, as he explained the origin of the Petitioner's complaints and – as the Petitioner's treating physician – had more opportunities to become familiar with the Petitioner and his condition throughout all phases of his treatment.

The circumstantial evidence also supports Dr. Gornet's opinions. The Petitioner had no neck problems before the accident. Despite the improvement from the first surgery, his condition worsened during his recovery – especially after going back to work and undertaking physical therapy.

Therefore, the Arbitrator finds that the Petitioner has met his burden of proving by a preponderance of the evidence that his cervical condition at all four levels was causally connected to the work accident.

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

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const.*, 388 Ill. App.

3d 380, 383, 902 N.E.2d 1269, 327 Ill.Dec. 883 (2009). A claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18, 259 Ill.Dec. 173 (1st Dist. 2001).

The Respondent disputes the reasonableness and necessity of the second surgery. Dr. Chabot stated that he would not have performed the cervical disc replacements at C3-6 and reiterated the basis for his causation opinion as his rationale. In his deposition, Dr. Gornet explained that although there was pathology at all four cervical levels, he proceeded initially with a single-disc replacement as a more conservative way to get the Petitioner back to work. However, the Petitioner's symptoms did not fully resolve after the first surgery. Dr. Gornet testified that the second surgery was necessary because the Petitioner was still symptomatic following the first surgery and physical therapy, and his symptoms were getting worse. Dr. Gornet's opinion was more thoroughly explained than Dr. Chabot's and deserves greater weight.

For these reasons and the findings above regarding causation, the Arbitrator finds that the second surgery was reasonable and necessary, and the Respondent has not paid the bills for this treatment. Therefore, the Respondent is ordered to pay the medical expenses contained in Petitioner's Exhibit 1 pursuant to Section 8(a) of the Act and in accordance with medical fee schedules.

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

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity;

and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

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

(ii) **Occupation.** The Petitioner now works as a correctional sergeant for the Respondent with the same physical demands as prior to the accident. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 28 years old at the time of the injury. He has many work years left during which time he will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

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

(v) **Disability.** The Petitioner testified that he still has sudden, sharp bursts of pain if he moves wrong and sometimes feels weak. He said he does not have full range of motion yet, so performing shakedowns, moving property, putting restraints on inmates and turning keys wears on him a little bit. He takes Tylenol and ibuprofen three to five times a week. His recreational activities also have been affected. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 30 percent of the body as a whole as it pertains to the Petitioner's cervical spine.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC005183
Case Name	Michelle Howardson v. Galesburg Hospital Ambulance Service
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0547
Number of Pages of Decision	17
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Patrick Jennetten
Respondent Attorney	R Mark Cosimini

DATE FILED: 11/15/2024

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

☒ 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

MICHELLE HOWARDSON,

Petitioner,

vs. NO: 23 WC 5183

GALESBURG HOSPITAL AMBULANCE SERVICE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, whether the medical treatment was reasonable and necessary, prospective medical treatment, permanent partial disability, and medical authorization under Section 8(a) of the Act, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed February 13, 2024, is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

November 15, 2024

CAH/tdm
O: 11/7/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC005183
Case Name	Michelle Howardson v. Galesburg Hospital Ambulance Service
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Patrick Jennetten
Respondent Attorney	R Mark Cosimini

DATE FILED: 2/13/2024

/s/Adam Hinrichs, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 6, 2024 5.045%

24IWCC0547

STATE OF ILLINOIS)
)SS.
COUNTY OF ROCK ISLAND)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Michelle Howardson Case # **23WC005183**
Employee/Petitioner

v.
Galesburg Hospital Ambulance Service
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Rock Island**, on **12/11/2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of the alleged accident, **12/23/2022**, Respondent **was** operating under and subject to the provisions of the Act.

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

On this date, Petitioner **did not** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned **$8,152.14**; the average weekly wage was **$815.21**.

On the date of accident, Petitioner was **42** years of age, **single**, with **0** children under 18.

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$0.00**.

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

ORDER

Petitioner failed to prove that she sustained an accidental injury arising out of and in the course of her employment by Respondent.

Petitioner's claim for benefits under the Illinois Workers' Compensation Act is denied.

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

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

Signature of arbitrator

February 13, 2024

FINDINGS OF FACT

Michelle Howardson ("Petitioner") testified that she is an Emergency Medical Technician ("EMT"), receiving her certification in late 2012. Petitioner testified that she started working as a certified EMT in 2012 for Lomax Ambulance Service ("Lomax"). She worked for Lomax for six years. (TX p. 76) After Lomax, and after completing paramedic schooling, Petitioner began working for Galesburg Hospital Ambulance Service ("Respondent") in July 2022 as an EMT.

Petitioner testified that she informed Respondent upon hire that she had a previous spinal fusion and was fused L4-S1. Further, she and had just passed a paramedic program with over 300 clinical hours with no issues lifting. (TX p. 77) Petitioner testified that she has never previously filed a workers' compensation claim and had never previously been injured at work. Petitioner testified that she is 43 years old with two prior back surgeries performed in Dubuque, Iowa by Dr. Foster. (TX p. 78) Petitioner testified that following her prior back surgeries, she still had centralized pain in her low back off and on but was pretty well pain-free. (TX p. 79)

Petitioner testified that as part of her job with Respondent, she had to lift heavy patients. (TX p. 79). Petitioner testified that on December 23, 2022, she was dispatched to St. Mary's for a hospice patient weighing what she believed was more than 315 pounds, which is what Petitioner weighed at the time. (TX 80) Petitioner was told that there would be no mutual assistance from the Fire Department for lifting, so they arranged to have two family members meet them. She testified that they got the patient on to a "Mega Mover" to move the patient into the ambulance. (TX p. 80) Petitioner testified that when they pulled up to the house, there was a slight incline on the street. They got the patient out and covered the patient with a blanket because it was cold that day. (TX p. 80) Petitioner testified that they wheeled the patient up the driveway with the stretcher, then they moved the patient from the stretcher with a Mega Mover under him with herself in the lead head position. (TX p. 81) Michelle testified that her co-worker, Shayne Overturf, was located at the patient's head on the right side and she was located at the patient's head on the left side and the two family members that were there to assist were at the feet. (TX p. 81) Petitioner testified that they went up the stairs and at the last step she had to pause because she felt like she was going to drop the patient, so she grabbed the two handles into one hand, twisted to grab the railing for support, took a step, and that is when she felt a twinge when she twisted with the load reaching to the railing so that she would not drop the patient. (TX p. 81) Petitioner testified that she rotated to the left when she was injured. (TX p. 118)

Petitioner testified that she did tell Shayne Overturf that her back felt funny but that she was also fighting a kidney stone at the time. (TX p. 83) Petitioner testified that she reported the work accident once she knew it was a low back injury, but not on December 23, 2022, because at that time she thought she was just having kidney pain. (TX p. 84) Petitioner testified that she did go to the emergency room on December 27, 2022, for "severe lower right pain" and blood in her urine due to what she thought was from the passing of a kidney stone. (TX p. 84) Petitioner testified that she was not provided any sort of any orthopedic analysis, but a kidney scan and blood urinalysis that showed there was blood in her urine, and she was returned home. (TX p. 85)

On December 30, 2022, Petitioner was getting ready for her shift at work. Petitioner testified that after getting dressed and putting her boots on, she walked around a corner and felt extreme pain in her back, which radiated down her leg and caused her to fall. Petitioner acknowledged this was the first time her pain radiated down her leg. (TX pp. 86-92)

Petitioner called into work letting them know that she could not make it, as she needed to go to the chiropractor and later on saw her family doctor. (TX p. 86) Petitioner testified that she went to a chiropractor and reported that she had an acute injury on December 24, 2022, as she thought she was working Christmas Eve when the accident

occurred due to working long shifts at that time. (TX pp. 86-87). Petitioner testified that she filed an Application of Adjustment of Claim initially dated December 24, 2022, because she thought she was injured that day, and she was sure the incident occurred in Macomb, IL. (TX pp. 87-88)

Petitioner testified that she saw the chiropractor on December 30, 2022, and described the sudden onset back with low back pain into the right hip and leg with her whole back hurting. The chiropractic manipulation did not help, so she went to see her primary care physician the same day. (TX pp. 88-89) Petitioner testified that her family doctor recommended that she go see Dr. Charles Frank, an orthopedic surgeon who recommended physical therapy and a spinal injection. (TX pp. 89-90)

Petitioner continued to work throughout most of January 2023. (TX p. 73) On January, 26, 2023, Petitioner complained to her supervisor that her back was hurting. The supervisor sent Petitioner home until she could get looked at and get a release to return to work. (TX pp. 73-74, Rx 21)

Petitioner testified that she saw Dr. Frank on January 31, 2023, who recommended that she stop working as a paramedic, attempt weight loss, steroid injections, and physical therapy. (TX p. 93-94) Petitioner testified that since she has seen Dr. Frank, she has lost 45 pounds with diet (TX p. 94) Petitioner testified that she has not gone back to Dr. Frank, as he indicated that he does not accept workers' compensation cases. (TX p. 94). Petitioner was upset when Dr. Frank recommended this change in jobs, as she loves being a paramedic and wants to try to return to work in that profession. (TX p. 95).

Petitioner testified that she then sought treatment with Dr. John Peloza in St. Louis, as she lives in southeast Iowa and does not have many options locally. (TX p. 96). She ultimately chose Dr. Peloza as he offered a disc replacement surgery which she felt had a better likelihood of healing. (TX pp. 96-97). Petitioner testified that she wants to have the surgery recommended by Dr. Peloza. (TX p. 100).

Testimony of Shayne Overturf

Shayne Overturf testified that he is an EMT working for Respondent. He has worked there for five years, and it is his first job as an EMT. (TX p.11)

Mr. Overturf worked with Petitioner as a rotating partner, working with her on occasion. (TX pp. 11-13) Mr. Overturf testified that Petitioner was a PRN employee, working as needed. Shayne Overturf testified that his job as an EMT required lifting of patients including patients that weighed quite a bit. (TX p. 13) Mr. Overturf testified he remembered picking up a patient in Galesburg, IL on December 23, 2022, for transport to Macomb, IL for hospice. Mr. Overturf testified he had an independent recollection of this patient's move and that he was working with Petitioner at the time. (TX p. 15) Mr. Overturf testified they got a mega mover to move the patient which he believed weighed 200 pounds. Shayne Overturf testified it was easier to carry a patient with a Mega Mover as opposed to carrying patients on a backboard, which is uncomfortable.

Mr. Overturf testified that Petitioner did not tell him that she tweaked her back while lifting the patient and did not tell him at any point that she was having any issues or if something went wrong that evening. (TX p. 18) He testified that he did not believe that Petitioner twisted her back while going up the stairs, as he believes she did very little lifting during that patient lift, and he did not recall her having her hands on the handles really at all with the family members assisting. (TX p. 19) Shayne Overturf testified that Petitioner did the report describing the patient's move. (TX p. 20)

Mr. Overturf agreed that Petitioner had at least one hand on the Mega Mover while lifting the patient into the house. Shayne Overturf agreed that he had no idea what happened with Petitioner's body when she was moving the patient with the mega mover into the house. (TX p. 28)

Testimony of Richard Springer

Richard Springer testified that he is a paramedic with Respondent, working there for seven years as a director of operations. (TX pp. 41-42) Richard Springer agreed that Petitioner texted him on December 30, 2022, indicating that she had an accident at work. (TX pp. 42-43) Richard Springer testified that he had Petitioner come in and fill out an incident report. (TX pp. 45-46) After he received the incident report, Richard gave the incident report to Paul, the Human Resources ("HR") director.

Richard Springer was asked about the incident report filled out by Petitioner indicating that she injured herself on December 25, 2022, lifting a patient and felt a twinge in pain. He did not recall doing any follow-up after the incident report. He testified that there is a second sheet that goes with this report that's a narrative showing his investigation or conversations with a supervisor. (TX p. 49) He testified that he did not prepare a narrative on this case and did not remember talking to any of Petitioner's co-workers. (TX p. 50) He did not recall talking to Michelle about what happened with her incident and does not know what else he filled out. (TX p. 50) He did not recall investigating anything and when reading the incident report, and he did not remember talking to anyone or filling out anything else in terms of investigation. (TX p. 53)

Richard Springer reviewed the text messages with Petitioner on December 30, 2022, that Petitioner apologized for not reporting the accident on the date of the occurrence, and indicated the pain was in the same place that her kidney pain had been and that she had been to the hospital for kidney pain. (TX p. 56)

Testimony of Paul Greiner

Paul Greiner testified he is a director of finance and HR for Respondent. He testified that he has been working there for three years in the same position since December of 2022. (TX p. 60) Mr. Greiner testified that at some point in time he became aware that Petitioner was claiming a work accident on or around December 25, 2022. He did not become aware until January 3, 2023, when an incident report was filled out. (TX p. 61) He was aware that there was a voicemail left on December 30, 2022, but he had been gone for the holiday and had Michelle fill out an accident report in the new year. (TX p. 61)

Mr. Greiner testified that the incident report was filled out at Richard Springer's directions and Richard gave him the accident report which he put in a medical report for Petitioner. (TX p. 62) He did not conduct any investigation and did not turn the report over to workers' compensation. (TX p. 62) He did not conduct any interviews and only put the incident report in her medical file and nothing more. (TX p. 62-63) Mr. Greiner agreed that nothing else was done with the accident report other than being put in the personnel file with no contact to worker's compensation and no investigation done. Mr. Greiner agreed that Petitioner came in late January with an off-work slip telling Respondent that she was off work due to a medical condition. (TX pp. 63-64). He agreed that Petitioner never returned to work and was not specifically aware of work comp filings other than notifying their agent in early February 2023 about a potential work comp claim. (TX p. 64)

Mr. Greiner was not aware of any denial by any work comp insurance carrier or denial made by Respondent. (TX p. 65) He agreed that workers' compensation did not ask for any further investigation in February of 2023 when he sent them the information. (TX pp. 65-66) After receiving the filing from the law firm for the workers' compensation case, Mr. Greiner did recall trying to determine what run reports were done in Macomb, IL to find out where this could have happened, and determined that there had been a run on December 23, 2022. (TX p. 67) He does not recall talking to Mr. Overturf or taking any notes of any conversation with Mr. Overturf. (TX p. 67)

Testimony of McKenna Ewing

Ms. Ewing testified that she took part in a meeting with Petitioner about Petitioner's performance issues January 19, 2023. (TX p. 125) At the end of the meeting, Ms. Ewing asked Petitioner if she was having any issues with her back that day, and Petitioner indicated she was not having any back pain and could perform her job duties. (TX pp. 125-127)

Petitioner testified the meeting with Ms. Ewing was on Christmas Day. She also testified the conversation with Ms. Ewing about her back never happened. (TX pp. 116-117)

Non-Testimonial Contemporaneous Histories of Accident

Petitioner introduced a run report she prepared from her job activities on December 23, 2023, while working in Macomb, Illinois. On that date, the Petitioner and her co-worker, Mr. Overturf, were dispatched to take a patient from OSF St. Mary in Galesburg, Illinois, who was on hospice, to a private residence in Macomb, Illinois. The patient required a "Mega Mover" to move the patient. The report notes that the EMS crew and two family members were waiting to help the EMS crew help carry the patient up to the house; the patient had to be lifted up four steps of the porch into the house. In the report, Petitioner is listed as "Lead" while Mr. Overturf is listed as "Driver." The report is consistent with the testimony at hearing regarding the patient move, however, there is no mention of Petitioner having any incident during the transport of the patient. (PX 3).

On December 27, 2022, Petitioner posted on Facebook that "My dr is off still and guess who is having pains like when she had her kidney stone last??? Me of course . . . so ER in my future today." (Rx 17, Page 1)

The following day on December 28, 2022, Petitioner posted on *Facebook* that her neighbor had a water leak, and there was 2.5 inches of water on the ground. (Rx 17, Page 2) The next post from Petitioner was the following morning when she stated, "And this morning it was a lake of ice and we know how graceful I am . . . lol yeah my back's a lil sore now . . ." (Rx 17, Page 2). At trial, Petitioner testified that her back was sore from the lift at work and not from slipping on ice. (T 105-106)

The Petitioner messaged a coworker Hailey on December 30, 2022, indicating that she hurt herself. The Petitioner asked for a number for Paul to report that she was hurt. Hailey suggested calling Richie. (PX 5).

The Petitioner then texted Richard Springer on December 30, 2022, indicated that she felt of twinge of pain during her last shift, bud didn't think anything of it because of a kidney stone, but looking back she "pulled something in my lower back". (PX 6).

The Petitioner left a voicemail with Paul Greiner on December 30, 2022, indicated that she needs to file an incident report due to injuring herself while at work. Petitioner's voicemail reads, in the relevant part, as follows "…the last day I worked I bent over a stretcher to release the side panel and felt a bit of a twinge of pain over on the right side. While that twinge of pain has gone into a little bit, you know, of a whole lot more pain…I have injured my back…I need to file an incident cause I did feel the twinge of pain when I bent over at work. I don't think that's what caused this problem." (RX 18).

At trial, Petitioner denied that she was talking about an incident December 28, 2022, when she left the message for Mr. Greiner. She indicated the incident should have been about the events December 23, 2022. (TX p. 109) Petitioner further testified there really was not an incident December 28, 2022, as it was just a normal release of a lever. (TX pp. 110-111)

Petitioner also posted on Facebook on December 30, 2022. The post indicates Petitioner was off work that day and she wrote, "idk what I did but I took a step and shooting pains to my flank/lower back…" (RX 17, p. 4)

The Petitioner filed an accident report with Respondent on January 3, 2023, indicated under the heading "narrative of situation/problem" that that she was "lifting a patient and felt a twinge of pain. Have been fighting kidney stones and had been urinating blood that shift so figured it was pain related to passing a kidney stone, which I did. Went to ER and hematuria diagnosed with kidney spasms. Thurs my back lower right side was sore, went for massage and felt better until Fri morning 12-30-22 when I turned R out of my bedroom after getting ready for work and I dropped from the pain to the floor. Made chiropractor apt, no relief, Dr. Apt at 2 pm and Dr told me I was not to work over the weekend due to injury to low back." (PX 4).

John Shannon, Petitioner's supervisor, wrote an incident report on February 1, 2023, after a January 26, 2023 "date of situation," wherein he reported that he was informed by Petitioner that she was unable to lift due to a chronic back injury due to a back injury that occurred prior to her employment at Respondent. The report states that Petitioner has "6 lumbar vertebrae in her back that is fused between l5/l6 which has always caused problems." (Rx. 21).

Petitioner's Pre-Alleged Accident Medical History

The Petitioner treated with Dr. Robert Foster for her prior back injuries. Dr. Foster treated a L4/5 disc herniation in 2019, after a prior fusion at L5/S1. (PX 11). The disc herniation at L4/5 resulted in Dr. Foster performing another fusion surgery at L4/5 and repairing the pseudoarthrosis at L5-S1. (PX 11).

The Petitioner reported chronic mid and low back pain persistent since 2017 in an orthopedic visit on June 30, 2021. At that time, she was complaining of interscapular pain without any leg or lower extremity symptoms. (PX 11).

As of July 18, 2022, the Petitioner was not complaining of low back pain to her family doctor. She was complaining of bilateral hip pain or chronic bilateral hip pain in the buttocks and groins, but no complaints of back pain. (PX 11). She saw orthopedics on July 26, 2022, for the bilateral hip pain, indicating her job was very physical as an EMT. There was no mention of low back pain or radicular pain in the July 26, 2022, note. (PX 11). The Petitioner similarly did not complain of low back pain or radicular pain at her follow up with her family doctor on October 24, 2022. (PX 11).

The Petitioner presented to the emergency room on November 13, 2022, complaining of right flank pain that started earlier in the evening. A CT was ordered for potential evaluation of pelvis stone. She was diagnosed with flank pain as well as an acute UTI and was discharged with instructions to follow up with her family doctor. (PX 11).

A message from Petitioner to her family doctor on November 15, 2022, noted that Petitioner was in significant pain from a potential kidney stone and was shaking. Petitioner requested oxycodone because hydrocodone was not working. (PX 11).

Petitioner's Post-Alleged Accident Medical History

Petitioner reported to the Great River Emergency Room December 27, 2022. The history indicates Petitioner had complaints of right flank pain. Petitioner told the emergency room staff she has a history of kidney stones. Her pain was intermittent for the previous few days, and it was similar to the kidney stone pain she had in the past. Petitioner denied any hematuria. The history further indicates Petitioner had a past medical history of chronic back pain. (PX 12; RX 7, p. 1) The assessment portion of the note indicates Petitioner did have some

blood in her urine but there was no evidence of a urinary tract infection. The emergency room staff treated Petitioner with IV fluids and pain medication. She was discharged with instructions to use over-the-counter pain medications and to follow-up with her primary care physician. She was also referred to urology for follow-up if her symptoms persisted. (PX12; RX 7, p. 2)

Petitioner reported to Chiropractor David Sherbondy on December 30, 2022. Petitioner provided a history of a sudden onset of back pain. She indicated the pain was in her lower back, right hip and leg, but her whole back hurt. The acute onset was December 24, 2022, "When she gradually becoming more frequent, more severe." Petitioner described her pain as aching, sharp, shooting, cramping, and throbbing. Her pain was constant, and she rated her symptoms as a 9/10. Dr. Sherbondy recommended chiropractic spinal manipulation based upon segmental and somatic disfunction of the cervical, thoracic, lumbar, and sacral regions. (PX 10; RX 8, pp. 1-2)

Following the visit with Dr. Sherbondy, Petitioner went to her primary care physician's office, where Dr. David Carlson evaluated her. Dr. Carlson's note indicates Petitioner woke up that morning with sharp pain in her right low back, hip and groin. Chiropractic treatment did not help. Petitioner previously had a lumbar fusion in 2009. She was not experiencing any radicular symptoms. Petitioner indicated she does a lot of lifting as an EMT on an ambulance crew. She did not report any specific accident. On exam, a straight leg raising test was negative on the left, but Petitioner complained of pain in the right posterior thigh and buttock. (PX12; Rx 9, Page 2) Dr. Carlson wrote a note indicating Petitioner could return to work January 2, 2023 with no restrictions. (PX 12; Rx 9, Page 1)

The Petitioner returned to the family doctor on January 6, 2023, to follow up on right sided lumbar radicular pain. The doctor noted that the Petitioner did a lot of heavy lifting as an EMT on an ambulance crew. The Petitioner was having weakness in her right leg. The Petitioner had attempted massage, chiropractic treatment and a hot tub with no relief. The family practice ordered an MRI due to the symptoms and history, with referral to an orthopedic doctor after the MRI results. (PX 12).

The Petitioner had a lumbar MRI performed on January 27, 2023, which showed post-surgical changes of posterior spinal fusion at L4/5 and L5/S1 with a right subarticular recess narrowing at L3/4 secondary to right paracentral disc protrusion likely impinged upon the right L4 traversing nerve root. (PX 12).

The Petitioner went back to her primary care physician's office on January 30, 2023, where based upon the L3/4 disc protrusion, she was referred to the orthopedic surgeon. (PX 12).

The Petitioner saw the orthopedic surgeon, Dr. Charles Frank, on January 31, 2023. The Petitioner complained of significant back pain down the thigh and to the knee along the lateral aspect of her right calf. Dr. Frank noted the Petitioner was not interested in injections, but only surgical treatment. Dr. Frank found that the MRI demonstrated L3 nerve root stenosis traversing on the right, which he was not certain matched the dermatomal distribution of the Petition's pain. Dr. Frank was very hesitant to offer a third level fusion without attempting physical therapy and an epidural steroid injection at L3-4. Dr. Frank noted the Petitioner should consider a different job, considering the need to lift heavy patients, and recommended either a modified job or change of careers. (PX 12).

Testimony and Treatment of Dr. John Peloza

Dr. Peloza testified that he is an orthopedic surgeon with a subspecialty in the spine. (PX 7, p. 5). Dr. Peloza is a board-certified orthopedic surgeon with a spine surgery fellowship completed in 1990. (PX 7; p. 6). Dr. Peloza has practiced as a spinal surgeon in Dallas, TX, California, and Colorado before moving to Saint Louis, MO. (PX 7; p. 7). Dr. Peloza performs spinal surgeries including spinal fusions, spinal decompressions, as well as disc replacement surgeries. (PX 7; p. 8).

Dr. Peloza had the occasion to see the Petitioner in February of 2023. (PX 7; p. 8-9). Petitioner came to Dr. Peloza complaining of low back pain and right leg pain. (PX 7, p. 9) Dr. Peloza took a history of previous lumbar fusion performed in 2009 as well as a fusion surgery in 2019. (PX 7, p. 9) Dr. Peloza took a history of Petitioner injuring herself as an emergency medical technician on December 24, 2022, when she was lifting a large patient with co-workers, with the patient estimated as around 300 pounds, lifting the patient, when she rotated to the right and experienced severe pain in her back and down the right leg. (PX 7, p. 10)

Dr. Peloza took a physical examination with a markedly reduced range of motion in her low back as well as reproduction of pain on the right on the orthopedic exam. A neurological exam showed decreased sensation on the top of her right thigh with weakness in the plantar flexion of the right leg and a very positive stretch test to the femoral nerve to the right. (PX7, p. 11) Dr. Peloza reviewed MRI and X-ray films which he saw evidence of an injury to the L3/4 disc with dehydration and a very large posterior disc herniation in the midline. (PX7, pp. 11-13) Dr. Peloza believed the whole back wall of disc L3/4 was ruptured pushing on the thecal sac. (PX 7; p. 13) Dr. Peloza believed the only pathology was at L3/4 with the disc herniation as well as seeing evidence of her prior surgeries from L4 to S1. (PX 7; p. 13)

Dr. Peloza testified that Petitioner's previous surgery and fusion made her more susceptible to injury at L3/4. (PX 7, p. 13) Dr. Peloza opined that Petitioner had a disc herniation which was a very specific injury to the disc where the back wall of the disc weakened or ruptured with the disc nucleus pushing through it. (PX 7, p. 13) Dr. Peloza testified that the disc herniation pushed into the spinal canal compressing the nerve roots which typically results in not only back pain but significant leg pain based upon the displacing of the nerve root. (PX 7, p. 14) Dr. Peloza testified that the disc injury at L3/4 was consistent with the history of injury as it was consistent with symptoms in the back down the anterior thigh, and lifting in an abnormal position with a heavy load with rotation is the sort of mechanism of injury most common to hurt a disc. (PX 7, pp. 14-15)

Dr. Peloza opined that Petitioner's disc injury at L3/4 was consistent with her symptoms in her back and down her anterior thigh and that the dermatome was consistent with the area where the disc herniation was present at L3/4. (PX 7, p. 15) Based upon the prior fusion surgery, Dr. Peloza believed that a disc replacement was the best solution for Petitioner for her current disc herniation at L3/4. (PX 7, pp.16-17) Dr. Peloza testified that the purpose of the disc replacement surgery was to help both keep the range of motion at L3/4 and prevent further damage to the levels above L3/4. (PX 7, pp. 16-17). Dr. Peloza agreed with Dr. Frank in that a fusion was not a good idea, and he would prefer to do a disc replacement surgery to help with her leg pain and weakness. (PX 7, pp. 29)

Dr. Peloza next saw Petitioner on April 26, 2023, and based on her history and physical examination, she was deteriorating. Michelle was having her knee buckle and falling due to weakness in her quadriceps. (PX 7, p. 17) Her physical examination showed a neurologic deficit with weakness in the quad and knee which was significant, as well as weakness in the muscles that control the foot along the L4-5 nerve roots. Dr. Peloza believed that she had a combination of nerve root impingement through L3 to L5 on the right with a very positive stretch test a progression of neurological deficits. Dr. Peloza believed that the neurological deficits aligned with the L3/4 and L5 nerve root patterns stemming from her herniation and narrowing at the L3/4 disc level. (PX 7, p. 18)

Dr. Peloza did not see any evidence of Petitioner suffering from an L3 disc herniation with radicular symptoms prior to December of 2022 in her medical records. He saw chiropractic records from 2017 through 2021 but no neurological examination consistent with a disc herniation at L3/4. (PX 7, pp. 24-25)

Dr. Peloza testified that Petitioner's disc herniation was consistent with trauma, specifically it was consistent with the trauma Petitioner described to him in moving a patient and twisting her back. (PX 7, p. 20) Dr. Peloza testified that EMTs perform heavy lifting and manually moving patients that involve twisting of the spine, and that the mechanism of movements and lifting would be consistent with a disc herniation suffered by Petitioner (PX 7, pp.

25-26) Dr. Peloza testified that absent any other trauma, he believed that Petitioner's work as an EMT with heavy lifting and twisting of the spine was a causative or aggravating factor in the development of her disc herniation at L3/4. (PX 7; pp. 25-26)

Dr. Peloza testified that other things that can cause disc herniations at L3/4 besides lifting include falls, traumatic blows, poor posture, and even minor incidents, especially if there is a fusion at an adjacent level, which changes the mechanics of the spine. (PX 7, pp. 31)

Dr. Peloza testified that someone passing a kidney stone can mask low back pain, as kidney stones are very painful and can cause you to end up in the emergency room with pain until you pass the stone. (PX 7, p. 52)

Dr. Peloza also noted that at the time of her injury in December of 2022, the Petitioner was being actively treated for kidney stones. Dr Peloza noted that the kidney stone was reaffirmed by the December 27, 2022, CT scan and she eventually passed the stone. However, Michelle's back pain and leg pain persisted after passing the kidney stone. (PX 8)

Dr. Robert Bernardi Section 12 Exam and Report

At the request of Respondent, Dr. Robert Bernardi evaluated Petitioner om September 19, 2023, pursuant to Section 12 of the Act. Dr. Bernardi prepared a 32-page report. (Rx 16) Petitioner provided a history of transporting a hospice patient home on December 24, 2022. She indicated the individual weighed between 375 and 400 pounds. She told Dr. Bernardi they had to navigate five or six stairs into the patient's home. (RX 16, p. 1)

Petitioner told Dr. Bernardi that as she reached the last step, she twisted to the left in order to grab the rail. She felt immediate pain in her right low back. Petitioner was also passing a right-sided kidney stone, and she was not sure if she was experiencing the kidney stone pain or something new. (RX 16, p. 2)

The history also indicates that on December 28, 2022, Petitioner slid three feet across ice and struck the left side of her body against a friend's car. (RX 16, p. 2) Petitioner further reported that on December 30, 2022, she got up for her morning shift and got dressed. She turned the corner to leave her bedroom, and she experienced severe pain extending from her right low back to the anterior aspect of her right thigh causing her to drop to the floor. (RX 16, p. 3)

From pages 3 to page 19 of his report, Dr. Bernardi described Petitioner's medical treatment from before the alleged accident date. The medical records are contained in Respondent's Exhibits. (RX 1, 2, 3, 4, 5, and 6)

Dr. Bernardi described Petitioner's medical records as being an object lesson in drug-seeking behavior. He described Petitioner's behavior as being variably charming, bullying, threatening, suicidal, self-pitying, and ingratiating. Dr. Bernardi further stated Petitioner does what she needs to do to get what she wants which is invariably more narcotics. She asked for specific medications by name, which is a classic symptom of drug-seeking behavior. She claimed being allergic to non-narcotic medication which Dr. Bernardi described as another classic ploy. Petitioner played to the concerns of her providers and repeatedly claimed that her pain was so bad that she was taking toxic amounts of Tylenol. Petitioner routinely had problems with post-operative pain control regardless of how minor the procedure might have been. Dr. Bernardi stated he was not sure he had ever seen an individual go to the emergency room so frequently. (RX 16, pp. 26-27)

Following his exam of Petitioner and review of the medical information, Dr. Bernardi concluded Petitioner ruptured her L3/4 disc on December 30, 2022. He noted that something dramatic happened to her on that day.

Petitioner reported she was leaving her bedroom to go to work when she experienced severe pain and collapsed to the ground. (RX 16, p. 26)

Dr. Bernardi further commented on the inconsistencies in the records including the lack of a history of a work accident. (RX 16, p. 26) With respect to Petitioner's pain medications, Dr. Bernardi obtained printouts from Iowa and St. Louis County Prescription Monitoring Programs. Between September 21, 2017, and August 16, 2019, Petitioner was prescribed 2,815 tablets of narcotic medications. Then, between September 13, 2021, and November 29, 2022, Petitioner was prescribed an additional 490 tablets of narcotic medications. Dr. Bernardi described this as problematic. Dr. Bernardi wondered whether Petitioner might have Munchausen's syndrome. At only 43 years old, Petitioner has undergone 18 procedures, some of which she requested. (RX 16, p. 27)

Dr. Bernardi set forth his conclusions based upon Petitioner's clinical exam. He noted Petitioner exhibited profound weakness in every muscle of her right leg including muscles, which are innervated by nerves that exit above L3/4 and could therefore not be affected by a disc herniation at L3/4. Additionally, Dr. Bernardi thought the disc herniation was large enough to affect the L4 nerve root, but it did not produce significant central stenosis, so it could not affect the L5 or S1 nerve roots. Similarly, it could not produce either bowel or bladder dysfunction. Dr. Bernardi further explained the muscles those nerves innervate were weak. Nerve root irritation severe enough to produce such significant weakness in the quadriceps would also be associated with a diminution of the knee reflex. However, Petitioner's reflexes were normal and symmetric. Furthermore, if the weakness was genuine, Petitioner would have objective atrophy in her leg. She did not. Additionally, he opined that if the weakness was genuine, she would not have been able to walk without a cane or walker. She came into the office without any assistive devices. Dr. Bernardi concluded that either Petitioner is not aware that her symptoms are not real in which case she is suffering from hysterical paralysis, which is also known as a conversion reaction. Alternatively, she could be aware that it is not real in which case she is malingering. Based upon the past history of Petitioner's medical treatment, Dr. Bernardi suspected Petitioner was malingering. (RX 16, p. 29)

Dr. Bernardi also reviewed the deposition testimony of Dr. Peloza. He stated the recent tendency to downplay the importance of dermatomal pain patterns disturbed him. He commented it conveniently takes the burden off the physician to obtain a detailed history while simultaneously fostering greater reliance on ancillary testing where incidental findings abound. He further commented that while dermatomal patterns are not absolute or carved in stone, it did not change the fact that the migration of Petitioner's pain from the back of her leg to the front of the leg was inexplicable. Finally, Dr. Bernardi concluded Petitioner's back symptoms are not causally related to her work activities. (RX 16, p. 31)

CONCLUSIONS OF LAW

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

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

Petitioner testified she injured her lower back while completing a team carry of a heavy patient up some stairs with a "Mega Mover," when she twisted to grab the railing for support, took a step, and felt a twinge in her right lower back. (TX pp. 81-83) When Petitioner completed the run report for the alleged incident December 23, 2022, she wrote the patient they lifted weighed 250 pounds. (PX3) Petitioner later reported to Dr. Peloza the patient weighed over 300 pounds. (PX 7) Petitioner testified the patient weighed over 315 pounds. (TX 80) Petitioner told Dr. Bernardi the patient weighed between 375 and 400 pounds. (RX 16, p. 1) Shane Overturf was working with Petitioner at the time of the alleged accident. Mr. Overturf testified that the patient weighted around 200 pounds. (TX 16) He further testified he was observing Petitioner at the time of the alleged accident, and he did not observe any sign of Petitioner twisting or being in pain.

Petitioner testified she initially thought the twinge of pain in her back was due to her kidney stones. (TX 83) On December 27, 2022, Petitioner posted on Facebook that "My dr is off still and guess who is having pains like when she had her kidney stone last??? Me of course . . . so ER in my future today." (Rx 17, Page 1)

Petitioner reported to the Great River Emergency Room that day, December 27, 2022. Petitioner reported right flank pain. Petitioner reported a history of kidney stones, that her pain was intermittent for the previous few days, and it was similar to the kidney stone pain she had in the past. The history also relates Petitioner had a past medical history of chronic back pain. (RX 7, p. 1) The emergency room staff treated Petitioner with IV fluids and pain medication. She was discharged with instructions to use over-the-counter pain medications and to follow-up with her primary care physician. She was also referred to urology for follow-up if her symptoms persisted. (RX 7, p. 2)

Petitioner testified that on December 30, 2022, she got dressed for work at home, then walked around a corner and felt extreme pain in her back, which radiated down her leg and caused her to fall. Petitioner acknowledged at trial this was the first time her pain radiated down her leg. (TX pp. 86-92).

Petitioner posted on Facebook that same day, December 30, 2022. In that post, Petitioner wrote, "idk what I did but I took a step and shooting pains to my flank/lower back…" (RX 17, p. 4)

Also on December 30, 2022, Dr. David Carlson evaluated Petitioner and noted that Petitioner reported waking up that morning with sharp pain in her right low back, hip and groin. It further relates the Petitioner did not report any specific accident. (PX12; Rx 9, pp. 1- 2)

The Petitioner then left a voicemail with Paul Greiner on December 30, 2022, indicated that she needs to file an incident report due to injuring herself while at work. Petitioner's voicemail reads, in part, as follows "…the last day I worked I bent over a stretcher to release the side panel and felt a bit of a twinge of pain over on the right side. While that twinge of pain has gone into a little bit, you know, of a whole lot more pain…I have injured my back…I need to file an incident cause I did feel the twinge of pain when I bent over at work. I don't think that's what caused this problem." (RX 18).

The Petitioner filed a written accident report with Respondent on January 3, 2023, and indicated under the heading "narrative of situation/problem" that that she was "lifting a patient and felt a twinge of pain. Have been fighting kidney stones and had been urinating blood that shift so figured it was pain related to passing a kidney stone, which I did. Went to ER and hematuria diagnosed with kidney spasms. Thurs my back lower right side was sore, went for massage and felt better until Fri morning 12-30-22 when I turned R out of my bedroom after getting ready for work and I dropped from the pain to the floor. Made chiropractor apt, no relief, Dr. Apt at 2 pm and Dr told me I was not to work over the weekend due to injury to low back." (PX 4).

The pre-alleged accident medical records document a long history of surgical treatment to Petitioner's low back including a fusion at an adjacent level of her lumbar spine. Dr. Peloza testified that given Petitioner's prior fusion at an adjacent level, changes the mechanics of her spine and makes it easier for even a minor incident to cause a disc herniation at L3/4. (PX 7, pp. 31) Dr. Bernardi concluded Petitioner ruptured her L3/4 disc on December 30, 2022, when she was leaving her bedroom to go to work and experienced severe pain and collapsed to the ground. (RX 16, p. 26) Petitioner acknowledged at trial that this event at home was first time pain radiated down her leg. (TX p. 92)

The Arbitrator finds that the record is littered with too much contradictory and inconsistent evidence to support Petitioner's allegation of a work-related accident. It is significant that despite multiple opportunities for the Petitioner to provide a clear history of accident while receiving medical care, or authoring Facebook posts, or

providing direct written and verbal histories to the Respondent in the form of written accident reports and voicemail, none are consistent with her testimony at trial of suffering a work-related accident on December 23, 2022, while performing a team lift of a patient.

There are too many critical inconsistencies in the record to find the Petitioner's testimony credible.

The Arbitrator finds Petitioner failed to prove by a preponderance of the evidence that she sustained an accident arising out of and in the course of her employment by Respondent. Having found that Petitioner did not sustain a work-related accident, all other issues are rendered moot.

Petitioner's request for benefits under the Illinois Workers' Compensation Act is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC030923
Case Name	Steven Stout v. Pekin Park District
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0548
Number of Pages of Decision	20
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Matthew Compton
Respondent Attorney	Nicole Breslau, Michael Rusin

DATE FILED: 11/15/2024

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

☒ 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

STEVEN STOUT,

Petitioner,

vs. NO: 17 WC 30923

PEKIN PARK DISTRICT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses and prospective medical care, and being advised of the facts and applicable law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission hereby remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 7, 2024 is hereby affirmed and adopted.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

November 15, 2024

CAH/pm
O: 11/7/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC030923
Case Name	Steven Stout v. Pekin Park District
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Matthew Compton
Respondent Attorney	R. Mark Cosimini

DATE FILED: 3/7/2024

/s/Maureen Pulia, Arbitrator

Signature

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

2STATE OF ILLINOIS)
)SS.
COUNTY OF **ROCK ISLAND**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

STEVEN STOUT,
Employee/Petitioner

v.

PEKIN PARK DISTRICT,
Employer/Respondent

Case # **17** WC **30923**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Rock Island**, on **2/13/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **1/10/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**34,777.60**; the average weekly wage was $**668.80**.

On the date of accident, Petitioner was **56** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services for petitioner's left and right shoulder from 3/17/21 through 2/13/24, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay reasonable and necessary medical services recommended by Dr. Ramirez for a left reverse total shoulder arthroplasty, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

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

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

Signature of Arbitrator

March 7, 2024

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 56 year old maintenance worker, sustained an accidental injury to his bilateral shoulders that arose out of and in the course of his employment by respondent on 1/10/17. Petitioner began working for respondent in 1980, and working full duty for respondent as a maintenance man in 1995. His duties as a maintenance man included electrical work, plumbing, painting and whatever they wanted him to do. On 1/10/17 petitioner was picking up and throwing Christmas trees into his truck and heard both his shoulders pop. Petitioner underwent a prior left rotator cuff repair in 2014 performed by Dr. Delucia. After his postoperative treatment concluded, petitioner returned to full duty work for respondent and worked without incident until the injury on 1/10/17.

This matter first came before Arbitrator Gillespie on 3/16/21 pursuant to Section 19(b) of the Act. The issues in dispute where accident, notice, casual connection, and prospective medical care. The Arbitrator found that petitioner sustained an accidental injury that arose out of and in the course of his employment by respondent on 1/10/17; that petitioner provided timely notice of the accident to respondent; that petitioner's current condition of ill-being was casually related to the injury on 1/10/17; and, ordered respondent to authorize and pay for the reasonable and necessary medical expenses associated with the surgical treatment to petitioner's right shoulder recommended by Dr. Steven Below.

Respondent did not appeal the Decision of the Arbitrator, and treatment for the right shoulder was eventually authorized. Given that the issue at bar is related to treatment for the left shoulder the arbitrator will focus on the status of the left shoulder condition since the 1/10/17 injury.

On 5/18/17 petitioner presented to Dr. Below. Petitioner arrived as a new patient with left shoulder complaints following an injury at work. He reported that his left shoulder popped, and he began to feel pain in both his shoulders after throwing Christmas trees into the back of a truck. Petitioner also complained of the pain extending to his left elbow, and he had tingling in the middle and ring fingers on his left hand. An examination revealed bilateral shoulder pain with weakness, rotator cuff tendon weakness bilaterally with acromioclavicular joint primary osteoarthritis. MRIs of his bilateral shoulders were ordered.

On 6/1/17 petitioner followed up with Dr. Below regarding his bilateral shoulder pain. He reviewed the MRI results of the left and right shoulder performed on 5/30/17. Dr. Below was of the opinion that the MRI of the left shoulder showed that the rotator cuff repair was intact, status past acromioplasty; some acromioclavicular joint degenerative disc disease; a torn biceps tendon; and a tear of the superior glenoid. Petitioner reported that both shoulders hurt. Dr. Below recommended a right

shoulder arthroscopy, subacromial decompression acromioplasty, excision of the distal clavicle, arthroscopic rotator cuff repair with debridement of the labral tear and paralabral cyst, and biceps tenodesis versus tenotomy. He also recommended gentle exercises for petitioner's left shoulder.

Respondent did not authorize the surgery recommended by Dr. Below for petitioner's right shoulder and on 10/3/17 it was noted that the WC Adjuster Dave Hunter indicated that they would only approve cortisone injections and therapy for the petitioner's left shoulder. They refused to authorize anything for the petitioner's right shoulder.

Petitioner continued to work light duty for respondent.

The first hearing on this matter was held before Arbitrator Gillespie on 3/16/21 pursuant to Section 19(b) of the Act. On 4/27/21 Arbitrator Gilespie issued his decision finding accident, notice, causal connection and petitioner's need for surgery to right shoulder to be authorized by respondent. Neither party appealed this Decision of the Arbitrator.

On 6/7/21 petitioner returned to Dr. Below. His complaints were unchanged and Dr. Below's exam was unchanged. Dr. Below reiterated his request for surgery to the right shoulder. He recommended repeat MRIs of petitioner's bilateral shoulders. Following this exam, Laura Brady in Dr. Below's office again spoke with WC Adjuster Dave Hunter who again reiterated that respondent would only authorize cortisone injections and therapy for petitioner's left shoulder, and no treatment for the right shoulder.

On 7/15/21 petitioner followed up with Dr. Below. Dr. Below reviewed the results of the bilateral shoulder MRIs dated 7/6/21. Dr. Below noted that the MRI of the left shoulder showed postsurgical changes of the rotator cuff repair with severe supraspinatus tendinitis and partial thickness articular sided tear with insertional infraspinatus tendinitis; atrophy of the left supraspinatus, infraspinatus, and teres minor muscles; and, a full thickness tear of the long head of the biceps, which was retracted; and a displaced posterior superior labral tear and postsurgical changes of the acromioplasty with marked moderate AC joint DJD and degenerative changes of the glenohumeral joint. Dr. Below's exam was unchanged. He ordered an EMG nerve conduction study.

On 8/5/21 petitioner underwent an EMG/NCS of his upper extremities. The impression was findings compatible with peripheral polyneuropathy of the upper extremities; findings that may represent superimposed focal median neuropathy at the wrists particularly right median nerve, but difficult to determine with underlying neuropathy; findings that may represent superimposed right ulnar neuropathy at the elbow, but difficult to differentiate with poly neuropathy; and findings compatible with left suprascapular neuropathy chronic.

On 8/9/21 petitioner returned to Dr. Below. He had the results of his EMG nerve conduction study performed 8/5/21 which showed peripheral polyneuropathy in the upper extremities, likely secondary to diabetes. Other EMG fundings unrelated to the shoulders were noted. Petitioner reported that he was in physical therapy, but was still in pain and wanted to undergo the recommended right shoulder surgery.

On 9/14/21 petitioner underwent a right shoulder arthroscopic rotator cuff repair and subacromial decompression with acromioplasty excision and distal clavicle extensive debridement with tenodesis. Petitioner followed up postoperatively with Dr. Below. This post operative treatment included physical therapy.

By 12/13/21 Dr. Below noted that petitioner was improving, and still needed restrictions for his right arm. Petitioner also complained again with regard to his left shoulder, which was status post acromioplasty and rotator cuff repair 7-8 years ago. Petitioner stated that his left shoulder was still painful and more painful his right shoulder at this point.

On 1/24/22 petitioner followed up with Dr. Below. Petitioner reported that he was doing well with regards to his right shoulder, and had completed his formal physical therapy and was doing home exercises. He reported some minimal right sided weakness. He was continued on light duty for the next 4-5 weeks. Petitioner again complained of left shoulder pain and some weakness away from the body and with above the shoulder activities. Following an examination Dr. Below assessed left shoulder partial thickness rotator cuff tear, with moderate supraspinatus and infraspinatus muscle atrophy; acromioclavicular joint degenerative joint disease and impingement; biceps tendon tear; and, some glenohumeral joint degenerative joint disease. Petitioner noted that he was still working. Dr. Below talked of the possible need for a reverse total shoulder on the left. Petitioner noted that he did not want to have it at that time. Dr. Below also talked about a shoulder arthroscopy with rotator cuff tear, if indicated, and decompression and distal clavicle excision and debridement. Petitioner noted that he was pleased with his right shoulder, and wanted to proceed with an arthroscopy on his left shoulder. Respondent's worker's compensation carrier did not provide authorization for the recommended surgery.

Petitioner returned to Dr. Below on 11/14/22. X-rays taken that day showed elevated humeral head changes consistent with chronic rotator cuff tear arthropathy. Petitioner continued to complain of tenderness, weakness and pain on away-from-the-body and above-the-shoulder activities, and pain when he lies on his left shoulder at night. Following an examination, Dr. Below assessed a left rotator cuff tear with rotator cuff tear arthropathy and superior elevation of the humeral head. Given that petitioner now had some elevation of the humeral head, he put off his original recommendation for an arthroscopic surgery, and instead recommended that petitioner see one of the shoulder joint replacement surgeons for

a reverse total shoulder. He no longer felt that petitioner's shoulder pathology would be adequately addressed by a shoulder arthroscopy. Dr. Below continued petitioner's light duty restrictions of 20 pound max lifting, with limited away-from-the-body and above-the-shoulder activities.

On 12/6/22 petitioner presented to Dr. Miguel Ramirez regarding a reverse total shoulder. Dr. Ramirez reviewed the MRI of 7/6/21 and was of the opinion that petitioner had a full-thickness tear of the rotator cuff with significant grade 4 atrophy, and mild glenohumeral osteoarthritis. He assessed arthritis of the left acromioclavicular joint, and traumatic tear of the left rotator cuff. He noted that petitioner was refractory to injections and therapy. Dr. Ramirez recommended a left reverse total shoulder arthroplasty.

On 4/21/23 petitioner underwent a Section 12 examination performed by Dr. Grant Garrigues, an orthopedic surgeon, at the request of the respondent. Petitioner complained of left shoulder pain, weakness, and limited range of motion. He reported that he was working modified duty for respondent mostly "running lawn mowers." Petitioner had a 20 pound lifting restrictions on both sides with repetitive overhead or away from the body lifting. Following a record review, and physical examination, Dr. Garrigues assessed left shoulder rotator cuff tear arthropathy, and severe peripheral neuropathy. Dr. Garrigues noted that petitioner had clear evidence of weakness, rotator cuff tear arthropathy, and multiple other relates issues including suprascapular neuropathy, arthritic changes, labral changes, biceps changes, that all fall under the heading of rotator cuff tear arthropathy. Dr. Garrigues was of the opinion that petitioner was coping quite well and continues to be working and had minimal complaints on examination. Dr. Garrigues also noted that petitioner had unrelated peripheral neuropathy with Charcot foot on the right side, clear changes of both hands that are either severe peripheral neuropathy, and possible superimposed chronic low grade ischemia and ulnar neuropathy on the left side with atrophy and hand posturing despite minimal complaints.

Dr. Garrigues recommended a corticosteroid injection into the left subacromial space, and a couple of visits (1-2 times a week for 6 weeks) for a "refresher course" to teach the petitioner stretching and rotator cuff strengthening due to motion that is quite limited. Dr. Garrigues did not think petitioner's weakness was nearly as bad as one might think from the images. He believed a lot of petitioner's stiffness might improve with physical therapy. Dr. Garrigues was also of the opinion that petitioner may be made worse with surgery, because of his diabetes, even though petitioner reported that his diabetes was well controlled. Dr. Garrigues had reviewed no records regarding petitioner's diabetes. Dr. Garrigues was of the opinion that if petitioner failed physical therapy, three months had elapsed from the injection, that his A1c is below 7.5, and he is cleared for surgery by his primary care physician, then

surgery could be considered, but his pathway for success is one with potential pitfalls due to his underlying neuropathy and peripheral vascular disease.

With respect to the issue of whether or not petitioner's current condition of ill-being as it relates to his left shoulder is related to the injury he sustained on 1/10/17, Dr. Garrigues noted that he only read the report of the 5/30/17 MRI of the left shoulder, and did not see the actual films. He was also of the opinion that the after reviewing the films of the 7/6/21 MRI he was of the opinion that the radiologist's read was wildly inaccurate. Based on this incorrect MRI interpretation, Dr. Garrigues questioned the radiologist's report regarding the MRI of 5/30/17. Dr. Garrigues was of the opinion he would need to review the actual films from the MRI dated 5/30/17. With regards to whether or not petitioner needed additional treatment for his left shoulder, Dr. Garrigues recommended that other than the injection and additional treatment, that petitioner make all efforts to live with his shoulder in its current state. However, if petitioner absolutely cannot handle the pain any longer, Dr. Garrigues thought a reverse total shoulder arthroplasty on the left side could be considered. With regard to the relatedness of this to the injury on 1/10/17 Dr. Garrigues referred to his response on the question of causation. Dr. Garrigues recommended that petitioner's current restrictions remain in place.

On 6/30/23 Dr. Garrigues drafted an addendum to his report dated 4/21/23, after reviewing the MRI films of the left shoulder taken 5/30/17 and 7/6/21. After reviewing the MRI of the left shoulder taken 5/30/17, Dr. Garrigues was of the opinion that it showed no evidence of any work related pathology or really any significant pathology of any kind, just some chronic wear and tear changes to his left shoulder. Based on this reading, Dr. Garrigues opined that the findings on the 7/6/21 MRI showing a retear of the rotator cuff tendon that in no way traces back to the 1/10/17 event because the MRI performed on 5/30/17 showed that the tendon was intact. Based on these opinions, Dr. Garrigues did not feel petitioner needed any time off, any work restrictions, or anything else related to the rotator cuff tear visualized on the MRI of 7/6/21. He deemed it not work related.

On 10/12/23 the evidence deposition of Dr. Steven Below, an orthopedic surgeon, was taken on behalf of the petitioner. Dr. Below testified that he recommended surgery on the right shoulder first because that one had a full thickness tear. Following that surgery and post operative treatment, Dr. Below, in January of 2022, recommended a left shoulder arthroscopy. Dr. Below testified that between January of 2022 and November 2022, the recommended surgery was not performed. Dr. Below was of the opinion that by November 2022 petitioner had signs of possible rotator cuff insufficiency where you cannot really address that arthroscopically, and there was some degenerative changes in the shoulder joint, and glenohumeral joint, so he recommended petitioner see his joint replacement surgeon for a

reverse total shoulder arthroplasty, because he does not perform this type of surgery. Dr. Below agreed with Dr. Ramirez's recommendation for a left reverse total shoulder arthroplasty.

Dr. Below was of the opinion that when he first saw petitioner following the injury on 1/10/17, petitioner had been doing well with his left shoulder status post his surgery in 2014, and he was having no problems until the injury on 1/10/17. Based on this history Dr. Below opined that petitioner's current condition of ill-being as it relates to his left shoulder is causally related to the injury he sustained on 1/10/17. Dr. Below was of the opinion that he was unaware of any new injury to petitioner's left shoulder between the MRI dates of June 2017, and July 2021.

On cross-examination Dr. Below was of the opinion that the left shoulder could be treated non-surgically in June of 2017. Dr. Below testified that he did not know of any of petitioner's activities between June of 2017, and July of 2021. He was not sure if petitioner was working. Dr. Below was of the opinion that degeneration, or wear and tear, is not necessarily more likely to occur after surgery. Dr. Below did not agree that there was a correlation, or even causation between diabetes and wear and tear and degenerative changes in the shoulder, but was of the opinion that in terms of healing and repair there could be some delay due to the diabetes and possible incomplete type of complete resolution or healing. Dr. Below said this was a possibility after petitioner's 2013 surgery. Dr. Below was of the opinion that findings on the left shoulder MRI in July of 2021 were worse than they were in June of 2017, especially as to the increased muscle atrophy and signs of a rotator cuff insufficiency in the July of 2021 MRI. He was further of the opinion that the tears were more progressed, more severe, due to time or even activities of daily living. Dr. Below was of the opinion that the glenohumeral joint degenerative changes were a contributing factor to the shoulder replacement, but the degeneration of the AC joint was not.

On 12/12/23 the evidence deposition of Dr. Garrigues, an orthopedic surgeon, was taken on behalf of respondent. Dr. Garrigues was of the opinion that Charcot is a condition that is a sign of very bad neuropathy, which is a sign of bad diabetes. Dr. Garrigues testified that petitioner told him his A1c was at 6.5, and that is a reasonable level of control. He was of the opinion that petitioner had multiple signs in his body that diabetes had taken a significant toll on his body. Dr. Garrigues was of the opinion that there were no findings on the MRI of the left shoulder on 5/30/17 that was acute or concerning. Dr. Garrigues opined that petitioner did not sustain a significant injury to his rotator cuff, or any injuries that showed up on the MRI. He only noted chronic findings of wear and tear. At most, he was of the opinion that the only injury petitioner sustained would have been a strain or overuse. He saw no structural damage as a result of the 1/10/17 injury, and believed a strain or overuse would have resolved in 6 weeks with no treatment at all. Dr. Garrigues opined that petitioner's symptoms of weakness and anterolateral

shoulder pain at the time of the 7/6/21 MRI of the left shoulder, were consistent with having a chronic rotator cuff tear. Dr. Garrigues opined that the injury on 1/10/17 did not contribute to the pathology noted on the 7/6/21 MRI. Dr. Garrigues also opined that there was no evidence of any traumatic or injury findings on his EMG. Dr. Garrigues opined that any total reverse shoulder arthroplasty on the left is not related to the injury on 1/10/17, but rather to the massive rotator cuff tear seen on the MRI on 7/6/21, which he opined is not related to the injury on 1/10/17. Dr. Garrigues also opined that any need for work restrictions is not related to the injury on 1/10/17.

On cross examination, Dr. Garrigues was of the opinion that diabetes and age are 2 risk factors for rotator cuff tears, and rotator cuff tears do not need to be caused by trauma. He was of the opinion factually that whatever happened to him that resulted in the findings on the 7/6/21 MRI happened after the 5/30/17 MRI. He was of the opinion that it could have been degenerative or traumatic, but did not happen before 5/30/17. He opined that simply time or daily activity could not account for the changes seen on the 7/6/21 MRI. He also did not think that "overuse" caused it either. He did not believe the changes on the MRI of 7/6/21 could be the natural progression of a shoulder strain from 2017 that was not treated until 2021. Dr. Garrigues was of the opinion that petitioner should continue with 20 pound lifting restrictions for both arms.

Petitioner testified that he has continued to work light duty from 2017. He further testified that since 1/10/17 his left shoulder symptoms have not resolved. Petitioner testified that currently, his left shoulder is getting worse. He reported more pain, and stated that he cannot lift it as high. He denied any new accidents or injuries to his left shoulder since 1/10/17.

On cross-examination petitioner testified that he received no treatment for hAis left shoulder between June of 2017 and June of 2021, but continued working light duty. In his light duty capacity petitioner worked at the parks cleaning bathrooms and stuff, and running a mower.

Petitioner testified that he has had problems with diabetes for 20 years, and has been on medication, including insulin for the past 7-8 years. Petitioner testified that his A1c is under 7.2.

Petitioner testified that he is currently off work due to an unrelated surgery he had on his right foot on 5/25/23. Petitioner testified that he had broken his foot, but was not sure how he broke it. Petitioner testified that it had something to do with his diabetes. He agreed that he was told that diabetes weakens the bones.

Petitioner testified that he lost his job because he ran out of sick and vacation time.

E. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner claims his current condition of ill-being as it relates to his left shoulder is causally related to his injury on 1/10/17. Respondent disputes this claim.

Following the injury on 1/10/17 petitioner reported that his left shoulder popped and he felt pain in both his shoulders after throwing Christmas trees in the back of a truck. He did not seek treatment until 5/18/17. At that time, an examination revealed bilateral shoulder pain with weakness, and bilateral rotator cuff weakness with acromioclavicular joint primary osteoarthritis. An MRI of the left shoulder showed a prior rotator cuff repair intact. It also showed some acromioclavicular joint degenerative disc disease, a torn biceps tendon, and a tear of the superior glenoid. Dr. Below began treatment of the right shoulder and recommended gentle exercises for the left shoulder.

Surgery was recommended for the right shoulder, but authorization for the surgery by respondent's workers' compensation carrier was denied. Respondent offered cortisone injections and physical therapy for petitioner's left shoulder. Petitioner continued light duty work.

On 3/16/21 a hearing was held before Arbitrator Gillespie pursuant to Section 19(b) of the Act. Arbitrator Gillespie found accident, causation, and ordered the respondent to pay for the surgery to the right shoulder. This decision was issued on 4/27/21. Neither part appealed the decision.

Petitioner continued to treat with Dr. Below, and on 6/7/21, after the decision was issued by Arbitrator Gillespie, respondent's workers' compensation carrier still refused to authorize the surgery to petitioner's right shoulder, and would only authorize cortisones injection and physical therapy for petitioner's left shoulder.

Updated MRIs of the shoulders were ordered by Dr. Below. On 7/5/21 Dr. Below was of the opinion that the MRI of the left shoulder showed postsurgical changes of the rotator cuff repair with severe supraspinatus tendinitis and partial thickness articular sided tear with insertional infraspinatus tendinitis; atrophy of the left supraspinatus, infraspinatus, and teres minor muscles; a full thickness tear of the long head of the biceps, which was retracted; a displaced posterior superior labral tear; postsurgical changes of the acromioplasty with marked moderate AC joint DJD; and, degenerative changes of the glenohumeral joint.

Petitioner finally underwent the recommended surgery for his right shoulder on 9/14/21, nearly 5 months after the Decision of the Arbitrator was issued. On 12/13/21, petitioner reported to Dr. Below that his right shoulder was improving, but his left shoulder was still painful, and worse than his right shoulder at that point.

On 1/24/22 petitioner was still working light duty. Dr. Below examined petitioner and assessed a left shoulder partial thickness rotator cuff tear, with moderate supraspinatus and infraspinatus muscle atrophy; acromioclavicular joint degenerative joint disease and impingement; biceps tendon tear; and, some glenohumeral joint degenerative joint disease. Dr. Below talked of the possible need for a reverse total shoulder on the left, which petitioner did not want to undergo. Dr. Below then talked about a shoulder arthroscopy with rotator cuff tear, if indicated, and decompression and distal clavicle excision and debridement. Petitioner noted that he wanted to proceed with an arthroscopy on his left shoulder.

Respondent's workers' compensation carrier did not provide authorization for the surgery recommended by Dr. Below, and petitioner continued working light duty. Petitioner returned to Dr. Below on 11/14/22. X-rays at that point showed elevated humeral head changes, consistent with chronic rotator cuff tear arthropathy. Petitioner was still complaining of left shoulder pain and weakness, and pain away from the body and with above the shoulder activities. He also complained of pain in his left shoulder when he sleeps on it during the night. Due to the elevated humeral head, Dr. Below was of the opinion that an arthroscopic surgery was no longer appropriate, and recommended petitioner see Dr. Ramirez for a possible reverse total shoulder.

Dr. Ramirez reviewed the MRI and assessed a full thickness tear of the rotator cuff with significant Grade 4 atrophy, and mild glenohumeral osteoarthritis. He further assessed arthritis of the left acromioclavicular joint, and traumatic tear of the left rotator cuff. He noted that petitioner was refractory to injections and therapy. Dr. Ramirez recommended a left reverse total shoulder arthroplasty.

Following this surgical recommendation, respondent had petitioner undergo a Section 12 examination performed by Dr. Garrigues. Petitioner continued to complain of left shoulder pain, weakness, and limited range of motion. He reported that he was working modified duty for respondent mostly "running lawn mowers." Petitioner had a 20 pound lifting restrictions on both sides with repetitive overhead or away from the body lifting. Dr. Garrigues assessed left shoulder rotator cuff tear arthropathy, and severe peripheral neuropathy. Dr. Garrigues noted that petitioner had clear evidence of weakness, rotator cuff tear arthropathy, and multiple other relates issues including suprascapular neuropathy, arthritic changes, labral changes, biceps changes, that all fall under the heading of rotator cuff tear arthropathy. Dr. Garrigues was of the opinion that petitioner was coping quite well and continued to work and had minimal complaints on examination.

Dr. Garrigues did not think petitioner's weakness was nearly as bad as one might think from the images. He believed a lot of petitioner's stiffness might improve with physical therapy. Dr. Garrigues was also of the opinion that petitioner may be made worse with surgery, because of his diabetes, even

though petitioner reported that his diabetes was well controlled, and he had no trouble following his right shoulder surgery in September of 2021, or his prior left shoulder surgery in 2014, despite being a diabetic for 20 years. Additionally, Dr. Garrigues reviewed no records regarding whether or not petitioner's diabetes was controlled or not. Dr. Garrigues was of the opinion that if petitioner failed physical therapy; three months had elapsed from the injection; his A1c was below 7.5; and he was cleared for surgery by his primary care physician, then surgery could be considered, but his pathway for success is one with potential pitfalls due to his underlying neuropathy and peripheral vascular disease.

Dr. Garrigues recommended that other than the cortisone injection and additional treatment, that petitioner should make all efforts to live with his shoulder in its current state. However, if petitioner absolutely cannot handle the pain any longer, Dr. Garrigues thought a reverse total shoulder arthroplasty on the left side could be considered. Dr. Garrigues recommended that petitioner's current restrictions remain in place.

On 6/30/23 Dr. Garrigues drafted an addendum to his report dated 4/21/23, after reviewing the MRI films of the left shoulder taken 5/30/17 and 7/6/21. Dr. Garrigues was of the opinion that it showed no evidence of any work related pathology or really any significant pathology of any kind, just some chronic wear and tear changes to his left shoulder. Based on this reading, Dr. Garrigues opined that the findings on the 7/6/21 MRI showing a retear of the rotator cuff tendon no way trace back to the 1/10/17 event because the MRI performed on 5/30/17 showed that the tendon was intact. Dr. Garrigues then changes his prior opinions and determined that petitioner did not need any time off, did not need any work restrictions, and did not need anything else related to the rotator cuff tear visualized on the MRI of 7/6/21. He deemed petitioner's current condition of ill-being not work related.

In his deposition Dr. Below testified that between January of 2022 and November 2022, the arthroscopic surgery he recommended had not been performed, and that by November 2022 petitioner had signs of possible rotator cuff insufficiency that could not really be addressed arthroscopically. That is why he sent petitioner to Dr. Ramirez. Dr. Below agreed with Dr. Ramirez's recommendation for a left reverse total shoulder arthroplasty.

Dr. Below was of the opinion that when he first saw petitioner following the injury on 1/10/17, petitioner had been doing well with his left shoulder status post his surgery in 2014, and he was having no problems until the injury on 1/10/17. Based on this history, Dr. Below opined that petitioner's current condition of ill-being as it relates to his left shoulder is causally related to the injury he sustained on 1/10/17. Dr. Below also noted that he was unaware of any new injury to petitioner's left shoulder between the MRI dates of June 2017, and July 2021.

On cross-examination Dr. Below did not agree that there was a correlation, or even causation between diabetes and wear and tear and degenerative changes in the shoulder, but was of the opinion that in terms of healing and repair there could be some delay due to the diabetes and possible incomplete type of complete resolution or healing. The arbitrator finds it significant that following his left shoulder surgery in 2014, and his right shoulder surgery in 2021 there is no record of any complications related to petitioner's diabetes.

Dr. Below was of the opinion that findings on the left shoulder MRI on 2021 were worse than they were in 2017, especially as to the increased muscle atrophy and signs of a rotator cuff insufficiency seen on the 2021 MRI. He was further of the opinion that the tears were more progressed and more severe due to time or even activities of daily living. Dr. Below was of the opinion that the glenohumeral joint degenerative changes were a contributing factor to the left shoulder replacement.

During his deposition, Dr. Garrigues was of the opinion that petitioners had multiple signs in his body that diabetes had taken a significant toll on his body. Dr. Garrigues was of the opinion that there were no findings on the MRI of the left shoulder on 5/30/17 that were acute or concerning. Dr. Garrigues opined that petitioner did not sustain a significant injury to his rotator cuff, or any injuries that showed up on the MRI. He only noted chronic findings of wear and tear. At most, he was of the opinion that the only injury petitioner sustained would have been a strain or overuse. He saw no structural damage as a result of the 1/10/17 injury, and believed a strain or overuse would have resolved in 6 weeks with no treatment at all.

Dr. Garrigues opined that petitioner's symptoms of weakness and anterolateral shoulder pain at the time of the 7/6/21 MRI of the left shoulder, were consistent with having a chronic rotator cuff tear. Dr. Garrigues opined that the injury on 1/10/17 did not contribute to the pathology noted on the 7/6/21 MRI. Dr. Garrigues also opined that there was no evidence of any traumatic or injury findings on his EMG. Dr. Garrigues opined that any total reverse shoulder arthroplasty on the left is not related to the injury on 1/10/17, but rather to the massive rotator cuff tear seen on the MRI on 7/6/21, which he opined is not related to the injury on 1/10/17. Dr. Garrigues opined that the need for any work restrictions is not related to the injury on 1/10/17.

On cross examination, Dr. Garrigues was of the opinion that diabetes and age are 2 risk factors for rotator cuff tears, and rotator cuff tears do not need to be caused by trauma. He was of the opinion that whatever happened to petitioner that resulted in the findings on the 7/6/21 MRI happened after the 5/30/17 MRI. He was of the opinion that it could have been degenerative or traumatic, but did not happen before 5/30/17. He opined that simply time or daily activity could not account for the changes

seen on the 7/6/21 MRI. He also did not think that "overuse" caused it. He did not believe the changes on the MRI of 7/6/21 could be the natural progression of a shoulder strain from 2017 that was not treated until 2021. Dr. Garrigues was of the opinion that petitioner should continue with 20 pound lifting restrictions for both arms.

The arbitrator finds many of Dr. Garrigues opinions are not supported by the credible evidence, are speculative, and inconsistent at times. When Dr. Garrigues examined petitioner on 4/21/23 petitioner complained of left shoulder pain, weakness and limited range of motion. Dr. Garrigues considered these complaints "minimal." The arbitrator finds this opinion without merit given petitioner has had these complaints since the date of injury, and as a result has been restricted to light duty since May of 2017. The arbitrator also finds it significant that even Dr. Garrigues recommended that petitioner's restrictions remain in place. If petitioner's complaints were "minimal," or the result of a simple strain, the arbitrator questions why Dr. Garrigues would be recommending continued work restrictions on 4/21/23. The arbitrator reasonably infers from Dr. Garrigues light duty recommendation that petitioner's complaints were not "minimal', and petitioner did not sustain a simple strain as a result of the injury on 1/10/17 that would have resolved in 6 weeks.

Dr. Garrigues was also of the opinion that the MRI of 7/6/21 showed a retear of the rotator cuff tendon, but opined it could not be related to the injury on 1/10/17 because it was not seen on the MRI of 5/30/17. Based on these findings, Dr. Garrigues deemed the retear of the left rotator cuff tendon is not related to the injury on 1/10/17. Alternatively, Dr. Below, petitioner's treating physician, opined that petitioner's current condition of ill-being as it relates to his left shoulder is causally related to the injury he sustained on 1/10/17. Dr. Below based this opinion on the fact that petitioner had no new injuries to his left shoulder between the MRI of June 2017, and July of 2021. Despite Dr. Garrigues' opinion that petitioner did sustain some new injury between June of 2017 and July of 2021 to account for what he described as a "massive rotator cuff tear", the arbitrator finds this opinion speculative at best, given that there was no credible evidence offered to support a finding that the petitioner sustained any intervening accident. In fact, what the evidence does show is that despite his worsening complaints, petitioner continued to work light duty for respondent.

Dr. Below saw no causation between diabetes and wear and tear and degenerative changes in the shoulder. Although Dr. Garrigues was of the opinion that diabetes is a risk factor for rotator cuff tears, he admitted that he had reviewed no records regarding whether petitioner's diabetes was controlled or not, and petitioner reported to him that his A1c was below 7.5. Based on this evidence, the arbitrator

finds Dr. Garrigues' opinion that petitioner's diabetes may have been a risk factor for petitioner's rotator cuff tear speculative at best.

Dr. Garrigues was of the opinion that petitioner only sustained a shoulder strain as a result of the injury on 1/10/17, and that petitioner's current condition of ill-being as it relates to his left shoulder could not be the natural progression of that strain. The arbitrator gives no weight to this opinion given that the MRI of the left shoulder on 5/30/17 showed some acromioclavicular joint degenerative disc disease, a torn biceps tendon, and, a tear of the superior glenoid. The arbitrator is of the opinion that these findings clearly represent injuries greater than a simple strain.

The arbitrator also finds it significant that the gaps in petitioner's treatment between 2017 and June of 2021, as well as between January of 2022 and November of 2022 were not due to the petitioner's failure to seek treatment, but were instead due to the fact that the treatment recommended by Dr. Below was denied by respondent's workers' compensation carrier, and petitioner was forced to file a Motion for a Section 19(b) hearing which was not heard by Arbitrator Gillespie until 3/16/21. Following this hearing Arbitrator Gillespie issued a decision ordering respondent pay for the right shoulder surgery recommended by Dr. Below, and again the respondent denied authorization until 5 months after the Decision of the Arbitrator was issued.

In January of 2022 Dr. Below then recommended an arthroscopic surgery to petitioner's left shoulder. Again, respondent's workers' compensation carrier denied the recommended surgery, and when petitioner next saw Dr. Below in November of 2022 his condition had worsened to a point where a left reverse total shoulder replacement was recommended, and Dr. Garrigues found it was not related to the injury on 1/10/17.

Based on the above, as well as the credible evidence, the arbitrator finds the opinions of Dr. Below more persuasive than those of Dr. Garrigues, and finds the petitioner's current condition of ill-being as it relates to his left shoulder causally related to the injury he sustained on 1/10/17. The arbitrator bases this finding on the fact that the MRI of the left shoulder dated 5/30/17 showed that petitioner clearly sustained more than a simple strain of his left shoulder as a result of the injury on 1/10/17; that since the date of injury petitioner has had ongoing complaints of pain, weakness and limited range of motion of the left shoulder from 1/10/17 through 2/13/24, the date of hearing; that despite these complaints petitioner continued to work light duty for respondent until taken off work on 5/25/23 due to an unrelated issue; that in his light duty capacity petitioner worked at the parks cleaning bathrooms and stuff, and running a lawn mower; that there is no credible evidence that petitioner sustained any intervening accident between 1/10/17 and 2/13/24; that there is no credible evidence to support a finding that the changes in

petitioner's left shoulder between 5/30/17 and 7/6/21 were due to his diabetes; that there were no changes in petitioner's left rotator cuff repair following the left shoulder surgery in 2013 and the injury on 1/10/17, but there were immediate and ongoing changes in petitioner's left shoulder following the injury on 1/10/17 that continued to worsen through 1/24/22 to the point where an arthroscopic surgery of the left shoulder was recommended; that the arthroscopic surgery of the left shoulder was denied by respondent's workers' compensation carrier; and, that due to the denial of petitioner's left shoulder arthroscopy in early 2022 petitioner's left shoulder worsened to the point that on 11/14/22, a left reverse total shoulder arthroplasty was recommended.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

Having found the petitioner's current condition of ill-being as it relates to his left shoulder causally related to the injury petitioner sustained on 1/10/17, the arbitrator finds the left reverse total shoulder arthroplasty recommended by Dr. Ramirez reasonable and necessary to cure or relieve petitioner from the effects of his injury on 1/10/17. The arbitrator bases this finding on the opinions of Dr. Below and Dr. Ramirez which the arbitrator found more persuasive than those of Dr. Garrigues.

The arbitrator also finds it significant that despite Dr. Garrigues' opinion that petitioner's current condition of ill-being as it relates to his left shoulder is not causally related to the injury on 1/10/17, he did opine that the petitioner's complaints of weakness and anterolateral shoulder pain at time of the 7/6/21 MRI of the left shoulder were consistent with petitioner having a chronic rotator cuff tear, and that the left reverse total shoulder surgery would be reasonable.

Respondent shall pay reasonable and necessary medical services recommended by Dr. Ramirez for a left reverse total shoulder arthroplasty, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC017223
Case Name	Aimee Lang v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0549
Number of Pages of Decision	13
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 11/15/2024

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ 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

AIMEE LANG,

Petitioner,

vs. NO: 22 WC 17223

MENARD CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and temporary total disability (TTD) benefits, and being advised of the facts and applicable law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission hereby remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 5, 2024 is hereby affirmed and adopted.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

November 15, 2024

CAH/pm
d: 11/7/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC017223
Case Name	Aimee Lang v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Jason Coffey
Respondent Attorney	Kenton Owens

DATE FILED: 2/5/2024

/s/ Bradley Gillespie, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JANUARY 30, 2024 4.985%

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

February 5, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Aimee Lang
Employee/Petitioner

v.

SOI/Menard Correctional Center
Employer/Respondent

Case # **22** WC **017223**

Consolidated cases: **None**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin, IL**, on **January 3, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 30, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**73,032.99**; the average weekly wage was $**1,404.48**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **1** dependent children.

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

Respondent shall be given a credit of $**13,376.74** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**13,376.74**.

Respondent is entitled to a credit under Section 8(j) of the Act for medical bills paid through their employer-sponsored group health plan.

ORDER

Respondent shall pay reasonable and necessary medical services as provided in Petitioner's Group Exhibit #6, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $926.96/week for 1 3/7 weeks, commencing October 26, 2022 through November 3, 2022, and January 3, 2024, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $13,376.74 for temporary total disability benefits that have been paid.

Respondent shall authorize and pay for the treatment recommended by Dr. Matthew Gornet.

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

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

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

Bradley D. Gillespie
Signature of Arbitrator

February 5, 2024

BEFORE TO THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMIEE LANG,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 22WC017223**
	)	
MENARD CORRECTIONAL CENTER,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

The parties tried this matter pursuant to Section 19(b) on January 3, 2024. Amiee Lang [hereinafter "Petitioner" filed a Application for Adjustment of Claim on or about June 30, 2022 alleging injuries to her low back while working for Menard Correctional Center [hereinafter "Respondent"] on September 30, 2021. (Arb. Ex. #2) The parties completed and signed a Request for Hearing Form. (Arb. Ex. #1) Petitioner has a current recommendation for continued medical treatment on her low back. The Respondent disputes the causal connection between the Petitioner's current condition and her work injury. The following issues were in dispute:

- Causal Connection;
- Medical Bills;
- Temporary Total Disability; and
- Future Medical Treatment

FINDINGS OF FACT

Petitioner is a 43-year-old licensed practical nurse at Menard Correctional Center. She has worked at Menard for a little over 16 years. Ms. Lang was passing medications in the prison facility from cell to cell at the time of her injury. She was carrying a box of medications distributing them to individuals in custody. While she was walking down the cell gallery holding the box of medications she slipped on some unknown substance on the floor and fell to the ground. She reported her injury to her employer. This injury is undisputed.

Petitioner sought medical treatment at the facility reporting injuries to her bilateral knees and low back. Over the next couple of days, the contusions on her bilateral knees resolved. Her low back pain did not resolve. She was seen by her primary care physician at Chester Clinic. (PX #2) Eventually, she underwent MRI evaluation at Chester Memorial Hospital. (PX #3) She also underwent physical therapy at the request of her primary care physician.

Following physical therapy, Petitioner was referred for pain management treatment with Dr. Zhu. (PX #2) Dr. Zhu performed injections on her low back. Following these injections, Petitoiner was referred to see Dr. Matthew Gornet, an orthopedic spine surgeon.

Petitioner reported low back radiating down her left leg to her foot and left glute pain. Dr. Gornet recommended a second MRI of the low back. (PX #5) Following the MRI, Dr. Gornet requested a CT discogram. It is Petitioner's understanding that following the CT discogram, she may have recommendation for surgical intervention on her low back. Petitioner understands her current problems are at the L4-5 and L5-S1 levels of the lumbar spine. She testified that she was ready, willing, and able to undergo the CT discogram as currently recommended by Dr. Gornet.

Petitioner informed Dr. Gornet that she had received medical treatment on her low back prior to her work injury. Petitioner testified there was nothing substantial done to her low back and that she was having maintenance by visiting a chiropractor, Dr. Jodi Buskohl. Petitioner indicated that she has treated with Dr. Buskohl for 14-15 years. Dr. Buskohl treats her entire spine but mostly focuses on her neck and right hip. Petitioner admitted there were sporadic times when she reported low back pain to Dr. Buskohl prior to her work injury. However, she never reported pain running down her left leg to her foot prior to the work injury. Furthermore, she never missed a significant amount of time of work due to this pre-existing low back pain. She testified that she had never underwent a lumbar MRI prior to her work injury.

Petitioner was asked about a prior work injury and a workers' compensation claim she filed in 2010. She made a claim for her neck and back in 2010. (RX #6) The prior Arbitration Decision was entered into evidence by the Respondent. The Arbitration Decision indicated that Petitioner was receiving an award for the person as a whole due to neck and back pain. Petitioner testified she never underwent a lumbar MRI due to her injury to 2010. She did not even recall receiving treatment for her lumbar spine in 2010.

Petitioner worked full duty in 2021 up until September 30, 2021. After her injury, she was unable to work full duty. She has been on work restrictions since the injury. Petitioner testified she did not have pain running down her left leg to her foot prior to September 30, 2021.

On cross examination, Petitioner discussed a referral to Dr. Gornet with her attorney. She said she asked her attorney if she could see Dr. Gornet because her significant other was also a patient of Dr. Gornet. Petitioner readily admitted low back pain and left hip pain prior to September 30, 2021. However, she noted that it was sporadic and occasional. Petitioner testified that she does not dispute anything in her medical records that has been noted prior to her work injury. Petitioner was asked if she was working full duty. She responded that she was actually on a leave of absence at this time.

Medical records entered into evidence at trial reveal that Petitioner was initially seen by her chiropractor, Dr. Jodi Buskohl on October 1, 2021 (PX #1). She reported she had pain in her right and left knees and lower back due to a fall at work on September 30, 2021. She reported that she continued working for the rest of that day and was sore overall. When she awoke the following day, she was very stiff and sore. On October 4, 2021, Petitioner followed-up with Dr. Buskohl noting continued low back pain. She also had some bruising and scabs on her knee. The low back pain was interfering with her sleep. Dr. Buskohl noted back tenderness on physical examination. On October 6, 2021, Dr. Buskohl recommended that Petitioner see her primary-care physician. Petitioner continued treating with the chiropractor three times/week through

October 27, 2021. She was also seen by Dr. Buskohl either monthly or bi-monthly for the remainder of 2022, mostly for massage treatment and adjustments.

Petitioner saw Dr. Stephen Platt at Chester Clinic on October 7, 2021 (PX #2). She reported a consistent history of her work injury. Dr. Platt diagnosed Petitioner with a strain of her right knee, a contusion of the left knee, and sacral back pain. On October 21, 2021, Petitioner returned to Chester Clinic. She reported low back pain with left-sided sciatica. X-ray evaluation and physical therapy were recommended. Petitioner underwent X-ray evaluation of the lumbar spine which revealed no acute osseous abnormalities.

On November 11, 2021, Petitioner reported continued low back pain with left leg radiculopathy. Physical therapy was continued. On November 22, 2021, Petitioner presented with continued radicular symptoms. She was encouraged to return to work on November 29, 2021, with restrictions. On December 11, 2021, Chester Clinic ordered MRI evaluation. The MRI was completed on December 22, 2021. The radiologist read the MRI as demonstrating L4-5 and L5-S1 degenerative changes resulting in mild spinal canal stenosis together with mild bilateral neural foraminal stenosis at L5-S1. Following the MRI, Petitioner was referred for pain management by the Chester Clinic on January 4, 2022. On February 1, 2022, Petitioner followed-up at Chester Clinic with continued radicular pain. The pain management referral had not yet been approved by workers' compensation.

Petitioner first saw pain management specialist, Dr. Tong Zhu, on March 1, 2022. Dr. Zhu diagnosed Petitioner with degenerative disc disease, lumbar radiculopathy, spondylosis of the lumbar region, and SI joint disfunction. Dr. Zhu recommended L5-S1 transforaminal epidural injection. Petitioner underwent the injection on March 15, 2022. On March 29, 2022, Petitioner noted approximately 50% improvement. Dr. Zhu then recommended a left paramedian L5-S1 interlaminar epidural steroid injection or consider a L4-5/L5-S1 facet block at the next visit. Petitioner underwent a L5-S1 interlaminar epidural steroid injection on April 19, 2022. Petitioner, once again, reported approximately 50% improvement from the second injection. Dr. Zhu made further recommendations for treatment but noted they were denied by workers' compensation on June 21, 2022.

On July 5, 2022, Petitioner received a referral from the Chester Clinic to see Dr. Matthew Gornet for further treatment. Ms. Lang first presented for medical treatment with Dr. Gornet on July 27, 2022 (PX #3). Dr. Gornet took a history of injury from Petitioner. He noted her chief complaints were low back pain to the left side, left buttock, left hip and down the left leg to approximately the knee with occasional pain and tingling in her foot. Dr. Gornet further noted Petitioner readily admitted to him she underwent chiropractic care for maintenance at least twice monthly for a long time. However, Dr. Gornet noted Petitioner's pain now was completely different affecting all aspects of her life and her quality of life having never been this severe or having leg pain prior to her work injury. Dr. Gornet performed a physical examination and recommended MRI. Petitioner underwent the MRI evaluation the same day and returned to Dr. Gornet's office. Dr. Gornet found central disc pathology more to the left at L5-S1 which was clearly seen on the STIR sequence image #12 of 21. There was also a suggestion of pathology at L4-5.

Dr. Gornet recommended a CT discogram at L3-4 and L4-5. Since L5-S1 had such a compelling lesion and had already failed conservative medical treatment, he felt surgery was necessary at that level. However, Dr. Gornet felt the CT discogram at L3-4 and L4-5 was necessary to determine if surgery would be required at those adjacent levels as well.

On November 3, 2022, Dr. Gornet requested to review all the chiropractic records from Dr. Buskohl although his treatment recommendations remained the same. Ms. Lang was also seen on February 2, 2023, May 22, 2023, July 31, 2023, and November 2, 2023. The treatment recommendations remain the same to date.

Records from Dr. Jodi Buskohl, a chiropractor, revealed Petitioner began treating in January 2017. She was seen approximately two to three times per month reporting hip and low back pain from January through March 2017. Petitioner underwent massages and adjustments over the next several months noting some lumbar pain. However, by October 2017, Petitioner's complaints were of her right foot and potential bunion. She also began receiving treatment from Dr. Buskohl for her right shoulder area by December 2017. Petitioner treated throughout 2018 for her shoulder and neck seeing Dr. Buskohl six times. In 2019, Petitioner received massages and adjustments from Dr. Buskohl. Petitioner complained of back pain in June and July 2020, The pain was in her SI joint with some hip pain. There was also treatment for Petitioner's low back and left hip in 2021. Petitioner was seen by Dr. Buskohl three times in January, twice in March, one time each in May and June, twice in July and August for massages and adjustments. On September 10, 2021, Petitioner presented to Dr. Buskohl reporting her left hip was killing her. There were never complaints to Dr. Buskohl about pain radiating down her left leg and into her left foot.

Dr. Matthew Gornet testified, via evidence deposition on October 16, 2023 (PX #3). Dr. Gornet is a board-certified orthopedic surgeon whose practice is devoted to spine surgery. He graduated Summa Cum Laude Phi Beta Kappa from Washington University. He then attended the Johns Hopkins School of Medicine where he graduated and stayed on for internship and residency in orthopedic surgery. Dr. Gornet sees and treats approximately 100 to 120 patients per week and performs approximately five to ten surgeries per week. Dr. Gornet performs medical research as part of his practice and was an invited guest lecturer in Los Angeles, CA at the largest spine meeting in the world.

Dr. Gornet testified regarding the care and treatment of Petitioner. The testimony was consistent with his medical records. He stated his diagnosis of Petitioner was partly based on reading the MRI films. He specifically pointed out image 12 of 21 of the STIR sequence of the MRI. He pointed out the specific image for two reasons. First, in case anybody wants to go back and look at the exact image to confirm his reading they can. Second, with the STIR sequence in general, when you see pathology, it is usually an acute type of injury.

Dr. Gornet reviewed all the medical records from Dr. Jodi Buskohl dating both before and after the Petitioner's work injury. Dr. Gornet did not see any records documenting radicular symptoms down the Petitioner's left leg in the records predating the work injury. Dr. Gornet opined that Petitioner's current symptoms, and need for treatment, were causally-related to her work injury on September 30, 2021. Dr. Gornet testified the treatment he has both recommended

and performed to date were both reasonable and necessary. He feels Petitioner has tried and failed conservative measures, she needs obvious treatment at L5-S1 based upon MRI, but he wants to make sure L4-L5 is not a part of the problem causing Petitioner's pain.

On cross-examination, Dr. Gornet was asked about radicular pain in general. Dr. Gornet testified radicular pain is nerve pain which tends to follow the distribution of the nerve. Sciatic nerve pain is a little different. It involves a compilation of several nerves. Dr. Gornet feels Petitioner's nerve pain is being caused by the L5-S1 nerve distribution. Dr. Gornet acknowledged that Petitioner complained of left hip pain on September 10, 2021, and stated it could have been nerve pain causing her problem.

Respondent requested a Section 12 evaluation with Dr. Michael Chabot. Dr. Chabot reviewed medical records, performed a physical examination on the Petitioner, and reviewed diagnostic studies. Dr. Chabot authored a Section 12 report dated February 16, 2023. Dr. Chabot testified, via evidence deposition, on June 2, 2023 (RX #3).

Dr. Chabot is a board-certified orthopedic surgeon who completed fellowship training in spine surgery which is the emphasis of his practice. He performs spine surgery on a regular basis. Dr. Chabot was requested by Respondent to perform a Section 12 evaluation of Petitioner. Dr. Chabot testified consistent with his report.

Dr. Chabot felt the records he reviewed revealed a long-standing history of treatment with Dr. Jodi Buskohl. Dr. Chabot diagnosed Petitioner with bilateral knee contusions, back sprain, resolved sacroiliac strain and evidence of a left-sided disc protrusion at L5-S1. Dr. Chabot believed all of those diagnoses related to Petitioner's work injury on September 30, 2021. However, Dr. Chabot believed the Petitioner had already reached maximum medical improvement and could return to full duty work.

On cross-examination, Dr. Chabot admitted to performing six IME's per week. Usually, they are at the request of insurance companies or defense counsel. Dr. Chabot reviewed a pain diagram completed by Petitioner at his request. It was dated February 16, 2023. Dr. Chabot agreed that Petitioner indicated a pain distribution/pattern down her left buttocks to her left hamstring to just above her left knee. Dr. Chabot felt the pattern was associated with strain or SI dysfunction. However, Dr. Chabot admitted it was possible the pattern was an indication of lumbar radiculopathy. Dr. Chabot further admitted he did not see any evidence of MRI examination prior to Petitioner's work injury. Dr. Chabot testified it was possible the Petitioner's left-sided disc protrusion at L5-S1 was contributing to her burning pain in the back of her left leg.

CONCLUSIONS OF LAW

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds and concludes that Petitioner's current condition of ill-being is causally related to the injury. The parties did not dispute that Petitioner suffered a slip and fall

injury arising out of and the in course of Petitioner's employment which injured her low back. Furthermore, there is no dispute that Petitioner underwent a degree of medical treatment on her low back prior to her work injury.

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Comp. Comm'n*, 864 N.E.2d 266, 272-273 (5th Dist. 2007). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982).

The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967); see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n,* 362 N.E.2d 339 (Ill. 1977). The law holds that accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665, 672 (2003). "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Industrial Commission*, 723 N.E.2d 846 (3d Dist. 2000).

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

Petitioner was working full duty for Respondent in the year 2021 and prior thereto. She suffered an undisputed fall onto a hard surface at work on September 30, 2021. She has either been on work restrictions or off work since the work injury. Further, although Petitioner received medical treatment from a chiropractor for her low back prior to her work injury, she never complained of pain radiating down her left leg to her left foot until after her work injury.

Both Dr. Gornet and Dr. Chabot agree the Petitioner's work injury caused a low back injury including a left-sided disc protrusion at L5-S1. Dr. Gornet believes he can alleviate the Petitioner's current pain levels through surgical intervention. He is now requesting a CT discogram at the adjacent levels to determine the extent of damage at those levels as well. Dr. Chabot feels the Petitioner is at maximum medical improvement. However, he has no explanation for her current pain levels, and admitted her current pain distribution could possibly be radiculopathy from her low back injury.

Under the circumstances, the Arbitrator finds and concludes that Dr. Gornet's opinions are more persuasive.

K. ☒ Is Petitioner entitled to any prospective medical care?

The Arbitrator finds and concludes that Petitioner is entitled to prospective medical care. Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. Plantation Mfg. Co. v. Indus. Comm'n, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. F & B Mfg. Co. v. Indus. Comm'n, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Based upon the Findings of Fact and Conclusions of Law, regarding accident and causal connection, the Arbitrator finds and concludes that Respondent shall authorize the surgery recommended by Dr. Matthew Gornet.

L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD

The Arbitrator concludes the Respondent shall pay Petitioner temporary total disability benefits of $926.96/week for 1 3/7 weeks, commencing October 26, 2022 through November 3, 2022, and January 3, 2024, as provided in Section 8(b) of the Act.

It should be noted that Respondent disputed liability for TTD benefits based upon causal connection. Given the Arbitrator's conclusions regarding causal connection, the Arbitrator finds and concludes that Respondent is liable to Petitioner for TTD benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012393
Case Name	DeMone Davis v. City of Bloomington
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0550
Number of Pages of Decision	18
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	R Mark Cosimini

DATE FILED: 11/18/2024

/s/Carolyn Doherty,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF McCLEAN)

☒ 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

DEMONE DAVIS,

Petitioner,

vs. NO: 22 WC 12393

CITY OF BLOOMINGTON,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, benefit rates, medical expenses, temporary total disability, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 2, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. 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 18, 2024

O: 11/07/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC012393
Case Name	DeMone Davis v. City of Bloomington
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	R Mark Cosimini

DATE FILED: 4/2/2024

/s/Kurt Carlson, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 2, 2024 5.125%

STATE OF ILLINOIS)
)SS.
COUNTY OF MCLEAN)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
8(A) & 19(B)

DeMone Davis Case # **22 WC 012393**
Employee/Petitioner/ <bill@williamsandswee.com

v.
City of Bloomington
Employer/Respondent/ MCosimini@rusinlaw.com

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Arbitrator Kurt Carlson, Arbitrator of the Commission, in the city of Bloomington, on 8/30/2023 and 2/29/2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, 3-14-22, Respondent **was** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$56,315.48**; the average weekly wage was **$1,082.99**.

On the date of accident, Petitioner was **48** years of age, **married**, with **1** children under 18.

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

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$0.00**.

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

ORDER

Petitioner failed to prove his current condition of ill-being relating to the right foot and ankle is causally related to the 03-14-22 work accident.

Petitioner's claim for TTD benefits between 12-20-22 and 01-04-23 is denied.

Petitioner's claim for the payment of Dr. Li's medical bills is denied.

Petitioner's claim for prospective medical treatment consisting of an Achilles tendon repair and calcaneal ostectomy is denied.

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

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

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

Kurt A. Carlson

Signature of Arbitrator

April 2, 2024

FINDINGS OF FACT

Petitioner worked as a laborer for the City of Bloomington. He testified he earned $27.00 per hour and worked 40 hours per week with some overtime. (T 7-8) Petitioner also testified the overtime hours were voluntary. (T 41-42)

With respect to Petitioner's earnings, he also testified he worked officiating football and basketball games. (T 8) Petitioner testified he made about $240.00 per week refereeing high school football games and about $280.00 per week refereeing JFL games. He indicated he made about $540.00 per week (actually $520.00 per week) during the eight-week football season. He testified he made between $500.00 and $550.00 per week refereeing basketball games and earned about $25,000.00 per year for his duties as a basketball referee. (T 9-10) Petitioner began working as a referee when he was about 30 years old, and he testified he had been performing those duties for about 20 years. (T 32-33)

Petitioner's Exhibit 9 is a Schedule C tax form from 2022. It reflects Petitioner earned $11,210.00 for his duties as a referee. It does not identify how much of the earnings was from before or after the 3/14/2022 accident date. (Px 9)

Respondent's Exhibit 1 is a wage statement documenting Petitioner's earnings for the one-year period prior to the accident date. The statement reflects Petitioner earned $56,315.48 excluding overtime earnings.

Petitioner described his job duties as operating garbage trucks, recycle trucks, dump trucks and loaders. He testified he was required to step on and off the trucks of various sizes throughout his shift on a daily basis. (T 10-11)

Petitioner testified that on 3/14/2022, he stepped off a truck and either hit a pothole or an uneven surface. He heard a pop in his ankle and felt discomfort. He managed to get through the day. On further questioning from his attorney, Petitioner testified he felt a pop rather than hearing a pop. Petitioner denied any swelling. (T 11)

Petitioner engaged in self-care including icing his ankle and using Tylenol, but those methods did not resolve his pain. (T 12)

Petitioner reported to OSF Occupational Health 4/1/2022. (T 12-13) The records from OSF Occupational Health were admitted in evidence as Petitioner's Exhibit 3. An x-ray of the right ankle was performed 4/1/2022. The report indicates Petitioner had early osteoarthritis of the ankle joint and a prominent plantar and dorsal calcaneal spur. No acute bony fractures were identified. (Px 3, Page 1)

Dr. Mary Yee-Chow evaluated Petitioner 4/1/2022. Petitioner provided a history of stepping out of a work truck and landing on his ankle wrong. He did not think he stepped into a pothole, but he thought maybe the ground was uneven. Petitioner further reported he heard a pop. At the time of the office visit, Petitioner complained of both aching and sharp pain in the back of his right ankle. He rated his pain as 4/10. He also described

his symptoms as intermittent. (Px 3, Page 2) On exam, Dr. Yee-Chow noted tenderness at the insertion of the Achilles tendon and on both sides of the posterior ankle. No swelling or bruising was noted, and the Achilles tendon appeared to be intact. Dr. Yee-Chow also noted there were no deficits at the insertion of the Achilles tendon. She diagnosed Petitioner with an acute ankle injury and provided him with a lace-up ankle brace. She also prescribed Prednisone. (Px 3, Page 4) Dr. Yee-Chow advised Petitioner to bear weight as tolerated and to restrict his lifting, pushing, and pulling to no more than 25 pounds. She also advised Petitioner to avoid repetitive bending, twisting, kneeling, and squatting. He was also to avoid prolonged standing and walking. Dr. Yee-Chow wrote Petitioner was to perform sedentary duties most of the time. (Px 3, Page 5)

Petitioner returned to see Dr. Mary Yee-Chow 4/15/2022. He advised he was working in a light-duty capacity and his pain was down to 2/10. Petitioner asked about heel supports, because he had less room in his work boot when wearing the ankle brace. He also reported his symptoms returned when he completed the Prednisone prescription. On exam, Dr. Yee-Chow noted tenderness to palpation at the posterior ankle and Achilles tendon. She documented slight swelling to the posterior aspect of the ankle and tenderness at the insertion of the Achilles tendon at the plantar aspect of the heel. She provided Petitioner with heel cushions and prescribed Mobic. Dr. Yee-Chow also recommended physical therapy. She listed the same light-duty restrictions, but she advised Petitioner to advance as tolerated with respect to his sedentary duties. (Px 3, Pages 7-8)

Petitioner attended three physical therapy sessions at the beginning of May 2022. The therapy note from 5/3/2022 contains a history from Petitioner that he stepped off a work truck and may have stepped into a pothole. He reported his right ankle pain was 90% improved. He rated his current pain as 0/10 and reported it ranges from 0/10 to 2/10. Petitioner told the therapist his doctor indicated he could return to his normal job duties when he felt ready, and he felt ready to do so at the start of the following week.

The therapist provided home exercises for Petitioner to perform. Petitioner indicated he did not have any pain when performing the exercises, and the therapist noted Petitioner's balance improved with practice. The only noted deficit was with the range of motion of the right ankle. (Rx 3)

Petitioner's second therapy session was 5/5/2022. He reported feeling good and not having any pain. The new home exercises did not cause him any pain, and Petitioner did not report any pain with a progression of exercises that day. (Rx 3)

Petitioner's third physical therapy session was 5/10/2022. Petitioner complained of pain that morning, which he thought might have been due to either the weather or possibly his work boots. Petitioner's pain was eliminated when he put on his shoes for physical therapy. Petitioner told the therapist he was seeing his doctor 5/20/2022 for a work release if he was doing well. (Rx 3)

Petitioner suffered a second accident on 5/11/2022. He was working in a light-duty capacity, and he was struck by a trailer. (T 16) Petitioner admitted at trial that the second injury made his foot and ankle worse, and it has remained so. (TX 31)

Petitioner returned to see Dr. Yee-Chow 5/24/2022. He rated his pain as about the same which was previously noted to be 2/10. He was wearing the ankle brace as needed and

was using ice and heat as needed. Petitioner told Dr. Yee-Chow the pain in his right ankle was feeling better, but it was aggravated again due to a new injury at work. Petitioner reported he missed the last two physical therapy sessions because of the new injury, but the ankle heel lifts helped. Petitioner also told Dr. Yee-Chow the pain at the back of the right ankle was better. On exam, Dr. Yee-Chow noted slight tenderness at the Achilles tendon, which was improved when compared to the previous office visit. There was no swelling, and calf compression was equal bilaterally with both flexion and extension of the feet. Dr. Yee-Chow did not identify any deficits at the insertion of the Achilles tendon. She commented physical therapy would be placed on hold, and she canceled the rest of the sessions. She advised Petitioner to continue performing a home exercise program. Dr. Yee-Chow discharged Petitioner from care and allowed him to return to work in a full-duty capacity. She did not impose any restrictions on any of Petitioner's activities. (Px 3, Pages 9-11)

At trial, Petitioner testified the second accident when he was struck by a trailer aggravated the condition of his foot and ankle. He further testified the second accident made his foot and ankle worse, and it remained worse. (T 31)

There is a seven-month treatment gap.

After being discharged by Dr. Yee-Chow 5/24/2022, Petitioner next treated for his foot and ankle at Orthopedic & Shoulder Center. (Px 4) Nurse Practitioner Antonia Abrahamsen evaluated Petitioner 12/13/2022. Petitioner provided a history of driving a garbage truck and having to jump off the truck many times during the day. He indicated that around 3/14 or 3/15, he got out of his truck in a three-point of contact mode and felt a pop and pain in his right Achilles. Petitioner advised of the second accident in May when a truck hit him. He reported he returned to work in a full-duty capacity a few weeks before the office visit, and his pain in the right foot and ankle returned. (Px 4, Page 3) Petitioner told Nurse Abrahamsen that physical therapy and anti-inflammatory medications did not provide him with any relief. He rated his pain as 8/10 and reported the pain level had been the same since the injury. (Px 4, Pages 3-4)

On exam, Nurse Abrahamsen noted tenderness at the Achilles tendon insertion as well as at the peroneal tendons. X-rays revealed prominent plantar and dorsal calcaneal spurs and mild osteophytosis. Nurse Abrahamsen recommended an MRI study. (Px 4, Pages 7-8)

Petitioner underwent an MRI of the right ankle 12/15/2022. (Px 4, Page 9, Px 7) The MRI report lists the findings as a high-grade partial thickness tear at the central Achilles insertion, moderate bone marrow edema at the posterior calcaneus, mild insertional tendinosis at the posterior tibialis and mild bursitis at the calcaneus and Achilles tendon. Additionally, the MRI report notes thinning of the anterior talofibular ligament, which was suspicious for scarring and osteophytic spurring at the plantar calcaneus. (Px 4, Page 9, Px 7)

Dr. Lawrence Li evaluated Petitioner 12/20/2022. He noted pain over the lateral aspect of the heel where the Achilles tendon attaches. He interpreted x-rays to show multiple bone fragments associated with an avulsion of the Achilles tendon. He noted petitioner failed nonoperative treatment for a nine-month period. Dr. Li recommended an Achilles tendon repair and a right calcaneal ostectomy. (Px 4, Pages 12-15) Dr. Li wrote a note

indicating Petitioner should be off work until further notice pending approval of surgery. (Px 4, Page 11)

Petitioner returned to see Dr. Li 1/4/2023. He complained of significant symptoms, but he needed to return to work despite his pain. Dr. Li noted Petitioner was not in any apparent distress. He noted mild swelling and tenderness at the Achilles tendon insertion. He also noted tenderness at the peroneal tendons with some reduced strength. Dr. Li allowed Petitioner to return to work with no restrictions, and he advised Petitioner to be extremely careful not to jump off garbage trucks as it may result in a rupture of the Achilles tendon. (Px 5, Pages 1-3)

At the request of Respondent, Dr. John Krause evaluated Petitioner 3/20/2023. Petitioner provided a history of stepping out of his truck 3/14/2022 and feeling a pop in his Achilles tendon. He also provided a history of the second accident 5/11/2022 when a trailer fishtailed off the back of a truck and struck Petitioner on his right side. (Rx 5, Deposition Exhibit B)

After providing a summary of Petitioner's medical records and Dr. Li's deposition testimony, Dr. Krause described his clinical exam and review of the diagnostic studies. He diagnosed Petitioner with insertional ossific right Achilles tendinitis. He disagreed with Dr. Li's diagnosis of avulsion fractures. He rendered an opinion Petitioner had intrasubstance in the Achilles tendon that ossified over time. He described the condition as a sign of chronic inflammation over the course of several years. Dr. Krause indicated Petitioner sustained an aggravation of his pre-existing condition as a result of the work accident. He rendered an opinion Petitioner reached maximum medical improvement for his work injuries on 5/24/2022 when Dr. Yee-Chow discharged Petitioner from care. He did not believe Petitioner needed to have any restrictions imposed on his activities. (Rx 5, Deposition Exhibit B)

Following the IME with Dr. Krause, Petitioner returned to see Dr. Li 3/27/2023 and 5/22/2023. On each occasion, Petitioner's condition was stable. (Px 6, Pages 3-9)

At trial, Petitioner testified he still wants to undergo the surgery recommended by Dr. Li. (T 23) However, he also testified he had not yet undergone the surgery because he does not have the time to be off work. (T 23)

Both Dr. Li and Dr. Krause testified by way of evidence of deposition. Dr. Li provided his evidence deposition 2/16/2023. (Px 1)

Dr. Li is a board certified orthopedic surgeon. His practice focuses on shoulders, hands and knees. (Px 1, Page 5)

Following an evaluation by Dr. Li's nurse practitioner and an MRI on the right ankle, Dr. Li evaluated Petitioner. He interpreted the MRI study to show tearing of the Achilles tendon with multiple bone fragments that came off the calcaneus as a result of the tears. Because Petitioner failed nonoperative treatment, Dr. Li recommended surgery consisting of an Achilles tendon repair and a calcaneus ostectomy. The procedure would involve removing bone spurs and bone fragments and repairing the tendon down to the bone. (Px 1, Page 9)

Dr. Li explained the degenerative tearing was from jumping in and out of garbage trucks multiple times per day. On one of those occasions, Petitioner felt a pop and it made his condition a lot worse resulting in permanent pain. (Px 1, Page 10) He further opined the cause of Petitioner's condition is chronic repetitive high impact loading on the Achilles tendon compounded by an acute-on-chronic injury. (Px 1, Pages 10-11)

The Arbitrator notes that Petitioner's testimony about hearing or feeling a "pop" seems more consistent with a tendon rupture: but the right ankle MRI did not reveal such a pathology. There was no rupture.

Dr. Li acknowledged he wrote a note at Petitioner's request indicating Petitioner could return to work without restrictions, but he also warned Petitioner not to return to work because of the risk of rupturing the Achilles tendon. (Px 1, Pages 12-13)

On cross-exam, Dr. Li testified there was a period of time when Petitioner was working in a light-duty capacity and was not jumping off garbage trucks. His foot and ankle was not a problem at that time. He developed a problem when he went back to work in a full-duty capacity. (Px 1, Pages 16-17)

Dr. Li acknowledged the x-rays from 4/1/2022 did not reveal any acute bony injury. (Px 1, Page 18)

When advised of the physical therapy notes from May 2022 showing Petitioner had a very low pain rating, Dr. Li indicated Petitioner was pretty well recovered. He agreed with Dr. Yee-Chow's decision to discharge Petitioner from care 5/24/2022. (Px 1, Pages 19-21)

Later in his testimony, Dr. Li described the chronology of events as Petitioner having an injury and getting better. He did not have any problems until he went back to work at the end of 2022 having to step off a high last step of his truck. (Px 1, Page 28)

Dr. Krause testified by way of evidence deposition 7/12/2023. (Rx 5)

Dr. Krause is an orthopedic surgeon who specializes in lower extremities. His practice is focused on knees as well as the foot and ankle. He testified he performs between 430 and 450 surgeries per year with about 60% of those surgeries involving the foot and ankle. He testified he performs between 20 and 30 Achilles tendon surgeries per year. (Rx 5, Pages 5-7)

Dr. Krause testified the pain Petitioner experienced around the Achilles tendon was consistent with Achilles tendinitis. (Rx 5, Page 12) He further commented swelling and tenderness along the peroneal tendons could be from an ankle sprain or tendinitis. The MRI did not reveal any abnormalities with the peroneal tendons. Consequently, Dr. Krause rendered an opinion there was no relationship between the work accident and any peroneal tendon issues. (Rx 5, Page 12)

Dr. Krause testified Petitioner was suffering from interstitial tearing of the Achilles tendon. He explained it is a chronic condition resulting from Achilles tendinosis. Dr. Krause noted that if Petitioner would have had an MRI before the work accident, it would have showed the same findings. (Rx 5, Page 13)

Dr. Krause's clinic exam revealed the Achilles tendon was intact and Petitioner's symptoms were consistent with tendinitis. He then explained Petitioner's diagnosis of insertional ossific Achilles tendinitis involved bone forming in and around the Achilles tendon as a result of chronic inflammation. With the amount of bone Petitioner had within the tendon, it had been forming for years. Dr. Krause testified Petitioner's condition was not causally related to either of the work accidents. (Rx 5, Pages 15-16)

Dr. Krause also testified he disagreed with Dr. Li's supposition that bone was pulled off the calcaneus. He explained if Petitioner would have suffered an avulsion fracture, meaning bone was pulled from the calcaneus, he would not have been able to continue walking on it. (Rx 5, Page 16)

With respect to the work accident, Dr. Krause testified Petitioner sustained a temporary aggravation of a pre-existing Achilles tendinitis condition. Petitioner reached maximum medical improvement when Dr. Yee-Chow released him from care 5/24/2022. (Rx 5, Page 17) With respect to additional treatment, Dr. Krause noted surgery could be appropriate, but given the lack of conservative treatment, he did not think Petitioner was a surgical candidate yet. (Rx 5, Page 18) He further explained any additional treatment would not be related to the work accident. More specifically, he testified the proposed surgery would not be related to either of the work accidents. (Rx 5, Page 18)

Dr. Krause summarized Petitioner's condition by noting Petitioner had a pre-existing condition which was aggravated by the work accident. He had treatment, and he recovered from his injury. (Rx 5, Pages 18-19)

On cross-exam, Dr. Krause testified Petitioner's condition occurs in the middle aged to older population. The likely causes of the condition are from being active, playing sports, or suffering a trauma to the Achilles tendon. The bone spurs are from having tendinitis for a long time. (Rx 5, Pages 23-25)

At the end of his testimony, Dr. Krause testified Petitioner's running activities while officiating football and basketball games was a more likely cause for his condition than climbing in and out of a truck. (Rx 5, Page 27)

The trial proceedings were bifurcated to allow Petitioner an opportunity to provide documentation of Petitioner's earnings from his officiating duties. After Petitioner's Exhibit 9 was presented and admitted in evidence, the Arbitrator closed proofs and took the matter under advisement.

CONCLUSIONS OF LAW

In support of the Arbitrator's Decision relating to whether Petitioner's current condition of ill-being is causally related to the work accident, the Arbitrator states as follows:

The Arbitrator adopts and incorporates herein the Findings of Fact set forth above.

Petitioner is alleging he suffered an Achilles tendon tear as a result of stepping down from a garbage truck 3/14/2022.

The Arbitrator notes Petitioner is not a very good historian. There is no dispute Petitioner sustained an injury to his Achilles tendon as a result of the work accident. However, the evidence is inconsistent as to whether Petitioner may or may not have stepped into a pothole. The evidence is also inconsistent as to whether Petitioner felt a pop in his ankle or heard a pop in his ankle.

The Arbitrator also notes some inconsistencies with the subjective complaints made by Petitioner. During the first two months after the work accident, Petitioner consistently reported improvement with his condition. The physical therapy records from the beginning of May 2022 indicate Petitioner was pain free, and his symptoms ranged up to a 2/10 pain level. However, when Petitioner reported to Dr. Li's office, he rated his pain as an 8/10 and indicated that was his same level of pain ever since the accident occurred.

When questioned by counsel for Respondent, Petitioner was unable to recall how many physical therapy sessions he attended. He also did not know whether Dr. Li prescribed physical therapy for him.

Notwithstanding Petitioner's reported level of pain when he saw Dr. Li's office in December 2022, the medical information from the time of the accident until 5/24/2022 clearly shows Petitioner was making an excellent recovery.

Dr. Mary Yee-Chow discharged Petitioner from care 5/24/2022, and she did not impose any restrictions on his activities with respect to the foot and ankle injury. Dr. Li testified he agreed with the decision of Dr. Yee-Chow to discharge Petitioner from care. Similarly, Dr. Krause testified Petitioner was at maximum medical improvement for his work accident at the time Dr. Yee-Chow released him from care.

Furthermore, Dr. Li testified Petitioner suffered an injury from the work accident; he got better; and he was doing just fine until he returned to work in a full-duty capacity at the end of 2022. Dr. Li attributed the need for treatment beginning in December 2022 to Petitioner's job duties after he returned to work in a full-duty capacity a few weeks before the 12/13/2022 office visit.

Significantly, Petitioner testified that when the second accident occurred 5/11/2022, it aggravated the condition of his foot and ankle. He further explained the second accident made his foot and ankle condition worse, and the condition never improved after that time. Essentially, Petitioner testified to an intervening accident, which would sever any

causal relationship between the 3/14/2022 accident and Petitioner's current condition of ill-being.

When comparing the opinions of Dr. Li and Dr. Krause, it is difficult to overlook the qualifications of the physicians. Dr. Li does not focus on foot and ankle injuries, and Dr. Krause does. It is clear Dr. Krause has significantly more experience treating conditions of the foot and ankle especially the Achilles tendon. Dr. Krause interpreted the diagnostic studies to show a chronic condition in the Achilles tendon. He indicated Petitioner aggravated the condition as a result of the work accident, but the aggravation was only temporary in nature. He explained his opinion by noting the findings on the MRI study showed a chronic condition. He disagreed with the premise of Dr. Li's position in that Dr. Krause refuted the idea of Petitioner sustained avulsion fractures with bone fragments from the calcaneus being pulled off by the Achilles tendon. Dr. Krause explained that if bone fragments were pulled off the heel in a traumatic fashion, Petitioner would not have been able to walk. In contrast, Petitioner worked for the next two weeks before seeking medical care.

Dr. Krause questioned whether surgery was appropriate because Petitioner did not undergo a course of conservative treatment. Clearly, Dr. Krause did not have all the medical information from April and May 2022, he was correct in that Dr. Li did not recommend or perform any conservative treatment prior to recommending surgery. The lack of information concerning the conservative treatment does not impact of Dr. Krause's opinion on causation.

The Arbitrator finds the opinions of Dr. Krause are more credible than those of Dr. Li. He has better medical qualifications and his accident theory seems more sensible to the trier of fact. While the Arbitrator acknowledges that both medical opinions involve some speculative elements, Dr. Li's theory of recovery is more tenuously based in that reaches too far back in time (seven-month treatment gap) and across formidable obstacles (discharged from care, second accident) to claw back causal connection. In the end, it's too much of a stretch for the Arbitrator. Especially when Petitioner admitted at trial the second accident made his condition worse.

Based upon the foregoing, the Arbitrator finds Petitioner failed to prove a causal relationship between the current condition of his right foot and ankle and the 3/14/2022 work accident. More specifically, Petitioner's condition reached a point of maximum medical improvement 5/24/2022 and his condition after that time is not causally related to the work accident.

In support of the Arbitrator's Decision relating to Petitioner's earnings, the Arbitrator states as follows:

The Arbitrator adopts and incorporates herein the Findings of Fact and Conclusions of Law set forth above.

Petitioner alleges his average weekly wage is $1,743.13. This includes his earnings from Respondent as well as his earnings from working as a sports official.

At trial, Petitioner testified he had been working as a referee in football and basketball games for about 20 years. Based upon his testimony, he is alleging he earned almost $30,000.00 per year as a sports official. However, the evidence submitted by Petitioner indicates that in 2022, he earned $11,210.00. The accident for this case occurred 3/14/2022, and Petitioner's Exhibit 9 does not provide any information as to how much of the $11,210.00 in earnings was from before the accident date or from after the accident date.

Significantly, Section 10 of the Workers' Compensation Act providers an employee's earnings from a concurrent employer should be included in the average weekly wage calculations only if the respondent employer had knowledge of the concurrent employment prior to the work accident. Here, no evidence was presented establishing or even suggesting the City of Bloomington had knowledge of Petitioner's concurrent employment. As a result, based upon the plain language of the Workers' Compensation Act and considering the lack of information on Petitioner's Exhibit 9, the Arbitrator finds the earnings set forth on Petitioner's Exhibit 9 should not be included in the average weekly wage calculations.

Petitioner's earnings from Respondent are set forth on Respondent's Exhibit 1. The itemization of Petitioner's earnings include both regular earnings and overtime earnings. The wage statement also includes documentation of a clothing allowance and meal reimbursements.

Petitioner testified that his overtime earnings were voluntary in nature. Consequently, they are considered overtime and pursuant to Section 10 of the Workers' Compensation Act they are excluded from the average weekly wage calculations.

Petitioner's regular earnings for the 52 week period prior to the accident total $56,315.48. When that amount is divided by the 52 weeks worked, the resulting average weekly wage calculates to $1,082.99. The Arbitrator finds this amount is the appropriate average weekly wage.

In support of the Arbitrator's Decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator states as follows:

The Arbitrator adopts and incorporates herein the Findings of Fact and Conclusions of Law set forth above.

Based upon the Arbitrator's Conclusions of Law set forth above, Petitioner reached maximum medical improvement 5/24/2022.

The claimed medical bills set forth in Petitioner's Exhibit 8 are limited to treatment provided by Dr. Li beginning in December 2022. The medical bills correspond with treatment rendered, which was not causally related to the work accident. As such, the claim for the payment of the medical bills is denied.

In support of the Arbitrator's Decision relating to whether Petitioner is entitled to any prospective medical care, the Arbitrator states as follows:

The Arbitrator adopts and incorporates herein the Findings of Fact and Conclusions of Law set forth above.

Based upon the Arbitrator's decision finding Petitioner reached maximum medical improvement for his work injury 5/24/2022 as well as the Arbitrator's finding indicating Petitioner failed to prove a causal relationship between his right foot and ankle condition after 5/24/2022, Petitioner's claim for prospective medical care is denied.

In support of the Arbitrator's Decision relating to where Petitioner is entitled to TTD benefits, the Arbitrator states as follows:

The Arbitrator adopts and incorporates herein the Findings of Fact and Conclusions of Law set forth above.

Based upon the Arbitrator's decision on the issues of causal connection and Petitioner's MMI status, Petitioner's claim for the payment of TTD benefits while treating with Dr. Li is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC032739
Case Name	Larry Giacone v. The American Coal Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0551
Number of Pages of Decision	23
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Julie Webb, Kenneth Werts

DATE FILED: 11/18/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ 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

Larry Giacone,

Petitioner,

vs. NO: 16 WC 32739

The American Coal Company

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of occupational disease, causal connection, permanent partial disability, legal error/evidentiary error under Section 1(d) – 1(f) of the Occupational Diseases Act, and whether Petitioner's noncompliance with a Section 12 examination effectively barred his claim, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 1, 2023, is hereby affirmed and adopted.

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

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

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 18, 2024

MP:ns
o 11/7/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC032739
Case Name	Larry Giacone, v. The American Coal Company,
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Kenneth Werts

DATE FILED: 11/1/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 31, 2023 5.32%

/s/Maureen Pulia, Arbitrator

Signature

STATE OF ILLINOIS)

)SS.

COUNTY OF **WILLIAMSON**)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

LARRY GIACONE,
Employee/Petitioner

v.

THE AMERICAN COAL COMPANY,
Employer/Respondent

Case # **16** WC **32739**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Herrin**, on **10/4/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

O. ☒ Other **Whether petitioner proved timely disablement pursuant to Sections 1(e) and 1(f) of the Occupation Diseases Act.**

FINDINGS

On **5/22/15**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

In the year preceding the injury, Petitioner earned $**79,748.24**; the average weekly wage was $**1,533.62**.

On the date of accident, Petitioner was **61** 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 $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

The petitioner has failed to prove by a preponderance of the credible evidence that he suffered from coal workers' pneumoconiosis, chronic bronchitis or any other occupational disease. The petitioner's claim for compensation is denied.

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

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

Maureen P. Pulia

NOVEMBER 1, 2023

Signature of Arbitrator

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 61 year old coal miner, alleges he sustained an occupational disease that arose out of and in the course of his employment by respondent on 5/22/15. Petitioner graduated from Benton Herrin High School and obtained a Degree in Education from the Southern Illinois University-Carbondale.

Petitioner worked in the coal mines for about 18 years, with all that time spent underground. Petitioner testified that while in the mines he was exposed to coal dust, rock dust, silica dust, and diesel fumes. Petitioner's last date working in the mines was in Galacia on 5/22/15. At that time petitioner was an examiner. Before that he was a general laborer. He left the mine because he was laid off. After he left the mine, petitioner ran a loan department at a bank. Currently, petitioner works part-time at KS Holdings. He makes some deliveries, but also does some gopher work. He also babysits his grandchildren.

Petitioner began working in the mines in 1997 at Kerr McGee (name later changed to The American Coal Company) as a laborer. For about three months he shoveled on the belt. Thereafter, he became a rock duster. His duties included rock dusting. This job entailed putting rock dust on the ribs and the top for fire prevention. In this job petitioner was exposed to a lot of rock dust and silica dust. Petitioner worked as a rock duster for 3-4 years. After that petitioner worked as ram car operator for 3-4 years. The ram car goes to the base of the mine, gets the coal and brings it to the belt so that it can be extracted. Petitioner testified that there is a lot of coal dust exposure when you are at the face of the mine where they are actually cutting the coal. Since the ram cars were diesel powered, petitioner was also exposed to diesel fumes. Petitioner also worked as an out by operating diesel equipment. In this job petitioner worked more towards the entrance to the mine. Petitioner did not work at the face of the mine as an out by. As an out by he would work at the belt line, travel ways or in a return. Petitioner performed this job for about a year or two, before becoming an examiner. Petitioner worked as an examiner until he left the mine on 5/22/15. As an examiner petitioner would walk the beltlines and returned looking for things such as bad tops, missing roof bolts, coal under the belts that might be touching the structure or the belt that had to be cleared off, walkways to be cleared, loose ribs, and anything that was a danger that somebody would get hurt with. In this job, petitioner went to all areas of the mine.

Petitioner testified that he first noticed breathing problems in 2010. He testified that in 1980 he started refereeing football and basketball for high school and college. He gave that up in 2010 because it was too hard on him to run. Petitioner testified that from the time he first noticed breathing problems up until he left the mine, and then through arbitration, they got worse. Petitioner testified that he can walk on level ground at a normal pace probably two blocks before becoming short of breath; cannot climb very many flights of stairs before having to stop and rest; and, if he goes to the basement in his house and the phone rings and he has to come up the steps fast, he is down. Petitioner testified that he does not take any breathing medication.

Petitioner testified that he has played golf most of his life and that he used to walk the course, but can no longer do that. He testified that up until two years ago he played three times a week, but in the last two years he has only played ten times. Petitioner has nine grandchildren. He testified that his breathing has affected his ability to interact with his nine grandkids. He testified that when playing in the yard or playing catch, he does what he can.

Petitioner testified that Dr. Ralph Latta in Benton is his treating doctor. He testified that he has not talked to Dr. Latta about his breathing problems, but he has talked to Dr. Latta about his throat clearings. He put him on some acid reflux medicine, but that has not helped. Petitioner testified that he smoked from age sixteen to age nineteen. Petitioner testified that a pack of cigarettes would last him a couple of weeks. Petitioner takes medicine for his high blood pressure, cholesterol, gout, and kidney stones.

Petitioner testified that he began working at Community Bank (which became Central Bank) in 1976. He worked his way up to a position as an officer at the bank. He left the bank in 1994 or 1995, which was a few years before he went to work for respondent. His last job at the bank was as a loan officer in charge of direct and indirect lending. Petitioner testified that he did not work in banking after he stopped working for respondent. Petitioner testified that after he left Central Bank, he worked at South Point Bank for 6-8 months. Next, he worked making some deliveries for Heritage Trailer Sales for a couple of months. He also did some work on his own building decks and roofing homes until he started working for respondent. Petitioner testified that if he had not been laid off in May 2015, he would have reported for his next shift. When he was laid off, petitioner applied for unemployment benefits and received those for a while. He

testified that he went to work for KS Bit in 2016. He was laid off during COVID, and was still working for them part time as of arbitration. Petitioner testified that KS Bit buys used oil and water bits and strips them down and rebuilds them and sells them as new bits. Petitioner makes deliveries and makes sure the employees have the supplies they need. Petitioner testified that he works 20 to 25 hours per week for KS Bit. Petitioner applied for Social Security at age 62 and for Medicare at age 65. He is collecting a 401(k) from Respondent.

Petitioner testified that when he referred to rib in the mine it means the wall of the mine. He testified that the rock dust is a suppression for coal dust. He testified that according to the bag, silica dust is approved by MSHA for allowable silica levels in the dust.

Petitioner testified that he refereed junior college level basketball and division 2 and 3 football. He testified that he refereed football for six or seven years until he started working at the mine and did not have the whole weekend off to travel for refereeing games. He testified that he continued to do local basketball around the area. Petitioner testified that he does not do anything else for a hobby other than golf. He also babysits his grandchildren.

Petitioner testified that from time to time over the years while he was employed at the coal mine, he had an opportunity to undergo NIOSH chest x-ray screening for black lung. He testified that he took that opportunity. Petitioner could not remember receiving a letter telling him what the chest x-rays revealed.

Dr. Suhail Instanbouly

Dr. Suhail Istanbouly is board certified in internal medicine, pulmonary medicine, critical care medicine and sleep medicine. Dr. Istanbouly worked in Southern Illinois from April 2003 to March 2019 as a pulmonologist and critical care specialist. He had his own private practice from October 2008 until March 2019. He provided both inpatient and outpatient care in his specialties of pulmonary, critical care and sleep medicine. At the request of attorneys, Dr. Istanbouly did black lung examinations on coal miners. Dr. Istanbouly now practices at Hines VA Hospital in Chicago in the specialty of pulmonary and sleep medicine. Dr. Istanbouly goes to Southern Illinois once a month where he has a satellite clinic at Marshall Browning Hospital.

On 8/8/17 petitioner presented to Dr. Istanbouly for workup of his state black lung claim, at the request of his attorneys. Dr. Istanbouly testified that for many years, he performed on average five to seven such examinations a month, always at the request of a claimant's attorney. He still comes to Southern Illinois for two days each month and he sets aside one of those days to perform the type of examinations he performed on Petitioner.

Dr. Istanbouly testified that Petitioner worked a little more than 19 years as a coal miner with all of that time being underground. In his last year of coal mine work he was a mine examiner. Petitioner smoked one to two years between ages 19 and 20. Petitioner reported that he had been coughing on a daily basis for the past 5-10 years. The cough is more prominent in the morning and sometimes severe in intensity. Dr. Istanbouly testified that petitioner reported that brisk walking may trigger the cough and his cough is occasionally productive of slight thick mucus. Dr. Istanbouly testified that this history was sufficient to satisfy a diagnosis of chronic bronchitis. Dr. Istanbouly testified that Petitioner described mild intermittent runny nose mainly with meals, which was consistent with rhinitis.

Dr. Istanbouly testified that Petitioner's spirometry was within the range of normal. Dr. Istanbouly opined that petitioner has coal workers' pneumoconiosis and chronic bronchitis. Dr. Istanbouly testified that the cause of petitioner's coal workers' pneumoconiosis and chronic bronchitis would be long term coal dust inhalation. Dr. Istanbouly testified that based on his diagnosis of coal workers' pneumoconiosis and chronic bronchitis, petitioner could not have any further exposure to the environment of a coal without endangering his health. Dr. Istanbouly testified that it was advisable for petitioner, from a medical standpoint, to avoid any further coal dust inhalation to prevent the progression of his pulmonary disease.

Dr. Istanbouly testified that coal workers' pneumoconiosis requires a tissue reaction in addition to just the deposition of coal mine dust in the lungs. He testified that this tissue reaction is commonly called scarring or fibrosis. He testified that if one has coal workers' pneumoconiosis at the site of each abnormality, it would be fair to say that he would have an impairment of the function of his lung at those sites whether it is measurable by pulmonary function testing or not.

Dr. Istanbouly is of the opinion that a person can have coal workers' pneumoconiosis despite having no complaints of shortness of breath, normal PFTs, normal ABGs and normal physical examinations; that coal workers' pneumoconiosis can progress even after a miner leaves their exposure in the mine and there is no cure; that coal mine dust inhalation can result in shortness of breath, chronic cough, emphysema, chronic bronchitis and occupational asthma; and, that chronic bronchitis reflects chronic inflammation of the small airways causing the patient to cough on a daily basis at least 3-4 months per year for two consecutive years.

Dr. Istanbouly testified that if he reads a chest x-ray as being positive for coal workers' pneumoconiosis and knows that the patient had a sufficient exposure to coal mine dust to cause that disease, those two things combined suffice to make a diagnosis of coal workers' pneumoconiosis. If he reads the chest x-ray as being negative that would not necessarily rule out the existence of coal workers' pneumoconiosis. Dr. Istanbouly agreed that there was a recent study showing that 50% or more of long term coal miners are found to have coal workers' pneumoconiosis at autopsy even though during their life it was not found radiographically.

Dr. Henry K. Smith

Dr. Henry K. Smith, a board certified radiologist and NIOSH B-reader, interpreted petitioner's chest x-ray of 10/14/16 at the request of the petitioner's attorney. He found intersitial fibrosis of calcification p/p, all lung zones involved bilaterally, of a profusion of 1/0. He noted that it was a Grade 1 chest x-ray. Dr. Smith noted no chest wall plaques, calcifications or large opacities. Dr. Smith's impression was simple coal workers' pneumoconiosis with small opacities, primary p, secondary p, all lung zones involved bilaterally, profusion 1/0.

Dr. Cristopher Meyer

Dr. Christopher Meyer reviewed the PA chest x-ray of petitioner's dates 10/14/16, that was of a Grade 1 quality. Dr. Meyer noted no small or large opacities. He saw changes in the distal left clavicle consistent with a prior acromioclavicular separation. His impression was no radiographic findings of coal workers' pneumoconiosis.

Dr. Meyer has been board certified in radiology since 1992. Dr. Meyer was asked to take the B-reading exam by Dr. Jerome Wiot who was part of the original committee that designed the teaching course which is called the B-reader program. Dr. Meyer testified that there are several ways to study for the B-reader examination. He testified that there is a course module that contains a whole series of films that NIOSH will send, or the American College of Radiology runs a B-reading course. Dr. Meyer has participated in the course previously in studying for the examination and was recently asked to have a more active academic role in helping with the course in the future. Dr. Meyer is a member of the ACR Pneumoconiosis Task Force, which is engaged in redesigning the course, the exam, and submitting cases for the training module and exam.

Dr. Meyer testified that the B-reading training course is a weekend training course in which there are a series of lectures describing the B-reading classification system. The course participants will then review a series of practice examples with mentors overseeing the practice examples. Dr. Meyer testified that the faculty for the course is typically experienced senior level B-readers who have been involved in the process for quite some time. Dr. Meyer testified that typically after one takes the B-reading course, he takes the B-reading exam. He testified that the certifying exam is six hours long with 120 chest x-rays to be categorized. The pass rate for that examination ran roughly 60%. Dr. Meyer testified that generally radiologists have about 10% higher pass rate than other specialties. In Dr. Meyer's opinion radiologists have a better sense of what the variation of normal is. Dr. Meyer testified that one of the most important parts of the B-reading training and examination is making the distinction between a film with profusion of 0/1 which is a normal examination, from 1/0 which is an almost normal but slightly abnormal examination. Dr. Meyer testified that making that distinction is a critical component of the B-reader examination and is a point of emphasis in the B-reading course as well.

Dr. Meyer did not pass the B-reader test the first time that he took it. He testified that he would not consider himself to be as good of a B-reader of x-rays at that time as he was later when he did pass the B-reader test. Dr. Meyer testified that he probably has 50,000 hours of reading chest x-rays compared to the less than 1,000 that he had when he first took the B-reader test. He testified that he is a better reader because of concentrating on being a chest radiologist and being a dedicated academic chest radiologist working with other chest radiologists to

develop that skill set. He testified that he reads 12,000 to 14,000 chest x-rays per year. He testified that over 20 years he has read a quarter of a million chest x-rays.

Dr. Meyer testified that the B-reader looks at the lungs to decide whether there are any small nodular opacities and based on the size and appearance of the small opacities they are given a letter score. Dr. Meyer testified that specific occupational lung diseases are described by specific opacity types. Coal workers' pneumoconiosis is characteristically described as small round opacities. Diseases that cause pulmonary fibrosis, like asbestosis, are described as small linear opacities. The distribution of the opacities is also described because different pneumoconioses are seen in different regions of the lung. Coal workers' pneumoconiosis is typically an upper lung zone predominant process. Idiopathic pulmonary fibrosis or asbestosis is a basilar or linear process. The last component of the interpretation is the extent of the lung involvement or so-called profusion. Dr. Meyer testified that profusion is basically trying to describe the density of the small opacities in the lung.

Dr. Meyer testified that when he wants to determine the existence of lung disease, the gold standard is pathologic review of the tissue itself rather than radiology. Dr. Meyer testified that when he does B-readings, he just wants to look at the film and answer the simple question: Is there anything on there that is consistent with the abnormalities of coal workers' pneumoconiosis. He testified that his assumption when he is asked to do a B-reading is that the worker has an appropriate exposure history to warrant having the chest x-ray. Dr. Meyer testified that one of the issues with interpreting a chest x-ray for pneumoconiosis is making sure the individual who is interpreting the study has ample experience reading them to be able to sort out what the background variation is for normal. Dr. Meyer testified that part of trying to figure out whether or not there is an abnormality in the lung is recognizing the large spectrum of normal which is why he spends his entire career as a chest radiologist devoted to looking at chest radiographs day in and day out to establish that spectrum of normal. Dr. Meyer testified that on average he performs 300 to 400 B-readings per month. Depending on the month, he also reads between 10 and 20 CT scans for the purpose of determining the presence, absence or severity of an occupational lung disease.

Dr. Meyer testified that there are studies that show that at autopsy 50% or more of long term coal miners have coal macules that can be diagnosed by pathology that have not reached the degree of severity to be seen on chest x-ray. Dr. Meyer testified that if he reads an x-ray as positive, and the worker had a sufficient history to cause coal workers' pneumoconiosis, that would warrant a finding of coal workers' pneumoconiosis. He testified that if he finds a chest x-ray negative that would not necessarily rule out that the miner may have pneumoconiosis pathologically. Dr. Meyer testified that it would be fair to say that all long term coal miners are going to come out with some dust deposit trapped in their lungs, however, the majority of those will not have changes in their lungs that qualify for coal workers' pneumoconiosis. Dr. Meyer testified that it is not possible to have coal workers' pneumoconiosis without having a tissue reaction to the coal dust. In category 1 pneumoconiosis there would be some change in the function of the lung at the very site of the tissue reaction which probably could not be measured. Dr. Meyer testified that simple pneumoconiosis typically will not progress once exposure ceases.

Dr. Meyer agreed that coal workers' pneumoconiosis can be considered a chronic progressive disease that can progress even after the miner leaves the exposure. He was also of the opinion that if a person has coal workers' pneumoconiosis at anytime in their life, inasmuch as the only thing that causes coal workers' pneumoconiosis is coal mine exposure it would be true that they probably had that coal workers' pneumoconiosis at some level when they left the mine. He was of the opinion that the progression of coal workers' pneumoconiosis would vary from miner to miner.

Dr. David Rosenberg

Dr. David Rosenberg conducted a review of medical records and a chest x-ray regarding petitioner at the request of Respondent's counsel. Dr. Rosenberg has been board certified in internal medicine since 1977. After graduating from medical school Dr. Rosenberg did a pulmonary fellowship at the National Institute of Health in Bethesda, Maryland. Dr. Rosenberg received his board certification in pulmonary disease in 1980, and his board certification in occupational medicine in 1995. Dr. Rosenberg has been a B-reader since July 2000. He is a member of the American Thoracic Society and American College of Chest Physicians. Dr. Rosenberg has lectured by invitation on a number of subjects through the years. These topics

include interstitial lung disease, chronic obstructive lung disease, pulmonary stress testing, pulmonary function testing, exercise testing and occupational lung disease. Dr. Rosenberg has patients in his clinical practice who have black lung.

Dr. Rosenberg reviewed petitioner's chest x-ray dated 10/14/16. Dr. Rosenberg was of the opinion that the film was considered Grade 1 quality and 0/0 profusion with no findings of micronodularity. Dr. Rosenberg was of the opinion that for a proper reading of a chest x-ray for pneumoconiosis, the reader first assesses the quality of the film. Next, the reader classifies whether there are parenchymal changes present. The reader outlines whether there are small opacities and outlines the type of opacities, whether they are micronodular or linear. The reader then outlines whether the opacities are in the upper, middle or lower lung zones. The reader identifies the profusion rating. He testified that the profusion is the density of the changes present. Next the reader outlines if there are any large opacities. The reader also notes any type of pleural abnormalities. In Section 4 the reader notes other abnormalities. Dr. Rosenberg testified that the film of the patient is looked at side by side with the standard ILO films. He testified that he did this with petitioner's chest x-ray. He testified that a profusion of 1/0 is a positive film for pneumoconiosis. A profusion of 0/1 is not considered positive for pneumoconiosis.

Dr. Rosenberg testified that the B-reading system was designed to create some kind of numerical methodology to quantitate what is really present on the chest x-ray and then one can gauge from one year to the next if changes are occurring. Dr. Rosenberg testified that what mild or early pneumoconiosis means to one person is not necessarily the same as what mild or early would mean to another person. Dr. Rosenberg testified that if a film has a 1/0 profusion, all A and B-readers know exactly what that means because there are standard films that one can use as a reference. Dr. Rosenberg testified that he did not see any emphysema on petitioner's chest x-ray. He testified that none of the B-readers whose reports he reviewed indicated that emphysema was present in petitioner. Dr. Rosenberg testified that making the distinction between a film that is category 1 pneumoconiosis and a film that is negative for same is a fine one. He testified that this distinction is a point of emphasis in the B-reading syllabus, course and exam.

Dr. Rosenberg testified that it is unlikely for coal workers' pneumoconiosis to progress once the exposure ceases. Dr. Rosenberg agrees with the American Thoracic Society that an older worker with a mild pneumoconiosis may be at low risk for working in the mine at currently permissible dust levels until he reaches retirement age. Dr. Rosenberg testified that one must be a susceptible host to develop pneumoconiosis. He testified that not all coal miners develop pneumoconiosis. He testified that most will not develop same.

Dr. Rosenberg testified that cough is not considered an objective determinant of pulmonary impairment. Dr. Rosenberg testified that chronic bronchitis is cough and sputum production for three months out of the year for two consecutive years. He testified that this definition comes from the World Health Organization and the American Thoracic Society. Dr. Rosenberg testified that a history of daily cough, occasionally productive, is not sufficient to satisfy that definition. Dr. Rosenberg testified that in the medical he reviewed, he did not see the diagnosis of chronic bronchitis for petitioner. He testified that the medical he reviewed did not support such a diagnosis.

Dr. Rosenberg is familiar with the AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition, Chapter 5, The Pulmonary System. He testified that chest imaging under the Guides is not a factor, let alone a key factor, in the assessment of pulmonary impairment. Dr. Rosenberg agrees with the Guides that the correlation of chest x-ray interpretations and physiologic measures of impairment is poor. Dr. Rosenberg testified that based on the pulmonary function testing performed on petitioner by Dr. Istanbouly there was not any indication of restriction in him or evidence of obstruction. Dr. Rosenberg agreed with Dr. Istanbouly that if Table 5-4 of the Guides was applied to the testing performed by Dr. Istanabouly, petitioner would fall in Class 0 impairment. Dr. Rosenberg testified that petitioner, from a respiratory standpoint, was capable of heavy manual labor.

Dr. Rosenberg testified that Petitioner's spirometry performed by Dr. Istanbouly was valid based on reproducibility. He testified that when looking at the FEV1 and FVC curves there was some flattening so petitioner probably could have given a little better effort. He testified that regardless of the effort, petitioner's study was normal. Dr. Rosenberg testified that the diffusion capacity testing performed on petitioner revealed a DLCO of 59% and a DLCO/VA of 91%. Dr.

Rosenberg testified that the diffusing capacity, in and of itself, is an indirect measurement of gas exchange. It tells how much carbon monoxide is able to get into the bloodstream. The DLCO/VA is how much comes in per certain amount of volume of lung that was there. He described it as sort of like a rate of entry into the lung. Dr. Rosenberg testified that the American Thoracic Society had recently outlined that the plain diffusing capacity, the DLCO, is more accurate overall. Dr. Rosenberg testified that according to the American Thoracic Society, in performing the diffusing capacity, the individual has to be able to take a deep breath in, and that same represents the inspiratory vital capacity. He testified that same should be 90% of the person's forced vital capacity measurement. Dr. Rosenberg testified that in a diffusion capacity testing the patient is inhaling a measured amount of carbon monoxide. He testified that it is critical for the patient to take in a deep breath which is 90% of his vital capacity because he has to allow what he is breathing in to come in contact with all the blood vessels in the lungs. The diffusion capacity is basically measuring how much carbon monoxide is being taken up by the capillary bed within the blood vessel. When the patient exhales, the amount of carbon monoxide that comes out is measured. The difference between what is inhaled and what is exhaled is the amount that is diffused in the lung. The differential of what is left from what started is what got into the bloodstream. What happens with the carbon monoxide is just what would happen with the oxygen as it crosses the alveolar membrane and binds with hemoglobin.

Dr. Rosenberg testified that based on the report from Methodist Hospital, petitioner's inspiratory vital capacity was 3.13L. His forced vital capacity was predicted to be 4.14L. Ninety percent of that would be 3.726L. Petitioner's inspiratory vital capacity was only 3.13L which is less than 90%. Dr. Rosenberg was of the opinion that the diffusing capacity testing at Methodist Hospital was not valid. Dr. Rosenberg testified that the AMA Guides require valid testing for determination of impairment. Dr. Rosenberg testified that this study from Methodist Hospital should not be relied upon for a determination of impairment. Dr. Rosenberg testified that since petitioner did not achieve 90% for his inspiratory vital capacity in the diffusion capacity testing, he recommended that the testing be repeated. Dr. Rosenberg testified that this procedure is not invasive and is not painful for the patient. He testified that there is not a risk to the patient in having this test performed.

Dr. Rosenberg testified that petitioner's pulmonary function tests were normal, and he did not have any chronic respiratory symptoms outlined in the records he reviewed. Petitioner had intermittent respiratory tract infections. Dr. Rosenberg testified that there was nothing to suggest the diagnosis of chronic bronchitis or any type of pulmonary condition related to petitioner's past coal mine dust exposure. He had no obstruction or restriction. Dr. Rosenberg testified that it is almost unheard of for one to have a reduced diffusion capacity with a category 1/0 pneumoconiosis.

Dr. Rosenberg testified that the only measurement of petitioner's DLCO was taken by Dr. Selby at the request of Respondent's counsel. Dr. Rosenberg testified that there is a half life for carbon monoxide to get off the hemoglobin molecule so one would probably want to wait a day or so before repeating the diffusing capacity testing. Dr. Rosenberg testified that there was no evidence in the file that petitioner would have clinically significant pathologic changes. He testified that he could have microscopic changes if a biopsy were performed, but it was not translating into something that was clinically significant.

Dr. Rosenberg testified that a tissue reaction to trapped coal mine dust is required either in the airways or in the parenchyma to have coal workers' pneumoconiosis. He testified that this tissue reaction can be called scarring or fibrosis. Dr. Rosenberg testified that the scar tissue of coal workers' pneumoconiosis cannot perform the function of normal, healthy lung tissue. He testified that most patients with simple disease have preserved lung function. Dr. Rosenberg testified that for determining coal workers' pneumoconiosis between radiographic study and pathologic study, pathology is the gold standard. He testified that an individual could have coal workers' pneumoconiosis pathologically with a negative chest x-ray. Dr. Rosenberg testified that the purpose behind the B-reading course was to teach physicians how to accurately read a chest x-ray for pneumoconiosis. He testified that there are only about 200 B-readers in the United States and having a B-reader certification adds to one's credentials.

Dr. Rosenberg was of the opinion that you can have coal workers' pneumoconiosis or chronic bronchitis and have normal spirometry. He was also of the opinion that you can also have reactive airway disease with normal spirometry. Dr. Rosenberg agreed that daily cough for 5 or 10 years is not normal. Dr. Rosenberg testified that coal workers' pneumoconiosis is a

chronic disorder that can be progressive. Dr. Rosenberg was of the opinion that it is probable that if a miner has coal workers' pneumoconiosis and the only x-ray you have is from ten years after he left the mine, the overwhelming probability is that he had some level of coal workers' pneumoconiosis when he left the mine. He was also of the opinion that it is possible to have radiographically significant coal workers' pneumoconiosis yet have normal pulmonary function tests, normal blood gasses, normal physical exam of the chest, and in fact no symptoms. Dr. Rosenberg believed that the inhalation of coal mine dust can result in emphysema, chronic bronchitis, COPD, and on a transient basis can cause and aggravate reactive airway disease.

Medical Records Dr. Laata/SMGS Family Health

Respondent offered into evidence the medical records of Dr. Latta/SMGS Family Health as they pertain to petitioner from 6/8/07 through 8/17/23. Petitioner had examinations of the chest on 6/8/07, 1/14/08, 4/3/09, 4/30/10, 2/28/11, 11/14/11, 6/13/12, 12/9/13, 7/4/14, 2/4/15, 7/20/15, 7/31/15, 7/29/16, 1/3/17, 1/31/17, 3/9/17, 8/9/17, 10/30/17, 10/17/18, 5/21/19, 10/24/19, 11/4/21, 11/8/22, and, 8/17/23. On each date his chest revealed no adventitious sounds, clear to auscultation, normal breath sounds, and/or lungs clear to auscultation. During this same period, petitioner had a sore throat and/or sinus congestion and was diagnosed with sinusitis on 1/14/08, 2/28/11, 2/4/15, and 3/9/17. Petitioner had a cough that was productive on 1/14/08, 2/28/11, and 11/14/11. He had a non-productive cough on 12/9/13, 2/4/15, and 3/9/17. Petitioner was assessed with acute sinusitis and pharyngitis on 1/14/08; was assessed with acute sinusitis, viral syndrome an upper respiratory infection on 2/28/11; was assessed with 11/14/11 with allergic rhinitis and reactive airway disease; was assessed with acute bronchitis on 12/9/13; was assessed with acute bronchitis and sinusitis on 2/4/15; and, was assessed with acute maxillary sinusitis on 3/9/17. Petitioner smoked cigars until 2014.

Dr. Fadi Shamsham

Respondent offered into evidence the medical records of Dr. Fadi Shamsham who saw petitioner on 11/6/17 for a cardiac evaluation. Petitioner reported intermittent episodes of substernal chest pain, unrelated to exertional activity. Petitioner reported that he could walk a mile with no issues. He reported riding a stationary bike for twenty minutes at a time with no

chest pain. Petitioner noted that he was retired and worked part time for a bit company in Benton. Petitioner reported that he had a prior smoking history but quit in 1975. Review of systems revealed no cough. Examination of the chest revealed the lungs clear to auscultation. Petitioner underwent a transthoracic echocardiogram on November 21, 2017. The study was interpreted as revealing normal left ventricular wall motion at rest with an ejection fraction of 55%. Petitioner exercised on the treadmill using Bruce protocol for a total of 6 minutes 47 seconds, achieving Stage 3 with an estimated workload of 8.1 METS. He had no arrhythmia or chest pain with exercise.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?
F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

All of the retained physicians interpreted the chest x-ray of petitioner dated 10/14/16. Dr. Rosenberg described the protocol for a proper reading of a chest x-ray for pneumoconiosis. Dr. Rosenberg testified that profusion tells the reader the intensity of the findings of opacities in the lungs and is the measure by which determination is made as to whether or not the x-ray is positive or negative for pneumoconiosis. Dr. Istanbouly did not follow this protocol and did not know the profusion of the film that he reviewed.

Dr. Meyer testified to the training and taking the examination required to become a B-reader. Dr. Rosenberg testified that having a B-reader certification adds to one's credentials. Although one does not have to be an A or B-reader to interpret films for the presence of coal workers' pneumoconiosis, such certification lends credibility to a physician's interpretation. Dr. Istanbouly testified that when he interprets a film for black lung, he determines whether it is positive or negative and if it is positive, he classifies it as mild, moderate or severe. He classified what he saw on petitioner's chest x-ray as mild or early pneumoconiosis. Dr. Rosenberg testified that the use of profusion ratings avoids imprecise descriptive terms of what is seen on the film such as mild or early pneumoconiosis. He testified that the B-reading system was designed to create some kind of numerical methodology to quantitate what is really present on the chest x-ray and one can gauge from one year to the next if changes are occurring. Based on the above, the arbitrator finds Dr. Istanbouly's interpretation of petitioner's 10/14/16 chest x-ray not as

persuasive as Dr. Meyer and Dr. Rosenberg, given that he is not a B-Reader and did not know the profusion of the chest x-ray her reviewed.

Dr. Smith interpreted the chest x-ray of 10/14/16 as positive for pneumoconiosis, profusion 1/0 with p/p opacities in all lung zones. Drs. Meyer and Rosenberg interpreted the same chest x-ray as negative for pneumoconiosis. The Arbitrator finds Drs. Meyer and Rosenberg to be the most persuasive of the B-readers. Dr. Meyer is not only a certified B-reader, he also serves on the ACR Pneumoconiosis Task Force which is engaged in redesigning the B-reader exam and submitting cases for the training module and exam. Dr. Meyer is the most experienced radiologist in this case having read approximately 250,000 chest x-rays. As noted by Panel C of the Commission, Dr. Smith has testified that the panel which assembled the B-reading syllabus are the peers that he aspires to be and he acknowledged that Dr. Meyer was one of the authors of the syllabus. Quinn v. The American Coal Co., 20 IWCC 0326 (citing Ferrell v. The American Coal Co., 20 IWCC 0067). The Arbitrator finds Dr. Smith to be less persuasive than Dr. Meyer. Based on the B-readings by Drs. Meyer and Rosenberg, the Arbitrator finds that petitioner does not suffer from coal workers' pneumoconiosis.

The Arbitrator notes the testimony of Drs. Meyer and Rosenberg that a negative chest x-ray would not rule out that petitioner could have coal workers' pneumoconiosis pathologically. The Arbitrator finds that such testimony is not the same as saying that petitioner in fact suffers from the disease. Woolard v. The American Coal Co., 21 IWCC 0154, p. 17. It is not respondent's duty to produce evidence that petitioner did not have coal workers' pneumoconiosis. Rather the issue is whether petitioner has proven that he does. Quinn v. The American Coal Co., 20 IWCC 0326.

Dr. Istanbouly testified that petitioner's history met the criteria for chronic bronchitis. Dr. Istanbouly testified that petitioner's symptoms included coughing on a daily basis for the past five to ten years. The cough was occasionally productive of slight thick mucus. However, the arbitrator finds this testimony of Dr. Istanbouly not supported by the credible medical records of SMGS Family Health.

Dr. Istanbouly testified that the cause of petitioner's chronic bronchitis would be long term coal dust inhalation. Dr. Rosenberg testified according to the World Health Organization and the American Thoracic Society chronic bronchitis is defined as cough and sputum production three months out of the year for two consecutive years. The arbitrator found nothing in petitioner's medical records from SMSG Family Health to support a finding that petitioner had cough and sputum production three months out of the year for two consecutive years.

Dr. Rosenberg testified that a history of daily cough, occasionally productive, is not sufficient to satisfy the definition of chronic bronchitis. Dr. Rosenberg testified that in the medical he reviewed, he did not see the diagnosis of chronic bronchitis for petitioner and the medical did not support such a diagnosis. Petitioner's own medical records from SMGS Family Health show that in a 15 year period from 6/8/07 through 8/17/23 petitioner's chest examinations showed no adventitious sounds, lungs clear to auscultation, normal breath sounds, and/or lungs clear to auscultation. During this same period, petitioner had a sore throat and/or sinus congestion and was diagnosed with sinusitis on 4 occasions from 1/14/08 to 3/9/17. Petitioner had a cough that was productive on 3 occasions from 1/14/08 through 3/9/17. He also had a non-productive cough on 3 occasions from 1/14/08 through 3/9/17. Petitioner was assessed with acute sinusitis and pharyngitis on 1/14/08; was assessed with acute sinusitis, viral syndrome an upper respiratory infection on 2/28/11; was assessed on 11/14/11 with allergic rhinitis and reactive airway disease; was assessed with acute bronchitis on 12/9/13; was assessed with acute bronchitis and sinusitis on 2/4/15; and, was assessed with acute maxillary sinusitis on 3/9/17. These records show that during this period petitioner was not diagnosed with a chronic condition on a regular basis. Petitioner's respiratory and sinus infections were intermittent throughout the records and were identified as acute. Based on this credible evidence the arbitrator finds that petitioner does not suffer from chronic bronchitis, or any other chronic respiratory condition.

The Arbitrator notes that from the testing performed on petitioner at Methodist Hospital he had a diffusion capacity of 59%. Dr. Rosenberg explained that this testing was not valid as petitioner's inspiratory vital capacity was not 90% of his forced vital capacity measurement. Dr. Rosenberg testified that the AMA Guides require valid testing for determination of impairment. Petitioner's counsel declined to allow his client to undergo repeat diffusion capacity testing. Therefore, the arbitrator does not find the results of this testing very persuasive.

Based on the above, as well as the credible evidence, the arbitrator finds that petitioner has failed to prove by a preponderance of the credible evidence that he suffered coal workers' pneumoconiosis, chronic bronchitis or any other occupational disease causally related to his exposures while working for respondent.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURIES?

O. DID PETITIONER PROVIDE TIMELY DISABLEMENT PURSUANT TO SECTIONS 1(e) AND 1(f) OF THE OCCUPATIONAL DISEASES ACT?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that he suffered coal workers' pneumoconiosis, chronic bronchitis or any other occupational disease causally related to his exposures while working for respondent, the arbitrator finds these remaining issues moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC032616
Case Name	Brian Paliga v. Orland Fire Protection District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0552
Number of Pages of Decision	14
Decision Issued By	Christopher Harris, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Michael Rom
Respondent Attorney	Nicole Breslau

DATE FILED: 11/19/2024

/s/Marc Parker,Commissioner
Signature

DISSENT: /s/Christopher Harris,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Brian Paliga,

Petitioner,

vs. NO: 19WC 32616

Orland Fire Protection District,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, permanent partial disability, §8(j) credit, medical bill award, and being advised of the facts and law, affirms with changes the Decision of the Arbitrator, which is attached hereto and made a part hereof.

On October 2, 2019, Petitioner, while on duty, received a flu vaccination as part of a voluntary inoculation program in connection with his employment as a firefighter/paramedic. He testified the vaccination was administered too high and posterior on his left shoulder, and he subsequently developed pain, bursitis, and tendonitis of his shoulder. Petitioner required months of treatment including medication and physical therapy.

Respondent offered an impairment rating report from Dr. Nikhil Verma, in which the doctor opined Petitioner's impairment rating for his injury was 0% of the upper extremity, and 0% of the whole person. The Arbitrator, in considering the five factors enumerated in §8.1b(b) of the Act, gave "no weight" to factor (i), the reported level of impairment from a licensed physician pursuant to the AMA's impairment guide, because Dr. Verma did not provide charts or page references or indicate if he used the most recent AMA impairment guide. However, the Commission notes that Dr. Verma in fact stated that he used the 6th edition AMA guide, the most current edition, in formulating his opinion (RX 3).

The Commission finds Dr. Verma's report and AMA impairment rating deserving of *some*, rather than *no*, weight. However, Dr. Verma's impairment rating was based upon a diagnosis of a shoulder sprain or strain only, when the facts show Petitioner's condition was more than only a sprain or strain.

We agree with the weights assigned by the Arbitrator for the other §8.1b(b) factors. Considering all of the factors together, we conclude that the 3% loss of body as a whole award under §8(d)2 was appropriate, and we affirm that award. All else in the Arbitrator's Decision is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that other than as noted above, the Decision of the Arbitrator filed January 22, 2024, is hereby affirmed and adopted.

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

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

Under Section 19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 19, 2024

/s/ *Marc Parker*
Marc Parker

MP/mcp
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068

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

DISSENT

I agree with the majority that Dr. Verma's AMA rating complied with 8.1b(a) of the Act, and further add that any lack of "charts and page references" found by the Arbitrator are not elements which are required pursuant to 8.1b(a). As such, Dr. Verma's AMA rating should have been afforded some weight by the Arbitrator.

After re-weighing all five factors under Section 8.1(b), and given the circumstances of this specific case, I believe 3% person-as-a-whole is excessive for the injuries alleged, and a 1% loss of a person-as-a-whole would be a more appropriate award. Therefore, I respectfully dissent in part from the majority.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC032616
Case Name	Brian Paliga v. Orland Fire Protection District
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Michael Rom
Respondent Attorney	Michael Rusin

DATE FILED: 1/22/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 17, 2024 4.97%

/s/ Raychel Wesley, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Brian Paliga
Employee/Petitioner

Case # **19WC032616**

v.

Consolidated cases: _____

Orland Fire Protection District
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Raychel Wesley,** Arbitrator of the Commission, in the city of **Chicago**, on **December 12, 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 **10/2/2019,** 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 $**103,287.60**; the average weekly wage was $**1986.30**.

On the date of accident, Petitioner was **33** years of age, ***married*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of $**1,011.66** under Section 8(j) of the Act.

ORDER

Respondent to pay Petitioner directly for the outstanding Blue Cross Blue Shield lien in the amount of $2,225.00 as provided in Section 8(a) and 8.2 of the Act. These bills are entered into evidence as Petitioner's Exhibit No. 3, Integrity Orthopedics.

Respondent shall pay Petitioner permanent partial disability benefits of $836.00 (max rate) for 15 weeks because the injury sustained caused the loss of use of the Petitioner's body as a whole to the extent of 3% thereof as provided under Section 8(d)2 of the Act.

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

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

/s/ *Raychel A. Wesley* **JANUARY 22, 2024**

Signature of Arbitrator

FINDINGS OF FACT

Brian Paliga is a 37 year old male employed by the Respondent as a firefighter with a rank of Lieutenant. Petitioner testified that he was hired by Respondent on May 9, 2014 as a firefighter paramedic. (R. 12).

Petitioner testified that on October 2, 2019, he was assigned to undergo a voluntary flu shot. Respondent was providing flu shots for District personnel at the Village of Orland Park Administration building. (R. 15).

Petitioner testified that he drove his ambulance while on duty to the administrative building of The Village of Orland Park. (R. 15-16). At that time, Petitioner was administered a flu shot which he indicated was somewhat high and to the back of his left shoulder. (R. 19, 20). Petitioner testified that he immediately began to feel pain in the left shoulder which by the next day increased to the point where he could barely raise his arm. (R. 17). Petitioner continued to work full duty with pain in the left arm until he requested medical treatment per Orland Fire Protection Districts rules.

On October 29, 2019, Petitioner filed a first report of injury and was sent to Dr. Richard Wilson, the Respondent's initial medical treater for occupational injuries. (R.21, 22). Dr. Richard Wilson indicated that Petitioner had pain at the time of the flu shot. Dr. Wilson recommended that Petitioner follow up with Dr. Edward Joy and referred Petitioner for an MRI which took place on November 2, 2019 at Palos Health. The MRI revealed severe tendinosis and non retractable partial thickness tearing of the inferior infraspinatus, teres minor tendon extending to its humeral insertion where there is several underlying subtle osseous edema. (PX. 1).

On November 5, 2019, Petitioner was seen by Dr. Edward Joy at Integrity Orthopedics. Dr. Joy's records contain a consistent history of having an injury on October 2, 2019 (he had a flu shot and has had pain since). (PX. 2). Dr. Joy recommended Petitioner undergo a course of physical therapy at Integrity Orthopedics.

Petitioner underwent physical therapy on eight occasions from November 11, 2019 to December 12, 2019. The records indicate that the Petitioner had initiated home exercise programs and was performing home physical therapy. (PX. 2, page 10).

Petitioner returned to Dr. Joy on December 17, 2019 for a follow up for the left shoulder brachial disorder/pain. Petitioner indicated that he was doing okay but that he continued to experience pain with certain movements. Dr. Joy indicated that mobility had improved and that the Petitioner felt well after physical therapy. Although Dr. Joy recommended a second MRI on that date, no further treatment was obtained by the Petitioner. (PX.2, p. 6).

On November 28, 2022, Petitioner was seen for an independent medical examination by Dr. Nikhil Verma at the request of the Respondent. Dr. Verma noted a history consistent with Petitioner's testimony and the medial records. Dr. Verma indicated a history of an alleged injury on October 2, 2019 when Petitioner was taking a voluntary flu shot. Petitioner states that he saw the nurse injecting some of the other employees and felt it was somewhat high. He received the injection in the same position that he thought was high in his arm. Petitioner indicated that he had some pain and soreness but woke up the next morning with significant difficulty with motion.

Dr. Verma's history is consistent with Petitioner's testimony. Dr. Verma reviewed the MRI report which indicated rotator cuff tendonitis with nonretractable partial thickness tear. Dr. Verma concluded that the diagnosis was resolved bursitis, and that the Petitioner's condition was related to the flu injection. Dr. Verma went on to state that when the flu injections are done in a more proximal location they can be placed subacromially and can cause a temporary bursitis which is consistent with the history in this case. The Petitioner does have some structural degeneration of the rotator cuff which is a preexisting condition unrelated to work.

Dr. Verma indicated that his opinion was that the Petitioner sustained temporary bursitis as a result of the work injury of October 2, 2019 with no ongoing pathology related to the injury.

Dr. Verma indicated that all treatment was reasonable and appropriate for the bursitis sustained as a result of the flu shot. (RX. 3).

Petitioner testified that there are days where he wakes up with and has pain in the same location as he had before and certain movements of the arm still cause the pain. (R. 26). The pain has subsided since 2019 however Petitioner still gets a sharp pain and soreness in the left shoulder at the site of the injection. (R. 26). Petitioner continues to work full duty as a firefighter paramedic for Orland Fire Protection District.

Respondent presented the testimony of Fire Chief Administrator, Michael Schofield. Chief Schofield testified that Respondent ran a voluntary flu shot clinic in 2019. (R. 41). Chief Schofield confirmed Petitioner's testimony that the flu shot was voluntary. The EMS Department works with Mariano's Pharmacy to have employees come to the administration building and give flu shots to those who want them. (R. 47). Time is carved out of the firefighter's day to go to the administration building and get the shot or sign a form to opt out. The flu shot program has been in operation since 2009 and was recommended by the membership instead of employees having to go off duty and obtain a flu shot. (R. 47).

CONCLUSIONS OF LAW

The Arbitrator adopts the above findings of fact and conclusions of law set forth below.

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

Credibility is a quality of a witness which renders his/her evidence worthy of belief. The Arbitrator, whose province it is to evaluate a witness's credibility, evaluates the demeaner of the witness and any external inconsistencies with his or her testimony. Where a claimant's testimony is inconsistent with their actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald vs. Industrial Commission* 39 Ill.2nd 396 (1968); *Swift vs. Industrial Commission* 52 Ill.2nd 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 a weight to witness testimony. *Odette vs. Industrial Commission* 79 Ill.2nd 249, 253, 403 N.E.2nd 221, 223 (1980); *Hosteny vs. Workers' Compensation Commission* 397 Ill.App.3rd 665, 674 (2009). Internal inconsistencies in that claimant's testimony as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert vs. Martin & Bailey/Hux* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed the Petitioner in the hearing and found him to be a credible witness. Petitioner was calm, well-mannered and composed. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

With respect to Issue (C), did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

Petitioner testified consistently throughout his medical records and at trial that he had never had a prior injury to or medical treatment to his left shoulder. (R. 14). On October 2, 2019, Petitioner received a voluntary flu shot while on duty at the Respondent's Administrative building. Petitioner testified that on the date in question he was given an assignment to proceed to the administrative offices of the Village of Orland Park to undergo a flu shot or opt out. All fireman had to proceed to the administration building at which time they could opt out of the program if they so chose. As a result of the flu shot, Petitioner developed bursitis and tendonitis of the left shoulder.

The Arbitrator finds that the Respondent offered the flu shot while Petitioner was on duty. The Petitioner is required to take the shot or opt out while on duty. The fact that Petitioner can opt out of the flu shot does not absolve Respondent of an injury that occurs if he chooses the offered flu shot. (In the same way that an accident would occur if Respondent offered but did not mandate safety glasses and they broke causing the injury or provided gloves that caused a reaction to latex).

In addition, the Arbitrator finds that Petitioner met his burden and that an accident arose out of and in the course of the Petitioner's employment on October 2, 2019. Section 11 of the Workers' Compensation Act states clearly that:

> "Any injury to, disease or death of an employee arising from the administration of a vaccine, including without limitation smallpox vaccine, to prepare for, or as a response to, threatened or potential bioterrorist incident to the employee as part of a voluntary inoculation program in connection with the person's employment or in connection with any governmental program or recommendation for the inoculation of workers in the employees occupation, geographical area or other category that includes the employee is deemed to arise out of and in the course of the employment for all purposes under this Act." 820 ILCS 305 Section 11.

In the case at present, the Petitioner was on duty and on call at the time of his assignment to proceed to the administrative building of the Village to receive a voluntary flu shot. It was only upon arrival at the administrative building that the Petitioner and his fellow fireman were allowed to opt out by signing the documents in Respondent's Exhibit 2. That form clearly states that the employees were offered education and training regarding the benefits in participating in the annual flu vaccine in conjunction with the Centers for Disease Control and prevention guidelines. As such, the Petitioner has met his burden that the flu vaccination falls within the Workers' Compensation Act and as such the Arbitrator finds that the Petitioner met his burden and finds that an accident occurred that arose out of and in the course of his employment on October 2, 2019.

With respect to Issue (F), is the Petitioner's current condition of ill-being causally related to the accident, the Arbitrator finds as follows:

The Arbitrator finds that the Petitioner's left shoulder complaints are causally related to his work injury. Petitioner testified credibly that he never suffered a prior left shoulder injury nor did he receive prior medical treatment to the left shoulder. Respondent's IME examiner, Dr. Verma states unequivocally that Petitioner's condition is related to the flu injection. Dr. Verma states that when a flu shot is given in a more proximal location, they can be placed subacromially and can cause a temporary bursitis which is consistent with the history in this case.

Based on Dr. Verma's report, the totality of the treating records as well as the credible testimony of the Petitioner that he had never suffered left shoulder problems prior to this incident, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to the October 2, 2019 accident.

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

Having found an accident and causal connection in the above paragraphs, the Arbitrator finds that the Respondent is liable for the following medical bills and shall pay directly to Petitioner's attorney $2,225.00 in medical bills as provided in Section 8(a) and 8.2 of the Act. The bills are listed in Petitioner's Exhibit 3, Integrity Orthopedics in the amount of $2,225.00. Petitioner agrees that Respondent is entitled to an 8(j) credit for any amounts paid under its group medical plan. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving credit as provided in Section 8(j) of the Act.

With respect to Issue (L), the nature and extent of the injury, the Arbitrator finds as follows:

As detailed in the findings of fact, the Petitioner sustained an injury to his left shoulder as a result of a voluntary flu shot provided by the Respondent on October 2, 2019. Petitioner

testified that he continues to suffer pain which is alleviated by performing exercises learned at physical therapy. (R. 25, 26).

Section 8.1(b) of the Act 820 ILCS 305-8.1(b) lists 5 factors to be considered in determining permanent partial disability. No single enumerated factor shall be the sole determinant of disability. The factors to be considered are:

i. AMA guides impairment rating;

ii. the occupation of the injury employee;

iii. The age of the employee at the time of injury;

iv. The employees future earning capacity;

v. Evidence of disability as corroborated by the medical records.

With regards to subsection i of Section 8.1(b), the Arbitrator gives no weight to this factor as Dr. Verma's alleged AMA rating contained in Petitioner's Exhibit 3 simply indicates that the appropriate diagnosis would be shoulder strain/sprain. However, Dr. Verma does not provide any charts or page references in relation to his finding of a zero-impairment rating. Dr. Verma also fails to indicate whether he has used the most recent online AMA impairment guide as required by the Act. As such, the Arbitrator gives no weight to the first factor.

With regards to subsection ii of Section 8.1(b), the occupation of the employee, the Arbitrator gives no weight to the second factor as Petitioner's injury has not affected his ability to perform his work related activity and has actually been promoted to Lieutenant.

With regards to subsection iii of Section 8.1(b), the Arbitrator notes that the Petitioner was 33 at the time of the injection which took place in 2019. The Petitioner has no prior history of or symptomology, injury or treatment to the left shoulder. The Arbitrator views the Petitioner as a younger to middle aged individual who could anticipate working and experiencing the results of his injury for years to come in the workforce. Therefore, the Arbitrator gives greater weight to this factor.

With regards to subsection iv of Section 8.1(b), the Petitioner's earning capacity, the Arbitrator notes that the Petitioner was promoted and currently makes more money in regards to his promotion to Lieutenant. As a result, the Arbitrator gives some weight to this factor.

With regards to subsection v of Section 8.1(b), the evidence of disability corroborated by the medical records, the Arbitrator notes that the treating records as well as the physical therapy records indicate Petitioner continued to complain of some left shoulder pain. The physical therapy records indicate that Petitioner had commenced home physical therapy which was controlling pain levels. This is consistent with Petitioner's testimony at trial. The Arbitrator gives significant weight to this factor.

The Arbitrator having considered the foregoing along with Petitioner's credible and unrebutted testimony as to his current symptomology and limitations finds that Petitioner suffered a permanent partial disability to the extent of 3% loss of use of the person pursuant to Section 8(d)2.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC008936
Case Name	Scott Edward McNeal v. Beelman Truck Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0553
Number of Pages of Decision	18
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Daniel Simmons, J Bradley Young

DATE FILED: 11/19/2024

/s/Marc Parker,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMAON

☒ 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

Scott McNeal,

Petitioner,

vs. NO: 18 WC 008936

Beelman Truck Company

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the nature and extent of Petitioner's disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November May 6, 2024, is hereby affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent and total disability benefits of $540.23/week for life, commencing June 28, 2022, as provided in Section 8(f) of the Act. 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 Section 8(g) of the Act.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 19, 2024

MP:ns
o 11/7/24
68

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC008936
Case Name	Scott Edward McNeal v. Beelman Truck Company
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	J Bradley Young, Daniel Simmons

DATE FILED: 5/6/2024

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 30, 2024 5.165%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Scott McNeal
Employee/Petitioner

v.

Beelman Trucking
Employer/Respondent

Case # **18** WC **008936**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **3/26/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/26/17**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**8,501.97**; the average weekly wage was $**708.54**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **1** dependent children.

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

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

Respondent shall be given a credit of $**154,055.50** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**154,055.50**.

ORDER

The Arbitrator finds that the Petitioner has met his burden of proof that his current condition of ill-being is causally related to the 12/26/17 work accident.

Respondent shall pay Petitioner permanent and total disability benefits of $540.23/week for life, commencing 6/28/22, as provided in Section 8(f) of the Act. Commencing on 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 Section 8(g) of the Act.

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

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

Edward Lee_____
Signature of Arbitrator

May 6, 2024

Findings of Fact

The Petitioner was born on 10/16/74 and has a high school education with some college. Petitioner currently lives in Petersburg, IL where he has lived since 2019.

The Petitioner was employed by the Respondent as a truck driver, a position he started in September 2017. Petitioner described his normal job duties of a truck driver which included doing pre-trip checks to making sure that his truck and load is safe for the road. He would then go get his truck filled up with coal and run it up to Chicago, dump it, and bring a load of ash back. As part of his job, the Petitioner had to climb, bend, stoop, squat and lift. (AT 6-8)

On 12/26/17, the Petitioner injured his right knee while shoveling coal. The Petitioner immediately noticed a lot of pain and swelling in his right knee and reported the incident to his employer the following morning. (AT 9-10)

The Petitioner initially presented to the Orthopedic Center of Illinois and saw Dr. Christopher Graves on 12/28/17. Petitioner presented for an initial consultation regarding right knee pain and provided a consistent history of his 12/26/17 injury while shoveling coal. An examination was conducted and the Petitioner was diagnosed with right knee pain. It was recommended the Petitioner would initially treat conservatively and he was issued work restrictions of no lifting over 20 pounds and no squatting or repetitive motions with the right leg. Dr. Graves recommended physical therapy. (PX 2, p 5-8)

Prior to 12/6/17 the Petitioner did not have any pain, had never sought medical care, had never taken any medications, or been on any work restrictions for his right knee. Prior to 12/26/17 the Petitioner was able to work his job as a truck driver full duty without any issues in his right knee. (AT 11-12)

On 1/4/18, the Petitioner had his initial physical therapy evaluation at Midwest Rehabilitation. (PX 2, p 9-11)

Petitioner followed up with Dr. Graves on 1/9/18. Physical therapy had not provided any relief and at that time Dr. Graves recommended the Petitioner have an MRI and maintained the same work restrictions as previously issued. (PX 2, p 18-20)

On 1/22/18, the Petitioner had an MRI of his right knee. This study revealed a linear tear to the inferior apical surface posterior horn and posterior aspect body medial meniscus, small joint effusion. (PX 3, p 2)

The Petitioner followed up with Dr. Graves on 1/30/18. The MRI was reviewed with the Petitioner and it was recommended that he stop physical therapy. Dr. Graves at that time referred the Petitioner to be evaluated by a sports medicine expert within his practice, either Dr. Herrin or Dr. Romanelli. Petitioner was also continued on light duty restrictions of no twisting, no repetitive bending of the right knee, no kneeling or squatting, no climbing of stairs or ladders, no lifting over 20 pounds, no pushing or pulling over 20 pounds. (PX 2, p 31-33)

The Petitioner initially saw Dr. Rodney Herrin on 2/14/18. The Petitioner provided a consistent history of his accident. Dr. Herrin performed an examination and reviewed the Petitioner's MRI. At this visit, Dr. Herrin administered an intraarticular steroid injection for both diagnostic and therapeutic purposes into the Petitioner's right knee. Dr. Herrin diagnosed right knee pain, complex tear of the medial meniscus of the right knee as current injury and **work related injury.** Petitioner was continued on his light duty restrictions. (PX 2, p 38-41)

The Petitioner next saw Dr. Herrin on 3/8/18. The injection performed at the previous visit did not provide any significant relief. As such, Dr. Herrin recommended that the Petitioner proceed with a right knee arthroscopic procedure for treatment of his meniscal pathology. (PX 2, p 43-45)

On 4/11/18, Dr. Herrin performed a right knee arthroscopy with arthroscopically assisted partial medial meniscectomy. Preoperative diagnosis was status post injury to the right knee with probable medial meniscal tear. Postoperative diagnosis was status post injury to the right knee with a complex tear of the body and posterior horn of the medial meniscus. The Petitioner was off of work following his surgery. (PX 2, p 50-54)

The Petitioner followed up with Dr. Herrin postoperatively on 4/23/18. At this time, Dr. Herrin ordered the Petitioner to begin physical therapy and maintained his off work status. (PX 2, p 56-59)

The Petitioner began postoperative physical therapy at Midwest Rehabilitation on 5/8/18. (PX 2, p 63-65)

The Petitioner followed up with Dr. Herrin on 5/10/18. It was recommended that the Petitioner continue to participate in physical therapy. Petitioner was also issued light duty restrictions of sit down work only. (PX 2, p 76-81)

Petitioner next saw Dr. Herrin on 5/31/18. The Petitioner had been participating in physical therapy which was providing relief. Petitioner did note significant progress with therapy. Given the Petitioner's progression, Dr. Herrin allowed the Petitioner to return to work full duty as of 6/7/18. Petitioner was to complete the remaining few weeks of physical therapy. (PX 2, p 104-108)

Petitioner followed up with Dr. Herrin on 6/28/18. Petitioner did report to Dr. Herrin that his job duties had caused increased pain and swelling in his right knee. Despite this, Dr. Herrin continued the Petitioner at full duty and instructed him to follow up in four weeks. (PX 2, p 123-126)

Petitioner followed up with Dr. Herrin on 7/23/18. It was noted the Petitioner had been doing his full duties at work but still noted occasional aching and throbbing in the knee. Petitioner also had popping anteriorly and laterally. At this point Dr. Herrin released the Petitioner from his care. (PX 2, p 129-132)

The Petitioner testified that he did return to work in June of 2018. When the Petitioner returned to work full duty, he noticed that his knee pain returned and it continued to get more aggravated and hurt worse. The Petitioner specifically noticed increased complaints when he returned to work in June 2018 when he would perform tasks that required climbing and scooping. Due to the increased and ongoing complaints in his right knee, the Petitioner returned to the Orthopedic Center of Illinois in October 2018. (AT 16-17)

The Petitioner saw PA Robert Whitman on 10/8/18. Petitioner described the continued complaints of pain in his right knee. An examination was performed and it was recommended that the Petitioner continue a home exercise program and treat conservatively for the time being. (PX 2, p 133-136)

The Petitioner then saw Dr. Herrin in follow up on 12/10/18. Petitioner reported to Dr. Herrin that his knee pain continues to worsen with activity. Petitioner noted difficulty with stairs and noted a popping sensation. Dr. Herrin reviewed the arthroscopic photos from the initial procedure and noted that there was evidence of a chondral injury of the central portion of the patella at the time of the initial arthroscopic surgery. Dr. Herrin diagnosed a complex tear of the lateral meniscus of the right knee, complex tear of the medial meniscus of the right knee, pain of the right patellofemoral joint, right knee pain, **work related injury. Dr. Herrin also noted that it does appear that the Petitioner's current complaints are still most likely related to his work injury.** It was recommended that the Petitioner reengage in physical therapy. There was also a discussion that if an additional surgery was needed that a cartilage biopsy for a potential MACI procedure would be appropriate. (PX 2, p 137-140)

The Petitioner restarted physical therapy at Midwest Rehabilitation on 1/15/19. (PX 2, p 142-145)

The Petitioner next saw Dr. Herrin on 2/11/19. The Petitioner continued to complain of right knee pain worsening with activity, especially at work. At this time, Dr. Herrin recommended that the Petitioner undergo viscosupplementation injections into his right knee. Dr. Herrin would seek approval of the viscosupplementation injections from the workers' compensation carrier. (PX 2, p 156-158)

On 3/7/19, Dr. Herrin saw the Petitioner and continued to recommend the viscosupplementation injections and would continue to seek approval from the workers' compensation carrier who had not authorized those up to this point. The Petitioner was also taken off work at this time. (PX 2, p 161-162)

Petitioner underwent his first viscosupplementation injection on 3/21/19, performed by Dr. Herrin. (PX 2, p 163-164)

On 4/22/19, Petitioner again saw Dr. Herrin and at this time it was recommended the Petitioner have an updated MRI of his right knee. (PX 2, p 165-167)

The Petitioner underwent the recommended right knee MRI at Springfield Memorial Hospital on 5/11/19. This study revealed the body of the medial meniscus is diminutive in size and slightly irregular, likely related to postsurgical change, chondromalacia patella with a small cartilage tear involving the patellar apex, and mild chondrosis and joint space narrowing in the medial compartment. (PX 7, p 1)

The Petitioner followed up with Dr. Herrin on 5/29/19. Dr. Herrin reviewed the updated MRI at which time he recommended proceeding with a right knee arthroscopy with debridement of the patella with possible biopsy of the articular cartilage for future MACI procedure potentially. (PX 2, p 168-169)

Dr. Herrin performed the second right knee surgery on 6/28/19. This was a right knee arthroscopy with arthroscopic debridement of the chondral flap as well as debridement of the surrounding area of the patella to accomplish a chondroplasty as well as obtainment of articular cartilage for biopsy. Postoperative diagnosis was status post injury to the right knee with unstable chondral flap of the central portion of the patella. The Petitioner was kept off of work at this time. (PX 2, p 170-172)

Petitioner followed up with Dr. Herrin on 7/11/19. Petitioner was kept off of work and was instructed to follow up in one month if symptoms persist. In the patellofemoral joint, he maybe considered a MACI procedure. (PX 2, p 173-174)

On 8/14/19, Dr. Herrin recommended the Petitioner begin postoperative physical therapy. Petitioner was kept off of work. (PX 2, p 175-176)

The Petitioner began postoperative physical therapy on 9/16/19. (PX 2, p 177-179)

On 9/19/19, the Petitioner followed up with Dr. Herrin. Petitioner continued to note problems with swelling of the knee. Dr. Herrin administered cortisone injection for pain relief and issued light duty restrictions. (PX 2, p 180-181)

Dr. Herrin next saw the Petitioner on 10/17/19. The injection which was previously administered did not provide any significant relief. Dr. Herrin discussed performing additional viscosupplementation injections and potentially having the Petitioner seek out a second opinion. (PX 2, p 188-189)

The Petitioner last saw Dr. Herrin on 12/30/19. At this time, given the Petitioner's ongoing complaints and lack of success, Dr. Herrin recommended the Petitioner proceed with obtaining a second opinion with another surgeon. (PX 2, p 190-192)

The Petitioner then sought a second opinion with Dr. Brian Cole at Midwest Orthopedics at Rush in Chicago. Dr. Cole took a history and performed a physical examination of the Petitioner. Dr. Cole diagnosed right knee chondral defect central lateral patella. Dr. Cole recommended the Petitioner obtaining an updated MRI to evaluate the subchondral bone to determine if treatment surgically would be indicated and whether that would be the MACI

transplant of the patella along with tibial tubercle osteotomy versus a osteochondral allograft of the patella also would be along with tibial tubercle osteotomy. Dr. Cole issued light duty restrictions of a sitting job with minimal walking. (PX 5, p 27-34) **Dr. Cole also noted that the Petitioner's current condition, diagnosis, and treatment is causally related to his work accident of 12/26/17.**

Petitioner underwent the recommended MRI of his right knee on 3/9/20. This study revealed medial meniscus surgery with residual tear, and associated effusion and baker's cyst. (PX 3, 3)

The Petitioner saw Dr. Cole in follow up 7/2/20. The MRI was reviewed at which time Dr. Cole recommended the Petitioner undergo the MACI procedure. (PX 5, p 36-38)

On 1/13/21, Dr. Cole performed a right knee arthroscopy, medial meniscectomy, right knee tibial tubercle osteotomy and right knee MACI or autologous chondrocyte implantation patella. Postoperative diagnosis was right knee patellar defect 18x14 with increased patellofemoral load and medial meniscal tear. (PX 5, p 144-146) Petitioner was off of work following the MACI procedure.

On 1/25/21, the Petitioner had a telemedicine visit with Dr. Cole's office. It was recommended the Petitioner begin physical therapy at this time and he was kept off work. (PX 5, p 70, 95)

The Petitioner did begin postoperative physical therapy at PhysioTherapy Professionals on 2/3/21. (PX 6, p 107-109)

Petitioner followed up with Dr. Cole on 3/4/21. Petitioner's physical examination was overall impressive with no concerns. Dr. Cole recommended the Petitioner return to work light duty. Light duty restrictions were issued for sedentary work. No squatting, kneeling, climbing and limited lifting, pushing, and pulling to 20 pounds or less for the next few months. (PX 5, p 87-91)

The Petitioner then an additional telemedicine visit with Dr. Cole's office on 4/12/21. The Petitioner expressed concern regarding swelling in his leg and knee. As such, a doppler ultrasound was ordered. The Petitioner was also instructed to continue his light duty restrictions of sedentary desk job only. (PX 5, p 57, 92)

The Petitioner again saw Dr. Cole on 5/27/21. The Petitioner had been participating in physical therapy as recommended. Dr. Cole instructed the Petitioner to continue physical therapy. Dr. Cole also ordered a Functional Capacity Evaluation and instructed the Petitioner to maintain his light duty restrictions. (PX 5, p 48-50, 89)

The Petitioner underwent the recommended Functional Capacity Evaluation at PhysioTherapy Professionals on 7/29/21. The Petitioner demonstrated abilities to perform in the medium work classification determined by the physical demand definitions from the Dictionary

of Occupational Titles. It was determined that the Petitioner was able to perform a frequent lift of at least 20 pounds from all levels tested. Petitioner gave a valid and consistent effort and it was determined that the results of the study were consistent with the Petitioner's objective and subjective findings. (PX 6, p 118-126)

The Petitioner followed up with Dr. Cole on 8/16/21. The Petitioner reported that following his Functional Capacity Evaluation he feels as though it reaggravated his right knee. Since the FCE the Petitioner has noted increased swelling, pain and limitations. At this visit, Dr. Cole administered an intraarticular cortisone injection in effort to calm down the Petitioner's right knee symptoms. It was noted if the symptoms persist that an updated MRI would be recommended. The Petitioner was maintained on his light duty restrictions. (PX 5, p 108, 122)

The Petitioner last saw Dr. Cole on 11/4/21. The Petitioner continued to report a significant amount of pain in his right knee. Pain was located primarily around the lateral joint as well as posteriorly. At this time, Dr. Cole released the Petitioner at maximum medical improvement and issued permanent work restrictions. Petitioner's permanent work restrictions included a sitting job with minimal walking, minimal bending or stooping, no commercial driving, minimal work involving the right leg, limited driving, limited walking, no squatting, no kneeling, no climbing. (PX 5, p 131, 141-143)

The Petitioner described the condition of his knee as of the time of trial. Petitioner testified that his knee is always stiff and always feels swollen. It effects his daily life in many aspects. The Petitioner was an active person before the accident and now lives a primarily sedentary lifestyle. (AT 25-26)

Subsequent to the Petitioner's release by Dr. Cole with permanent restrictions. The Petitioner did request that the Respondent provide a job within the permanent restrictions issued. The Respondent did not provide a job for the Petitioner within his permanent restrictions. The Petitioner also requested vocational rehabilitation to begin if a job within his permanent restrictions was not going to be offered. (AT 26-27; PX 13)

The Respondent did hire Mary Andrews to provide vocational services to the Petitioner, which began in February 2022. The Petitioner worked with Ms. Andrews from February 2022 until the time Ms. Andrews retired in November 2023. Petitioner worked with her during that entire 21 month period. Petitioner testified that he gave a good faith effort when working with Ms. Andrews. Petitioner made himself available for a full time job search as required. Petitioner submitted the job applications that Ms. Andrews asked him to submit. Petitioner believed that he averaged about four job applications per week. The Petitioner testified that Ms. Andrews did not require him to do anything more as far as job as job applications than the four per week that submitted. Petitioner testified that if Ms. Andrews had asked him to submit more weekly applications that he would have. (AT 27-28)

The Petitioner testified that he is unable to go back to any jobs that he had previously held for which he may have transferable skills for. This included jobs involving commercial driving, hanging drywall, painting, deburring and/or sandblasting. The Petitioner does not believe that he is physically capable of doing any of those types of jobs at the present time given the condition of his right knee. The Petitioner no longer has a CDL. (AT 29-31)

The Petitioner also has other significant health issues that have affected his ability to return to the work force. These health issues include tremors, COPD, congestive heart failure, A-fib, anxiety, IBS, pancreatitis, as well as memory issues and sleep apnea. Petitioner testified that these health issues affect him horribly on a day to day basis. Petitioner testified that these did affect his job search efforts but more importantly would affect his ability to hold down a job. (AT 32)

Petitioner also testified that he did take a medical terminology course at Lincoln Land Community College at the recommendation of Ms. Andrews. The Petitioner had no objection to taking and participating in that course. The Petitioner described the course as essentially learning medical terms like arthritis, inflammation and what those words mean. The Petitioner described this course as essentially a kind of vocabulary class. The Petitioner did not have to do any typing for that class and this was not a medical transcription course. Petitioner testified that he has minimal experience with computers. Petitioner described his current computer skills as almost nonexistent with very limited ability at typing. The Petitioner did work on his typing skills throughout the time period that he was working with Ms. Andrews. (AT 33-35)

The Petitioner also testified regarding some of the interviews that he had with prospective employers while working with Ms. Andrews. Several of the interviews that he had were with medical providers who required that the Petitioner be vaccinated in order to be hired. The Petitioner is not vaccinated and does not wish to be vaccinated. The Petitioner testified that his reason not to be vaccinated had nothing to do with his case or with his desire to get back into the workforce. The Petitioner made the decision not to become vaccinated shortly after the vaccination was released to the public in early 2021. The Petitioner's decision to not be vaccinated was made in early 2021 and he did not begin working with Ms. Andrews for vocational purposes until February 2022. As such, the Petitioner's decision to not be vaccinated was made over a year before Ms. Andrews and vocational rehabilitation ever were a part of his workers' compensation case. (AT 35-37)

The other interviews that the Petitioner he was informed by the interviewer that he was either not qualified for the position or that he was not a good fit for the position. In the 21 months that the Petitioner worked with Ms. Andrews, he had roughly five phone interviews. No job offers were ever made by any prospective employers while working with Ms. Andrews. Petitioner testified that in these interviews he put his best self forward and gave a good faith effort. The Petitioner was not rude or abrasive in the interviews. The Petitioner testified that he

did nothing in the interviews to intentionally not be hired by the prospective employers. (AT 39-41)

Regarding the Petitioner's effort and the Respondent's claims regarding the Petitioner's effort in vocational rehabilitation, the Petitioner testified that at no time were his maintenance benefits ever cut off because of lack of cooperation in vocational rehabilitation. (AT 67-68)

The Petitioner did apply for Social Security Disability in early 2022 and was awarded the same. The Petitioner is receiving Social Security Disability benefits as of the time of trial. The Petitioner testified that his receipt of Social Security benefits has not affected his job search efforts. The Petitioner testified that he is receiving approximately $960.00 per month from Social Security which is not enough to live on. The Petitioner testified that prior to his accident he had been consistently in the work force his entire life. (AT 43-44)

Kristen Hardy also testified at the time of trial. Ms. Hardy is the Petitioner's fiancé and caregiver. Ms. Hardy has been the Petitioner's caregiver since 2020. Ms. Hardy indicated that she was present in the Petitioner's meeting with Dennis Gustafson and that she did not provide any information to Mr. Gustafson directly. She simply helped the Petitioner to recall any specific dates or medications that he was taking during the questioning of Mr. Gustafson to the Petitioner. (AT 70-71)

The Petitioner hired Dennis Gustafson as an expert witness on the subject of vocational rehabilitation. Mr. Gustafson's deposition was taken on 4/12/23. Mr. Gustafson is a vocational counselor consultant, a position he has held for 48 years. He has a Master of Science degree in counseling and psychology and has been working as a vocational rehabilitation counselor and evaluator for 48 years. He has also been a certified rehabilitation counselor since 1980. He has served as a vocational expert for the Social Security Administration for 34 years. (PX 9, p 9-10)

Mr. Gustafson met with the Petitioner to perform a vocational assessment on 5/11/22. Mr. Gustafson took an extensive history regarding the Petitioner's education and work background. Mr. Gustafson also described his process when performing a vocational assessment with an individual such as the Petitioner. In addition to obtaining an education and work history from the Petitioner, he also obtained relative medical information including the surgeries that the Petitioner had underwent, the Functional Capacity Evaluation that had been performed, as well as the permanent restrictions issued by Dr. Cole. Mr. Gustafson testified that it would be very difficult for the Petitioner to succeed even in an extensive and hard fought job search to find employment based upon his knee condition alone. When also taking into account his work background, educational background, and lack of transferrable skills, Mr. Gustafson opined that even a major job search effort would probably not result in obtaining employment. (PX 9, p 26-27) Mr. Gustafson opined that the Petitioner would not qualify for sedentary positions and that it would be very difficult for him to succeed in a job search even only addressing his residual functional capabilities for his right knee. (PX 9, p 28) Mr. Gustafson concluded that taking the totality of all factors in this case that the Petitioner is not employable. (PX 9, p 30) Mr. Gustafson

testified that there is no stable labor market even only when looking at the Petitioner's knee. (PX 9, p 38-39) Mr. Gustafson noted that the Petitioner is unable to return to his original position with the Respondent and given his work history the Petitioner has developed no transferrable skills to sedentary employment which is the level in which his permanent restrictions from Dr. Cole leave him.

The Petitioner also hired Mr. Ed Steffan to perform a vocational evaluation and rehabilitation plan for the Petitioner. Mr. Steffan is a vocational rehabilitation counselor and has held that position since 1981. Mr. Steffan began his career placing individuals with disabilities in gainful employment. He has a Bachelor's degree in psychology and a Master's degree in rehabilitation counseling. Mr. Steffan is also a licensed professional counselor in the State of Illinois. (PX 10, p 6-9)

Mr. Steffan was hired to perform a vocational assessment and a transferrable skills analysis for the Petitioner. Mr. Steffan performed his initial evaluation with the Petitioner over the phone on 11/1/22. Mr. Steffan spent a little over 2 hours on the phone with the Petitioner. (PX 10, p 10) Mr. Steffan testified that his vocational assessment is done to evaluate and obtain information related to the Petitioner's education, work history and the type of skills they may have acquired. He reviews medical records provided to identify available capacities for work including Functional Capacity Evaluations and other relevant documents. At the conclusion of Mr. Steffan's meeting with the Petitioner he opined that any of the numerous positions identified with the Petitioner's transferrable skills do not coincide with his local labor market and require physical capabilities beyond those identified by his permanent restrictions. Mr. Steffan opined that the Petitioner was not a candidate for vocational placement and there was no readily available and stable labor market for him. (PX 10, 33-34) Mr. Steffan further testified that no stable labor market exists even when only addressing the Petitioner's right knee due in part to his lack of computer and customer service skills. (PX 10, p 34)

Mr. Steffan further testified that he does know Ms. Andrews personally and finds her to be highly competent. Mr. Steffan testified that the fact that the Petitioner had worked with Mary Andrews for the length of time that he did and did not find him a job this fact only further provided that no stable labor market exists for the Petitioner. (PX 10, p 35)

Mary Andrews' evidence deposition was conducted on 2/2/23. Ms. Andrews was hired by the Respondent to provide vocational services to the Petitioner. Ms. Andrews is a rehabilitation counselor. She has a Bachelor's and Master's degree from the University of Wisconsin. Her Master's degree is in vocational rehabilitation counseling. She has been a certified rehabilitation counselor for over 30 years and is also a Licensed Clinical Professional Counselor in the State of Illinois. (RX 2, p 5-6)

Ms. Andrews testified that she believed that the Petitioner had various transferrable skills that he could use in a position within his current restrictions. (RX 2, p 8) Ms. Andrews testified that the Petitioner never ruled out retraining as evidenced by him later participating in and

passing the medical terminology course that was recommended. (RX 2, p 12) **Most importantly, Ms. Andrews testified that in terms of job skills training the Petitioner provided a valid effort in that training.** (RX 2, p 16) Ms. Andrews also testified that the Petitioner met the criteria of applying for the required 3-5 jobs per week, per the job placement plan she provided to the Petitioner. (RX 2, p 23) Despite the fact that Ms. Andrews worked with the Petitioner for a period of 21 months which did not result in any job offers, she believed that the Petitioner is employable regarding his right knee. Ms. Andrews testified that the Petitioner met the minimum requirements for the job placement plan but admitted that the Petitioner was not required to do more than the minimum and she did not ask the Petitioner to do more than the minimum. (RX 2, p 82-83) Most importantly, Ms. Andrews never testified as to whether or not a stable labor market exists for the Petitioner. In fact, Ms. Andrews could not even provide the court with a definition as to what a stable labor market is. (RX 2, p 93)

The Petitioner admitted his job search efforts that he did initially be himself and that he subsequently submitted to Ms. Andrews. (PX 14) From approximately 11/22/21 through 3/8/22, a period of 16 weeks, the Petitioner made 242 contacts with prospective employers. From 2/14/22 through 11/8/23, a period of approximately 90 weeks while the Petitioner worked with Ms. Andrews, he submitted 362 job search efforts. In addition to the job search efforts with Ms. Andrews, the Petitioner routinely met with Ms. Andrews, worked on his typing skills, and attended and passed a medical terminology course at Lincoln Land Community College. (PX 14)

The Petitioner also admitted the decision of the Social Security Administration at the time of trial as Petitioner's Exhibit 11. Administrative Law Judge John P. Mills found that the Petitioner has the residual functional capacity to perform sedentary work. Judge Mills also found that the Petitioner is unable to perform any past relevant work and that his acquired job skills do not transfer to other occupations within his residual functional capacity. Finally, Judge Mills found that considering the Petitioner's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the Petitioner can perform. (PX 11)

Conclusions of Law

Causation

The Arbitrator finds the Petitioner has met his burden of proving that his current condition of ill-being regarding his right knee is causally related to his 12/26/17 work accident. The Petitioner clearly testified that prior to his accident he had no problems, had not sought medical care, had never taken any prescriptions and had never been placed on any work restrictions regarding his right knee. Petitioner had an accident that is undisputed, notified his employer shortly thereafter, and sought medical care for his right knee within 48 hours. The Respondent has provided no real basis for dispute regarding the issue of causal connection.

Furthermore, the Petitioner's medical records include numerous references that his condition of ill-being regarding his right knee is causally related to the work accident including the records from Dr. Graves, Dr. Herrin, and Dr. Cole. It should also be noted that the Respondent admitted into evidence at the time of trial the Independent Medical Examination Report of Dr. Lawrence Li who also agreed that a causal connection exists between the Petitioner's current condition of ill-being and his work accident.

The opinions from medical experts contained in the record as well as the chain of events support the Arbitrator's findings that the Petitioner has met his burden of proof on the issue of causal connection.

Nature and Extent

Consistent with the humane and remedial nature of the Workers' Compensation Act, the Supreme Court has found a continuing expression of legislative concern and intent that an employee who is completely disabled shall be correspondingly compensated under the Act. *Springfield Park District v. Ind. Comm.,* 49 Ill.2d 67, 273 N.E.2d 376 (1971) A person is totally disabled when he cannot perform any services except those which are so limited in quantity, dependability, or quality that there is no reasonable stable market for them. It is also well established that an employee may be rendered totally and permanently disabled for the purposes of determining workers' compensation benefits by a mental disorder as well as a physical one. *South Import Motors, Inc. v. Ind. Comm.,* 52 Ill.2d 485, 288 N.E.2d 373 (1972)

The Arbitrator finds that the Petitioner is an odd-lot perm total under Section 8(f) the Act. The only evidence that exists in the record is that a stable labor market does not exist for the Petitioner given his residual functional capacity. The Arbitrator notes the testimony of Mr. Dennis Gustafson who opined that a stable labor market does not exist for the Petitioner regarding the condition of his knee. Mr. Gustafson also testified that the Petitioner does not qualify for sedentary positions and he believed that even after a major job search effort Petitioner would not be able to locate suitable employment. This opinion is consistent with the facts in this case as Petitioner participated in a job search for over 2 years and was not able to secure employment.

Furthermore, Mr. Ed Steffan also testified that Petitioner is not even a candidate for vocational placement as there is not a readily available or stable labor market for the Petitioner. Mr. Steffan went so far as to say that the fact that Ms. Andrews, who he finds to be very competent, has not found him a job only further proves that no stable labor market exists.

Another key point is the involvement of Ms. Andrews in this case. Ms. Andrews worked with the Petitioner for a period of 21 months and at no time did she secure work for the Petitioner not were any job offers even made. Ms. Andrews testified the Petitioner provided a valid effort with job skill training and met the requirements of the job placement plan that she provided to the Petitioner. At no time did Ms. Andrews opine that a stable labor market existed.

Ms. Andrews only opined that the Petitioner was employable but never actually issued an opinion regarding whether or not a stable labor market existed for the Petitioner. Evidence that the claimant has been or is able to earn occasional wages or to perform certain useful services neither precludes a finding of total disability nor requires a finding of partial disability. For the purposes of Section 8(f), a person is totally disabled when he cannot perform any services except those for which no reasonably stable labor market exists. *E.R. Moore Co. v. Ind. Comm.,* 71 Ill.2d 353, 376 N.E.2d 206 (1978) Ms. Andrews testimony is completely insufficient to counter the opinions of Mr. Gustafson and Mr. Steffen who both testified that a stable labor market for the Petitioner does not exist. The evidence supports the opinions of Mr. Gustafson and Mr. Steffan.

The Petitioner met his burden of proving a stable labor market does not exist under an odd lot theory of permanent and total disability. As such, the burden then shifts to the Respondent to prove that a stable labor market does exist. The Arbitrator finds that no evidence exists in the record that a stable labor market exists for the Petitioner, and Respondent presented no evidence to meet the burden that shifted to Respondent once the opinions of Mr. Gustafson and Mr. Steffen were issued. The Arbitrator further finds that there is insufficient evidence that the Petitioner did not cooperate with vocational rehabilitation. The Arbitrator finds it significant in this regard that at no time did the Respondent stop paying Petitioner his maintenance benefits during the time period that he worked with Ms. Andrews and participated in vocational rehabilitation.

The preponderance of evidence supports that the Petitioner is permanently and totally disabled under an odd lot theory. As of his 6/28/22 report, Mr. Gustafson opined that a stable labor market does not exist. As such, the Respondent is ordered to pay Petitioner permanent and total disability benefits of $540.23/week for life, commencing 6/28/22, as provided in Section 8(f) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC006074
Case Name	Brenda Banks v. Northwestern Memorial Hospital
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0554
Number of Pages of Decision	31
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Gerald Connor
Respondent Attorney	Christine Jagodzinski

DATE FILED: 11/19/2024

/s/Deborah Simpson,Commissioner
Signature

DISSENT: /s/Deborah Simpson,Commissioner
Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Brenda Banks,
Petitioner,

vs. NO: 21 WC 6074

Northwestern Memorial Hospital,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 12, 2024, is hereby affirmed and adopted.

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

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

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

November 19, 2024

o: 9/25/24
DLS/rm
046

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

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

DISSENT

I respectfully dissent from the Decision of the Majority. The Commission affirmed and adopted the Decision of the Arbitrator who found that Petitioner sustained her burden of proving a repetitive traumatic accident which caused current conditions of ill-being of her right elbow and wrist.

The Arbitrator awarded Petitioner 189&6/7 weeks of temporary total disability/maintenance benefits, current medical expenses totaling $171,408.26, and 225 weeks of permanent partial disability benefits representing loss of 45% of the person-as-a-whole for loss of occupation. I would have reversed the Decision of the Arbitrator, found that Petitioner did not sustain her burden of proving a compensable repetitive traumatic accident which caused her conditions of ill-being of her right upper extremity, and denied compensation.

Petitioner was a nurse in the Intensive Care Unit for Respondent. She testified that she used her hand throughout her entire 12-hour shifts and that she cared for only either one or two patients at a time. The activities that would elicit symptoms included hanging IV bags, positioning patients, pushing patients on carts, changing sheets, and giving baths. Petitioner continued to attribute her upper extremity condition to hanging IVs. At the ER she reported "frequent use of the right arm hanging up IV bags and reaching for things at work over the last several months" and that "hanging IVs and reaching for things at work" caused her condition. In her report of the incident/injury dated June 6, 2021, Petitioner reported that during her shift the previous night she had discomfort in her right elbow which got progressively worse. The patient she was attending was prescribed multiple IV medications, oral medications that were crushed and administered through feeding tube, required blood draws, and received blood products. By the end of her shift, she had difficulty moving her arm. On cross examination, Petitioner agreed that her job duties varied during her shift. She could not recall doing one task continuously, but she had "the same type of tasks every day."

Meghan Otwell, patient care manager in the cardiac transplant ICU where Petitioner worked and who had previously worked as a critical care nurse in a unit very similar to Respondent's, testified there were a lot of job tasks nurses perform in her unit. Their job activities varied throughout their 12-hour shifts. "There isn't anything where you're doing something repetitively over and over again." One should always ask a co-worker to assist in lifting a patient or use a lift. Nurses in the CTICU very rarely have to push patients in carts to go for testing.

The description of Petitioner's job as critical care nurse was submitted into evidence. Both Petitioner and Ms. Otwell testified it was accurate. The job is a medium physical demand level position with lifting 21 to 50 pounds. It required moving patients in beds/wheelchairs, assisting patients to the bathroom, assisting patients transfer from bed to chair, inputting computer/paperwork for 2+ hours per shift, and caring for wounds. It requires frequent reaching, handling objects, grasping with hands, stocking, and positioning of patients.

Dr. Wiesman, one of Petitioner's treating doctors, testified by deposition that he believed Petitioner's right upper extremity condition and the need for surgery was caused by her repetitive activities as a critical care nurse. He explained that she was doing the same job for 18 years, her discomfort progressed to the point that she reported it, and there were positive findings on examination and testing. The work environment of acritical care nurse can be fast paced; it "is a strenuous job that can bring about her symptomology."

The facts that she worked 12-hour shifts and her symptoms worsened at the end of the day, suggested a correlation between her symptoms with her work. He thought pushing patients on a bed cart could cause or aggravate her condition, but "doing IV medication bags," "probably not much. That's pretty low – low stress," nor would dispensing medication, nor would dispensing food/water aggravate her condition. Activities such as rotating non-ambulatory patients, changing patients' clothes, changing bed sheets, and cardiac chest compression can cause some issues. Dr. Wiesman

acknowledged that in the notes of his initial visit, he did not specify what Petitioner's work activities were, Petitioner did not specify which work activity elicited her wrist or elbow pain, Petitioner is left-handed, and Dr. Wiesman did not believe he reviewed any description of Petitioner's job.

Dr. Biafora performed a §12 examination on Petitioner, reviewed her medical records, reviewed the description of her job, issued a report, and testified by deposition. Dr. Biafora diagnosed a history of right medial/lateral epicondylitis, which had resolved, history of wrist vascular malformation, which was improving, and right thumb CMC arthritis/right hand numbness/tingling of unknown etiology. He opined that none of these conditions were causally related to her jobs duties as nurse. He noted that epicondylitis was extremely common, especially in Petitioner's age group; "it's a degenerative condition where that tendon degenerates over time." Simply because a patient first feels symptoms performing an activity, such as lifting a coffee cup, does not mean that the activity caused the condition. He did acknowledge that repetitive forceful gripping can contribute to such conditions. However, "in this particular case, no such activities were rendered." He explained that the type of work requiring repetitive forceful gripping include construction workers, heavy laborers, forceful use of power tools, use of hand tools all day, and assembly line workers.

In explaining her decision to find accident, the Arbitrator wrote: "Petitioner's right hand and arm symptoms would be most severe at the end of a work shift compared with the days she was off work. Petitioner's symptoms gradually got worse leading up to June 5, 2020 accident date. Based on the above, the Arbitrator finds that Petitioner proved by a preponderance of the credible evidence that she sustained repetitive trauma to her right hand, wrist, and elbow arising out of her employment on June 5, 2020 as a result of her job duties and responsibilities as a CTICU nurse." On the issue of causation, the Arbitrator found Dr. Biafora's testimony incredible. In contrast, she found the testimony of Dr. Wiesman to be persuasive.

I disagree with the conclusion of the Arbitrator/Majority. In my opinion, Dr. Wiesman was not more persuasive than Dr. Biafora. It appears that Dr. Wiesman neither reviewed Petitioner's previous medical records nor the description of her job, while Dr. Biafora did. Dr. Wiesman also testified he considered performing an activity "more than a couple of times" is repetitive activity. In my opinion, Petitioner proved only that she used her hands and arms a lot in her work. Also in my opinion, that is insufficient for a claimant to prove repetitive traumatic accident that caused compressive neuropathies.

I agree with Dr. Biafora, that a claimant must also prove repetitive forceful gripping/grasping and/or awkward hand arm positioning for extended periods of time to prove repetitive traumatic accident and causation. In addition, Dr. Wiesman seemed to base his opinions on the fact that she experienced symptoms while working. As we know, correlation does not equal causation. Petitioner's primary complaint about offending activity seemed to involve hanging IVs, which Dr. Wiesman acknowledged would be innocuous activity that would not aggravate her condition. Finally, Petitioner is left-handed. Intuitively, it is difficult to fathom why Petitioner's pathology/symptoms were all on the right side if she was left-handed. One would assume that a left-handed person would perform more of their work functions with their left hand/arm than they would with their right hand/arm and therefore the offending work activity should affect their left side more than their right side.

For the reasons stated above, I would have reversed the Decision of the Arbitrator, found that Petitioner did not sustain her burden of proving a compensable repetitive traumatic accident which caused her conditions of ill-being of her right upper extremity, and denied compensation. Accordingly, I respectfully dissent from the Decision of the Majority.

DLS/dw
O-9/25/24

/s/Deborah L. Simpson
Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC006074
Case Name	Brenda Banks v. Northwestern Memorial Hospital
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Gerald Connor
Respondent Attorney	Christine Jagodzinski

DATE FILED: 3/12/2024

/s/ Jennifer Bae, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 12, 2024 5.10%

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

Brenda Banks
Employee/Petitioner

Case # 21 WC 006074

v.

Northwestern Memorial Hospital
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jennifer Bae**, Arbitrator of the Commission, in the city of **Chicago**, on **January 25, 2024**. 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. ☒ Respondent due any credit?
O. ☒ Other **Loss of Occupation and Credits.**

FINDINGS

On **June 5, 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 $**109,231.72**; the average weekly wage was $**2,100.61**.

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

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

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

Respondent shall be given a credit of $42,212.37 for TTD, $4,646.42 for TPD, $0 for maintenance, and $32,351.35 short term disability benefits, for a total credit of $79,210.14.

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, for the following providers: Illinois Orthopaedic Network $75,828.61 outstanding, Preferred Prescriptions Pharmacy $21,535.59 outstanding, MRAD Imaging $3,900.00 outstanding, Preferred Open MRI $1,200.00 outstanding, AMCI South Holland Medical $10,631.00 outstanding, Midwest Specialty Pharmacy $59.56 outstanding, Metro Anesthesia Consultants $6,191.35 outstanding, Victory Enterprises II Inc. $3,793.00 outstanding, QMED Assist Inc. $19,349.45 outstanding, ATI Physical Therapy $21,167.20 outstanding, and Preferred Imaging $ 7,752.50 outstanding, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $1400.41/week for 135 4/7 weeks, commencing June 6, 2020 through January 10, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner maintenance benefits of $1400.41/week for 54 2/7 weeks, commencing January 11, 2023 to January 25, 2024, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits at the maximum PPD rate of $836.69/week for 225 weeks because the injuries sustained caused 45% loss of use person-as-a-whole based on a loss of occupation, as provided in Section 8(d)2 of the Act.

Respondent shall be given a credit of $42,212.37 for TTD, $4,646.42 for TPD, $0 for maintenance, and $32,351.35 short term disability benefits, for a total credit of $79,210.14.

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.

Jennifer E. Bae

Signature of Arbitrator

March 12, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

BRENDA BANKS,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21WC006074
NORTHWESTERN MEMORIAL HOSPITAL,	)	
	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL HISTORY

Ms. Brenda Banks ("Petitioner"), by and through her attorney, filed an Application for Adjustment of Claim for benefits under the Worker's Compensation Act ("Act"). *820 ILCS 305/1 et seq. (West 2014)* Petitioner alleged that she sustained an accidental injury on June 5, 2020, while employed by Northwestern Hospital ("Respondent"). A hearing was held on January 25, 2024 on the following disputed issues: accident, notice, causal connection, reasonable and necessary medical expenses, temporary disability benefits, credits, nature and extent of the injury, and "other" issues including loss of occupation and credits.

Petitioner testified in support of her claim. Ms. Meghan Otwell testified on behalf of Respondent. Dr. Irvin Wiesman, the treating surgeon, was called to testify by evidence deposition. Dr. Sam Biafora, Respondent's Section 12 orthopedic examiner, was called by Respondent to testify by evidence deposition. In addition to his testimony, Dr. Biafora generated three (3) reports each addressing the disputed issues. The parties requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (Ax 1)

II. FINDINGS OF FACT

Petitioner testified that she had been working for as a clinical nurse in the Intensive Care Unit ("ICU") of the Northwestern Hospital for approximately eighteen (18) years. (T. 10) Petitioner worked thirty-six (36) hours per week, twelve (12) hour shifts. (T. 13)

Petitioner testified she kept a job log diary of all places she applied for jobs within her permanent work restrictions, and she is currently unemployed. (T. 36-37, Px 14) She identified a log of email

confirmations reflecting applications for some of these positions. (Px 17A). Petitioner stated she had worked in nursing since 1982. (T. 39)

Petitioner further testified that she had not applied for Social Security Disability. (T. 73) She confirmed she worked with Stephanie Tuchten in HR looking for jobs. (T. pages 73–74) She said that she spent four (4) to six (6) hours per week applying for jobs since 2022. (T. 76) Petitioner agreed that she had no restrictions regarding driving, but she knew how much driving she could do without being in pain. (T. 77) She claimed to never turn down positions located further from her home. (T. 77) She testified that she was not attending school while looking for a job. (T. 77) She also testified that she was two (2) classes short of obtaining a master's degree in nursing. (T. 78) Petitioner agreed that Respondent reimbursed a portion of the cost for her classes. (T. 78)

Petitioner testified that she had been receiving unemployment benefits until December 2023 when it was cut off. (T. 79) In addition, she received short-term disability benefits while off work for periods of time after her surgery. (T. 80)

Accident

On June 5, 2020, during her shift, Petitioner felt pain radiating from her right elbow down to her wrist and hand. (T. 10-11) Petitioner believed that her work accident was a repetitive trauma that persisted while she cared for the patients. (T. 11) She explained that in the middle of her shift, she would have pain in her right elbow, arm, and hand after hanging IV medication and blood products and drawing blood. (T. 11) Petitioner testified that on the days she was not working, her symptoms were better but worse after working 12-hour shift. (T. 12-13) Her job duties that caused most of the symptoms included hanging and lifting IV bags, turning and positioning patients in bed, pushing patients on carts for tests in other units, changing sheets, giving baths, reaching items on the shelf, and changing and dressing patients. (T. 13-14) Petitioner explained that the work environment in the ICU was fast paced. (T. 16)

Petitioner claimed that she informed her unit manager, Robin Oakley, and the clinical coordinators that came in for the morning shift of her injury. (T. 17) The coordinators were Christy Egan, Melissa Laszlo and Genevieve Spittler. (T. 17). Petitioner's Exhibit 15 was a copy of the Employee Incident Report (EIR) that Petitioner submitted to Respondent on June 6, 2020. (T. 17-18)

Once the incident report was filed with Respondent, Petitioner was contacted by the worker's compensation unit. (T. 20) Petitioner's Exhibit 16 was a copy the information that Petitioner submitted through the worker's compensation portal. (T. 20-21) She testified that the compensation was approved on July 1, 2020 and shortly thereafter she started to receive payments for her injury. (T. 21)

Respondent called Meghan Otwell to testify. (T. 86) Ms. Otwell testified that she had worked for Respondent for four (4) years. (T. 87) She currently worked as the Patient Care Manager of the Cardiothoracic or Cardiac Transplant ICU (CTICU). (T. 87) She stated she had held this position for two (2) years. (T. 87) In June 2020, she managed Galter 10 and CTMC or cardiac telemetry. (T. 87) She confirmed she temporarily covered the CTICU when the manager was on a medical

leave either in December 2020 or 2021. (T. 88) The manager of that unit was Robin Oakley. (T. 88) Ms. Otwell confirmed she was a registered nurse with a bachelor's degree in nursing and a master's degree in science with a focus on administration. (T. 89)

Ms. Otwell previously worked as a Clinical Nurse in the CTICU at Advocate Christ Medical Center in the adult surgical heart unit. (T. 89) As the manager of patient care in CTICU, she oversaw the day-to-day operations and ensured that the unit ran smoothly, carrying out initiatives of the organization as well as making sure that there was adequate staffing to take care of the patients. (T. 89–90) Ms. Otwell stated all staff in the CTICU get a 30-minute uninterrupted break for lunch as well as two (2) 15-minute breaks. (T. 90) Ms. Otwell testified she was familiar with the job duties of the nurses in the CTICU. (T. 92) She agreed that the physical requirements outlined on pages 7 through 14 were true and accurate representation for requirements as a Clinical Nurse at Northwestern. (T. 92–93, Rx 5) Ms. Otwell confirmed the ratio in the CTICU as one (1) nurse to two (2) patients. (T. 94) Typical patients were surgical patients who have undergone cardiac surgery or lung transplant. (T. 94) Nurses were responsible for getting them up to a chair the next morning and then walking and physical therapy in the hallway. (T. 94) Job duties also included assessing patients hourly by taking vital signs, observing urine output, and looking at chest tubes. (T. 95) CTICU nurses also monitor different waveforms, turn patients every two (2) hours, bathe patients, help them ambulate, titrate medications, and administer medications. (T. 95) Ms. Otwell testified that the tasks varied throughout the course of a 12-hour shift. (T. 95) She stated there was no task where you are doing something repetitively. (T. 96) Ms. Otwell confirmed that nurses should always ask a peer for assistance if there was a need to move a patient in the CTICU or utilize the lift equipment. (T. 96–97) Ms. Otwell agreed the amount of blood products, or IV bags used by a typical patient varied. (T. 97–98) She testified that it was rare for a CTICU nurse to push a patient in a bed cart for testing at another unit, but she could not rule this out. (T. 99)

Ms. Otwell stated she did not encounter Petitioner until she was covering the CTICU, which was in December 2020 or 2021. (T. 101) Ms. Otwell was not aware of the exact nature of Petitioner's injury other than that she talked about her wrist and wore a brace. (T. 101–103) Ms. Otwell indicated she was not aware of Petitioner's symptoms other than her statement indicating she developed wrist pain. She did not know if the symptoms occurred while Petitioner was at work during her nursing shift. (T. 105)

On cross-examination, Ms. Otwell agreed that a CTICU nurse performed various tasks. (T. 107–109) Ms. Otwell stated she had never reviewed any of Petitioner's medical records as that information was protected. (T. 115) She did state that Petitioner wore a brace on her wrist during her first encounter with her when she became a full-time manager. (T. 116) However, Ms. Otwell could not recall if Petitioner wore any braces at the time she was covering for Robin Oakley's medical leave in December of 2020 or 2021. (T. 116)

Summary of Medical Evidence

On June 5, 2020, Petitioner sought treatment at the same hospital she worked in the ER department. (T. 11-12) Petitioner testified that she described to the ER doctors regarding the repetitive work accident. (T. 12) Petitioner testified that she first noticed the symptoms several

weeks or months prior to June 5, 2020, but the symptoms got worse, and she had a swollen arm and hand. (T. 12) She explained that she was unable to straighten her right arm and could barely move her right arm due to pain which was 7/10. (T. 12, Px 1, pages 69-74) Once X-rays were taken, Petitioner was referred to an orthopedic doctor within the Northwestern network. (T. 23)

Petitioner saw Dr. Matthew Saltzman at Northwestern on June 9, 2020. (Px 5, pages 640-641) On exam, she had point tenderness of her medial epicondyle and pain in her elbow with resisted wrist flexion. X-rays were negative. Dr. Saltzman recommended a medial counterforce strap, temporary work restrictions and occupational therapy two (2) to three (3) times a week for six (6) weeks. He issued restrictions of no repetitive pushing, pulling, or overhead activities with the right arm and no lifting greater than five (5) pounds for three (3) weeks. Petitioner presented to Northwestern Occupational Therapy on June 11, 2020. (Px 5, pages 619-620)

Dr. Saltzman reevaluated Petitioner on June 30, 2020 for right medial and lateral epicondylitis. (Px 5, pages 571-572) Petitioner complained of more tenderness to palpation over the lateral epicondyle and less over the medial epicondyle. Dr. Saltzman recommended stretching, lidocaine patch, counterforce strap, and ice. He issued work restrictions for the next three (3) weeks. On July 13, 2020, Petitioner reported doing better in therapy with her elbow but mentioned some tenderness near her wrist. (Px 5, page 166)

On July 21, 2020, Petitioner again presented to Dr. Saltzman. (Px 5, pages 149-162) Her right elbow symptoms improved with minimal tenderness over the medial and lateral epicondyles. She reported pain in the volar flexion crease of her wrist with palpable swelling. Dr. Saltzman noted that it may be a possible ganglion versus tendinitis. He issued work restrictions (no lifting over five (5) pounds and no pushing or pulling) for her right elbow for four (4) weeks. He referred her to the hand clinic at Northwestern network for evaluation and treatment of her wrist.

On July 22, 2020, Petitioner presented to therapy for her right elbow. (Px 5, pages 139-148) Her elbow pain improved, but she now had pain along her wrist with large cyst along ulnar side, asymptotic until recently. She met goals for current condition, but further evaluation was needed to assess wrist pain.

On July 28, 2020, Petitioner presented to Dr. Chirag Shah at Northwestern with report of right wrist, right thumb, and right-hand numbness and tingling. (Px 5, pages 488-490) Petitioner told Dr. Shah that she treated with Dr. Saltzman for lateral epicondylitis which she attributed to a work-related overuse injury in June 2020. She started having symptoms and then noticed pain as well as swelling over the ulnar aspect of her wrist. Petitioner reported always having swelling in this area but denied pain until after her “overuse injury." She had numbness and tingling along the index, ring, and small fingers as well as pain along the ulnar aspect of her wrist. She mentioned some pain at the base of her thumb with gripping and pinching activities. Dr. Shah noted in the exam that it was somewhat difficult to interpret as she had a negative Tinel's over the cubital tunnel with a negative flexion compression test over the ulnar nerve. She exhibited a negative Tinel’s over the median nerve, a positive Tinel's over the carpal tunnel with an equivocal Durkin carpal tunnel compression test. She reported some tenderness over the CMC joint with a mildly positive grind test and a negative Finkelstein's test. There was tenderness over the thumb A1 pulley with some swelling over the ulnar aspect of the ulnocarpal joint and some tenderness in the area over

the ulnar fovea as well as slightly volar to this area. Range of motion was otherwise intact. X-rays of her right wrist showed mild thumb CMC arthritis, joint space narrowing, osteophyte formation, with ulnar positive variance bilaterally of 2 mm on the right side and 2.5 mm on the left side. It was difficult to assess any true cystic changes within the ulnar aspect of the lunate. Dr. Shah diagnosed her with right thumb CMC arthritis moderate, right ulnar sided wrist pain, rule out ulnar impaction, right hand numbness and tingling, rule out carpal tunnel syndrome, and initiated splinting. Dr. Shah prescribed EMG/NCS studies to evaluate underlying peripheral compression neuropathy. He issued a thumb splint for daytime use and recommended MRI studies of her hand/wrist to further evaluation for possible ulnar impaction. He issued work restrictions of use of the thumb Spica splint on the right with no other limitations. A follow up visit was scheduled in four (4) weeks.

On August 10, 2020, Petitioner left a message for Dr. Saltzman indicating she began to have symptoms of tendinitis in her left arm for about two (2) weeks. She complained of burning, irritation, and discomfort. She requested to see him for a visit so she could attend therapy.

Dr. Saltzman reevaluated Petitioner on August 11, 2020. (Px 5, pages 126-135) Her right elbow continued to improve, but she now complained of left lateral elbow pain for the last two (2) weeks, and stated it was not work related. She was not sure how this started but reported that it felt similar to the right side. She wanted to have it addressed before it got worse. Dr. Saltzman noted left elbow point tenderness over the lateral epicondyle and pain with resisted wrist extension. He diagnosed her with right medial lateral epicondylitis and left elbow pain, which was a separate issue that she described as not work related. He instructed her to start physical therapy on the left side and return in six (6) to eight (8) weeks.

Petitioner underwent MRI studies of her right wrist at Northwestern on August 15, 2020. (Px 3, pages 915-922) The results revealed a cystic lesion around the distal ulnar area measuring 3.1 x 2 x 2.2 cm containing fluid levels consistent with a vascular malformation. There was increased signal of the median nerve within the carpal tunnel, which may reflect median neuropathy and should be correlated for signs and symptoms of carpal tunnel syndrome. There was evidence of mild tendinosis involving the extensor carpi ulnaris and tendons of the first extensor compartment. The TFCC was intact. On August 20, 2020, Petitioner underwent EMG/NCV studies. The results revealed a comparatively delayed right median sensory distal latency on palmar stimulation which raised the question of mild median neuropathy at the right wrist.

On August 25, 2020, Dr. Saltzman examined Petitioner's right elbow. (Px 3, pages 894-906) She reported improvement of her right elbow. On exam, there was no discreet tenderness over the medial or lateral epicondyle. She denied pain with resisted wrist extension or wrist flexion. She wore a well-fitting counterforce strap. He diagnosed her with lateral and medial epicondylitis on the right side. Her current symptoms were more neurologic in nature. He noted he would defer to Dr. Shah for those issues as she was at MMI for her right elbow with no additional workup or treatment necessary.

Dr. Shah saw Petitioner on August 26, 2020. (Px 5, pages 874-893) He reviewed her MRI studies diagnosed her with right thumb CMC arthritis moderate, right ulnar sided wrist vascular malformation, and right carpal tunnel syndrome. He recommended continued splinting and

administered an injection to the carpal tunnel. With vascular malformation, he instructed her to follow up with interventional radiology for embolization versus operative excision.

On March 5, 2021, Petitioner underwent repeat right wrist MRI studies after her first embolization procedure, which were compared to prior MRI studies on August 15, 2020. (Px 2, pages 178-179, 350-351) The results revealed a cystic lesion in the distal radial ulnar joint with a tear of the triangular fibrocartilage complex in the central portion. The scapholunate lunotriquetral ligaments were intact. A mildly increased signal was noted again in the median nerve with moderate osteoarthritis and synovitis of the first carpometacarpal. The radiologist noted an interval decrease in size at the vascular malformation within the distal radial ulnar joint, which was significantly decreased compared to the prior exam. The ulnar aspect of the mass was overall stable.

On April 16, 2021, Petitioner underwent another embolization procedure for her vascular malformation. (Px 2, pages 191-192) Petitioner presented for additional MRI studies on May 11, 2021 at Northwestern due to ongoing wrist pain after her embolization procedure. (Px 2, pages 252-253) The results revealed first metacarpal phalangeal osteoarthritis with edema, mildly increased signal in the carpal tunnel unchanged, intact ulnar nerve in Guyon's canal, lesion along the flexor carpi ulnaris tendon decreased in size with a large field view precluding accurate evaluation of the TFCC. The radiologist noted there was an interval decrease in size and cystic component of the deep portion of the vascular malformation compared to March 5, 2021 consistent with recent embolization. Surrounding soft tissue muscular and distal ulnar edema favored to be reactive. There was also a continued decrease in size of the previously emboli superficial portion of the vascular malformation along the flexor carpi ulnaris tendon compared to March 5, 2021.

Petitioner returned to Dr. Shah on May 19, 2021. (Px 3, pages 336-341) Petitioner reported she was referred for evaluation because a repeat MRI mentioned a potential central tear of the TFCC. Independent review of the patient's new MRI mentioned a central tear of her TFCC, which was minimal and showed a cystic lesion consistent with vascular malformation. Dr. Shah informed Petitioner that her symptoms were not related to the TFCC pathology, and she should continue with treatment for the vascular malformation. She needed to contact interventional radiology later this week to let him know about improvement in pain symptoms. He concluded that Petitioner did not require any surgical treatment, or any other restrictions.

On June 14, 2021, Petitioner underwent additional MRI studies of her right wrist due to persistent pain. (Px 2, pages 259-260) The radiologist noted the cystic lesion remained slightly proximal to the distal radial ulnar joint. The cystic component of the lesion was not significantly changed and there was mild associated edema in the adjacent soft tissues, stable to slightly decreased from prior MRI studies. This lesion was associated with pronator quadratus muscle and deep to the ulnar neurovascular bundle. There was distal ulna marrow edema adjacent to the lesion which appears to have progressed. There was evidence of chronic scarring and swelling involving the anterior oblique ligament with thinning of the central triangular fibrocartilage complex without evidence for significant tearing. There was still evidence of minimally increased signal of the median nerve in the carpal tunnel and mild flexor bursitis within the carpal tunnel. The radiologist noted mild extensor carpi ulnaris tendinosis and the Guyon's canal showed an intact ulnar nerve. The radiologist concluded she was status post ethanol embolization of the right wrist vascular malformation with continued decrease in size of the deep and superficial components. However,

the heterogeneous distal ulnar marrow edema was of uncertain etiology and slightly progressed from prior, possibly noted to be related to osteonecrosis or an unusual stress response.

On July 13, 2021, Petitioner contacted Dr. Robert Vogelzang's nurse for intractable right wrist pain after venous embolization procedure on April 16, 2021. (Px 3, pages 381-382) Tramadol was prescribed with a referral issued to pain management for August 4, 2021. (Px 3, pages 381-382)

On September 7, 2021, Petitioner contacted Dr. Heejung Choi, who she previously saw on August 4, 2021 for right wrist pain. (Px 3, pages 294-302) She requested medication and was referred to the interdisciplinary pain program at Shirley Ryan Ability Lab. (Px 3, pages 294-302) On October 7, 2021, she presented to Occupational Therapy to replace her orthoses and was referred for skilled fitting of the prefabricated wrist orthosis. (Px 3, pages 276-289)

At the request of Respondent, Petitioner presented to Dr. Biafora on September 23, 2021 for an Independent Medical Examination (IME). (Rx 11) After the IME, Petitioner testified that she was unable to complete her treatment at Northwestern. (T. 26) On October 20, 2021, Petitioner sought treatment with Dr. Wiesman of Illinois Orthopaedic Network. (T. 26) Petitioner testified that she had to change doctors because Respondent denied treatment after IME. (T. 26)

By way of evidence deposition, Dr. Wiesman testified that he was board-certified in plastic surgery and hand and microvascular surgery. (Px 1, page 5) He had been practicing for approximately twenty-one (21) years and completed about five hundred (500) surgeries. (Px 1, page 5) He first met Petitioner on October 20, 2021. (Px 1, page 6) Dr. Wiesman learned that Petitioner was a nurse in the cardiac transplant unit at Northwestern Hospital for over eighteen (18) years and that she cared for very sick, non-ambulating patients on ECMO and other respiratory machines. (Px 1, page 7) Dr. Wiesman conducted an examination and noticed that Petitioner was wearing a right wrist splint, she had diffused tenderness over the wrist with a tender mass on the ulnar aspect of the wrist, tenderness over the lateral and medial epicondyles (elbow region), positive Tinel's sign in the cubital tunnel (inside portion of the elbow where the ulnar nerve goes through), and had pain in the first CMC joint (base of the thumb). (Px 1, pages 7-8) Dr. Wiesman's impression during the first visit was that Petitioner had a right thumb CMC osteoarthritis; right wrist pain with a volar ulnar-sided mass or lesion; right cubital tunnel syndrome (ulnar nerve impingement at the elbow); and right medial and lateral epicondylitis; right forearm pain and paresthesia with possible posterior interosseous nerve syndrome or radial tunnel syndrome. (Px 1, page 8) On October 20, 2021, Dr. Wiesman gave Petitioner a steroid injection in the cubital tunnel as well as in the thumb at the CMC joint. (Px 1, page 8-9) Petitioner was also provided with an elbow extension splint to wear at night, a hand splint to help with the arthritis, prescribed Lyrica and topical cream, and placed on no work status. (Px 1, page 9) Dr. Wiesman reviewed an MRI and EMG that was previously completed at Northwestern. (Px 1, page 9) The MRI showed an arteriovenous malformation; the right upper extremity EMG showed a positive with mild carpal tunnel syndrome; X-rays of the right wrist showed CMC arthritis as well as a possible 2 mm ulnar positive variance. (Px 1, page 9)

On November 22, 2021, an MRI was completed for Petitioner's right wrist. (Px 1, pages 9-10) The MRI showed chronic tendinosis of the common extensor tendon, partial thickness tearing, acute on chronic, a partial thickness tear of the proximal insertional anterior fibers of the radial

collateral ligament, and intra-substance mucinous changes versus mild insertional tendinosis of the distal biceps tendon. (Px 1, page 10) The bilateral upper extremities EMG of January 24, 2022 showed a positive carpal tunnel syndrome and cubital tunnel syndrome (swelling in the ulnar aspect of the wrist). (Px 1, pages 10-11)

On March 8, 2022, Dr. Wiesman performed a wrist arthroscopy and a cubital tunnel release for the anterior transposition. (Px 1, page 12) Dr. Wiesman testified that Petitioner's need for surgery was causally related to her repetitive job duties with symptoms manifesting on June 5, 2020. (Px 1, page 12) Dr. Wiesman further testified that Petitioner's repetitive job duties for eighteen (18) years at Northwestern was a competent cause for her current condition regarding her right arm and hand. (Px 1, pages 12-13) Dr. Wiesman believed that Petitioner described a progressive discomfort that finally got to a point where she reported it, workups showed positive findings as well as on examination and diagnostics. (Px 1, page 13) Dr. Wiesman's opinion was that being an ICU nurse was a strenuous job that can bright about Petitioner's symptomatology. (Px 1, page 14) Dr. Wiesman believed that the longer you do the same job, same motion with muscles and nerves, more likely that it will cause a problem. (Px 1, page 14) Dr. Wiesman explained that when Petitioner's symptoms were worse during her shift but that it subsided when not working meant that the work was correlated to the symptoms. (Px 1, page 15)

Dr. Wiesman testified that the repetitive job duties can contribute or cause the symptoms described by Petitioner. (Px 1, pages 16-17) Dr. Wiesman testified that IV medication bags was low stress; dispensing oral medication was very low impact and low stress; dispensing food and water to patients was not strenuous; rotating non-ambulatory patients on a bed can be quite heavy and cause acute incident or contribute to the symptomatology; changing patients' clothes on the bed can be strenuous that cause or contribute to the symptomatology; changing patients' bed sheets can be an issue if the patient was on the bed; handling a patient's catheter was a low stress; handling patients' dialysis bags was a low stress; cardiac chest compressions can cause injuries and stress; using emergency equipment was a low stress; using a crash cart was a low stress; bending arms and upper body can cause some issues on the musculature and the nerves; stretching arms and upper body (if overstressed) can pull something; overhead reaching would not cause symptoms; gasping and using hands and fingers would not be a problem unless it's very forceful; flexing and extension issues can cause irritation of the median nerve in the carpal tunnel; bending at the elbows and wrists can cause irritation of the ulnar nerve in the cubital tunnel; pushing or pulling equipment of various weights can aggravate symptomology in the underlying musculature and nerves; and lifting weights up to fifty (50) pounds (if repetitive) can cause some issues of the underlying musculature. (Px 1, pages 18-21) Dr. Wiesman believed that some of the low impact job duties and activities can contribute to symptoms, and this was exactly what repetitive trauma would be. (Px 1, page 22)

Dr. Wiesman believed that all treatments Petitioner received thus far were reasonable and necessary and causally related to the work accident. (Px 1, page 22) He further believed that Petitioner's off work status from June 5, 2020 to January 10, 2023 was necessary and causally related to the work accident that included time when she was recovering from surgery. (Px 1, page 23) Dr. Wiesman recommended a functional capacity evaluation (FCE) for the Petitioner that was completed on September 29, 2022 by Dr. Dale Hooten at Associated Medical Centers of Illinois (AMCI). (Px 1, page 23, Px 13) Dr. Wiesman concurred with the finding in the FCE and believed

that Petitioner needed permanent work restrictions that included no lifting more than six (6) hours over five (5) pounds. (Px 1, page 23-24, Px 13)

On January 10, 2023, Dr. Wiesman last saw Petitioner when he released her at MMI with permanent work restrictions. (Px 1, page 23-24)

Dr. Wiesman reviewed Dr. Biafora's IME reported dated October 11, 2021, addendum report of July 25, 2022, and a second IME report of May 24, 2023. (Px 1, page 24) He disagreed with Dr. Biafora's assessment that none of the symptoms were work-related. (Px 1, pages 24-25) Dr. Wiesman believed that work was contributing to Petitioner's symptomatology. (Px 1, page 25)

On cross-examination, Dr. Wiesman confirmed that on August 18, 2022, he noted in his report that Petitioner had reached MMI for her wrist pain. (Px 1, page 27) After the surgery, he ordered another EMG to ascertain whether the nerves had improved with Petitioner continuing to complain of numbness and tingling. (Px 1, page 28) On EMG, Dr. Wiesman saw that there was an improvement with velocity and believed that the surgery had decompress it. (Px 1, page 28) Dr. Wiesman explained that the FCE was for the entire right upper extremity as well as other body parts that are engaged in all the activities. (Px 1, page 28)

Dr. Wiesman explained that he was not a board-certified orthopedic surgeon but was a plastic surgeon. (Px 1, page 29) His fellowship with Dr. Susan McKinnon in Upper Washington University included hand surgery involving peripheral nerve surgery.(Px 1, page 30) Per year, Dr. Wiesman performed approximately fifty (50) or more soft tissue (medial and lateral epicondylitis) surgery on elbows. (Px 1, page 30) He explained that he did not perform bone or joint related surgeries. (Px 1, pages 30-31)

Dr. Wiesman agreed that he did not review any medical records from Northwestern for Petitioner prior to October 20, 2021. (Px 1, page 33) Dr. Wiesman confirmed that Petitioner was left hand dominant. (Px 1, page 34) Dr. Wiesman was not aware of whether Petitioner had a prior complaint to her right elbow or right thumb CMC issues before June 5, 2020. (Px 1, page 34-35) Dr. Wiesman explained that constantly keeping your elbow in flexed at 90-degree angle for 10 (ten), 20 (twenty), 30 (thirty) minutes every hour would be classified as repetitive in terms of job duty. (Px 1, page 36) Dr. Wiesman was not aware of any problems that Petitioner had that lead to onset of her conditions that he treated. (Px 1, page 37) He stated that Petitioner informed him that she was on tramadol, Neurontin, and Tylenol but he was not aware if she had hypertension. (Px 1, page 37) He was aware that Petitioner smoked but was not aware how often or how long but did not believe that smoking caused her symptoms such as tendonitis or ligament injuries. (Px 1, page 37) Smoking can be a contributing factor to the development of carpal tunnel syndrome. (Px, page 38) Dr. Wiesman explained that he did not see the carpal tunnel during his surgery which was arthroscopic procedure on March 8, 2022. (Px 1, page 38)

Dr. Wiesman explained that Petitioner had consented to having carpal tunnel release but during the pre-op exam, this area was not bothersome and therefore, he did not perform this procedure. (Px 1, page 39) Smoking makes the nerve more susceptible but you would need to have a direct compression. (Px 1, page 39) Prior to October 20, 2021, Dr. Wiesman did not know the last time Petitioner sought treatment for her right elbow. (Px 1, page 39) Dr. Wiesman did know that

Petitioner underwent some physical therapy prior to his recommendation for surgery. (Px 1, page 39) He attempted to treat Petitioner conservatively by giving her injections, but it only gave her a temporary relief. (Px 1, page 40) When steroid injections failed, Dr. Wiesman continued with conservative treatment that included wearing a splint to rest, taking away pressure by limiting the range of motion, and prescribing anti-inflammatories. (Px 1, page 40) When this failed, Dr. Wiesman's next step was to perform a surgery. (Px 1, page 40)

Dr. Wiesman's operative report and chart notes documented a TFCC tear. (Px 1, page 40) He did not know when the TFCC tear occurred, but he did know that a TFCC tear could cause wrist pain which was demonstrated on the MRI. (Px 1, page 41) He acknowledged that some visits for Petitioner were by telehealth by physician's assistances ("PA"). (Px 1, page 41) Dr. Wiesman believed that a PA ordered an MRI arthrogram for Petitioner's right wrist. (Px 1, pages 41-42) The MRI arthrogram demonstrated evidence of the AVN osteonecrosis which was weakening or loss of bone due to poor circulation which can be aggravated by smoking. (Px 1, page 42) The vascular malformation that he treated can cause a thiel-type syndrome however, smoking alone very rarely causes osteonecrosis. (Px 1, page 43) Petitioner also had an embolism. (Px 1, page 43)

Dr. Wiesman did not review a job description for Petitioner. (Px 1, page 44) He believed that Petitioner's repetitive work activities caused her injury – in that, Petitioner had inflammation that could have been from strenuous repetitive use of the wrist; a TFCC tear was a high-impact type that could have been from lifting a 300-pound patient in an ICU bed. (Px 1, pages 44-45)

Section 12 Examiner – Dr. Sam Biafora

Respondent introduced into evidence the deposition transcript of Dr. Sam Biafora as Respondent's Exhibit 7. Attached to the deposition transcript marked as Exhibit 1 was Dr. Biafora's CV, Exhibit 2 was a Section 12 report dated October 11, 2021, Exhibit 3 was the addendum dated July 25, 2022, and Exhibit 4 was a Section 12 reevaluation report dated May 24, 2023. Dr. Biafora testified that he was an orthopedic surgeon licensed to practice medicine in the State of Illinois since 2010. (Rx 7, page 4-6) He acknowledged that his six (6) page CV submitted to Petitioner's attorney was current. (Rx 7, page 5, Exhibit 1) Dr. Biafora's CV was made part of the record without an objection. (Rx 7, page 9) Dr. Biafora was retained by the Respondent to conduct a report pursuant to Section 12 of the Act. Dr. Biafora's qualification to perform Section 12 examinations and testify were not in dispute.

Dr. Biafora first evaluated Petitioner on September 23, 2021 and issued a report dated October 11, 2021 detailing his findings. (Rx 7, page 11) Petitioner told him she first noticed pain in her right forearm in June 2020 and denied any specific injury. She stated her entire arm and hand were swollen. (Rx 7, page 11) She then stated she started to notice numbness in her right hand when she was performing light duty and eventually had treatment for a vascular malformation, arthritis, and carpal tunnel syndrome and was referred to interventional radiology. (Rx 7, page 12) Her complaints included pain in her upper back and neck, occasional pain in the lateral right elbow and forearm, as well as occasional right-hand middle, ring, and small finger numbness a couple times a week. (Rx 7, pages 12–13) She also had pain at the base of her thumb. She reported some pain in the distant past in her right arm for which she was seen at Occupational Health. (Rx 7, page 13) She did not say when she had those prior issues. (Rx 7, page 13) Dr. Biafora asked her about her

job duties, and she stated her duties varied and included computer work, changing IVs, answering the phone, admitting patients, occasionally moving heavy equipment, and transferring patients. (Rx 7, pages 14–15) She last worked in her regular job in April 2021. (Rx 7, page 15) Dr. Biafora testified about his findings on exam when he evaluated Ms. Banks on September 23, 2021. (Rx 7, pages 16-19) He noted she had some reproducible pain in the thumb CMC joint when he stressed that area. (Rx 7, page 17) She also showed a mildly irritated ulnar nerve at the cubital tunnel. (Rx 7, page 18) Dr. Biafora confirmed he reviewed numerous diagnostic studies and observed calcifications on her wrist x-ray taken on June 5, 2020, consistent with a vascular malformation. (Rx 7, page 20) He explained a vascular malformation was something a person was born with where vessels are abnormal or a little bit larger than they should be, and with time, they can engorge and become larger. (Rx 7, page 20) He reviewed her right wrist/hand MRI studies on August 15, 2020, March 5, 2021, and May 11, 2021, which showed a vascular lesion to the volar wrist. (Rx 7, pages 21–22) There was evidence of ulnar positive variance of the wrist which can potentially lead to or contribute to a TFCC tear, which was another finding eventually noted on later MRI studies. (Rx 7, pages 22-23)

Dr. Biafora reviewed the EIR from June 6, 2020. (Rx 7, pages 23–24) He reviewed the medical records from the initial ER visit. (Rx 7, pages 24–26) Dr. Biafora noted that Petitioner started to complain of issues of the right wrist around July 21, 2020 when she saw Dr. Saltzman. (Rx 7, page 27) Dr. Biafora noted that the medical records from Dr. Shah stated that Petitioner told Dr. Shah she "always had swelling" in the vascular malformation, but never had pain until after her overuse injury. (Rx 7, pages 27–29) Dr. Biafora also noted she saw Dr. Shah in May 2021 and Dr. Shah did not believe any of her wrist symptoms were related to the TFCC pathology noted on her recent MRI on May 11, 2021. (Rx 7, page 32)

Dr. Biafora's diagnoses included a history of right elbow medial and lateral epicondylitis, which in his opinion had resolved. (Rx 7, page 34) He also diagnosed her with a history of right wrist vascular malformation, which was improving, a history of thumb CMC joint arthritis, and right-hand numbness and tingling, which was of unclear etiology. (Rx 7, page 34)

When asked whether the medial and lateral epicondylitis conditions were related to her job duties, Dr. Biafora stated that those diagnoses are extremely common and a result of degenerative condition where the tendons degenerate over time. (Rx 7, pages 36-37) He noted these conditions can also result from an eccentric load, meaning an unexpected load through the elbow or through the arm or from activities that involved forceful gripping repetitively. (Rx 7, page 37) Dr. Biafora believed that given his review of her work activities, these job duties did not involve forceful grasping of a repetitive nature which would have aggravated even an underlying epicondylitis. (Rx 7, page 37) With regards to the vascular malformation, he noticed this was congenital and her work activities did not cause or aggravate this condition, even though these malformations often become symptomatic while performing any activity or regular activities. (Rx 7, pages 38, 40-41) With regard to her thumb CMC arthritis, he noted same as epicondylitis because Petitioner's job did not require constant pinching or grasping of power tools all day, even though any activities can become symptomatic. (Rx 7, page 38) With regard to her right-hand numbness and tingling complaints, he noted her work activities would not have caused a peripheral nerve compression as there was no strenuous forceful use on a repetitive basis that could have resulted in that compression. (Rx 7, page 38) Dr. Biafora did not state an opinion regarding when she reached MMI as he did not find

any of her conditions work related, so MMI did not apply. He did agree with Dr. Saltzman who had found that Petitioner was at MMI on August 25, 2020 for her right elbow condition. (Rx 7, pages 40-41) With regard to her ability to work as a CTICU nurse without restrictions, he concluded there was nothing precluding her from completing her job tasks. (Rx 7, pages 41–42)

Dr. Biafora testified he authored an additional report on July 25, 2022 after reviewing updated medical records. (Rx 7, page 43) He confirmed none of his opinions had changed. (Rx 7, page 53) He testified that doctors should not treat based on diagnostic studies but treat based on the age of the patients and the fact that someone at Petitioner's age would never have a normal MRI. (Rx 7, pages 45-49) He further testified that an MRI was not going to necessarily tell you what the person had. (Rx 7, pages 48–49) He noted you must correlate these findings clinically. (Rx 7, page 49) Dr. Biafora testified the surgeries Petitioner underwent were not causally related to her work activities and duties. (Rx 7, pages 53-54)

Dr. Biafora reevaluated Petitioner on May 4, 2023 and authored a report dated May 24, 2023. (Rx 7, page 55) In addition, he obtained an updated history and reviewed medical records. (Rx 7, pages 57–58) Dr. Biafora reviewed FCE audit report by Kathy Majeski, dated February 24, 2023, as well as the report from FCE performed by Dr. Hooten. (Rx 7, page 60) He noted in his practice, he will review the FCE report, but gave greater weight to his exam, the patient's complaints, and whether those complaints correlate with any findings in the FCE prior to imposing restrictions. (Rx 7, pages 60-61)

On cross-examination, Dr. Biafora confirmed that Petitioner's treating physician, Dr. Saltzman found that her work aggravated her elbow condition. (Rx 7, page 66-67) Dr. Biafora did not believe that Dr. Shah found that Petitioner's right-hand condition was work related. (Rx 7, page 68) Dr. Biafora testified that he was not aware that Northwestern had paid for Petitioner's benefits based on the opinions of Dr. Saltzman and Dr. Shah. (Rx 7, pages 70-71) Dr. Biafora agreed that working in the ICU required Petitioner to care for very sick and non-ambulatory patients; Petitioner had worked in ICU for eighteen (18) years doing the same job over and over; Petitioner used her hands and arms; Petitioner worked 12-hour shifts; Petitioner's job required bending of arms; Petitioner's job required stretching of arms; Petitioner's job required overhead reaching; Petitioner's job required grasping using fingers/hands; Petitioner's job required flexing of wrists; Petitioner's job required holding patients or equipment; Petitioner's job required pushing or pulling medical equipment using hands and arms; Petitioner dealt with medication and medical supplies; Petitioner's job required bending at elbows and wrists; Petitioner's job required using chest compressions in emergency situations; and Petitioner's job required using lifting equipment (potentially up to fifty (50) pounds). (Rx 7, pages 76-79) Dr. Biafora believed that these were the job activities that Dr. Wiesman found that contributed to Petitioner's symptoms. (Rx 7, pages 79-80) Dr. Biafora testified that he was not aware that Petitioner was unable to find a nursing job that would accommodate her FCE restrictions. (Rx 7, pages 82-83) Dr. Biafora was not aware that Dr. Wiesman testified that Petitioner's permanent work restrictions were causally related to June 2020 work injury. (Rx 7, pages 84-85)

FCE Audit

At the request of Respondent, Kathleen Majeski at Athletico authored a report dated February 24,

2023. (Rx 9) This report was titled, “Independent FCE Peer to Peer Audit.” According to Ms. Majeski, she reviewed FCE report from Dr. Hooten dated September 9, 2022, operative report from Dr. Weisman dated March 8, 2022, IME reports from Dr. Biafora dated September 23, 2021 and July 25, 2022, office notes from Dr. Weisman dated October 21, 2022 and November 23, 2022, and job descriptions of a staff nurse and emergency department nurse. (Rx 9) According to Ms. Majeski, the FCE report dated September 9, 2022 lacked substantiation and therefore, the tolerance level listed should be considered as Petitioner’s minimal ability. She pointed out that Petitioner’s heart rate did not elevate at least 25% over her resting baseline during the material handling testing. Pushing was stopped due to Petitioner meeting the job demand, but the documentation for pulling tolerance contradicts itself as under the reason stopped, it is listed as “met requirement." Under the column that indicates whether the job demand has been met, the evaluator indicated that it was “not met.” Additionally, the job requirements listed do not match the demands delineated in the provided job description that Ms. Majeski received from Respondent. Further, Ms. Majeski indicated the end of the AMCI report reflected her safe recommended lift as twenty-four (24) pounds occasionally, but it was not clear why this would be less than Petitioner’s demonstrated ability to lift thirty (30) pounds occasionally. She commented how the AMCI therapist then concluded that lifting over five (5) times per day at this level will place her at a significant medical risk. There was no documentation to substantiate to what medical risk Petitioner would be subjected to.

Ms. Majeski concluded the FCE was not based on the employer's job description, which showed Petitioner would be required to occasional lifting up to fifty (50) pounds. In terms of the method used, Ms. Majeski stated it was unclear whether the FCE was performed using a psychophysical or kinesiophysical methodology. As a result, this FCE may not accurately represent Petitioner’s full functional capabilities. In addition, Ms. Majeski noted that the FCE lacked adequate Reliability of Pain metric testing because there was no documentation regarding the use of research-based pain and activity questionnaires, some of which are specific to an upper body diagnosis. She believed that this was critical in determining whether the subjective complaints of Petitioner correlate to the diagnosis and objective findings during the FCE as well as to assess Petitioner’s reliability related to pain complaints and symptoms and her impact on function. Petitioner reported a pain level of 5/10 as pre-test and post-test pain level, while her pain level remained 5/10 for all tasks during functional testing. Ms. Majeski noted that the FCE report did not specify the number of criteria used to determine validity or the percentage of failed versus passed criteria in this decision. There was no functional activity circuit to confirm tolerances and no job specific testing performed during the FCE with repeated testing to verify maximum frequent weights Petitioner could lift. Instead, frequent and constant lifting tolerances were extrapolated from occasional lifting tolerances, which may not reflect Petitioner’s true capabilities. Her maximum sitting and standing times were not documented. Certain diagnostic studies were referenced including an EMG noted to be positive, but the evaluator did not indicate specifics as to what structures were involved in the positive finding or when the EMG was performed.

III. CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).*

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009)*. Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).*

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find material contradiction that would deem the witness unreliable. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the records.

The Arbitrator reviewed all medical records. The Arbitrator finds the findings and opinions of Drs. Saltzman, Shah, and Wiesman to be more persuasive and consistent with the evidence and the reasonable inferences derived from the evidence over the opinions of Dr. Biafora.

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

An employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d).* Both elements must be present at the time of the claimant's injury in order to award compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, *131 Ill. 2d 478, 483 (Ill. 1989).*

The phrase "in the course of employment" refers to the time, place, and circumstances of the injury. *McAllister v. Illinois Workers' Compensation Comm'n, 2020 IL 124848, ¶ 34*. A compensable injury occurs 'in the course of' employment when it is sustained while he performs reasonable activities in conjunction with his employment. *Id.*

"The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id. at ¶ 36*. To determine whether a claimant's injury arose out of his employment, the risks to which the claimant was exposed must be categorized. *Id*. The three categories of risks are "(1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal

characteristics." *Id. at ¶ 38*. "A risk is distinctly associated with an employee's employment if, at the time of the occurrence, the employee was performing (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties." *Id. at ¶ 46.*

An employee who alleges injury based on repetitive trauma must still meet the same standard of proof as other claimants alleging an accidental injury. There must be a showing that the injury is work related and not the result of a normal degenerative aging process. *Peoria County Belwood v. Industrial Comm'n*, *115 Ill. 2d 524, 530 (Ill. 1987).*

Petitioner alleged repetitive trauma to her right elbow and right wrist manifesting on June 5, 2020 because of performing her regular work duties and responsibilities as a CTICU nurse for Respondent for eighteen (18) years. In the EIR dated June 6, 2020, Petitioner stated, "I began experiencing discomfort in my right arm in the elbow region. The discomfort started to get progressively worse. I applied a warm pack and an ace wrap to the area and continued my patient care duties. The patient was prescribed multiple IV medications, oral medications were crushed using a pill crusher and administered via feeding tube. The patient required blood draws at scheduled intervals, and additionally the patient received blood products this shift. This was my second consecutive shift caring for the patient. I took phone calls from various providers and departments during my shift." (Px 15, Rx 8) In other medical records, Petitioner stated hanging IV bags and reaching caused her issues. (Px 4, Px 1) On direct examination, Petitioner stated the job duties which brought about these symptoms included hanging IV bags, turning and positioning patients in bed, pushing patients on carts for tests off the unit, changing sheets, giving baths, and things of that nature. (T. 13)

Respondent's witness, Ms. Otwell corroborated Petitioner's testimony regarding her duties and responsibilities as a CTICU nurse. She described that typical patients in the CTICU were surgical patients who have undergone cardiac surgery or lung transplant. (T. 94) Nurses in this unit were responsible for getting them up to a chair the next morning and then walking and physical therapy in the hallway. (T. 94) Job duties included assessing patients hourly by taking vital signs, observing urine output, and looking at chest tubes. (T. 95) CTICU nurses also monitor different waveforms, turn patients over every two (2) hours, bathe patients, help them ambulate, titrate medications, and administer medications. (T. 95) She said that there was no task that the nurses do repetitively, but that the tasks varied based on the type of patients. (T. 95) She agreed that the amount of blood products or IV bags varied based on the type of patients, and that sometimes, the nurses would have to push a patient in a bed cart for testing. (T. 99) All the above duties required Petitioner to use her hand and arm which is a risk that is distinctly associated with her employment.

Petitioner worked for Respondent for eighteen (18) years full time, 12-hour shift, thirty-six (36) hours per week doing exactly what was described above. These daily job duties required reaching, bending at elbows/wrists, grasping, pushing, pulling, and lifting. In addition, Petitioner's right hand and arm symptoms would be most severe at the end of a work shift compared with the days she was off work. Petitioner's symptoms gradually got worse leading up to June 5, 2020 accident date.

Based on the above, the Arbitrator finds that Petitioner proved by a preponderance of the credible evidence that she sustained repetitive trauma to her right hand, wrist, and elbow arising out of her employment on June 5, 2020 as a result of her job duties and responsibilities as a CTICU nurse.

Issue E, was timely notice of the accident given to Respondent, the Arbitrator finds the following:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

A claimant must give notice of an accident to the employer "as soon as practicable, but not later than 45 days after the accident." 820 *ILCS* 305/6(c). The giving of notice to the employer within 45 days of the accident pursuant to Section 6(c) of the Act is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act. *Ristow v. Industrial Comm'n*, *39 Ill. 2d 410, 413 (Ill. 1968).* A claim is barred if no notice whatsoever is given. *Gano Electric Contracting v. Industrial Comm'n, 260 Ill. App. 3d 92, 96 (Ill. 1994).*

Section 6(c) provides in part, "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy" and "[n]otice of the accident shall give the approximate date and place of the accident, if known, and may be given orally or in writing." *820 ILCS 305/6(c).*

Respondent claimed that Petitioner failed to give proper notice regarding the right wrist because she did not complain about her right wrist until July 21, 2020 at a visit with Dr. Salzman. From the medical records, it appeared that the first time Petitioner complained about her wrist was on July 13, 2020, at Northwestern Occupational Therapy. (Px 5, page 166) Occupational Therapist Renee McDade noted that Petitioner "reports some tenderness near her wrist but otherwise reports doing better." (Px 5, page 166) On July 21, 2020, Petitioner informed Dr. Saltzman that her right elbow symptoms improved but reported having pain in the volar flexion crease of her wrist with swelling. Dr. Saltzman issued work restrictions (no lifting over five (5) pounds and no pushing or pulling) for her right elbow for four (4) weeks and referred her to Dr. Shah for further evaluation and treatment. On July 28, 2020, Petitioner presented herself to Dr. Shah and began treatment for her hand and wrist.

The EIR that Petitioner submitted on June 6, 2020, one day after the accident, stated in part that she experienced discomfort in her right arm in the elbow region, she used ice pack and wrapped it with an ace wrap." She further stated that she unwrapped the ace wrap to show Brenda Rocha (charging RN) noting swelling and bruising." (Px 15)

Based on medical records and other evidence submitted into evidence, testimonial evidence presented at trial, the Arbitrator finds that Petitioner provided notice for repetitive trauma when she submitted EIR on June 6, 2020. (Px 15) Even if the notice contained a defect or inaccuracy, Respondent failed to submit any evidence that he/she was unduly prejudiced. Furthermore, the Act requires approximate date and place of accident, not what body parts were injured. Lastly, once Petitioner's EIR was submitted, she began receiving benefits supporting the fact that Respondent

did in fact received notice. (Px 16)

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).* "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).*

In repetitive trauma cases, "gradual injury stemming from repetitive trauma clearly is compensable under the Workers Compensation Act as long as the employee proves the injury is work-related and not the result of normal degenerative processes." *Zion Benton TP H.S. Dist. v. Indus. Comm'n, 609 N.E.2d 974, 978 (1993).* The claimant need only prove that some act or phase of employment was a causative factor of the resulting injury. *Three "D" Discount Store v. Industrial Com., 198 Ill. App. 3d 43, 49, 556 N.E.2d 261, 265 (4th Dist. 1989).* It is well established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition." *Sisbro Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205 (2003).* Further, "[t]here is no legal requirement under workers compensation law that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Edward Hines Precision Components v. Industrial Comm. 825 N.E.2d 773, 780 (2nd Dist. 2005)*

First, Petitioner described her duties and responsibilities as a CTICU nurse, corroborated by Ms. Otwell, that caused pain to her hand and elbow and then to her wrist. (T. 10-11, 94-96) Petitioner testified that she noticed pain in her right elbow that radiated down her wrist and hands during her shift on June 5, 2020. (T. 10-11) She further testified that she first experienced symptoms in her right hand and arm several weeks or months prior to June 5, 2020 that got worse as time went on. (T. 12)

Second, Petitioner sought treatment at Northwestern Medicine Emergency Medicine on June 5, 2020 that continued to September 2021. (Px 2, Px 3) During this time, Petitioner met with many doctors and underwent numerous diagnostic assessments, and none of the treating doctors opined that her symptoms were not related to her job duties and responsibilities. In fact, Dr. Salzman noted in his medical records that Petitioner's condition was related to repetitive job duties and classified Petitioner's work injury as work-related. (Px 2, Px 3)

Third, after treating Petitioner from October 20, 2021 to January 10, 2023, Dr. Wiesman credibly testified that Petitioner's repetitive job duties performed over eighteen (18) years of employment with Respondent caused or aggravated her right hand and arm condition. (Px 1) Supporting his casual connection opinion, Dr. Wiesman testified that Petitioner's job as a critical care nurse in the ICU unit was "fast paced" and that an ICU nurse had a strenuous job that can bring about symptomatology. (Px 1, pages 14-15). Dr. Weisman further testified that the fact that Petitioner worked long, 12-hour shifts was also factor in his causation opinion. (Px 1, page 15). Dr. Wiesman opined that a correlation between symptoms and repetitive work activity existed because Petitioner's symptoms would be at their worst at the end of a work shift and subsided when not working. (Px 1, page 16).

Finally, Dr. Biafora, the Respondent's Section 12 examiner testified that the medial and lateral epicondylitis conditions were extremely common and a result of degenerative condition where the tendons degenerate over time, instead of work-related. (Rx 7, pages 36-37) Respondent's own treating doctor, Dr. Salzman's notes contradicted this opinion. Dr. Salzman found that Petitioner's "medial and lateral epicondylitis on the right side from a work-related injury." (Px 3, page 767) In fact, Dr. Biafora did testified that he knew that Dr. Salzman found that Petitioner's work aggravated her elbow condition. (Rx 1, pages 66-67) Dr. Biafora believed that given his review of Petitioner's job duties, because her duties did not involve forceful grasping of a repetitive nature, it would not aggravate even an underlying epicondylitis. (Rx 7, page 37) With regards to the vascular malformation, even though these malformations often become symptomatic while performing any activity or regular activities, he found that it was not work-related. (Rx 7, pages 38, 40-41) With regard to her thumb CMC arthritis, he noted this was the same as epicondylitis as it usually become symptomatic while performing regular activities, but Petitioner's job duties did not require constant pinching or constant grasping of power tools all day, it was not work-related. (Rx 7, page 38) With regard to her right-hand numbness and tingling complaints, he noted her work activities would not have caused a peripheral nerve compression as there was no strenuous forceful use on a repetitive basis that could have resulted in that compression. (Rx 7, page 38)

The Arbitrator finds Dr. Biafora's opinions to be incredible. Dr. Biafora's opinion is that performing any or regular activities can cause or aggravate an underlying epicondylitis, vascular malformation, CMC arthritis, and right-hand numbness and tingling, like the conditions of Petitioner. However, he did not believe that Petitioner's conditions were result of her job duties because her duties did not include forceful pinching or constant grasping of a repetitive nature. Petitioner's job duties included, as testified by her, and corroborated by Ms. Otwell, taking care of surgical patients who have undergone cardiac surgery or lung transplant that required her to get them up to a chair the next morning and then walking and physical therapy in the hallway, assessing patients hourly by taking vital signs, observing urine output, looking at chest tubes, monitoring different waveforms, turning patients over every two (2) hours, bathing patients, helping them ambulate, titrating medications, and administering medications using her hands and arms for 12-hour shift, thirty-six (36) hours per week, eighteen (18) years. (T. 11-16, 94-95)

The Arbitrator finds and concludes that the medical opinions of Drs. Salzman, Shah, and Wiesman to be more persuasive than those of Dr. Biafora. Dr. Biafora's findings and opinions are inconsistent with the objective diagnostic findings and his own opinions. Based on Petitioner's

testimony, the medical records and the findings and opinions of Drs. Salzman, Shah, and Wiesman, the Arbitrator finds Petitioner has proven by a preponderance of the evidence that her current condition of ill-being with respect to her right hand/wrist and elbow are causally related to the repetitive trauma accident of June 5, 2020.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

Section 8(a) of the Act states a Respondent is responsible "…for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. *See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).*

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for all of the said treatment. Dr. Weisman testified that the medical treatment Petitioner received was reasonable, necessary, and causally related to the accident. (Px 1, pages 23-24). Petitioner introduced into evidence as Petitioner's Exhibit 17 as the unpaid medical bills in the amount of $171,408.26. As such, Respondent shall pay the following balances:

Provider	Balance	Dates
Illinois Orthopedic Network	$75,828.61	10/20/21 to 1/11/23
Preferred Prescriptions Pharmacy	$21,535.59	10/20/21 to 4/27/22
MRAD Imaging	$ 3,900.00	11/22/21
Preferred Open MRI	$ 1,200.00	1/20/22
AMCI South Holland Medical	$10,631.00	1/24/22 to 12/12/22
Midwest Specialty Pharmacy	$ 59.56	3/8/22
Metro Anesthesia Consultants	$ 6,191.35	3/8/22
Victory Enterprises II Inc.	$ 3,793.00	3/8/2 to 8/18/22
QMED Assist Inc.	$19,349.45	3/9/22 to 4/27/22
ATI Physical Therapy	$21,167.20	5/23/22 to 6/27/22
Preferred Imaging	$ 7,752.50	8/9/22
TOTAL:	**$171,408.26**	

Respondent shall pay reasonable and necessary services which total $171,408.26 per the Illinois fee schedule, and as provided in Sections 8(a) and 8.2 of the Act. Respondent shall not receive credit under Section 8(j) for any medical bills paid. The only medical bills paid by Respondent were from Northwestern facilities. (Rx 1) Petitioner did not submit any unpaid medical bills from Northwestern facilities. (Px 7) Therefore, 8(j) credits for medical payments are not applicable.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).* In determining if a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010).*

Dr Wiesman testified that Petitioner's off work and restricted work status from June 6, 2020 to January 10, 2023, was reasonable, necessary, and causally related to the accident of June 5, 2020. (Px 1, pages 23-24) Dr. Weisman also testified that he released Petitioner MMI with permanent work restrictions per the FCE including no lifting over five (5) pounds and that the permanent work restrictions were causally related to the work accident of June 5, 2020. (Px 1, page 25) Following the ER visit on June 5, 2020, Petitioner was kept on off work or restricted work status each visit by either Drs. Saltzman, Shah, or Wiesman up until Petitioner was released MMI with permanent restrictions on January 11, 2023 which totals 135 4/7 weeks. Further, Respondent shall pay Petitioner maintenance benefits from January 11, 2023 to the date of the hearing January 25, 2024 representing 54 2/7 weeks at a rate of $1,400.41, given that Petitioner authenticated job search logs (Px 14) and confirmation of receipts of job applications from employers (Px 17A) from September 25, 2022 to January 18, 2024 showing that Petitioner was unable to find employment within her permanent FCE restrictions.

The Arbitrator finds that Petitioner is entitled to TTD benefits from June 6, 2020 to January 10, 2023 or 135 4/7 weeks, and maintenance benefits from January 11, 2023 to January 25, 2024 or 54 2/7 weeks at a rate of $1,400.41.

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

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

In determining PPD benefits, Section 8.1b(b) of the Act directs the Commission to consider: "(i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records." *820 ILCS 305/8.1b(b); Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n, 2016 IL App (1st) 152576WC, ¶ 22, 67 N.E.3d 959.* "No single enumerated factor shall be the sole determinant of disability." *820 ILCS 305/8.1b(b).*

With regard to Subsection (i) of Section 8.1(b), Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The statute does not require the claimant to submit an impairment rating. It only requires that the Commission consider such a

report if in evidence and regardless of which party submitted it. *See Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Comm'n, 2015 IL App (5th) 1404 45 WC 17.* The Arbitrator gives no weight to this factor.

With regard to Subsection (ii) of Section 8.1(b), the occupation of the employee, the Arbitrator notes that Petitioner sustained a loss of occupation. Petitioner worked as an ICU nurse for Respondent for eighteen (18) years. At trial, Petitioner authenticated job search logs (Px 14) and confirmations of receipts of job applications from employers (Px 17A) from September 25, 2022 to January 18, 2024 showing that Petitioner was unable to find employment within her FCE restrictions. Due to permanent work restrictions, Petitioner can no longer work in her occupation as a nurse. Petitioner worked in nursing since 1982 has no other job skills in other occupations outside of nursing. The Arbitrator gives the greatest weight to this factor.

With regard to Subsection (iii) of Section 8.1(b), the age of the employee, Arbitrator notes that at the time of the accident, Petitioner was 55 years of age. (Ax 1). Due to Petitioner's age, she will likely experience residuals of her injury for the duration of the work life ahead of her. *See Flexible Staffing Services v. Illinois Workers' Compensation Comm'n, 68 N.E 3d 846 (1st Dist. 2016).* The Arbitrator gives moderate weight to this factor.

With regard to Subsection (iv) of Section 8.1(b), Petitioner's future earning capacity, Arbitrator notes that the Petitioner's pre-injury salary was $109,231.72. Petitioner's current income is $0. Coupled with Petitioner's age, lack of other job skills and experience outside of nursing, and inability to return to nursing due to permanent work restrictions, Petitioner sustained a severe loss in future earning capacity. The Arbitrator gives great weight to this factor.

With regard to Subsection (v) of Section 8.1(b), evidence of disability corroborated by treating medical records, the Arbitrator notes that Petitioner sustained significant right arm and hand injuries requiring surgery and permanent restrictions that is corroborated by the treating medical records and Dr. Weisman's testimony. On November 22, 2021, an MRI of the right elbow states: "partial thickness tearing acute . . . partial thickness tear" (Px 7, page 975-976) and the MRI of the right wrist states: "Oblique fracture of the distal shaft . . . tear of the volar bank." (Px 7, page 978) On January 23, 2022, an EMG states: "this is an abnormal electrodiagnostic study." (Px 10, page 987) On March 8, 2022, Dr. Wiesman performed right hand and arm surgery. (Px 6, pages 929-930) On September 29, 2022, the FCE revealed permanent work restrictions including a five-pound lifting restriction. (Px 13, pages 1049-1053) On January 11, 2023, Dr. Wiesman discharged Petitioner MMI with permanent work restrictions noting that "FCE restrictions are permanent." (Px 6, pages 971-973) The Arbitrator gives great weight to this factor.

After considering the above five (5) factors and the entirety of the evidence, the Arbitrator finds that Petitioner sustained 45% loss of use of her person based on a loss of occupation. Respondent shall pay Petitioner 225 weeks of permanent partial disability benefits at the maximum PPD rate of $836.69 per week, because the injuries sustained caused 45% loss of use of person-as-a-whole based on a loss of occupation as provided in Section 8(d)2 of the Act.

In support of the Arbitrator's decision with respect to issues (N) and (O), other issues including loss of occupation and credits, the Arbitrator finds:

The Arbitrator adopts her findings of fact and conclusions of law contained above and incorporates them by reference as though fully set forth herein.

As outlined in section (L) above, Petitioner sustained a loss of occupation.

Respondent shall be given a credit of $42,212.37 for TTD, $4,646.42 for TPD, $0 for maintenance, and $32,351.35 short term disability benefits, for a total credit of $79,210.14 (Ax 1). As explained in section (J) above, Respondent shall not receive credit for medical bills as 8(j) credit is inapplicable.

It is so ordered:

Jennifer E. Bae

Arbitrator Jennifer E. Bae

March 12, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015014
Case Name	Matthew Randolph v. Marion Police Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0555
Number of Pages of Decision	24
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Andrew Keefe

DATE FILED: 11/20/2024

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MATTHEW RANDOLPH,

Petitioner,

vs. NO: 22 WC 15014

MARION POLICE DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission affirms the Arbitrator's finding that Petitioner was entitled to TTD benefits from 6/16/2022 through 4/21/2023 in the amount of $42,948.27 ($969.80 x 44 2/7 or 44.2857 weeks), but modifies the Arbitrator's Decision with respect to the credit due Respondent. The parties stipulated on the Request for Hearing form (Arb. Ex. 1) that Respondent was entitled to a TTD credit of $21,893.08 as well as credit for PEDA benefits that were paid totaling $47,564.40. The sum of both credits is $69,457.48.

Notwithstanding the parties' stipulation, the Public Employee Disability Act, or PEDA, limits the amount of credit that can be awarded. Section 1(d) of PEDA states: "Any salary compensation due the injured person from workers' compensation or any salary due him from any type of insurance which may be carried by the employing public entity shall revert to that entity during the time for which continuing compensation is paid to him under this Act." *5 ILCS 345/1(d)*. This provision is also consistent with Section 8(j)2 of the Act which states:

> Nothing contained in this Act shall be construed to give the employer or the insurance carrier the right to credit for any benefits or payments received by the employee other than compensation payments provided by this Act, and where the employee receives

> payments other than compensation payments, whether as full or partial salary, group insurance benefits, bonuses, annuities or any other payments, the employer or insurance carrier shall receive credit for each such payment only to the extent of the compensation that would have been payable during the period covered by such payment. *820 ILCS 305/8(j)2*.

As such, the Commission finds that Respondent is entitled to a credit of $21,893.08 for actual TTD benefits previously paid. Respondent is also entitled to a credit for PEDA payments but only up to $21,055.19 – the equivalent of the remaining TTD benefits owed Petitioner – for a total combined credit of $42,948.27.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 13, 2024 is hereby modified as stated and otherwise affirmed and adopted.

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

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

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

November 20, 2024

CAH/pm
O: 11/7/24
052

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

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

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC015014
Case Name	Matthew Randolph v. Marion Police Department
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	21
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Andrew Keefe

DATE FILED: 2/13/2024

/s/Linda Cantrell, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 6, 2024 5.045%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Matthew Randolph
Employee/Petitioner

v.

Marion Police Department
Employer/Respondent

Case # **22** WC **015014**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **12/11/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an 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 **4/18/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**75,644.40**; the average weekly wage was $**1,454.70**.

On the date of accident, Petitioner was **39** years of age, ***married*** with **1** dependent children.

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

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

Respondent shall be given a credit of $**21,893.08** for TTD, $**0** for TPD, $**0** for maintenance, and $**47,564.40** in PEDA benefits paid, for a total credit of $**69,457.48**, pursuant to the stipulation of the parties.

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

ORDER

Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 1, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall be given a credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**969.80**/week for **44-2/7** weeks, commencing **6/16/22** through **4/21/23**, pursuant to Section 8(b) of the Act. The parties stipulated to an average weekly wage of $1,454.70, resulting in a TTD rate of $969.80. Pursuant to the stipulation of the parties, Respondent shall receive a credit of $69,457.48, representing $21,893.08 in temporary total disability benefits and $47,564.40 in PEDA benefits paid, resulting in an overpayment of TTD benefits in the amount of $26,509.21 ($969.80 x 44.2857 = $42,948.27 - $69,457.48 = -$26,509.21).

Respondent shall pay Petitioner permanent partial disability benefits of $**872.82**/week for **150** weeks, because the injuries sustained caused permanent partial disability to the extent of **30%** loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 11/16/23 through 12/11/23, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Arbitrator Linda J. Cantrell

February 13, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MATTHEW RANDOLPH,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 22-WC-015014**
	)	
MARION POLICE DEPARTMENT,	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on December 11, 2023. On 6/9/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to his right knee, right hip, right shoulder, neck, and body as a whole as a result of attempting to place a resisting suspect into custody on 4/18/22. (AX2) Respondent stipulated that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent on 4/18/22. The parties stipulated that Respondent shall receive credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act. The parties further stipulated that Respondent is entitled to a credit of $21,893.08 in temporary total disability benefits and $47,564.40 in PEDA benefits paid. Respondent claims an overpayment of TTD benefits from 6/16/22 through 11/16/22 in the amount of $21,893.08.

The issues in dispute are causal connection, medical expenses, temporary total disability benefits, and the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 39 years old, married, with one dependent child at the time of accident. Petitioner was employed by Respondent as a Sergeant. He testified that on 4/18/22 he came up behind a male suspect who was attempting to kick in the door of a building. He grabbed the suspects arm and attempted to pull him off a stoop that was approximately three feet high. Petitioner testified, "As I was pulling him, as his momentum was coming towards me, not wanting him to fall, I reached up and stopped him, brought him off the stoop. He still resisted arrest, at which time I took him to the ground". Petitioner testified that he injured his knee, hip, and neck.

Petitioner testified that he underwent x-rays and physical therapy on his knee and hip that improved his symptoms. He denied any ongoing issues with his knee or hip. Petitioner treated

with Dr. Bradley for his neck/shoulder condition. He underwent physical therapy that did not alleviate his symptoms. Petitioner began treating with Dr. Gornet on 6/16/22 and underwent surgery in July 2022. Petitioner testified that before his surgery he had constant shoulder pain that radiated into his neck and the back of his skull, but no neck pain. Petitioner testified that surgery improved his symptoms but his pain, tingling, and numbness returned. He underwent a second surgery in November 2022 that resolved the numbness and radiating pain.

Petitioner testified that prior to 4/18/22 he had not undergone any MRIs, surgeries, or physical therapy with regard to his cervical spine. He stated that Dr. deGrange told him before his first surgery that he had a large herniation and needed surgery. Petitioner testified that he began working for the Herrin Police Department in October 2023 to seek better employment opportunities. He continues to have neck pain with certain activities. His pain increases with wearing a hard helmet or Kevlar jacket for long periods of time, and his handgun shooting is "no where [sic] near where it used to be." His hobbies of fishing and hiking have been adversely affected. He experiences stiffness in his neck, radiating pain, or a migraine with weather changes. Petitioner takes one to three Ibuprofen per week for his symptoms.

On cross-examination, Petitioner testified that he has not reviewed the dash cam video entered into evidence or spoken to his treating physicians about the video. He agreed that he arrived at the scene at 9:54:16 before his work shift began. He agreed that he approached the suspect and took him by his left hand at 9:54:29. He testified that he fought with the suspect because he would not go to the ground or come away from the door. Petitioner testified that he had to pull the suspect multiple times to get him off the porch. He testified that he did a straight arm bar takedown and pulled the suspect to the ground. Petitioner testified that Officer Coleman helped him put the suspect on the ground. He could not recall if Officer Coleman helped him remove the suspect from the stoop or who handcuffed the suspect after the takedown.

Petitioner testified that he drove the suspect to the jail and the police department but he could not recall any discussions he had with the suspect. He and Officer Coleman completed reports following the arrest. Petitioner stated he would not dispute any information he provided in his written report. He agreed that he told his treating physicians that he was injured while fighting with a suspect. Petitioner testified that after he was released by Dr. Gornet in April 2023 he returned to full duty work without restrictions for Respondent.

Petitioner testified that he has a history of migraines and has taken medication in the past on an irregular basis. He agreed that he worked full duty for a period of time after the work accident and was then placed on restrictions. He did not recall presenting to Heartland Regional Medical Group on 5/20/22 and requesting to be returned to full duty work. Petitioner testified that he has an old LinkedIn account. On 7/7/22, Petitioner posted on LinkedIn that he had been a police officer working patrol for over a decade and was looking to transition to investigations, contractor work, and firearm industry. Petitioner testified that he was not planning on leaving his employment with Respondent in 2022 and that he made the post a long time ago.

Petitioner testified that his right hand tremors that he had in September 2022 resolved. He stated he did not have right hand tremors prior to the work accident. Petitioner testified that he still has migraines. His arm symptoms have resolved.

MEDICAL HISTORY/ACCIDENT REPORTS

On 4/18/22, Petitioner completed an Illinois form 45 indicating he was injured while attempting to gain control of a suspect. (PX16) Petitioner reported he attempted to put the suspect on the ground to apply handcuffs and injured his right knee, right hip, and right shoulder and he had consistent pain after ground contact.

On 4/18/22, Petitioner completed a police report and indicated that upon arrival at the scene he observed Officer Coleman yelling at the suspect to step down from the porch. (PX17, RX2) Petitioner observed the suspect in the doorway ignoring Officer Coleman's commands. Petitioner stated he grabbed the suspect's left wrist and pulled him towards himself. He stated that due to the height of the porch to the ground he [Petitioner] stopped the suspect before he left the porch and ordered him to step down. The suspect eventually stepped off the porch to the ground. Petitioner placed the suspect on the ground to be secured in handcuffs. Petitioner stated that due to the suspect's continuous aggressive behavior/attitude towards the officers, he arrested the suspect, walked him to his patrol car, and escorted the suspect to jail.

On 4/18/22, Officer Jovontae Coleman completed a Supplemental Incident Report. (PX17, RX2) Officer Coleman reported that upon arrival he observed the suspect kicking and punching a residential door. The suspect ignored his commands to get down off the porch. Petitioner grabbed the suspect's left hand while Officer Coleman held the suspect's right hand and they assisted the suspect off the porch to the ground. He and Petitioner went to the ground with the suspect and he [Coleman] handcuffed the suspect. Officer Coleman helped the suspect to his feet and escorted him to a patrol car.

A dash cam video of the incident was admitted into evidence. (PX18, RX1) The video depicts Petitioner approach the suspect that was standing on a concrete porch that was several feet off the ground. Petitioner remained standing on the ground and used his right hand to grab the suspect's left hand. Petitioner attempted to pull the suspect off the porch and the suspect resisted. Petitioner appeared to forcibly pull on the suspect's left hand for three seconds before Officer Coleman grabbed the suspect's right hand and together they pulled the suspect off the porch. The officers forcibly took the suspect to the ground on his stomach. Petitioner's body is seen going to the ground quickly in a forward motion and to the right side. He restrained the suspect on the ground for approximately ten seconds while the suspect was handcuffed. Both officers helped the suspect off the ground.

On 4/29/22, Petitioner was examined by Terri Hartman, NP at SIMCA Occupational Health. (PX3) NP Hartman noted Petitioner was injured when he was trying to get a suspect off the porch. He was "helping the guy down" and trying to get him on the ground but ended up falling and landing on his right knee. Petitioner reported pain in his right hip and knee that changed his gait, and he was walking with his right foot turned outward. Petitioner reported he had intermittent right shoulder pain that was not bothering him much anymore. NP Hartman noted no edema, redness, or abrasions to Petitioner's right knee or hip. X-rays of Petitioner's right hip and knee were normal. NP Hartman diagnosed pain in the right knee and right hip. Petitioner was returned to work without restrictions, referred for physical therapy, and instructed to follow up. NP Hartman did not indicate what body part was to be addressed in therapy.

On 5/3/22, NP Hartman noted Petitioner's right knee and hip pain were better and he had ongoing right shoulder pain. Petitioner reported that his right shoulder was injured in the first incident with the suspect, but he had subsequent encounters and felt as though he re-injured his shoulder. Petitioner reported that after the initial altercation with the suspect, he picked something up and experienced pain in his right anterior shoulder, numbness in his fourth and fifth fingers, and shooting pain down the posterior elbow. Physical examination of the right shoulder revealed normal range of motion, no unilateral weakness, point tenderness on the anterior aspect along the subscapularis and AC joint, and thickening of the trapezium muscle. NP Hartman diagnosed pain in the right knee and right shoulder. She ordered physical therapy for Petitioner's right shoulder and indicated she spoke to the physical therapist regarding the new complaint. She considered a right shoulder MRI and prescribed restrictions of limited use of the right shoulder and arm through his follow up visit on 5/17/22.

Petitioner began physical therapy on 5/3/22 for a chief complaint of "pain in right knee and hip". It was noted that the mechanism of injury was fighting someone to arrest and during takedown his knee hit the ground. As the night progressed the pain increased, and he started limping. Petitioner reported that later that evening he was reaching for a clipboard in his passenger seat and experienced sharp pain and a shocking sensation in his fourth and fifth digits. Physical examination focused on Petitioner's right lower extremity and treatment provided was limited to ultrasound to the right hip/glut region.

On 5/12/22, the therapist noted Petitioner's right hip pain was zero, his right knee pain was minimal at 2/10, and the majority of his pain was located at his right shoulder, but he did not rate his pain. His sleep returned to normal and he did not wake at night due to pain or discomfort. His worst rated pain was 4/10. Physical examination and treatment focused on Petitioner's right lower extremity.

On 5/16/22, a right shoulder MRI was performed that showed bursal-sided supraspinatus tendinopathy and mild anterior infraspinatus bursal-sided tendinopathy with no evidence of a tear. (PX4)

On 5/20/22, Petitioner returned to NP Hartman and reported pain at rest at 3/10 and 5-6/10 with movement. NP Hartman did not indicate which body part Petitioner was referring to. Petitioner stated he had a high pain tolerance and "I have never really had any really bad pain it just keeps me from doing the things that I want to do". He questioned if it was normal for him to have a limp on the right side and numbness and tingling in the 4th and 5th fingers on his right hand. Petitioner stated he was bored with performing light duty and he wanted to get back to work. Petitioner complained of pain in the anterior right shoulder. Physical examination revealed thickening in the axillary area and right teres minor that did not appear to be tender. NP Hartman reviewed Petitioner's MRI and noted that physical therapy for Petitioner's right shoulder had not yet been approved. She continued Petitioner's work restrictions and instructed him to return in three weeks.

On 5/23/22, Petitioner presented for his second of four authorized physical therapy sessions related to his right hip and knee. On 5/26/22, Petitioner reported a constant aching pain in his right scapular area that he rated 3/10, that increased to 5/10 with reaching activities and

caused a stabbing sensation. Petitioner reported that the day prior he was holding a clipboard for five minutes and his 4th and 5th fingers became stuck, and he had to forcibly pry them open.

On 5/31/22, the physical therapist noted Petitioner was on his second week off work due to shoulder pain. His shoulder was painful with movement, throwing, and reaching above shoulder height. Physical examination revealed reduced extension at 4+/5 in his right shoulder, tenderness to the right upper trapezius, and decreased scapular mobility. It was noted that the tightness and pain in Petitioner's right hip and knee had nearly resolved; however, his right shoulder, scapular, and upper trapezius symptoms were worsening. He underwent ultrasound to the right cervical, upper trapezius, and medial scapular areas. It was noted that Petitioner had an appointment with Dr. Bradley.

On 6/2/22, Petitioner was examined by Dr. Matthew Bradley at Metro East Orthopedics for right shoulder and elbow pain. (PX5) Dr. Bradley noted that on 4/18/22 Petitioner was called for backup on a break in. He entered the building, grabbed the suspect to perform a takedown, and he went over a three-foot drop with the suspect and another officer. Dr. Bradley noted that after Petitioner went back to the precinct to write his report, he was stretching his right hand and felt an electrical feeling in his 4th and 5th digits. Petitioner reported significant shoulder pain that radiated into his neck and down his right arm. Examination of Petitioner's shoulder and elbow were normal with some pain to palpation over the levator scapulae. X-rays of the right shoulder and elbow were normal. Dr. Bradley assessed myofascial periscapular pain of the right shoulder for which physical therapy was ordered, traumatic cubital tunnel syndrome for which an EMG/NCS was ordered, and possible radiculopathy from the cervical spine for which a cervical MRI was ordered. He allowed Petitioner to return to work without restrictions.

On 6/6/22, Petitioner returned to physical therapy and reported his hip and knee were back to normal and he was working without restrictions. He reported continued right shoulder pain rated 1-2/10, with occasional symptoms in his 4th and 5th digits. Physical examination revealed reduced strength in the right shoulder, rhomboid, and middle and lower trapezius, tenderness in the right upper trapezius, and decreased scapular mobility. It was noted that Petitioner had postural deviations and weakness of the interscapular musculature with altered functional movement patterns and tenderness to palpation at the coracoid process. He underwent ultrasound of the bilateral cervical and upper trapezium areas.

On 6/8/22, Petitioner began physical therapy at Athletico Therapy for his right shoulder. (PX6) It was noted that his symptoms began on 4/18/22 when he was on duty restraining a suspect. Petitioner reported that his knee and hip were giving him more trouble initially, but his symptoms resolved. A neurologic screening assessment was normal, however, his cervical exam showed right-sided tightness and decreased range of motion on left cervical rotation and side bending. Examination of his right shoulder revealed decreased strength and range of motion. Petitioner reported increased symptoms in his hand. He rated his pain 2/10 and reported his symptoms were aggravated with reaching and lying on his shoulder. Petitioner reported he avoided strenuous activity since his injury. His pain was located in the upper back and radiated toward his shoulder blade, the back of his armpit, and the outside of his upper arm and fingers.

On 6/9/22, Petitioner underwent a cervical spine MRI at Midwest Imaging Specialists that revealed left lateral recess herniated and cranially extruded disc fragments at C5-6 and C6-7 with extension of disc herniation in the neural foramina bilaterally at C5-6 and into the left neural foramen at C6-7, with moderate to severe left greater than right C5-6 and left-sided C6-7 foraminal stenosis, and moderate central canal stenosis at both levels. (PX4, p. 3) There were also left paracentral foraminal and right foraminal protrusions at C4-5 resulting in mild left greater than right foraminal stenosis, and lobulated left paracentral and right foraminal protrusions at C3-4 resulting in mild right greater than left formals stenosis.

On 6/13/22, Petitioner reported to his physical therapist that he gained some improvement after his initial treatment. (PX6, p. 9) On 6/15/22, Petitioner reported that he re-injured himself while trying to "constrain" a suspect. He reported that his shoulder seemed okay but he was having pain in the back of his upper arm.

On 6/16/22, Petitioner underwent a right upper extremity EMG/NCS that revealed mild cubital tunnel syndrome and moderate carpal tunnel syndrome. (PX7) Petitioner returned to Dr. Bradley the same day with intermittent and unchanged numbness and tingling in his fingers. (PX5, p. 2) Petitioner reported he had continued daily headaches. Dr. Bradley reviewed the EMG/NCS and noted moderate carpal tunnel syndrome, with no impingement of the ulnar nerve at the elbow or wrist. He did not believe that Petitioner's symptoms were consistent with carpal tunnel syndrome but were more consistent with cubital tunnel or cervical radiculopathy. He recommended that Petitioner follow up with a spine specialist following his cervical MRI as he suspected the etiology of Petitioner's right upper extremity numbness and tingling was coming from his cervical spine. He placed Petitioner off work until he was evaluated by a spine surgeon.

Petitioner was examined by Nathan Collins, PA at Dr. Matthew Gornet's office. (PX8, p. 2) PA Collins noted Petitioner had neck pain to the base of his neck and into his bilateral trapezius and shoulders, particularly on the right, that radiated down his right arm, numbness and tingling in his right hand, pain in his right scapula, and frequent headaches. The history of injury was noted, and Petitioner reported he had immediate pain following the incident but was able to finish his shift. Petitioner reported that his symptoms became so severe his employer told him to go to occupational health. Petitioner reported that he complained of shoulder and arm pain at occupational health, but his complaints were not addressed. Petitioner reported that he returned to occupational health and was adamant about addressing his shoulder and arm symptoms at which time a right shoulder MRI was ordered. PA Collins noted that Dr. Bradley did not feel Petitioner's symptoms were emanating from his shoulder. PA Collins noted that Petitioner had some chiropractic care for routine maintenance approximately 10+ years prior; however, he had no previous problems of significance with regard to his neck.

Physical examination revealed decreased range of motion in all directions but particularly with flexion and extension. Motor exam revealed decreased biceps, wrist dorsiflexion, and volar flexion at 4/5 on the right, and decreased sensation in the C6 and C7 dermatomes on the right. PA Collins reviewed the cervical MRI and interpreted large herniations at C5-6 and C6-7, an extruded disc fragment at C5-6, a cranial extruded fragment at C6-7, disc pathology at C3-4 with an annular tear and more subtly at C4-5. He noted that Petitioner had components of axial neck pain and headaches in conjunction with radicular symptoms. Given the size of Petitioner's

herniations and his weakness, a disc replacement surgery was recommended from C3 through C7 which was discussed with Dr. Gornet. Petitioner was continued off work and cautioned against falls due to the size of the herniations. PA Collins opined that if Petitioner's verbal history of injury was factually correct, then his condition and need for treatment was related to the work accident.

On 6/27/22, Petitioner underwent a cervical CT scan that showed left lateral recessed protrusions at C5-6 and C6-7 with disc and foraminal height loss and endplate spurring resulting in moderate to severe left greater than right foraminal stenosis, left lateral recess stenosis and moderate central canal stenosis at both levels, and small central protrusions at C3-4 and C4-5 resulting in dural displacement with mild bilateral foraminal stenosis at C4-5. (PX10)

On 6/27/22, Petitioner was examined by Dr. Gornet who noted mild decreased function in the biceps, wrist dorsiflexion, and volar flexion on the right, and decreased sensation at the C6 and C7 dermatomes on the right. (PX9, p. 6) Dr. Gornet noted Petitioner had bilateral neck pain, headaches, and trapezium pain. He believed the MRI views on the right showed herniations into the foramen at C3-4 and C4-5 and large central herniations at C5-6 and C6-7. He recommended disc replacements at C5-6 and C6-7 with a distinct possibility of disc replacements at C3-4 and C4-5. Dr. Gornet continued Petitioner off work pending surgery.

On 6/28/22, Petitioner was examined by Nathaniel Clark, PA at Prairie Cardiovascular Consultants for preoperative cardiac clearance. (PX11) PA Clark noted Petitioner had a history high blood pressure and migraines that were stable for years utilizing Propranolol. Petitioner was cleared for surgery.

On 7/5/22, Dr. Gornet performed disc replacements at C5-6 and C6-7 with Dr. John Peloza and PA Collins assisting. (PX8, p. 8) On 7/18/22, Petitioner reported a dramatic difference in his pain and his arm symptoms dramatically improved. Petitioner continued to have some achiness into his trapezius and shoulders bilaterally. X-rays showed some settling of the superior component at C6-7; however, there was no evidence of major subsidence or mitigation. Dr. Gornet noted that his pathology at C3-4 and C4 5 could account for some of his trapezius and shoulder pain; however, it was too early to determine whether same would need to be treated.

On 8/15/22, Petitioner was examined by Allyson Joggerst, PA at Dr. Gornet's office and reported continued improvement. Petitioner had intermittent right shoulder blade pain and the achiness in his trapezius has subsided. Petitioner was instructed to wean out of his brace and begin walking. Petitioner was continued off work.

On 10/17/22, Petitioner underwent a postoperative CT scan. (PX10, PX8) Radiologist Ruyle interpreted persistent left foraminal stenosis at C5-6 and C6-7, a left paracentral protrusion at C3-4, and a left paracentral foraminal protrusion at C4-5. Dr. Gornet noted Petitioner was doing well but activity without wearing his cervical collar caused increased right trapezium pain and headaches. Dr. Gornet noted that Petitioner's prior MRI showed foraminal herniations on the right at C3-4 and C4-5. He felt that Petitioner had a global injury from the very beginning and recommended treatment at C3-4 and C4-5.

On 11/1/22, Dr. Donald deGrange generated a Section 12 report following a records review. (RX4, Ex. 2) Dr. deGrange opined that the records revealed inconsistencies, contradictions, and discrepancies. He did not believe there was a causal connection between the disc replacements performed by Dr. Gornet at C5-6 and C6-7 and the work accident. In review of the 6/6/22 cervical MRI, Dr. deGrange identified osteophyte complexes at C5-C7, with the pathology being left-sided and causing left lateral recess compromise. He pointed out the existing nerves at C5 and C6 on the right were not compromised and there was no right-sided pathology on the axial or foraminal views. He did not agree with the reported pathology at C3-C5. Dr. deGrange identified significant facet arthropathy at C5-C7 on the 6/27/22 CT scan. He did not believe there was any evidence of acute pathology identified on the scans or in the operative report. He noted that the documented cubital and carpal tunnel diagnosis would account for Petitioner's reported right hand/finger symptoms. He opined that even if it was claimed Petitioner aggravated a pre-existing cervical condition, his symptoms would have resolved within six weeks post-accident. He did not believe Petitioner required additional treatment.

On 11/15/22, Dr. Gornet performed disc replacements at C3-4 and C4-5. Intraoperatively, Dr. Gornet noted bilateral foraminal herniations at C4-5 mostly on the right and left bilateral foraminal herniations at C3-4 greater on the right. Dr. Gornet noted the objective findings correlated well with Petitioner's trapezium pain on the right.

On 12/1/22, Petitioner followed up with PA Joggerst and reported he could tell a difference in his neck symptoms. He reported a fine tremor in his right hand since September 2022. PA Joggerst noted they would monitor the tremors. Petitioner was continued off work.

On 1/5/23, Dr. Gornet noted Petitioner was doing exceedingly well. (PX8, p. 26) He had 5/5 strength in all groups and a dramatic improvement in his right trapezium pain and headaches. Petitioner brought the records review report from Dr. deGrange for Dr. Gornet to review. Dr. Gornet noted that Dr. deGrange did not explain why Petitioner continued to have symptoms six weeks post-accident which was not consistent with a strain. He noted that Dr. deGrange did not address the fact Petitioner had no significant problems with his neck prior to the work accident. Dr. Gornet opined that Petitioner's accident could easily aggravate or injure an underlying problem in the cervical spine and he believed that Petitioner sustained both an aggravation and an injury. Dr. Gornet indicated that Petitioner had clear objective findings on MRI, which correlated well with his objective findings on physical exam. He stated that there was no other plausible explanation other than to associate the pathology present on Petitioner's MRI as being aggravated or caused by the incident.

On 1/12/23, Petitioner was examined by Dr. deGrange pursuant to Section 12 of the Act. (RX4, Ex. 2) Dr. deGrange took a history that Petitioner was apprehending a resisting suspect on 4/18/22 during a violent confrontation when he developed knee, hip, and especially right shoulder pain. Petitioner reported that his shoulder was swollen for several weeks after the incident. Petitioner reported his symptoms had subsided for several weeks after the 7/5/22 surgery but returned to the pre-existing level by September or October, which resulted in a second surgery on 11/15/22. As of the exam date, Petitioner reported he was good, had no neck pain, and no upper extremity symptoms. Dr. deGrange noted Petitioner had persistent mildly

positive Tinel's at the right elbow. Based on Dr. deGrange's evaluation and review of medical records/films, he believed Petitioner sustained an injury to his right shoulder, right hip, and right knee as a result of the 4/18/22 work incident. Dr. deGrange noted that the first mention of neck pain was documented in Dr. Bradley's 6/2/22 office note. He opined that neither cervical surgery was reasonable, necessary, or causally related to the work incident. He reiterated that Petitioner would have been considered MMI six to eight weeks post-incident.

On 2/27/23, Dr. Gornet noted that Petitioner was doing well with some persistent mild weakness in his right arm. A repeat CT scan showed persistent foraminal stenosis at C3-C7 with no lucency. Dr Gornet reviewed Dr. deGrange's Section 12 report dated 1/12/23. He noted that Dr. deGrange felt that Petitioner sustained injuries to his right shoulder, right hip, and right knee, but not his cervical spine. Dr. Gornet felt that this finding was curious given the fact Dr. Bradley found no significant shoulder pathology causing his right shoulder symptoms. Dr. Gornet indicated that he frequently saw patients with shoulder pain emanating from the cervical spine. He stated that the fact Petitioner predominantly had shoulder pain from the initiation of his work injury should not exclude a cervical injury. He stated that the fact Petitioner's shoulder symptoms resolved after cervical surgery clearly supported that his initial complaints of shoulder pain were related to his cervical spine. He noted that Dr. deGrange did not comment on the fact Petitioner had an excellent result from his cervical treatment. Dr. Gornet released Petitioner to work full duty on 4/16/23 after completion of upper extremity strengthening.

Petitioner underwent physical therapy at Joyner Therapy from 3/6/23 through 4/28/23. (PX13)

On 5/25/23, Dr. Gornet noted Petitioner continued to do well; however, prolonged sitting in his new patrol car bothered his neck with fixed head positions and the size of the vehicle. Dr. Gornet reviewed with Petitioner his records from Occupational Health which indicated right shoulder pain after his accident. Dr. Gornet discussed with Petitioner the overlap between right shoulder and arm symptoms that emanate from the cervical spine. Dr. Gornet opined that Petitioner's shoulder symptoms emanated from his cervical herniations. Dr. Gornet noted that Petitioner had returned to full duty work. He recommended that Petitioner drive an SUV patrol car if available and ordered Petitioner to follow up in six months.

On 6/8/23, Dr. deGrange generated a third report following review of additional medical records, a dash cam video, and an incident report completed by Petitioner. (RX4, Ex. 2) Dr. deGrange stated that the history contained in the records of Nurse Hartman, Dr. Bradley, PA Collins, and Dr. Gornet was not consistent with the video. Dr. deGrange stated the new information further supported his opinion there was no causal connection between Petitioner's cervical spine, the surgeries, and the work incident.

On 11/16/23, Dr. Gornet noted Petitioner was doing well, working full duty with no restrictions, and was doing well with his job duties at the Herrin Police Department. A CT scan showed no evidence of lucency. (PX8, PX10) Dr. Gornet noted that Petitioner had mild residual pain at times that was normal. He released Petitioner at MMI and ordered him to follow up in one year.

Dr. Matthew Bradley testified by way of deposition on 10/11/23. (PX15) Dr. Bradley is a board-certified orthopedic surgeon. He testified that his initial examination of Petitioner's shoulder and elbow was normal aside from reported intermittent tingling in the 4th and 5th digits. His initial working diagnosis was shoulder pain, traumatic cubital tunnel syndrome, and possible radiculopathy from a cervical spine injury. He opined that Petitioner's conditions of ill-being were causally related to the work accident based on the mechanism of injury and that Petitioner had no prior history of injury or pain. Dr. Bradley interpreted the right shoulder MRI as normal with some tendinopathy. He agreed with the radiologist's interpretation of the cervical MRI and referred Petitioner to Dr. Gornet. He testified that the EMG/NCS showed very mild slowing of the nerve consistent with cubital tunnel. He testified that Petitioner's symptoms could have been coming from a pinched nerve in the arm or his neck, but he suspected it was coming from his neck based on the MRI and EMG findings. He testified that Petitioner's shoulder MRI showed tendinopathy which could cause pain, but it does not typically cause weakness. He testified that there is considerable overlap in symptoms from shoulder and neck injuries. Dr. Bradley deferred to Dr. Gornet for causation opinions with respect to Petitioner's cervical spine.

On cross-examination, Dr. Bradley testified that tendinopathy in the shoulder can cause pain in the shoulder and arm but usually not weakness. He testified that Petitioner reported on his intake form that he was "fighting with a suspect at work". Dr. Bradley stated that during his initial examination Petitioner pointed to the base of his neck and trapezius area where he felt pain. He explained that many patients refer to it as shoulder pain when it is actually the muscles around the shoulder and part of the neck that is injured and not the shoulder itself. He testified that when he initially examined Petitioner on 6/2/22 he felt that his strength, motion, and pain were such that he could continue to work as a police officer. Dr. Bradley testified that the diagnoses of carpal and cubital tunnel syndrome were incidental findings because Petitioner did not have any symptoms.

Dr. Matthew Gornet testified by way of evidence deposition on 8/17/23. (PX14) Dr. Gornet is a board-certified orthopedic surgeon. He testified that Petitioner reported grabbing a suspect and dragging him off a porch that was approximately three feet above the ground. He swept the suspect's legs to take him to the ground, they both fell, and he landed hard on his right side. Dr. Gornet opined that Petitioner's mechanism of injury was consistent with a cervical spine injury. He testified that it is very common for patients to mistake a neck injury for a shoulder injury due to the interplay in symptoms which progress over time. He testified that some patients with shoulder pain with a cervical origin have only shoulder pain and upper arm symptoms and possibly numbness and tingling, and other patients have symptoms that progress from the shoulder to the trapezium muscle and into the neck. He explained that thickening of the trapezium muscle, which Petitioner had, is often related to spasm which is a normal constellation of symptoms of shoulder or a referred pain from the cervical spine.

Dr. Gornet testified that Petitioner did not have a history of neck or right shoulder symptoms prior to 4/18/22 and he was working full duty at the time of the accident. He diagnosed disc injuries at C3 through C7 and suspected Petitioner's radicular symptoms were coming from C5-6 and C6-7 and his axial neck pain and headaches were coming from C3-4 and C4-5. He opined that the objective MRI findings were consistent with Petitioner's subjective complaints and his cervical condition was causally related to the work accident. Dr. Gornet based

his opinion on clear objective pathology that could cause shoulder and trapezial pain at all of the levels; his physical examination correlated with Petitioner's shoulder etiology, including weakness of his biceps, wrist dorsiflexion, and volar flexion; the EMG/NCS showed only mild nerve entrapment; the tingling in Petitioner's arm was consistent with the objective disc injuries; his weakness was consistent with injuries at C5-6 and C6-7; and the intraoperative findings were consistent with the objective pathology seen on the scans. He testified that Petitioner's condition significantly improved with surgery; however, when he weaned out of his cervical collar and began increasing activity, he began to have right trapezium pain and headaches. Dr. Gornet testified that trapezium pain usually emanates partly from C3-4 and since Petitioner had clear foraminal herniations at that level, he was concerned that this level was still a part of Petitioner's symptoms. He opined that both surgeries were causally related to Petitioner's work accident. He explained that Petitioner had clear, objective, large herniations and significant weakness, which had to be addressed fairly urgently before he sustained more prolonged nerve damage.

Regarding Dr. deGrange's opinion that there was an absence of complaints involving cervical involvement following the accident, Dr. Gornet explained, "Well, I would say that's sort of skirting the issue. He complained of shoulder pain immediately. And so if you just look at this at a 30,000-foot view, he had significant shoulder pain immediately. Very short period of time, he also had trapezial thickening, which is probably spasm. His pain is consistent with the cervical origin, but more important, now that we look back and know that he doesn't have significant shoulder pathology, what's the cause of his shoulder pain? And his shoulder pain didn't resolve until we operated on his cervical spine. We found objective studies. All that indicates a cervical spine origin of his shoulder pain. That was there immediately. And given the knowledge of treating like or similar patients who present sometimes only with shoulder pain as the manifestation of their cervical spine problems, this gentleman is just as consistent. He did develop neck pain later and headaches, which was part of the evolution, but his shoulder discomfort was there from the beginning".

Dr. Gornet was asked if he agreed with Dr. deGrange's opinion that the C5-6 and C6-7 surgery documented only degenerative changes, to which he replied, "No, I believe that they were traumatic at all of the levels, is my opinion. And when we removed the pathology present, the patient did well and is back to work full duty, which is the purpose of doing any surgery, is to cure and relieve the effects of his work injury. The fact that Dr. deGrange makes that statement, he is -- again, you're not picking up on the misleading comment. He said in asymptomatic individuals. In asymptomatic individuals. I don't think Dr. deGrange, the physical therapist, Dr. Bradley, myself ever felt that Mr. Randolph was asymptomatic. So to apply a standard for what may be a tear in the disc in an asymptomatic individual is inconsistent with the symptomatic. And there is no -- not been a study done with that. What we can say in this case is, removal and addressing the structural tears in the disc and herniations addressed his problem, and he is back to work full duty. I think that speaks volumes".

On cross-examination, Dr. Gornet testified that he understood Petitioner fell on his shoulder and went to the ground. He stated that either the altercation, the force involved in trying to subdue the suspect, or the fall could have caused his cervical injury. He testified that sitting in a car and reaching for a clipboard would not cause a shoulder injury. Dr. Gornet testified that generally a person has symptoms into the ring and little fingers with cubital tunnel syndrome. He

testified that intraoperatively he noted the majority of the disc herniations at C5-6 and C6-7 were central left, but there was a smaller extension to the right side. He noted that the majority of the pathology at C3-4 and C4-5 was right-sided. He testified that Petitioner had bilateral trapezius pain with no radiculopathy down the left arm. Dr. Gornet disagreed that Petitioner did not immediately report symptoms related to his neck because the trapezius symptoms were part of his neck injury. Dr. Gornet was not aware of a history of Petitioner picking something up after the work accident that caused anterior shoulder pain and numbness and tingling into his right fingers. He testified that the physical therapist graded Petitioner's shoulder strength as 4/5, which is the same grading by his office 8 to 10 days later.

Dr. Donald deGrange testified by way of evidence deposition on 7/18/23. (RX4) Dr. deGrange is a board-certified orthopedic surgeon. He reviewed the Form 45 that indicated Petitioner's right knee, right hip, and right shoulder were injured in the work accident, with consistent pain after ground contact. He testified that Petitioner did not mention any neck injury when he treated ten days after the accident on 4/29/22, but some mild intermittent right shoulder pain was noted that was not bothering him much anymore. Dr. deGrange testified that there can be overlap in symptoms with shoulder and neck injuries. He testified that if it were a soft tissue neck injury the symptoms could take several days to manifest. He did not note any cervical injury in Petitioner's physical therapy records dated 5/3/22. He stated the medical records did not mention any complaints of pain radiating into Petitioner's neck prior to Dr. Bradley's initial examination on 6/2/22, which there was no sound orthopedic explanation for. Dr. deGrange testified that the physical therapist's record dated 6/8/22 did not mention Petitioner's neck.

Dr. deGrange testified that Petitioner's treating physicians noted numbness and tingling in his right 4th and 5th fingers and Dr. Bradley found an unstable ulnar nerve at the elbow which was confirmed by EMG/NCS. Dr. deGrange reviewed the MRI dated 6/9/22 and noted bone spurs and left-sided herniations at C5-6 and C6-7 causing nerve root compression. He testified that Petitioner's MRI findings were not acute and there was clear evidence of chronicity. He interpreted no right-sided herniations or compression. Dr. deGrange testified that Petitioner's right radiculopathy was consistent with his diagnosis of cubital and carpal tunnel syndrome. He testified that Dr. Gornet's operative findings of a large tear and central herniation on the right at C6-7 was contradictory to the MRI findings. Dr. deGrange testified that he saw no fragments on the right side. He opined that Petitioner's cervical condition was not causally connected to the work accident.

Dr. deGrange testified that he did not interpret any right-sided herniations that were removed during the second cervical surgery. He opined that neither of the surgeries were reasonable or necessary and Petitioner did not sustain a cervical injury as a result of the work accident. He testified that Petitioner would have reached MMI for his right shoulder, hip, and knee four weeks after the accident.

Dr. deGrange testified that the history contained in the incident reports and medical records of Dr. Bradley and Dr. Gornet were inconsistent with the dash cam video. He did not observe any cervical injury when reviewing the video.

On cross-examination, Dr. deGrange testified that he charged approximately $10,000 for the Section 12 reports, examination, and first hour of his deposition. He testified that he does not perform disc replacement procedures. He agreed that a cervical spine injury could cause symptoms in the shoulder and trapezius. He did not agree with Dr. Ruyle's interpretation of the cervical MRI dated 6/9/22. Dr. deGrange did not appreciate any right-sided protrusions at C3-4, right foraminal protrusions at C4-5, or any right-sided pathology at C5-6. Dr. deGrange noted moderate left and mild right central canal stenosis at C5-6 with a large bulge and stenosis on the left. He did not agree that central canal stenosis can cause symptoms on either side because they do not follow any specific nerve root distribution. He testified that there was a fissure at C5-6 and C6-7 which is degenerative. He does not use the term "tear" because it suggests an acute injury. Dr. deGrange testified that the pathology noted by Dr. Ruyle would not cause symptoms into the trapezius or headaches. He agreed that the pathology could cause neck symptoms. He was not aware that Petitioner sustained any injuries after 4/18/22 or had any symptoms in his right shoulder, trapezius, or neck prior to the work accident. He agreed that degenerative pathology can be asymptomatic. He had no evidence that Petitioner's underlying degenerative cervical condition was symptomatic prior to the work accident.

Dr. deGrange testified that Petitioner's recitation of the accident was inconsistent with the video because he did not recall Petitioner fall to the ground with the suspect. Dr. deGrange testified that the video depicted Petitioner helping the suspect to the ground after Officer Coleman back-kneed the suspect. He did not see Petitioner drag the suspect off the porch. He testified that the summary Petitioner provided in his narrative report was consistent with what he observed on the video. He disagreed with Petitioner that he had a violent confrontation with the suspect. He did not observe any activity on the video that would cause a cervical injury. He testified that falling to the ground and landing on your side is not enough to cause trauma to the cervical spine. He agreed that it could cause a shoulder injury if Petitioner landed on his right shoulder. He testified that Petitioner's shoulder and trapezius symptoms were not related to his cervical spine.

CONCLUSIONS OF LAW

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

A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, 976 N.E.2d 1 (2011)
In addition to or aside from expert medical testimony, circumstantial evidence may also be used to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724 (4th Dist. 1994); *International Harvester v. Indus. Comm'n*, 442 N.E.2d 908 (1982)

The Commission has acknowledged there is overlap between shoulder injuries and cervical spine conditions. See *Tiffany Molton v. Red Bud Reg'l Care*, 18 I.W.C.C. 0381; *Jennifer Miller v. SOI/ Shawnee C.C.*, 23 I.W.C.C. 0463.

Petitioner was 39 years old at the time of the accident. According to his LinkedIn page, he had been a police officer working patrol for over a decade. He had no history of symptoms, injuries, or treatment to his cervical spine and he was working full duty without restrictions prior to the work accident.

The Arbitrator finds Petitioner's police report and Illinois Form 45 consistent with the dash cam video entered into evidence. The video depicts Petitioner standing on the ground and grabbing the suspect's left hand while the suspect stood on a concrete porch. Petitioner attempted to pull the suspect off the porch and the suspect resisted. Petitioner forcibly pulled on the suspect's left hand for three seconds before Officer Coleman grabbed the suspect's right hand and they both pulled the suspect off the porch. The officers forcibly took the suspect to the ground on his stomach. Petitioner's body is seen going to the ground quickly in a forward motion and to the right side. He restrained the suspect on the ground for approximately ten seconds while the suspect was handcuffed.

Petitioner's written report indicated he grabbed the suspect's left wrist and pulled him towards himself. He stated that due to the height of the porch to the ground he [Petitioner] stopped the suspect before he left the porch and ordered him to step down. The suspect eventually stepped off the porch to the ground and Petitioner placed the suspect on the ground to be handcuffed. Petitioner reported injuries to his right knee, hip, and shoulder. The Arbitrator finds Dr. deGrange's testimony inconsistent with the dash cam video. Dr. deGrange reviewed the video and testified that Petitioner was not involved in any activity that could cause a cervical spine injury. However, he did not recall Petitioner falling to the ground during the altercation and he did not see Petitioner drag the suspect off the porch.

Petitioner testified that Respondent referred him to SIMCA Occupational Health due to worsening of symptoms. Petitioner reported that he was trying to get a suspect off the porch and when he took him to the ground he fell and landed on his right knee. It was noted that Petitioner had intermittent right shoulder pain that was not bothering him much anymore. The focus of his treatment was to his right knee and hip. He returned to SIMCA four days later on 5/3/22 with improved knee and hip pain and ongoing right shoulder pain. He reported that after the altercation with the suspect he picked something up and experienced pain in his right anterior shoulder, numbness in his fourth and fifth fingers, and shooting pain down the posterior elbow. The same day the physical therapist noted that Petitioner was reaching to grab a clipboard in the passenger seat of his patrol car the evening of 4/18/22. He felt a sharp pain and a shocking sensation into his fingers. Petitioner was positive for tenderness along the subscapularis and AC joint and thickening of the trapezium muscle. He was referred to physical therapy and placed on light duty restrictions for his shoulder.

In May 2022, Petitioner's chief complaint was anterior right shoulder pain with radiculopathy in his hand. On 5/20/22, NP Hartman noted that physical therapy for Petitioner's right shoulder had not yet been approved; therefore, the physical therapy records focus on Petitioner's right lower extremity. However, the therapist noted Petitioner had a constant aching pain in his right scapular area that increased with activities. On 5/31/22, the physical therapist examined Petitioner's shoulder and noted reduced extension at 4+/5, tenderness to the upper

trapezius, and decreased scapular mobility. It was noted that his right shoulder, scapular, and upper trapezius symptoms were worsening.

Petitioner underwent a right shoulder MRI and was examined by Dr. Bradley approximately one month after the accident. Dr. Bradley reviewed the MRI and ruled out the shoulder as the source of Petitioner's symptoms. He testified that Petitioner's EMG/NCS showed very mild slowing at the ulnar nerve, and he did not believe Petitioner's radicular symptoms were coming from his elbow. He testified that based on a review of the cervical MRI, which was consistent with radiologist Dr. Ruyle's interpretation, he believed that Petitioner's cervical spine was the source of his symptoms. Dr. Bradley testified that Petitioner pointed to the base of his neck and trapezius area where he felt pain, which he stated is the area commonly mistaken by patients as a shoulder injury when in fact it is a neck injury.

Dr. Bradley, Dr. Gornet, and Dr. deGrange agreed there is an overlap in symptoms from shoulder and cervical spine injuries. Dr. Bradley and Dr. Gornet testified that they both frequently treat patients who have shoulder pain of a cervical origin, and that same is not always immediately apparent. Petitioner's physical therapy examination showed weakness in the shoulder which continued to worsen, and both Dr. Bradley and Dr. Gornet testified that while tendinopathy can cause symptoms in the shoulder, it is unlikely to cause weakness. Although Dr. deGrange disagreed that Petitioner's MRI correlated with his intraoperative findings, Dr. Gornet logically explained that although Petitioner had a herniation on the central left at C6-7, he also had a component on the right, and that central herniations can cause symptoms on either the right or the left side. He testified that intraoperatively he noted the majority of the disc herniations at C5-6 and C6-7 were central left, but there was a smaller extension to the right side. He noted that the majority of the pathology at C3-4 and C4-5 was right-sided. He testified that Petitioner had bilateral trapezius pain with no radiculopathy down the left arm.

Dr. Gornet opined that the objective MRI findings were consistent with Petitioner's subjective complaints and his cervical condition was causally related to the work accident. Dr. Gornet based his opinion on objective pathology that could cause shoulder and trapezial pain at all of four levels; his physical examination correlated with Petitioner's shoulder etiology, including weakness of his biceps, wrist dorsiflexion, and volar flexion; the EMG/NCS showed only mild nerve entrapment; the tingling in Petitioner's arm was consistent with the objective disc injuries; his weakness was consistent with injuries at C5-6 and C6-7; and the intraoperative findings were consistent with the objective pathology seen on the scans.

Based on the evidence as a whole, the Arbitrator finds that Petitioner's current condition of ill-being in his cervical spine is causally connected to the work accident.

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

Based on the Arbitrator's finding as to causal connection, Dr. Gornet's opinion that Petitioner's cervical spine surgeries were reasonable and necessary, and that Petitioner's condition improved following both surgeries that allowed him to return to full duty work without

restrictions as a police officer, the Arbitrator finds that Petitioner is entitled to medical expenses. Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 1, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall be given a credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

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

Petitioner claims entitlement to temporary total disability benefits from 6/16/22 through 4/21/23. Respondent disputed liability for TTD benefits for the claimed period and claims an overpayment of TTD benefits from 6/16/22 through 11/16/22 in the amount of $21,893.08. The parties stipulated that Respondent is entitled to a credit of $21,893.08 in temporary total disability benefits and $47,564.40 in PEDA benefits paid.

Dr. Bradley placed Petitioner off work on 6/16/22 pending a cervical evaluation. Petitioner was continued off work by Dr. Gornet and underwent two cervical spine surgeries. On 2/27/23, Dr. Gornet released Petitioner to full duty work effective 4/16/23 after completing upper extremity strengthening. Petitioner underwent therapy from 3/6/23 through 4/28/23.

Based on the findings as to causal connection, the Arbitrator awards Petitioner temporary total disability benefits from 6/16/22 through 4/21/23, representing 44-2/7th weeks, pursuant to Section 8(b) of the Act. The parties stipulated to an average weekly wage of $1,454.70, resulting in a TTD rate of $969.80. Pursuant to the stipulation of the parties, Respondent shall receive a credit of $69,457.48, representing $21,893.08 in temporary total disability benefits and $47,564.40 in PEDA benefits paid, resulting in an overpayment of TTD benefits in the amount of $26,509.21 ($969.80 x 44.2857 = $42,948.27 - $69,457.48 = -$26,509.21).

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

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

(i) **Level of Impairment**: Neither party submitted an AMA impairment rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner voluntarily resigned from employment with Respondent and is currently employed by the Herrin Police Department. He has returned to full duty work without restrictions. Petitioner testified that wearing a hard helmet or Kevlar jacket for a long period of time causes pain. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 39 years old at the time of accident. He is a younger individual and must live and work with his disability for an extended period of time. Pursuant to Jones v. Southwest Airlines, 16 I.W.C.C. 0137 (2016) (wherein the Commission concluded that greater weight should have been given to the fact that Petitioner was younger [46 years of age] and would have to work with his disability for an extended period of time). The Arbitrator places greater weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. Petitioner was released to full duty work without restrictions and returned to his pre-accident position with Respondent. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of the undisputed accident, Petitioner sustained cervical injuries that resulted in disc replacements at C3-4, C4-5, C5-6, and C6-7. Petitioner testified that he still has neck pain that increases with certain activities, including wearing a helmet and Kevlar jacket at work. His hobbies of fishing and hiking have been adversely affected. He experiences neck stiffness with weather changes and takes Ibuprofen one to three times per week to manage his symptoms.

X-rays of Petitioner's right hip and knee were normal, and he was not diagnosed with any injury to hip or knee other than noted pain. Petitioner underwent physical therapy for his right hip and knee. On 6/6/22, Petitioner told his physical therapist that his hip and knee were back to normal. Petitioner testified that he does not have any ongoing issues with his hip or knee. The Arbitrator places significant weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 30% loss of Petitioner's body as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 11/16/23 through 12/11/23, and shall pay the remainder of the award, if any, in weekly payments.

Linda J. Cantrell

Arbitrator Linda J. Cantrell

February 13, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC030863
Case Name	Barbara Martin v. North American Lighting, Inc.
Consolidated Cases	17WC000627; 17WC000629;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0556
Number of Pages of Decision	22
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	David Moss, Martin Haxel
Respondent Attorney	Stephen Carter

DATE FILED: 11/21/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ 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

Barbara Martin,

Petitioner,

vs. No. 16 WC 030863

North American Lighting, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, permanent partial disability, the Arbitrator's rulings concerning various objections made during trial, the weight assigned to the opinions of the various doctors (and nurses) including Respondent's Section 12 IME physician, when did Petitioner reach MMI, and Petitioner's credibility, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 21, 2023, is hereby affirmed and adopted.

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

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

The bond requirement in §19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. 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 21, 2024

MP/mcp
o-11/07/24
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC030863
Case Name	Barbara Martin v. North American Lighting, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	David Moss
Respondent Attorney	Stephen Carter

DATE FILED: 8/21/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 15, 2023 5.29%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BARBARA MARTIN
Employee/Petitioner

v.

NORTH AMERICAN LIGHTING, INC.
Employer/Respondent

Case # **16-WC-030863**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **6/12/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **4/5/16**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of the accident ***was not*** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**30,128.80**; the average weekly wage was $**579.40**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of $**Any and all payments made** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Based on the Arbitrator's finding that Petitioner did not give notice of her alleged accident to Respondent within the time limits set forth in Section 6(c) of the Act, the Arbitrator denies all benefits herein.

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

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

AUGUST 21, 2023

Arbitrator Linda J. Cantrell

ICArbDec p. 2

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BARBARA MARTIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 16-WC-030863**
	)	
NORTH AMERICAN LIGHTING, INC.,	)	**Consolidated Case Nos. 17-WC-000627**
	)	**17-WC-000629**
Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Herrin on June 12, 2023. On 10/6/16, Petitioner filed an Application for Adjustment of Claim alleging injuries to her low back/man as a whole as a result of pulling and lifting containers of parts on or about 5/31/2016. (Case No. 16-WC-030863, AX4, RX10) The same day, Petitioner filed an Amended Application for Adjustment of Claim amending the date of accident to "on or about 4/5/2016". (AX4) On 1/9/17, Petitioner filed an Application for Adjustment of Claim alleging injuries to her low back/man as a whole as a result of pulling and lifting at work on 6/7/16. (Case No. 17-WC-000627, AX5) On 1/9/17, Petitioner filed an Application for Adjustment of Claim alleging injuries to her low back/man as a whole as a result of pulling and lifting at work on 8/3/16. (Case No. 17-WC-000629, AX6)

The parties stipulated that Respondent shall receive a credit of $109,856.14 in medical bills paid through its group medical plan, under Section 8(j) of the Act, and $2,949.39 in short term disability benefits paid. The issues in dispute in Case No. 16-WC-030863 are accident, notice, causal connection, medical expenses, temporary total disability benefits, the date Petitioner reached maximum medical improvement, whether Petitioner exceeded her choice of two physicians under the Act, and the nature and extent of Petitioner's injuries. The Arbitrator has simultaneously issued separate Decisions in Case Nos. 17-WC-000627 and 17-WC-000629.

TESTIMONY

Petitioner was 52 years old, married, with no dependent children at the time of the alleged accident. She is currently employed by Respondent and was hired on 9/4/14. In April 2016, Petitioner worked on the KC C-line making lens bezels for lamps. She put the lenses in a machine to be etched, removed the etched lenses and screwed bezels in them, and placed the finished lenses in a tub. Petitioner testified that she assembled approximately 200 lenses per hour. Her duties required pushing and pulling tubs and bending down low to push the tubs under

a rack. She described the rack as four feet high. She pulled a tub down and forward, took parts out, assembled the lenses, filled the tub with finished lenses, and lifted the full tub and placed it underneath to send down the line. The area where she worked was "turn around space". The tubs measured 4x4 and were stacked three high. She testified she had to reach "really high" to pull the tubs down. Petitioner identified photos of tubs and racks that were similar but not exactly like the tubs and racks she worked with for Respondent. (PX12) She performed these duties eight hours per day from 7:00 a.m. to 3:30 p.m. She had a 30-minute lunch break and two 10-minute breaks per shift.

Petitioner testified that because the tubs were stacked three high and they were placed so high she had to stand on her tippy toes to pull them down. Petitioner is 5'8" and the tubs were over six feet above her head. She pulled five to six tubs down per hour to make 200 parts per hour. Petitioner testified that she noticed mid-to-low back pain and numbness in her legs when pulling the tubs down. She stated she is sure she had back pain prior to April 2016 that she treated with rest.

Petitioner testified that she notified her supervisor Rick Smith about her symptoms. Petitioner continued to work after 4/5/16 and her symptoms progressed. On 6/7/16, Petitioner again notified her supervisor Mr. Smith that her symptoms were progressing. She filled out an accident report that day. She testified that she may have written the wrong accident date of 5/5/16 on the report. Petitioner sought treatment at Clay County Hospital on 6/7/16 and was placed on light duty restrictions. On 6/9/16, Petitioner was seen by Respondent's on-site physician Dr. Brower. She testified that she told Dr. Brower she had back pain and numbness in her legs from pulling down tubs and pushing them under the counter while assembling lens bezels. Dr. Brower ordered Petitioner to return to work. She continued to treat with her doctor, but also Dr. Brower because Respondent told her she had to. She underwent physical therapy and her symptoms continued to progress while she worked.

On 8/3/16, Petitioner filled out another accident report and reported she had low back pain and shooting pain down her leg. She testified she was sure she notified her supervisor Mr. Smith of her injury, or she would not have received an accident report to fill out. Petitioner believed she was working light duty at that time packing bulbs in the service plant. Her symptoms persisted and never resolved after June 2016. She treated with Dr. Brower on 8/4/16 and told him she still had back pain and numbness and tingling in her leg. She underwent x-rays at Clay County Hospital and returned to her primary care physician on 8/12/16 who recommended physical therapy. She continued to treat with Dr. Brower who recommended she continue physical therapy. On 9/15/16, Dr. Brower continued her light duty restrictions and physical therapy. On 9/29/16, Petitioner underwent a Fit for Duty exam and her light duty restrictions were continued. She underwent a lumbar MRI on 10/31/16. Petitioner was referred to Dr. Kovalsky at the Orthopedic Center of Southern Illinois who ordered physical therapy. On 12/29/16, Petitioner underwent a second lumbar MRI. On 3/13/17, Petitioner saw Dr. Rerri at Bonutti Clinic for a second opinion. She testified that she looked Bonutti Clinic up on the internet and was not referred to his office. Dr. Rerri prescribed Hydrocodone. She last treated with Dr. Brower on 10/26/17. On 8/11/17, Dr. Rerri recommended an L4-5 fusion. Petitioner was examined by Dr. Kitchen's at the request of Respondent on 7/28/17.

Petitioner underwent an L5 selective nerve root block that caused a reaction and resulted in her undergoing a "blood patch" at Crossroads Hospital. She was placed off work from 12/22/17 through 1/2/18. On 2/22/18, Petitioner underwent a fusion at L4-5 by Dr. Rerri at St. Mary's Hospital and was discharged on 2/24/18. She worked light duty up to the date of her surgery. Dr. Rerri prescribed a bone stimulator on 3/2/18 that she used every day. Petitioner testified that her pain and leg symptoms improved following surgery. She underwent physical therapy from 3/27/18 through 6/8/18. Petitioner returned to light duty work on 4/16/18 where she placed bulbs in bags. Her symptoms continued to improve while working light duty. Petitioner wore a back brace at work for one year following surgery.

On 2/22/19, Dr. Rerri released Petitioner to return to work without restrictions and discharged her from care. Petitioner testified she was almost back to normal at that time. Petitioner began working in the service plant for Respondent where she assembled headlights and performed a lot of manual work. She did not treat with her primary care physician, chiropractor, pain management, or Dr. Brower after being released by Dr. Rerri. Petitioner returned to Dr. Rerri on 1/20/22 for low back pain at the surgical site and her back was "snapping" like the cage was coming apart. She testified that she did not reinjure herself or lift anything heavy that brought on her symptoms. She testified she could perform her job duties at her own pace so it would not hurt her. Dr. Rerri ordered a CT scan and prescribed Hydrocodone again. She purchased a TENS unit that improved her symptoms. On 4/15/22, Dr. Rerri prescribed a bone stimulator. On 8/26/22, Dr. Rerri recommended continued use of the bone stimulator and advised Petitioner he was retiring. Her last treatment with Dr. Rerri's office was a telemedicine appointment on 1/13/23 and she was informed that Dr. Rerri left the medical practice.

Petitioner testified she still has low back pain and continues to perform full duty work. She testified that her symptoms feel like being stabbed 50 million times in her back and it hurts so bad she wants to cry. She uses a TENS unit and an ointment that helps alleviate her pain. Petitioner received short-term disability benefits following surgery. She stated her medical bills were paid by her group health insurer Blue Cross/Blue Shield through her employment with Respondent. Petitioner testified that since her accident she cannot sit, stand, or walk for prolonged periods without pain. Household chores increase her pain. Petitioner is able to perform her regular job duties for Respondent, but she is slower and cautious not to aggravate her back. Her current job duties are less physically demanding than the job duties she had in 2016.

On cross-examination, Petitioner testified she is claiming temporary total disability benefits from 12/22/17 through 1/2/18. She agreed that Respondent's facility is shutdown during that period for the holiday. She testified that not all departments shut down during the holiday, but she believed her department did. She testified she did not think she ever told her doctors she never had back pain prior to April 2016. She did not recall treating at Clay County Hospital on 10/5/15 for sharp stabbing low back pain or returning to the hospital on 10/13/15.

Petitioner did not recognize the FMLA form admitted into evidence. (RX18) She testified that it was not the same form employees took to their doctor. She did not know if she missed work during the period of time stated on the FMLA form. Petitioner did not recall going to the doctor in 2015.

Petitioner testified that when she filed her initial Application for Adjustment of Claim she alleged a date of accident of 5/31/16. She testified she could have said the wrong date. She stated she asked her supervisor for an accident report, and he refused to give her one. She did not complete an accident report for any injury dated 5/31/16. Petitioner testified that she amended the date of accident to 4/5/16 but did not complete an accident report for that injury. She testified that the 6/7/16 accident report that she completed states a date of injury of approximately 5/5/16. She agreed that she reported on 6/7/16 that she injured herself by bending over to put tubs in a chute and that her Application for Adjustment of Claim alleges she was pulling and lifting. She was unsure if she began treating with Nurse Nussmeier at Clay County Hospital in April or June 2016. She stated she could have told Nurse Nussmeier that her symptoms started around 4/5/16. She agreed that the accident report she prepared on 8/3/16 indicates she injured herself while bending over to put tubs in a chute and the Application for Adjustment of Claim alleges she injured herself pulling and lifting. Petitioner testified that she described her job duties to Dr. Rerri the same way she described them on direct examination. She agreed that Dr. Kovalsky never recommended surgery. She disagreed that her pain was 10/10 before and after the injection by Dr. Kovalsky. She did not receive treatment from Dr. Bhandarkar at Dr. Rerri's referral. She did not return to Dr. Kovalsky after he gave her the injection and "blew out her veins in both arms".

On re-direct examination, Petitioner testified that she received one tub full of lenses and one tub full of bezels. She removed the lenses and bezels, assembled the parts, and placed the assembled parts back in the tubs. She estimated that the full tubs weighed 5 to 10 pounds and possibly more depending on the light fixtures. She lifted the tubs and placed them underneath the rack that sent them to material handlers. Petitioner testified that the racks were permanent, and the tubs of lenses and bezels were placed on the racks by material handlers. She had to pull 4 to 5 tubs of lenses and bezels down from the racks per hour. She had to make rate of 200 completed bezels per hour. Petitioner clarified that she had stabbing pain prior to her surgery which has resolved. When her back "snaps" it locks up and feels like a jolt.

Barrie Ballentine testified on behalf of Respondent. Ms. Ballentine is currently the wellness and risk manager for Respondent which includes overseeing workers' compensation. In 2016, she was the HR manager of Respondent's Paris manufacturing facility. Ms. Ballentine testified that every year starting Christmas Eve through just after New Year's all production is shut down for preventative maintenance. She stated that Petitioner worked in the production department. She testified that the plant was shut down during the period Petitioner underwent her injection and was claiming TTD benefits. Ms. Ballentine identified a time clock printout admitted into evidence as RX17. She testified that Petitioner did not work from 12/22/17 through 1/2/18. She assumed it was because the plant was shut down during that period. The printout shows Petitioner worked 5.8 hours on 12/22/17, 8 hours on 1/2/18, and she did not work on the days in between.

MEDICAL HISTORY/ACCIDENT REPORTS

Medical records that pre-date Petitioner's alleged accidents were admitted into evidence. (PX4, RX1)

On 8/28/14, Petitioner underwent a preemployment physical at Respondent's on-site medical facility, MOHA. (PX4) Her history and exam were unremarkable. Petitioner reported she did not have any current conditions of the neck, back, or lower extremities or had any previous injury or surgery to her neck, back, or lower extremities.

On 6/4/15, Petitioner presented to Clay County Hospital Medical Clinic (CCH) to establish patient care and for a checkup. A physical examination was performed, and Petitioner was diagnosed with COPD and prescribed Chantix. No history of back complaints or treatment were noted. On 6/25/15 and 7/20/15, Petitioner followed up with CCH and her physical exam remained unchanged. Additional diagnosis were hyperlipidemia and polydipsia.

On 10/5/15, Petitioner presented to CCH for back pain, abdominal pain, and urinary retention. She had sharp lower back and left flank pain that was aggravated by twisting. She rated her abdominal pain 7/10 that was located in the left lower quadrant and radiated to her left lower back. Her pain was sharp and stabbing and occurred on urination. Her urinary retention radiated to her back. Nurse Harris assessed a UTI and prescribed Bactrim.

On 10/13/15, Petitioner presented to the emergency room at Good Samaritan Hospital for left flank pain with a sudden onset three days ago. (RX2) She reported nausea, decreased urine output, and the pain started in her left groin and radiated to her left lower back. Her pain was so severe she was unable to walk. She was positive for back pain with no falls. Physical examination and diagnostic studies of Petitioner's abdomen and pelvis were completely normal, but her pain was worse with movement. Assessment was likely musculoskeletal and not a kidney stone. Petitioner declined pain medication.

Petitioner returned to CCH on 10/15/15 and reported lower back and left flank pain when bending forward, changing positions, daily activities, and twisting. Petitioner reported she went to the emergency room last night and had a torn muscle in her back. She had significant pain if she did not take Norco, but she could not function well on the medication. Physical examination revealed moderate lumbar spine pain and tenderness with motion and left flank pain. She was assessed with low back pain and placed off work for four days. FMLA paperwork was completed. On 3/10/16, Petitioner returned to CCH with an upper respiratory infection. No back or flank pain was noted.

On 6/7/16, Petitioner completed an Accident Report indicating she injured the middle of her back on approximately 5/5/16 while pulling down a tub off a bezel rack. (RX11)

On 6/7/16, Petitioner presented to CCH with back pain. It was noted Petitioner had a gradual onset of low back pain without injury. Her symptoms were mild, persistent, and achy. Bending forward, bending over, and lifting heavy objects increased her symptoms. She reported her back pain started around 4/5/16 while at work lifting tubs containing bezels that weighed approximately five pounds. She started doing more overhead lifting around this time and associated her pain with that activity. Nurse Nussmeyer noted Petitioner had not told her employer until today and they gave her paperwork for her doctor to complete. Nurse Nussmeyer noted Petitioner was not sure if it was actually work comp or not. Petitioner requested to do light duty. Physical examination of Petitioner's lumbar spine revealed limited range of motion and

tenderness. Nurse Nussmeyer assessed low back pain and discussed physical therapy, massage, and acupuncture. She placed Petitioner off work for two weeks and referred her for a physical therapy evaluation to determine how much weight she could lift. Nurse Nussmeyer called Respondent's office to see if it was work comp since the possible injury date was more than two months ago. Respondent's office was closed and she did not speak to anyone.

On 6/9/16, Petitioner was examined by Respondent's on-site physician Dr. Jeffrey Brower at Midwest Occupational Associates (MOHA). (RX4) Dr. Brower noted Petitioner had back pain that she believed started in April. She was pulling tubs down and developed pain in her mid-back. She did not see anyone until two days ago and was placed off work and referred to physical therapy. Dr. Brower noted Petitioner's gait was normal and she had almost full range of motion of the lumbar spine. She had tenderness along the midline of the thoracolumbar junction and negative straight leg raises. Dr. Brower assessed thoracolumbar strain and placed Petitioner on lifting and bending restrictions. Petitioner reported that the prescribed restrictions would place her back on her regular line and her job duties were as easy as the restrictions but that is how she was injured. He discussed moving Petitioner to a different line and prescribed physical therapy.

On 6/29/16, Petitioner returned to CCH and Nurse Nussmeyer noted Petitioner was following up for repetitive work causing back pain. Petitioner did not qualify for work comp but did see the company doctor who placed her on restrictions. Petitioner was to start physical therapy soon at CCH. Nurse Nussmeyer noted from this point Dr. Brown would be taking over Petitioner's care for mid-back strain while at work.

On 7/8/16, Petitioner returned to Dr. Brower who noted no significant change since her last visit. She had tenderness along the L2-3 region and excellent range of motion. Dr. Brower diagnosed a lumbar strain and continued to recommend physical therapy.

On 7/21/16, Dr. Brower noted Petitioner's pain occasionally radiated down the back of her right thigh. Her claim was denied so she had not started physical therapy. Petitioner had pain with range of motion and extension. Dr. Brower recommended continued light duty with limited bending and no lifting over 10 pounds for seven days and attempting to return to regular duty.

On 8/3/16, Petitioner filled out an Accident Report and reported that on 8/3/16 she had back pain and shooting pain in the middle of her back and leg numbness while bending over to put tubs in a shoot and her back snapped.

On 8/3/16, Petitioner returned to CCH for lower back pain with an onset date of 6/6/16. Petitioner rated her pain 8/10 that was fluctuating, persistent, aching, stabbing, and radiated to her left thigh and buttock. Bending forward, lifting heavy objects, and twisting increased her symptoms. Nurse Mack noted Petitioner returned to work on Monday and has recurrent back pain after working three days. Physical examination revealed lumbar spine muscle spasms and moderate pain with motion. Nurse Mack prescribed Naproxen and ordered physical therapy and lumbar spine x-rays. Petitioner was placed on light duty restrictions of no lifting over 10 pounds and no bending over five reps per hour for two weeks. Lumbar spine x-rays were unremarkable. (RX3)

On 8/4/16, Dr. Brower noted that yesterday Petitioner was moving a tote waist level down to floor level and felt a pop in her lower back with pain. She had to leave work and underwent x-rays. Petitioner stated the totes were very heavy but could not state how much they weighed. Dr. Brower noted tenderness across the L4-5 area bilaterally, full extension with no discomfort, no spasms, and negative straight leg raises. He did not appreciate evidence of a herniated disc. Dr. Brower continued Petitioner's light duty restrictions. (RX4)

On 8/12/16, Petitioner returned to CCH and Nurse Mack noted moderate low back pain with no radiating pain. Petitioner described her pain as localized and sharp. Physical therapy was scheduled to begin on 8/22/16. X-rays were unremarkable. Petitioner's symptoms were relieved with ice, pain medications, rest, and light duty. Musculoskeletal examination revealed a normal gait. Nurse Mack continued Petitioner's light duty restrictions for two weeks due to severe back pain and muscle spasms.

On 8/18/16, Dr. Brower noted Petitioner's condition was unchanged. She was taking Tramadol, Naproxen, and working light duty. Dr. Brower continued Petitioner's light duty restrictions and recommended physical therapy.

On 8/26/16, Petitioner reported her symptoms were improving but were persistent and aching. She reported difficulty getting in and out of a vehicle and kneeling. Physical examination revealed muscle spasms and moderate pain with motion. Nurse Mack recommended Petitioner continue physical therapy, pain medication, muscle relaxers, and light duty for one week.

On 9/15/16, Dr. Brower noted Petitioner had two therapy sessions with little improvement. Petitioner had axial pain, no radicular pain, and tenderness along the L2-3 area in the midline. Dr. Brower continued Petitioner's light duty restrictions and therapy.

On 9/28/16, Petitioner returned to CCH and reported her lower back pain radiated to her bilateral thighs and buttocks. Onset of symptoms was reported to be three months ago. Petitioner reported her symptoms were deep, sharp, and stabbing and increased with lifting, bending, twisting, walking, and working at NAL. Petitioner reported no improvement with physical therapy. Physical examination revealed muscle spasms and severe pain with motion. Nurse Mack instructed Petitioner to continue Naproxen, Tramadol, Methocarbamol, and Flexeril. A lumbar spine MRI was ordered and Petitioner's light duty restrictions were continued for one month.

On 9/29/16, Dr. Brower noted physical therapy did not improve Petitioner's symptoms and treatment was discontinued. She presented for a fit for duty exam. Petitioner reported that she was prescribed a new pain medication she could take during the day and an MRI was ordered.

On 10/27/16, Petitioner returned to CCH with no change in lower back symptoms. Nurse Mack noted Petitioner missed her MRI appointment and had to be recertified with her insurance. Physical examination revealed Petitioner walked with a limp on the right side with no assistive device, severe muscle spasms, moderate pain with motion, normal heel-and-toe-walk, no pain in her bilateral buttock or SI joint, and positive straight leg raise causing back pain only on the right

and left. Petitioner's medications were refilled, and her light duty restrictions were continued for one month.

On 10/31/16, Petitioner underwent a lumbar MRI that revealed mild lumbar spondylosis with facet arthropathy and no stenosis; foraminal narrowing at L4-5 and L5-S1; and no compression disc herniation, fracture, or malalignment identified. (RX3) The history recorded on the MRI report stated "low back pain, bilateral leg pain for 1 month. Pulling injury".

On 11/3/16, Nurse Mack noted the MRI revealed mild lumbar spondylosis and annular bulge and foraminal narrowing at L4-5, L5-S1. Petitioner continued to have low back pain radiating to her bilateral thighs and buttocks. Nurse Mack continued Petitioner's medications, light duty restrictions, and referred Petitioner to Dr. Don Kovalsky for further evaluation. Nurse Mack noted Petitioner was not taking the prescribed Cyclobenzaprine, Methocarbamol, or Naproxen.

On 11/30/16, Petitioner was examined by Dr. Kovalsky for constant low back pain and intermittent radiculopathy in her bilateral buttocks and legs. (RX5) Dr. Kovalsky noted Petitioner was injured on 5/7/16 which he did not believe Petitioner reported as a work comp injury. Dr. Kovalsky noted clinical evidence of symptom magnification and Petitioner rated her pain excessively high at 8-9/10. She stated that most days her pain was 10/10 and on a good day it was 7/10, but she was able to work which he found to be inconsistent. Dr. Kovalsky noted an unremarkable past medical history. Physical examination revealed mechanical back pain and right buttock pain with forward flexion, positive Waddell's sign, positive straight leg raises on the right, some buttock pain with hyperextension, and positive provocative testing on the right SI joint. Dr. Kovalsky reviewed lumbar x-rays and the MRI. He diagnosed right lateral L5-S1 disc herniation and right lumbar radiculopathy. He advised Petitioner that 70% of disc herniations absorb over 6 to 9 months without the need for surgery. He prescribed a Prednisone taper, Flexeril, and Fioricet. Petitioner advised she could not tolerate narcotics. Dr. Kovalsky referred Petitioner to Dr. Smith for a selective nerve root block at L5 on the right to determine the pain generator. He advised that if she did not receive relief from the L5 injection, he would inject her SI joint. He placed Petitioner on light duty restrictions of no lifting greater than 10 pounds and no repetitive bending, lifting, twisting, or carrying for 8 to 9 weeks. Petitioner reported a date of injury of "5/7/16" on the intake form.

On 12/13/16, Nurse Mack noted Petitioner's symptoms were worsening. Petitioner reported that the pharmacist told her that the four medications prescribed by Dr. Kovalsky for back pain was interacting with the Cartia that her heart doctor prescribed. Petitioner had significant low back pain that increased with breathing deep. Nurse Mack advised there were no contraindications to Cartia and she should take the medications prescribed by Dr. Kovalsky. Petitioner expressed anxiety with an upcoming cortisone injection ordered by Dr. Kovalsky.

On 12/16/16, Petitioner underwent a right L5-S1 selective nerve block by Dr. Aiping Smith at the referral of Dr. Kovalsky. (RX3) Dr. Smith noted fluoroscopic pictures were obtained confirming the needle placement in the right L5 neural foramen. He noted Petitioner tolerated the procedure well with no complications. She was discharged home in stable condition. Dr. Smith noted Petitioner had significant magnification behavior and she was

screaming during IV placement. She reported brief reproduction of the right lower extremity pain when the needle advanced into the L5 neural foramen. She reported 10/10 pain before and after the injection.

On 12/27/16, Dr. Kovalsky ordered an urgent lumbar MRI. (RX5) The MRI was performed on 12/29/16 that revealed a small posterior disc-osteophyte complex with mild facet and ligamentum flavum hypertrophy resulting in moderate bilateral foraminal stenosis; and mild facet hypertrophy and a small posterior disc-osteophyte complex with severe bilateral foraminal stenosis with no spinal stenosis. (RX3) Impression was multilevel degenerative disc disease with multilevel foraminal stenosis. Dr. Kovalsky interpreted the MRI as showing a far lateral disc bulge on the right at L5-S1 that appeared to be contacting the L5 nerve root. Petitioner reported significant pain since the nerve root block with headaches, photophobia, and mild nausea. She reported paresthesia and tingling in her buttocks and thigh that stopped at her knee. Dr. Kovalsky noted a small collection of fluid posteriorly at L4-5 and L5-S1. Clinical impression was persistent right buttock pain which was most likely sacroiliac in nature given the injection provided no relief. Dr. Kovalsky suspected a cerebral spinal fluid leak. He referred Petitioner for a blood patch, followed by injections or physical therapy for the SI joint dysfunction, with Lidocaine and steroids.

On 1/19/17, Petitioner underwent a right L5-S1 transforaminal L5 perineural and epidurogram with transforaminal blood patch at Crossroads Hospital for cerebral spinal fluid leak. (RX3)

On 1/26/17, Petitioner returned to Dr. Kovalsky and reported her headaches resolved about one week after the blood patch. He felt that Petitioner's buttocks pain was not coming from her L5 nerve root or a radiculitis because she failed to improve with the injection. She refused additional injections by Dr. Smith. She rated her buttock pain 10/10 and sometimes 11 or 12, which was again a red flag. Petitioner walked with an antalgic gate on the right. She had positive provocative testing of the right SI joint, Fortin finger pointing, thigh thrust, Patrick's test, and pelvic distraction test. She had positive straight leg raising and Valsalva testing reproduced buttocks pain but no referred leg pain. Dr. Kovalsky advised that Lidocaine injections were necessary to diagnose SI joint dysfunction. Petitioner was very hesitant but agreed to be referred to Dr. Anderson for the injection. Dr. Kovalsky continued Petitioner's light duty restrictions.

On 2/3/17, Petitioner return to CCH and reported her low back pain radiated to her bilateral buttocks and right thigh/calf/foot. She had numbness and piercing pain. Petitioner reported she saw Dr. Kovalsky twice and had an injection by Dr. Smith that hit the wrong nerve and caused a great deal of pain. Petitioner was in worse pain than before. She had to undergo an epidural patch at Crossroads Hospital. Nurse Mack referred Petitioner to Dr. Bhaskara at Fairfield Pain Clinic for pain management. On 2/15/17, CCH noted Petitioner told Dr. Bhaskara's office she did not want to treat with their facility because she did not want injections to cover up her pain but wanted to find out what was causing her pain.

On 3/13/17, Petitioner presented to Dr. Bernard Rerri at Bonutti Orthopedic Services. (RX6) It was noted she referred herself to his office. Petitioner reported injuring herself pushing

and pulling tubs at work. She worked in a confined space and had to bend and throw tubs. Petitioner reported low back pain that radiated to her lower extremities, greater on the right. X-rays were performed that showed degenerative disc disease at L4-5 and L5-S1, a central annular tear and retrolisthesis at L4-5, and bilateral lateral recess stenosis worse on the right at L5-S1. Dr. Rerri noted Petitioner had an occupational back injury as far back as June 2016. He noted that the instability at L4-5 was consistent with Petitioner's complaints. He recommended sedentary restrictions with a 10-pound lifting limit until further notice. Dr. Rerri recommended a transforaminal interbody fusion at L4-5.

On 3/30/17, Petitioner was examined by Dr. Gordon at Respondent's on-site medical clinic (MOHA). (PX4) Petitioner reported she injured her back on 6/7/16 while pulling product and felt a snap in her low back. She reported that repetitive pulling, pushing, bending, and twisting on the line further aggravated her back pain. She was waiting on approval for surgery. Petitioner denied any problems with her back prior to June 2016. Petitioner's work restrictions were continued.

On 7/28/17, Petitioner was examined by Dr. Daniel Kitchens pursuant to Section 12 of the Act. (RX8) Petitioner reported a date of injury of 4/7/16 on the Accident Information Sheet. She reported pulling tubs that were stacked three high, bending over to put tubs under a rack, bending, twisting, turning, lifting, and pulling tubs in a small area, and taking tubs from the top of the stack that sometimes fell and she had to catch them. She had worked that line for six months. She reported her symptoms started around 11:00 a.m. on 4/7/16 that included shooting, pulling, ripping-type pain in her mid-back, with no pain in her legs. She took Ibuprofen on her lunchbreak and thought she pulled a muscle. She worked light duty cleaning floors and packing light bulbs. Petitioner reported she was put back on the tub line in June 2016 and her pain increased after one day. Dr. Kitchens noted that Petitioner first sought treatment on 6/7/16. Petitioner could not recall when she initially saw her primary care physician but thought it was soon after her work accident. Dr. Kitchens opined that Petitioner's condition was not related to her work activities of lifting totes and bending since her pain did not improve with refraining from these activities. He opined that Petitioner had age-related degenerative disc disease which was not related to her work activities. There was no objective evidence of an acute injury, instability, disc herniation, or nerve root impingement. Dr. Kitchens opined that Petitioner did not require surgery and she did not have signs or symptoms of radiculopathy. He opined that Petitioner could work in a full duty capacity.

On 8/4/17, Petitioner returned to Dr. Rerri at his new medical practice. It was noted Petitioner was following up for low back pain and sciatica pain down both legs that was present for over one year. Petitioner reported her symptoms were getting worse. Dr. Rerri wanted to review his records from when he examined Petitioner at Bonutti Clinic and the MRI.

On 8/11/17, Dr. Rerri reviewed Petitioner's medical records and continued to recommend a fusion at L4-5. He recommended a 5-pound lifting restriction and no overhead work, bending, twisting, or climbing ladders or stairs until further notice.

On 9/14/17, Dr. Gordon at MOHA noted Petitioner continued to have 6/10 pain in the central lumbar back that radiated down her right leg to her calf. (RX4) Dr. Rerri had her on work

restrictions which Respondent was accommodating. Dr. Brower noted Petitioner walked with an antalgic gait and had increased pain with lumbar flexion. Heel walking was difficult. Dr. Brower agreed with the light duty restrictions recommended by Dr. Rerri.

On 10/26/17, Petitioner returned to MOHA for repeat evaluation of chronic low back pain with radiation down her right leg. Her pain was constant and 10+/10. Physical examination was limited due to increased pain. Petitioner's restrictions were continued as recommended by Dr. Rerri which Respondent was accommodating.

On 2/22/18, Petitioner underwent a transforaminal interbody fusion at L4-5 by Dr. Rerri. (RX3)

On 3/2/18, Dr. Rerri noted Petitioner was doing well and was taking minimal pain medications. Dr. Rerri recommended a bone stimulator in view of multiple preop epidurals and smoking history. On 3/22/18, Dr. Rerri noted Petitioner was not taking pain medications and referred her to physical therapy. Petitioner began physical therapy at Salem Township Hospital on 3/27/18. (RX7) She reported numbness in her right great toe. She reported the tingling in her leg and back pain had resolved and she had no difficulty walking.

On 4/13/18, Dr. Rerri noted Petitioner had bilateral buttock pain for the past two weeks and numbness in her right big toe. She was undergoing physical therapy. Dr. Rerri allowed Petitioner to return to light duty work of no lifting greater than 10 pounds, no bending/twisting, and to wear her brace at work.

On 5/10/18, Dr. Rerri noted Petitioner had intermittent numbness in her legs even without activity. He ordered her to continue wearing the brace. X-rays showed stable implants with a slight screw halo. He prescribed Gabapentin and continued her light duty restrictions.

On 8/3/18, Dr. Rerri noted Petitioner was slowly improving and Gabapentin helped. He continued her light duty restrictions and ordered her to wean off her brace.

On 2/22/19, Dr. Rerri noted Petitioner was doing well one-year post-fusion. X-rays revealed partial bone fusion of the intervertebral space at L4-5; partial bone fusion of the left traverse process at L4 and L5; mild spondylosis; and no acute abnormality of the lumbar spine. (RX3) Dr. Rerri diagnosed stable implants and a solid fusion. He released Petitioner to full duty work and ordered her to discontinue the bone stimulator. He advised Petitioner to return on an as-needed basis.

On 3/14/20, Dr. Rerri authored a narrative report stating he initially treated Petitioner at Bonutti Clinic for back pain that radiated to her lower extremities. Petitioner described an injury at work around 4/4/16 while pulling and stacking tubs in a confined space. Dr. Rerri opined that Petitioner's injury at work aggravated and exacerbated degenerative disc disease that required surgical intervention.

On 12/18/20, Dr. Bernard Rerri testified by way of deposition. (PX7) Dr. Rerri is an orthopedic surgeon. He testified that when he initially examined Petitioner on 3/13/17 she

reported she injured herself at work by pushing and pulling tubs in confined spaces. Dr. Rerri reviewed Petitioner's MRI from October 2016, performed a physical examination, and concluded that Petitioner's pain and instability was from L4-5. Dr. Rerri testified he left Bonutti Clinic in June 2017. When he examined Petitioner on 12/28/17 she was getting worse, with increasing pain down her right leg, unsteadiness, and urinary urgency. Dr. Rerri performed a minimally invasive fusion at L4-5 on 2/22/18. He testified that he usually prescribes a bone stimulator following surgery. Dr. Rerri opined that the work injury aggravated and exacerbated Petitioner's degenerative disc disease in her lumbar spine causing progressive pain and instability. He opined that the fusion was necessary to relieve and address Petitioner's symptoms caused by the work injury. Dr. Rerri was asked to consider a hypothetical consistent with Petitioner's testimony at arbitration, and assuming the full totes weighed approximately 10 pounds. He opined that the repetitive lifting, bending, and transferring can lead to the back injury Petitioner presented to him with and her condition required surgery.

On cross-examination, Dr. Rerri testified that the only history Petitioner provided him was that she moved and pushed tubs and worked in a confined space. He was not aware how much the tubs weighed, where she moved the tubs, what was in the tubs, how many tubs she moved per hour or day, etc. Dr. Rerri testified he did not recall a particular date of injury, but made a reference that an injury was reported and she had back pain for eight months when he initially examined her in March 2017. He testified that Petitioner's symptoms were caused by repetitive activities at work and she did not report a specific acute injury. He was not aware of other dates of accident Petitioner provided to other treating physicians. He was not aware Petitioner had any prior back complaints in 2015. He did not review any records from Clay County Hospital or Dr. Kovalsky. Dr. Rerri testified that he relied on Petitioner's history of injury and treatment and the diagnostics studies he reviewed prior to recommending surgery.

On 4/27/21, Dr. Kitchens authored a narrative response to a letter presented by Respondent's counsel. Dr. Kitchens reviewed the operative report, updated medical records from Dr. Rerri, films from the first MRI, and Dr. Rerri's deposition transcript. Dr. Kitchens opined that after reviewing the additional records his causation opinion was unchanged. He opined that none of Petitioner's medical treatment was related as Petitioner did not sustain a work-related injury. He opined that Petitioner's work duties were not supra-physiologic and there was no evidence of an acute injury to her lumbar spine. He stated that the history provided by Petitioner was not consistent with her medical records. He opined there was no evidence of injury to the L4-5 disc or SI joint dysfunction.

Dr. Daniel Kitchens testified by way of deposition on 5/5/21. (RX9) Dr. Kitchens is a board-certified neurosurgeon. He testified there was no evidence Petitioner sustained a neurologic injury or nerve type pain on 4/7/16 as she did not treat soon after the onset of her symptoms. He explained that patients are unable to function well without treatment of nerve pain and there was no evidence that she sought treatment until June. He did not find any evidence of radiculopathy as Dr. Rerri reported four months prior in March 2017. Dr. Kitchens testified that Petitioner did not report any other dates of injury to him, and she did not report that her 4/7/16 injury was a result of repetitive trauma. Petitioner did not state how much the tubs weighed or how many tubs she lifted, but she did tell him some were empty and some had parts in them. He testified that Dr. Rerri's records do not contain any detail about Petitioner's work duties or

repetitive activities. He testified that Petitioner denied prior back complaints which he found inaccurate. Dr. Kitchens did not see any radiologist's diagnosis of retrolisthesis at L4-5 with instability, a herniated disc, spondylolisthesis, or nerve root impingement and he did not appreciate any of these diagnoses on the MRI films. He testified that retrolisthesis would show on x-rays, MRIs, and physical examination. Dr. Kitchens testified that the radiologist's report to the 10/31/16 MRI showed mild lumbar spondylosis and facet arthropathy. He testified that "spondylosis" is an aging of the disc, whereas "spondylolisthesis" is an offset of the vertebrae where the disc is slid forward. He testified that the MRI did not provide any condition that he would operate on.

Dr. Kitchens testified he does not recommend injections for diagnostics purposes in his practice because they are invasive, risky, and unreliable in causing a false negative or false positive. His physical examination of Petitioner did not reveal any significant findings at any disc level of Petitioner's lumbar spine. He opined that none of Petitioner's treatment was reasonable or necessary or related to an alleged work accident or Petitioner's work duties. He testified that the x-ray ordered by Dr. Kovalsky dated 11/30/16 was unremarkable with normal alignment and well-maintained disc heights, with very minor anterior lipping at L4-5 which is degenerative changes and arthritis. He testified that the earliest indication in Petitioner's medical records that she suffered from radiculopathy was on 9/28/16.

Dr. Kitchens testified that after Dr. Kovalsky ruled out L5-S1 as a pain generator he directed his treatment to Petitioner's SI joint, not L4-5. He testified that Petitioner's subjective report that her symptoms improved following surgery was unreliable.

On cross-examination, Dr. Kitchens testified that Petitioner's initial report of a gradual onset of back pain without a specific injury did not equate to repetitive trauma. He based his opinions on Petitioner not sustaining an acute injury. Dr. Kitchens agreed that the MRI dated 10/30/16 showed an annular bulge and facet arthroplasty at L4-5. He agreed that Petitioner had degenerative disc disease at L4-5, but disagreed she had an annular tear at that level. He agreed that Petitioner had a good result from surgery.

On 1/20/22, Petitioner returned to Dr. Rerri with a history of back and right leg pain and numbness for two months. She reported she had been doing well until two months ago. She used a TENS unit that helped. Dr. Rerri ordered x-rays and prescribed Diclofenac.

On 3/4/22, Dr. Rerri noted x-rays showed a fusion at L4-5 and instability at L5-S1. He suspected the screw may be loose at L4. Dr. Rerri ordered a CT scan of the lumbar spine from L3 to S1 to verify fusion and check status of the screws. He opined Petitioner may require an epidural steroid injection, removal of the screws, or a revision from L4 to S1.

On 4/15/22, Dr. Rerri ordered a bone stimulator due to a nonunion at L4-5. There was no office note admitted into evidence to support his orders.

On 9/23/22, Dr. Rerri noted Petitioner's low back pain was worse lately with pain down her legs. X-rays showed stable implants and progressing lumbar fusion. He prescribed Norco.

On 1/13/23, Dr. Rerri noted Petitioner preferred not to take narcotics but kept an emergency supply for her pain as-needed. Petitioner agreed to be referred to Dr. Bhandarkar for further treatment. Dr. Rerri refilled her prescription for Nocro and advised her to return as-needed.

CONCLUSIONS OF LAW

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

Section 6(c) of the Act (820 ILCS 306/6(c)) requires that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. The notice required by Section 6(c) of the Act is jurisdictional and failure of the Petitioner to give notice will bar his claim. *Thrall Car Manufacturing Co. v. Indus Comm'n*, 64 Ill.2d 459, 356 N.E.2d 516 (1976). A claim is only barred if no notice whatsoever has been given. *Silica Sand Transport Inc. v. Indus Comm'n*, 197 Ill.App.3d 640, 554 N.E.2d 734 (1990). If some notice has been given, but the notice is defective or inaccurate, then the employer must show that he has been unduly prejudiced. *Id*.

The Arbitrator finds that no notice was given to Respondent within 45 days of the alleged accident date of 4/5/16. On 10/6/16, Petitioner filed an Application for Adjustment of Claim alleging injuries to her low back/man as a whole as a result of pulling and lifting containers of parts on or about 5/31/2016. (AX4, RX10) The same day, Petitioner filed an Amended Application for Adjustment of Claim amending the date of accident to "on or about 4/5/2016". (AX4) Petitioner signed both Applications for Adjustment of Claim on 9/27/16.

Although Petitioner testified that she notified her supervisor of her symptoms, she did not state what date she notified him. Petitioner's supervisor Rick Smith did not testify at arbitration. Petitioner testified that she requested to fill out an accident report, but Mr. Smith refused to provide her with a report. The Arbitrator does not find Petitioner's testimony credible, particularly since Petitioner was provided with accident reports to fill out on 6/7/16 and 8/3/16.

On 6/7/16, Petitioner completed an accident report and reported she injured the middle of her back on approximately 5/5/16 while pulling down a tub off a bezel rack. (RX11) On 8/3/16, Petitioner filled out another accident report and reported she had back pain and shooting pain in the middle of her back and leg numbness while bending over to put tubs in a shoot and her back snapped. (RX11) She reported the accident occurred that day [8/3/16]. On 8/3/16, Petitioner presented to her primary care physician and reported her symptoms began on 6/6/16. When Petitioner filed her Applications for Adjustment of Claim she reported a date of accident of 5/31/16, which was amended to 4/5/16.

Despite the multiple dates of injury in Petitioner's medical records and accident reports, Petitioner continued to allege a date of injury of 4/5/16 at arbitration. Petitioner did not receive treatment for her injuries until 6/7/16 when she presented to her primary care physician at Clay County Hospital with back pain. Nurse Nussmeyer noted Petitioner had a gradual onset of low back pain without injury which started around 4/5/16. Nurse Nussmeyer noted Petitioner had not told her employer until today [6/7/16] and they gave her paperwork for her doctor to complete.

The Arbitrator finds that the history provided in the medical record is consistent with Petitioner's report of symptoms on 6/7/16 which resulted in her completing an accident report and seeking treatment. Nurse Nussmeyer called Respondent's office to "see if it was work comp since the possible injury date was more than two months ago".

The evidence is clear that Petitioner did not notify Respondent of her alleged injury until 6/7/16, which was more than 45 days following her alleged accident. Based upon the overwhelming evidence, the Arbitrator finds that Petitioner did not give notice of her alleged accident within the time limits stated in Section 6(c) of the Act and her claim is barred.

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

Based on the Arbitrator's finding that Petitioner did not give notice of her alleged accident to Respondent within the time limits set forth in Section 6(c) of the Act, this issue is moot.

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

Based on the Arbitrator's finding that Petitioner did not give notice of her alleged accident to Respondent within the time limits set forth in Section 6(c) of the Act, this issue is moot.

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

Based on the Arbitrator's finding that Petitioner did not give notice of her alleged accident to Respondent within the time limits set forth in Section 6(c) of the Act, this issue is moot.

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

Based on the Arbitrator's finding that Petitioner did not give notice of her alleged accident to Respondent within the time limits set forth in Section 6(c) of the Act, this issue is moot.

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

Based on the Arbitrator's finding that Petitioner did not give notice of her alleged accident to Respondent within the time limits set forth in Section 6(c) of the Act, this issue is moot.

Issue (O): MMI date and whether Petitioner exceeded her choice of two physicians under the Act.

Based on the Arbitrator's finding that Petitioner did not give notice of her alleged accident to Respondent within the time limits set forth in Section 6(c) of the Act, these issues are moot.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC000627
Case Name	Barbara Martin v. North American Lighting Inc
Consolidated Cases	16WC030863; 17WC000629;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0557
Number of Pages of Decision	31
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	David Moss, Martin Haxel
Respondent Attorney	Stephen Carter

DATE FILED: 11/21/2024

/s/Marc Parker,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☐ 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

Barbara Martin,

Petitioner,

vs. No. 17 WC 000627

North American Lighting, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, temporary total disability, prospective medical care, permanent partial disability, the Arbitrator's rulings concerning various objections made during trial, the weight assigned to the opinions of the various doctors (and nurses) including Respondent's Section 12 IME physician, when did Petitioner reach MMI, and Petitioner's credibility, and being advised of the facts and law, affirms with changes the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 is to be established using the following criteria: (i) the reported level of impairment from a physician; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b.

The Commission has considered the five factors, and affirms and adopts the weights given by the Arbitrator for the first four. While the Arbitrator considered the fifth §8.1b factor – evidence

of disability corroborated by the treating medical records – the Arbitrator omitted assigning a weight for that factor.

With regard to factor (v), the Commission finds, as did the Arbitrator, that as a result of Petitioner's June 16, 2016 accident, she required and underwent a lumbar interbody fusion at L4-5. Following that surgery, Petitioner required physical therapy, use of a bone stimulator, and work restrictions which were not lifted until almost one year after her surgery. Although Petitioner returned to work, she performs her duties more slowly and cautiously, and she cannot sit, stand or walk for prolonged periods without pain. The Commission therefore assigns significant weight to factor (v) of §8.1b of the Act.

After considering all five §8.1b factors, we find the Petitioner sustained permanent partial disability to the extent of 22.5% loss of use of her body as a whole, pursuant to §8(d)2 of the Act, and we affirm that award made by the Arbitrator. All else in the Arbitrator's Decision is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that other than as noted above, the Decision of the Arbitrator filed August 21, 2023, is hereby affirmed and adopted.

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

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

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

November 21, 2024

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/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC000627
Case Name	Barbara Martin v. North American Lighting, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	David Moss
Respondent Attorney	Stephen Carter

DATE FILED: 8/21/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 15, 2023 5.29%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BARBARA MARTIN
Employee/Petitioner

v.

NORTH AMERICAN LIGHTING, INC.
Employer/Respondent

Case # **17-WC-000627**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **6/12/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/7/16**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

Timely notice of the 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 $**30,128.80**; the average weekly wage was $**579.40**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**2,949.39 in short-term disability benefits paid from 3/1/18 through 4/14/18,** for other benefits, for a total credit of $**2,949.39**.

Respondent is entitled to a credit of $**109,856.14** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

The Arbitrator finds that Petitioner reached maximum medical improvement on 2/22/19. The Arbitrator further finds that Petitioner did not exceed her choice of two physicians under Section 8(a) of the Act.

Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 10 and itemized and attached to the Request for Hearing (AX2), directly to Petitioner and pursuant to the Illinois medical fee schedule, as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall receive a credit for medical expenses paid through its group medical plan in the amount of $109,856.14, as stipulated by the parties. Respondent shall further pay Petitioner out-of-pocket expenses in the amount of $528.87.

Respondent shall pay Petitioner temporary total disability benefits of $**386.27**/week for **7-2/7th** weeks, commencing **2/22/18** through **4/13/18**, representing **7-2/7th** weeks, pursuant to Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit in the amount of $2,949.39 in short-term disability benefits paid from 3/1/18 through 4/14/18.

Respondent shall pay Petitioner permanent partial disability benefits of $**347.64**/week for **112.5** weeks, because the injuries sustained caused **22.5%** loss of use of her body as a whole, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 2/22/19 through 6/12/23, and shall pay the remainder of the award, if any, in weekly payments.

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

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

AUGUST 21, 2023

Arbitrator Linda J. Cantrell

ICArbDec p. 2

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BARBARA MARTIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 17-WC-000627**
	)	
NORTH AMERICAN LIGHTING, INC.,	)	**Consolidated Case Nos. 16-WC-030863**
	)	**17-WC-000629**
Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Herrin on June 12, 2023. On 10/6/16, Petitioner filed an Application for Adjustment of Claim alleging injuries to her low back/man as a whole as a result of pulling and lifting containers of parts on or about 5/31/2016. (Case No. 16-WC-030863, AX4, RX10) The same day, Petitioner filed an Amended Application for Adjustment of Claim amending the date of accident to "on or about 4/5/2016". (AX4) On 1/9/17, Petitioner filed an Application for Adjustment of Claim alleging injuries to her low back/man as a whole as a result of pulling and lifting at work on 6/7/16. (Case No. 17-WC-000627, AX5) On 1/9/17, Petitioner filed an Application for Adjustment of Claim alleging injuries to her low back/man as a whole as a result of pulling and lifting at work on 8/3/16. (Case No. 17-WC-000629, AX6)

The parties stipulated that Respondent shall receive a credit of $109,856.14 in medical bills paid through its group medical plan, under Section 8(j) of the Act, and $2,949.39 in short term disability benefits paid. The issues in dispute in Case No. 17-WC-000627 are accident, notice, causal connection, medical expenses, temporary total disability benefits, the date Petitioner reached maximum medical improvement, whether Petitioner exceeded her choice of two physicians under the Act, and the nature and extent of Petitioner's injuries. The Arbitrator has simultaneously issued separate Decisions in Case Nos. 16-WC-030863 and 17-WC-000629.

TESTIMONY

Petitioner was 52 years old, married, with no dependent children at the time of the alleged accident. She is currently employed by Respondent and was hired on 9/4/14. In April 2016, Petitioner worked on the KC C-line making lens bezels for lamps. She put the lenses in a machine to be etched, removed the etched lenses and screwed bezels in them, and placed the finished lenses in a tub. Petitioner testified that she assembled approximately 200 lenses per hour. Her duties required pushing and pulling tubs and bending down low to push the tubs under

a rack. She described the rack as four feet high. She pulled a tub down and forward, took parts out, assembled the lenses, filled the tub with finished lenses, and lifted the full tub and placed it underneath to send down the line. The area where she worked was "turn around space". The tubs measured 4x4 and were stacked three high. She testified she had to reach "really high" to pull the tubs down. Petitioner identified photos of tubs and racks that were similar but not exactly like the tubs and racks she worked with for Respondent. (PX12) She performed these duties eight hours per day from 7:00 a.m. to 3:30 p.m. She had a 30-minute lunch break and two 10-minute breaks per shift.

Petitioner testified that because the tubs were stacked three high and they were placed so high she had to stand on her tippy toes to pull them down. Petitioner is 5'8" and the tubs were over six feet above her head. She pulled five to six tubs down per hour to make 200 parts per hour. Petitioner testified that she noticed mid-to-low back pain and numbness in her legs when pulling the tubs down. She stated she is sure she had back pain prior to April 2016 that she treated with rest.

Petitioner testified that she notified her supervisor Rick Smith about her symptoms. Petitioner continued to work after 4/5/16 and her symptoms progressed. On 6/7/16, Petitioner again notified her supervisor Mr. Smith that her symptoms were progressing. She filled out an accident report that day. She testified that she may have written the wrong accident date of 5/5/16 on the report. Petitioner sought treatment at Clay County Hospital on 6/7/16 and was placed on light duty restrictions. On 6/9/16, Petitioner was seen by Respondent's on-site physician Dr. Brower. She testified that she told Dr. Brower she had back pain and numbness in her legs from pulling down tubs and pushing them under the counter while assembling lens bezels. Dr. Brower ordered Petitioner to return to work. She continued to treat with her doctor, but also Dr. Brower because Respondent told her she had to. She underwent physical therapy and her symptoms continued to progress while she worked.

On 8/3/16, Petitioner filled out another accident report and reported she had low back pain and shooting pain down her leg. She testified she was sure she notified her supervisor Mr. Smith of her injury, or she would not have received an accident report to fill out. Petitioner believed she was working light duty at that time packing bulbs in the service plant. Her symptoms persisted and never resolved after June 2016. She treated with Dr. Brower on 8/4/16 and told him she still had back pain and numbness and tingling in her leg. She underwent x-rays at Clay County Hospital and returned to her primary care physician on 8/12/16 who recommended physical therapy. She continued to treat with Dr. Brower who recommended she continue physical therapy. On 9/15/16, Dr. Brower continued her light duty restrictions and physical therapy. On 9/29/16, Petitioner underwent a Fit for Duty exam and her light duty restrictions were continued. She underwent a lumbar MRI on 10/31/16. Petitioner was referred to Dr. Kovalsky at the Orthopedic Center of Southern Illinois who ordered physical therapy. On 12/29/16, Petitioner underwent a second lumbar MRI. On 3/13/17, Petitioner saw Dr. Rerri at Bonutti Clinic for a second opinion. She testified that she looked Bonutti Clinic up on the internet and was not referred to his office. Dr. Rerri prescribed Hydrocodone. She last treated with Dr. Brower on 10/26/17. On 8/11/17, Dr. Rerri recommended an L4-5 fusion. Petitioner was examined by Dr. Kitchen's at the request of Respondent on 7/28/17.

Petitioner underwent an L5 selective nerve root block that caused a reaction and resulted in her undergoing a "blood patch" at Crossroads Hospital. She was placed off work from 12/22/17 through 1/2/18. On 2/22/18, Petitioner underwent a fusion at L4-5 by Dr. Rerri at St. Mary's Hospital and was discharged on 2/24/18. She worked light duty up to the date of her surgery. Dr. Rerri prescribed a bone stimulator on 3/2/18 that she used every day. Petitioner testified that her pain and leg symptoms improved following surgery. She underwent physical therapy from 3/27/18 through 6/8/18. Petitioner returned to light duty work on 4/16/18 where she placed bulbs in bags. Her symptoms continued to improve while working light duty. Petitioner wore a back brace at work for one year following surgery.

On 2/22/19, Dr. Rerri released Petitioner to return to work without restrictions and discharged her from care. Petitioner testified she was almost back to normal at that time. Petitioner began working in the service plant for Respondent where she assembled headlights and performed a lot of manual work. She did not treat with her primary care physician, chiropractor, pain management, or Dr. Brower after being released by Dr. Rerri. Petitioner returned to Dr. Rerri on 1/20/22 for low back pain at the surgical site and her back was "snapping" like the cage was coming apart. She testified that she did not reinjure herself or lift anything heavy that brought on her symptoms. She testified she could perform her job duties at her own pace so it would not hurt her. Dr. Rerri ordered a CT scan and prescribed Hydrocodone again. She purchased a TENS unit that improved her symptoms. On 4/15/22, Dr. Rerri prescribed a bone stimulator. On 8/26/22, Dr. Rerri recommended continued use of the bone stimulator and advised Petitioner he was retiring. Her last treatment with Dr. Rerri's office was a telemedicine appointment on 1/13/23 and she was informed that Dr. Rerri left the medical practice.

Petitioner testified she still has low back pain and continues to perform full duty work. She testified that her symptoms feel like being stabbed 50 million times in her back and it hurts so bad she wants to cry. She uses a TENS unit and an ointment that helps alleviate her pain. Petitioner received short-term disability benefits following surgery. She stated her medical bills were paid by her group health insurer Blue Cross/Blue Shield through her employment with Respondent. Petitioner testified that since her accident she cannot sit, stand, or walk for prolonged periods without pain. Household chores increase her pain. Petitioner is able to perform her regular job duties for Respondent, but she is slower and cautious not to aggravate her back. Her current job duties are less physically demanding than the job duties she had in 2016.

On cross-examination, Petitioner testified she is claiming temporary total disability benefits from 12/22/17 through 1/2/18. She agreed that Respondent's facility is shutdown during that period for the holiday. She testified that not all departments shut down during the holiday, but she believed her department did. She testified she did not think she ever told her doctors she never had back pain prior to April 2016. She did not recall treating at Clay County Hospital on 10/5/15 for sharp stabbing low back pain or returning to the hospital on 10/13/15.

Petitioner did not recognize the FMLA form admitted into evidence. (RX18) She testified that it was not the same form employees took to their doctor. She did not know if she missed work during the period of time stated on the FMLA form. Petitioner did not recall going to the doctor in 2015.

Petitioner testified that when she filed her initial Application for Adjustment of Claim she alleged a date of accident of 5/31/16. She testified she could have said the wrong date. She stated she asked her supervisor for an accident report, and he refused to give her one. She did not complete an accident report for any injury dated 5/31/16. Petitioner testified that she amended the date of accident to 4/5/16 but did not complete an accident report for that injury. She testified that the 6/7/16 accident report that she completed states a date of injury of approximately 5/5/16. She agreed that she reported on 6/7/16 that she injured herself by bending over to put tubs in a chute and that her Application for Adjustment of Claim alleges she was pulling and lifting. She was unsure if she began treating with Nurse Nussmeier at Clay County Hospital in April or June 2016. She stated she could have told Nurse Nussmeier that her symptoms started around 4/5/16. She agreed that the accident report she prepared on 8/3/16 indicates she injured herself while bending over to put tubs in a chute and the Application for Adjustment of Claim alleges she injured herself pulling and lifting. Petitioner testified that she described her job duties to Dr. Rerri the same way she described them on direct examination. She agreed that Dr. Kovalsky never recommended surgery. She disagreed that her pain was 10/10 before and after the injection by Dr. Kovalsky. She did not receive treatment from Dr. Bhandarkar at Dr. Rerri's referral. She did not return to Dr. Kovalsky after he gave her the injection and "blew out her veins in both arms".

On re-direct examination, Petitioner testified that she received one tub full of lenses and one tub full of bezels. She removed the lenses and bezels, assembled the parts, and placed the assembled parts back in the tubs. She estimated that the full tubs weighed 5 to 10 pounds and possibly more depending on the light fixtures. She lifted the tubs and placed them underneath the rack that sent them to material handlers. Petitioner testified that the racks were permanent, and the tubs of lenses and bezels were placed on the racks by material handlers. She had to pull 4 to 5 tubs of lenses and bezels down from the racks per hour. She had to make rate of 200 completed bezels per hour. Petitioner clarified that she had stabbing pain prior to her surgery which has resolved. When her back "snaps" it locks up and feels like a jolt.

Barrie Ballentine testified on behalf of Respondent. Ms. Ballentine is currently the wellness and risk manager for Respondent which includes overseeing workers' compensation. In 2016, she was the HR manager of Respondent's Paris manufacturing facility. Ms. Ballentine testified that every year starting Christmas Eve through just after New Year's all production is shut down for preventative maintenance. She stated that Petitioner worked in the production department. She testified that the plant was shut down during the period Petitioner underwent her injection and was claiming TTD benefits. Ms. Ballentine identified a time clock printout admitted into evidence as RX17. She testified that Petitioner did not work from 12/22/17 through 1/2/18. She assumed it was because the plant was shut down during that period. The printout shows Petitioner worked 5.8 hours on 12/22/17, 8 hours on 1/2/18, and she did not work on the days in between.

MEDICAL HISTORY/ACCIDENT REPORTS

Medical records that pre-date Petitioner's alleged accidents were admitted into evidence. (PX4, RX1)

On 8/28/14, Petitioner underwent a preemployment physical at Respondent's on-site medical facility, MOHA. (PX4) Her history and exam were unremarkable. Petitioner reported she did not have any current conditions of the neck, back, or lower extremities or had any previous injury or surgery to her neck, back, or lower extremities.

On 6/4/15, Petitioner presented to Clay County Hospital Medical Clinic (CCH) to establish patient care and for a checkup. A physical examination was performed, and Petitioner was diagnosed with COPD and prescribed Chantix. No history of back complaints or treatment were noted. On 6/25/15 and 7/20/15, Petitioner followed up with CCH and her physical exam remained unchanged. Additional diagnosis were hyperlipidemia and polydipsia.

On 10/5/15, Petitioner presented to CCH for back pain, abdominal pain, and urinary retention. She had sharp lower back and left flank pain that was aggravated by twisting. She rated her abdominal pain 7/10 that was located in the left lower quadrant and radiated to her left lower back. Her pain was sharp and stabbing and occurred on urination. Her urinary retention radiated to her back. Nurse Harris assessed a UTI and prescribed Bactrim.

On 10/13/15, Petitioner presented to the emergency room at Good Samaritan Hospital for left flank pain with a sudden onset three days ago. (RX2) She reported nausea, decreased urine output, and the pain started in her left groin and radiated to her left lower back. Her pain was so severe she was unable to walk. She was positive for back pain with no falls. Physical examination and diagnostic studies of Petitioner's abdomen and pelvis were completely normal, but her pain was worse with movement. Assessment was likely musculoskeletal and not a kidney stone. Petitioner declined pain medication.

Petitioner returned to CCH on 10/15/15 and reported lower back and left flank pain when bending forward, changing positions, daily activities, and twisting. Petitioner reported she went to the emergency room last night and had a torn muscle in her back. She had significant pain if she did not take Norco, but she could not function well on the medication. Physical examination revealed moderate lumbar spine pain and tenderness with motion and left flank pain. She was assessed with low back pain and placed off work for four days. FMLA paperwork was completed. On 3/10/16, Petitioner returned to CCH with an upper respiratory infection. No back or flank pain was noted.

On 6/7/16, Petitioner completed an Accident Report indicating she injured the middle of her back on approximately 5/5/16 while pulling down a tub off a bezel rack. (RX11)

On 6/7/16, Petitioner presented to CCH with back pain. It was noted Petitioner had a gradual onset of low back pain without injury. Her symptoms were mild, persistent, and achy. Bending forward, bending over, and lifting heavy objects increased her symptoms. She reported her back pain started around 4/5/16 while at work lifting tubs containing bezels that weighed approximately five pounds. She started doing more overhead lifting around this time and associated her pain with that activity. Nurse Nussmeyer noted Petitioner had not told her employer until today and they gave her paperwork for her doctor to complete. Nurse Nussmeyer noted Petitioner was not sure if it was actually work comp or not. Petitioner requested to do light duty. Physical examination of Petitioner's lumbar spine revealed limited range of motion and

tenderness. Nurse Nussmeyer assessed low back pain and discussed physical therapy, massage, and acupuncture. She placed Petitioner off work for two weeks and referred her for a physical therapy evaluation to determine how much weight she could lift. Nurse Nussmeyer called Respondent's office to see if it was work comp since the possible injury date was more than two months ago. Respondent's office was closed and she did not speak to anyone.

On 6/9/16, Petitioner was examined by Respondent's on-site physician Dr. Jeffrey Brower at Midwest Occupational Associates (MOHA). (RX4) Dr. Brower noted Petitioner had back pain that she believed started in April. She was pulling tubs down and developed pain in her mid-back. She did not see anyone until two days ago and was placed off work and referred to physical therapy. Dr. Brower noted Petitioner's gait was normal and she had almost full range of motion of the lumbar spine. She had tenderness along the midline of the thoracolumbar junction and negative straight leg raises. Dr. Brower assessed thoracolumbar strain and placed Petitioner on lifting and bending restrictions. Petitioner reported that the prescribed restrictions would place her back on her regular line and her job duties were as easy as the restrictions but that is how she was injured. He discussed moving Petitioner to a different line and prescribed physical therapy.

On 6/29/16, Petitioner returned to CCH and Nurse Nussmeyer noted Petitioner was following up for repetitive work causing back pain. Petitioner did not qualify for work comp but did see the company doctor who placed her on restrictions. Petitioner was to start physical therapy soon at CCH. Nurse Nussmeyer noted from this point Dr. Brown would be taking over Petitioner's care for mid-back strain while at work.

On 7/8/16, Petitioner returned to Dr. Brower who noted no significant change since her last visit. She had tenderness along the L2-3 region and excellent range of motion. Dr. Brower diagnosed a lumbar strain and continued to recommend physical therapy.

On 7/21/16, Dr. Brower noted Petitioner's pain occasionally radiated down the back of her right thigh. Her claim was denied so she had not started physical therapy. Petitioner had pain with range of motion and extension. Dr. Brower recommended continued light duty with limited bending and no lifting over 10 pounds for seven days and attempting to return to regular duty.

On 8/3/16, Petitioner filled out an Accident Report and reported that on 8/3/16 she had back pain and shooting pain in the middle of her back and leg numbness while bending over to put tubs in a shoot and her back snapped. She stated her injuries were due to repetitive lifting, moving, pushing, and pulling. She requested medical treatment and advised that preventative measures could include changing the height of the tub shoot, changing the size of the tubs, or make it easier to return the tubs.

On 8/3/16, Petitioner returned to CCH for low back pain with an onset date of 6/6/16. Petitioner rated her pain 8/10 that was fluctuating, persistent, aching, stabbing, and radiated to her left thigh and buttock. Bending forward, lifting heavy objects, and twisting increased her symptoms. Nurse Mack noted Petitioner returned to work on Monday and has recurrent back pain after working three days. Physical examination revealed lumbar spine muscle spasms and moderate pain with motion. Nurse Mack prescribed Naproxen and ordered physical therapy and lumbar spine x-rays. Petitioner was placed on light duty restrictions of no lifting over 10 pounds

and no bending over five reps per hour for two weeks. Lumbar spine x-rays were unremarkable. (RX3)

On 8/4/16, Dr. Brower noted that yesterday Petitioner was moving a tote waist level down to floor level and felt a pop in her lower back with pain. She had to leave work and underwent x-rays. Petitioner stated the totes were very heavy but could not state how much they weighed. Dr. Brower noted tenderness across the L4-5 area bilaterally, full extension with no discomfort, no spasms, and negative straight leg raises. He did not appreciate evidence of a herniated disc. Dr. Brower continued Petitioner's light duty restrictions. (RX4)

On 8/12/16, Petitioner returned to CCH and Nurse Mack noted moderate low back pain with no radiating pain. Petitioner described her pain as localized and sharp. Physical therapy was scheduled to begin on 8/22/16. X-rays were unremarkable. Petitioner's symptoms were relieved with ice, pain medications, rest, and light duty. Musculoskeletal examination revealed a normal gait. Nurse Mack continued Petitioner's light duty restrictions for two weeks due to severe back pain and muscle spasms.

On 8/18/16, Dr. Brower noted Petitioner's condition was unchanged. She was taking Tramadol, Naproxen, and working light duty. Dr. Brower continued Petitioner's light duty restrictions and recommended physical therapy.

On 8/26/16, Petitioner reported her symptoms were improving but were persistent and aching. She reported difficulty getting in and out of a vehicle and kneeling. Physical examination revealed muscle spasms and moderate pain with motion. Nurse Mack recommended Petitioner continue physical therapy, pain medication, muscle relaxers, and light duty for one week.

On 9/15/16, Dr. Brower noted Petitioner had two therapy sessions with little improvement. Petitioner had axial pain, no radicular pain, and tenderness along the L2-3 area in the midline. Dr. Brower continued Petitioner's light duty restrictions and therapy.

On 9/28/16, Petitioner returned to CCH and reported her lower back pain radiated to her bilateral thighs and buttocks. Onset of symptoms was reported to be three months ago. Petitioner reported her symptoms were deep, sharp, and stabbing and increased with lifting, bending, twisting, walking, and working at NAL. Petitioner reported no improvement with physical therapy. Physical examination revealed muscle spasms and severe pain with motion. Nurse Mack instructed Petitioner to continue Naproxen, Tramadol, Methocarbamol, and Flexeril. A lumbar spine MRI was ordered, and Petitioner's light duty restrictions were continued for one month.

On 9/29/16, Dr. Brower noted physical therapy did not improve Petitioner's symptoms and treatment was discontinued. She presented for a fit for duty exam. Petitioner reported that she was prescribed a new pain medication she could take during the day and an MRI was ordered.

On 10/27/16, Petitioner returned to CCH with no change in lower back symptoms. Nurse Mack noted Petitioner missed her MRI appointment and had to be recertified with her insurance. Physical examination revealed Petitioner walked with a limp on the right side with no assistive

device, severe muscle spasms, moderate pain with motion, normal heel-and-toe-walk, no pain in her bilateral buttock or SI joint, and positive straight leg raise causing back pain only on the right and left. Petitioner's medications were refilled, and her light duty restrictions were continued for one month.

On 10/31/16, Petitioner underwent a lumbar MRI that revealed mild lumbar spondylosis with facet arthropathy and no stenosis; foraminal narrowing at L4-5 and L5-S1; and no compression disc herniation, fracture, or malalignment identified. (RX3) The history recorded on the MRI report stated "low back pain, bilateral leg pain for 1 month. Pulling injury".

On 11/3/16, Nurse Mack noted the MRI revealed mild lumbar spondylosis and an annular bulge and foraminal narrowing at L4-5 and L5-S1. Petitioner continued to have low back pain radiating to her bilateral thighs and buttocks. Nurse Mack continued Petitioner's medications, light duty restrictions, and referred Petitioner to Dr. Don Kovalsky for further evaluation. Nurse Mack noted Petitioner was not taking the prescribed Cyclobenzaprine, Methocarbamol, or Naproxen.

On 11/30/16, Petitioner was examined by Dr. Kovalsky for constant low back pain and intermittent radiculopathy in her bilateral buttocks and legs. (RX5) Dr. Kovalsky noted Petitioner was injured on 5/7/16 which he did not believe Petitioner reported as a work comp injury. Dr. Kovalsky noted clinical evidence of symptom magnification and Petitioner rated her pain excessively high at 8-9/10. She stated that most days her pain was 10/10 and on a good day it was 7/10, but she was able to work which he found to be inconsistent. Dr. Kovalsky noted an unremarkable past medical history. Physical examination revealed mechanical back pain and right buttock pain with forward flexion, positive Waddell's sign, positive straight leg raises on the right, some buttock pain with hyperextension, and positive provocative testing on the right SI joint. Dr. Kovalsky reviewed lumbar x-rays and the MRI. He diagnosed right lateral L5-S1 disc herniation and right lumbar radiculopathy. He advised Petitioner that 70% of disc herniations absorb over 6 to 9 months without the need for surgery. He prescribed a Prednisone taper, Flexeril, and Fioricet. Petitioner advised she could not tolerate narcotics. Dr. Kovalsky referred Petitioner to Dr. Smith for a selective nerve root block at L5 on the right to determine the pain generator. He advised that if she did not receive relief from the L5 injection, he would inject her SI joint. He placed Petitioner on light duty restrictions of no lifting greater than 10 pounds and no repetitive bending, lifting, twisting, or carrying for 8 to 9 weeks. Petitioner reported a date of injury of "5/7/16" on the intake form.

On 12/13/16, Nurse Mack noted Petitioner's symptoms were worsening. Petitioner reported that the pharmacist told her that the four medications prescribed by Dr. Kovalsky for back pain was interacting with the Cartia that her heart doctor prescribed. Petitioner had significant low back pain that increased with breathing deep. Nurse Mack advised there were no contraindications to Cartia and she should take the medications prescribed by Dr. Kovalsky. Petitioner expressed anxiety with an upcoming cortisone injection ordered by Dr. Kovalsky.

On 12/16/16, Petitioner underwent a right L5-S1 selective nerve block by Dr. Aiping Smith at the referral of Dr. Kovalsky. (RX3) Dr. Smith noted fluoroscopic pictures were obtained confirming the needle placement in the right L5 neural foramen. He noted Petitioner

tolerated the procedure well with no complications. She was discharged home in stable condition. Dr. Smith noted Petitioner had significant magnification behavior and she was screaming during IV placement. She reported brief reproduction of the right lower extremity pain when the needle advanced into the L5 neural foramen. She reported 10/10 pain before and after the injection.

On 12/27/16, Dr. Kovalsky ordered an urgent lumbar MRI. (RX5) The MRI was performed on 12/29/16 that revealed a small posterior disc-osteophyte complex with mild facet and ligamentum flavum hypertrophy resulting in moderate bilateral foraminal stenosis; and mild facet hypertrophy and a small posterior disc-osteophyte complex with severe bilateral foraminal stenosis with no spinal stenosis. (RX3) Impression was multilevel degenerative disc disease with multilevel foraminal stenosis. Dr. Kovalsky interpreted the MRI as showing a far lateral disc bulge on the right at L5-S1 that appeared to be contacting the L5 nerve root. Petitioner reported significant pain since the nerve root block with headaches, photophobia, and mild nausea. She reported paresthesia and tingling in her buttocks and thigh that stopped at her knee. Dr. Kovalsky noted a small collection of fluid posteriorly at L4-5 and L5-S1. Clinical impression was persistent right buttock pain which was most likely sacroiliac in nature given the injection provided no relief. Dr. Kovalsky suspected a cerebral spinal fluid leak. He referred Petitioner for a blood patch, followed by injections or physical therapy for the SI joint dysfunction, with Lidocaine and steroids.

On 1/19/17, Petitioner underwent a right L5-S1 transforaminal L5 perineural and epidurogram with transforaminal blood patch at Crossroads Hospital for cerebral spinal fluid leak. (RX3)

On 1/26/17, Petitioner returned to Dr. Kovalsky and reported her headaches resolved about one week after the blood patch. He felt that Petitioner's buttocks pain was not coming from her L5 nerve root or a radiculitis because she failed to improve with the injection. She refused additional injections by Dr. Smith. She rated her buttock pain 10/10 and sometimes 11 or 12, which was again a red flag. Petitioner walked with an antalgic gate on the right. She had positive provocative testing of the right SI joint, Fortin finger pointing, thigh thrust, Patrick's test, and pelvic distraction test. She had positive straight leg raising and Valsalva testing reproduced buttocks pain but no referred leg pain. Dr. Kovalsky advised that Lidocaine injections were necessary to diagnose SI joint dysfunction. Petitioner was very hesitant but agreed to be referred to Dr. Anderson for the injection. Dr. Kovalsky continued Petitioner's light duty restrictions.

On 2/3/17, Petitioner return to CCH and reported her low back pain radiated to her bilateral buttocks and right thigh/calf/foot. She had numbness and piercing pain. Petitioner reported she saw Dr. Kovalsky twice and had an injection by Dr. Smith that hit the wrong nerve and caused a great deal of pain. Petitioner was in worse pain than before. She had to undergo an epidural patch at Crossroads Hospital. Nurse Mack referred Petitioner to Dr. Bhaskara at Fairfield Pain Clinic for pain management. On 2/15/17, CCH noted Petitioner told Dr. Bhaskara's office she did not want to treat with their facility because she did not want injections to cover up her pain but wanted to find out what was causing her pain.

On 3/13/17, Petitioner presented to Dr. Bernard Rerri at Bonutti Orthopedic Services. (RX6) It was noted she referred herself to his office. Petitioner reported injuring herself pushing and pulling tubs at work. She worked in a confined space and had to bend and throw tubs. Petitioner reported low back pain that radiated to her lower extremities, greater on the right. X-rays were performed that showed degenerative disc disease at L4-5 and L5-S1, a central annular tear and retrolisthesis at L4-5, and bilateral lateral recess stenosis worse on the right at L5-S1. Dr. Rerri noted Petitioner had an occupational back injury as far back as June 2016. He noted that the instability at L4-5 was consistent with Petitioner's complaints. He recommended sedentary restrictions with a 10-pound lifting limit until further notice. Dr. Rerri recommended a transforaminal interbody fusion at L4-5.

On 3/30/17, Petitioner was examined by Dr. Gordon at Respondent's on-site medical clinic (MOHA). (PX4) Petitioner reported she injured her back on 6/7/16 while pulling product and felt a snap in her low back. She reported that repetitive pulling, pushing, bending, and twisting on the line further aggravated her back pain. She was waiting on approval for surgery. Petitioner denied any problems with her back prior to June 2016. Petitioner's work restrictions were continued.

On 7/28/17, Petitioner was examined by Dr. Daniel Kitchens pursuant to Section 12 of the Act. (RX8) Petitioner reported a date of injury of 4/7/16 on the Accident Information Sheet. She reported pulling tubs that were stacked three high, bending over to put tubs under a rack, bending, twisting, turning, lifting, and pulling tubs in a small area, and taking tubs from the top of the stack that sometimes fell and she had to catch them. She had worked that line for six months. She reported her symptoms started around 11:00 a.m. on 4/7/16 that included shooting, pulling, ripping-type pain in her mid-back, with no pain in her legs. She took Ibuprofen on her lunchbreak and thought she pulled a muscle. She worked light duty cleaning floors and packing light bulbs. Petitioner reported she was put back on the tub line in June 2016 and her pain increased after one day. Dr. Kitchens noted that Petitioner first sought treatment on 6/7/16. Petitioner could not recall when she initially saw her primary care physician but thought it was soon after her work accident. Dr. Kitchens opined that Petitioner's condition was not related to her work activities of lifting totes and bending since her pain did not improve with refraining from these activities. He opined that Petitioner had age-related degenerative disc disease which was not related to her work activities. There was no objective evidence of an acute injury, instability, disc herniation, or nerve root impingement. Dr. Kitchens opined that Petitioner did not require surgery and she did not have signs or symptoms of radiculopathy. He opined that Petitioner could work in a full duty capacity.

On 8/4/17, Petitioner returned to Dr. Rerri at his new medical practice. It was noted Petitioner was following up for low back pain and sciatica pain down both legs that was present for over one year. Petitioner reported her symptoms were getting worse. Dr. Rerri wanted to review his records from Bonutti Clinic and the MRI.

On 8/11/17, Dr. Rerri reviewed Petitioner's medical records and continued to recommend a fusion at L4-5. He recommended a 5-pound lifting restriction and no overhead work, bending, twisting, or climbing ladders or stairs until further notice.

On 9/14/17, Dr. Gordon at MOHA noted Petitioner continued to have 6/10 pain in the central lumbar back that radiated down her right leg to her calf. (RX4) Dr. Rerri had her on work restrictions which Respondent was accommodating. Dr. Brower noted Petitioner walked with an antalgic gait and had increased pain with lumbar flexion. Heel walking was difficult. Dr. Brower agreed with the light duty restrictions recommended by Dr. Rerri.

On 10/26/17, Petitioner returned to MOHA for repeat evaluation of chronic low back pain with radiation down her right leg. Her pain was constant and 10+/10. Physical examination was limited due to increased pain. Petitioner's restrictions were continued as recommended by Dr. Rerri which Respondent was accommodating.

On 2/22/18, Petitioner underwent a transforaminal interbody fusion at L4-5 by Dr. Rerri. (RX3)

On 3/2/18, Dr. Rerri noted Petitioner was doing well and was taking minimal pain medications. Dr. Rerri recommended a bone stimulator in view of multiple preop epidurals and smoking history. On 3/22/18, Dr. Rerri noted Petitioner was not taking pain medications and referred her to physical therapy. Petitioner began physical therapy at Salem Township Hospital on 3/27/18. (RX7) She reported numbness in her right great toe. She reported the tingling in her leg and back pain had resolved and she had no difficulty walking.

On 4/13/18, Dr. Rerri noted Petitioner had bilateral buttock pain for the past two weeks and numbness in her right big toe. She was undergoing physical therapy. Dr. Rerri allowed Petitioner to return to light duty work of no lifting greater than 10 pounds, no bending/twisting, and to wear her brace at work.

On 5/10/18, Dr. Rerri noted Petitioner had intermittent numbness in her legs even without activity. He ordered her to continue wearing the brace. X-rays showed stable implants with a slight screw halo. He prescribed Gabapentin and continued her light duty restrictions.

On 8/3/18, Dr. Rerri noted Petitioner was slowly improving and Gabapentin helped. He continued her light duty restrictions and ordered her to wean off her brace.

On 2/22/19, Dr. Rerri noted Petitioner was doing well one-year post-fusion. X-rays revealed partial bone fusion of the intervertebral space at L4-5; partial bone fusion of the left traverse process at L4 and L5; mild spondylosis; and no acute abnormality of the lumbar spine. (RX3) Dr. Rerri diagnosed stable implants and a solid fusion. He released Petitioner to full duty work and ordered her to discontinue the bone stimulator. He advised Petitioner to return on an as-needed basis.

On 3/14/20, Dr. Rerri authored a narrative report stating he initially treated Petitioner at Bonutti Clinic for back pain that radiated to her lower extremities. Petitioner described an injury at work around 4/4/16 while pulling and stacking tubs in a confined space. Dr. Rerri opined that Petitioner's injury at work aggravated and exacerbated degenerative disc disease that required surgical intervention.

On 12/18/20, Dr. Bernard Rerri testified by way of deposition. (PX7) Dr. Rerri is an orthopedic surgeon. He testified that when he initially examined Petitioner on 3/13/17 she reported she injured herself at work by pushing and pulling tubs in confined spaces. Dr. Rerri reviewed Petitioner's MRI from October 2016, performed a physical examination, and concluded that Petitioner's pain and instability was from L4-5. Dr. Rerri testified he left Bonutti Clinic in June 2017. When he examined Petitioner on 12/28/17 she was getting worse, with increasing pain down her right leg, unsteadiness, and urinary urgency. Dr. Rerri performed a minimally invasive fusion at L4-5 on 2/22/18. He testified that he usually prescribes a bone stimulator following surgery. Dr. Rerri opined that the work injury aggravated and exacerbated Petitioner's degenerative disc disease in her lumbar spine causing progressive pain and instability. He opined that the fusion was necessary to relieve and address Petitioner's symptoms caused by the work injury. Dr. Rerri was asked to consider a hypothetical consistent with Petitioner's testimony at arbitration, and assuming the full totes weighed approximately 10 pounds. He opined that the repetitive lifting, bending, and transferring can lead to the back injury Petitioner presented to him with and her condition required surgery.

On cross-examination, Dr. Rerri testified that the only history Petitioner provided him was that she moved and pushed tubs and worked in a confined space. He was not aware how much the tubs weighed, where she moved the tubs, what was in the tubs, how many tubs she moved per hour or day, etc. Dr. Rerri testified he did not recall a particular date of injury, but made a reference that an injury was reported and she had back pain for eight months when he initially examined her in March 2017. He testified that Petitioner's symptoms were caused by repetitive activities at work and she did not report a specific acute injury. He was not aware of other dates of accident Petitioner provided to other treating physicians. He was not aware Petitioner had any prior back complaints in 2015. He did not review any records from Clay County Hospital or Dr. Kovalsky. Dr. Rerri testified that he relied on Petitioner's history of injury and treatment and the diagnostics studies he reviewed prior to recommending surgery.

On 4/27/21, Dr. Kitchens authored a narrative response to a letter presented by Respondent's counsel. Dr. Kitchens reviewed the operative report, updated medical records from Dr. Rerri, films from the first MRI, and Dr. Rerri's deposition transcript. Dr. Kitchens opined that after reviewing the additional records his causation opinion was unchanged. He opined that none of Petitioner's medical treatment was related as Petitioner did not sustain a work-related injury. He opined that Petitioner's work duties were not supra-physiologic and there was no evidence of an acute injury to her lumbar spine. He stated that the history provided by Petitioner was not consistent with her medical records. He opined there was no evidence of injury to the L4-5 disc or SI joint dysfunction.

Dr. Daniel Kitchens testified by way of deposition on 5/5/21. (RX9) Dr. Kitchens is a board-certified neurosurgeon. He testified there was no evidence Petitioner sustained a neurologic injury or nerve type pain on 4/7/16 as she did not treat soon after the onset of her symptoms. He explained that patients are unable to function well without treatment of nerve pain and there was no evidence that she sought treatment until June. He did not find any evidence of radiculopathy as Dr. Rerri reported four months prior in March 2017. Dr. Kitchens testified that Petitioner did not report any other dates of injury to him, and she did not report that her 4/7/16 injury was a result of repetitive trauma. Petitioner did not state how much the tubs weighed or

how many tubs she lifted, but she did tell him some were empty and some had parts in them. He testified that Dr. Rerri's records do not contain any detail about Petitioner's work duties or repetitive activities. He testified that Petitioner denied prior back complaints which he found inaccurate. Dr. Kitchens did not see any radiologist's diagnosis of retrolisthesis at L4-5 with instability, a herniated disc, spondylolisthesis, or nerve root impingement and he did not appreciate any of these diagnoses on the MRI films. He testified that retrolisthesis would show on x-rays, MRIs, and physical examination. Dr. Kitchens testified that the radiologist's report to the 10/31/16 MRI showed mild lumbar spondylosis and facet arthropathy. He testified that "spondylosis" is an aging of the disc, whereas "spondylolisthesis" is an offset of the vertebrae where the disc is slid forward. He testified that the MRI did not provide any condition that he would operate on.

Dr. Kitchens testified he does not recommend injections for diagnostics purposes in his practice because they are invasive, risky, and unreliable in causing a false negative or false positive. His physical examination of Petitioner did not reveal any significant findings at any disc level of Petitioner's lumbar spine. He opined that none of Petitioner's treatment was reasonable or necessary or related to an alleged work accident or Petitioner's work duties. He testified that the x-ray ordered by Dr. Kovalsky dated 11/30/16 was unremarkable with normal alignment and well-maintained disc heights, with very minor anterior lipping at L4-5 which is degenerative changes and arthritis. He testified that the earliest indication in Petitioner's medical records that she suffered from radiculopathy was on 9/28/16.

Dr. Kitchens testified that after Dr. Kovalsky ruled out L5-S1 as a pain generator he directed his treatment to Petitioner's SI joint, not L4-5. He testified that Petitioner's subjective report that her symptoms improved following surgery was unreliable.

On cross-examination, Dr. Kitchens testified that Petitioner's initial report of a gradual onset of back pain without a specific injury did not equate to repetitive trauma. He based his opinions on Petitioner not sustaining an acute injury. Dr. Kitchens agreed that the MRI dated 10/30/16 showed an annular bulge and facet arthroplasty at L4-5. He agreed that Petitioner had degenerative disc disease at L4-5, but disagreed she had an annular tear at that level. He agreed that Petitioner had a good result from surgery.

On 1/20/22, Petitioner returned to Dr. Rerri with a history of back and right leg pain and numbness for two months. She reported she had been doing well until two months ago. She used a TENS unit that helped. Dr. Rerri ordered x-rays and prescribed Diclofenac.

On 3/4/22, Dr. Rerri noted x-rays showed a fusion at L4-5 and instability at L5-S1. He suspected the screw may be loose at L4. Dr. Rerri ordered a CT scan of the lumbar spine from L3 to S1 to verify fusion and check status of the screws. He opined Petitioner may require an epidural steroid injection, removal of the screws, or a revision from L4 to S1.

On 4/15/22, Dr. Rerri ordered a bone stimulator due to a nonunion at L4-5. There was no office note admitted into evidence to support his orders.

On 9/23/22, Dr. Rerri noted Petitioner's low back pain was worse lately with pain down her legs. X-rays showed stable implants and progressing lumbar fusion. He prescribed Norco.

On 1/13/23, Dr. Rerri noted Petitioner preferred not to take narcotics but kept an emergency supply for her pain as-needed. Petitioner agreed to be referred to Dr. Bhandarkar for further treatment. Dr. Rerri refilled her prescription for Nocro and advised her to return as-needed.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner alleges that her injuries were the result of repetitive trauma caused by her work duties. Respondent argued that Petitioner's accident report dated 6/7/16 alleged an acute injury as she described mid back pain while "pulling down tub off bezel rack". Petitioner's testimony and medical records support that she associated her symptoms with repetitive lifting and pulling tubs at work. Petitioner initially sought treatment on 6/7/16 and reported a gradual onset of low back pain that was aggravated by bending forward and lifting heavy objects. She reported that her back pain started around 4/5/16 while at work lifting tubs containing bezels that weighed approximately five pounds. She started doing more overhead lifting around this time and associated her pain with that activity. Petitioner's Application for Adjustment of Claim filed on 1/9/17 alleged injuries from pulling and lifting at work. Dr. Rerri examined Petitioner on 3/13/17 and she reported she injured herself at work by pushing and pulling tubs in confined spaces. Dr. Rerri examined Petitioner again on 12/28/17 and her condition was progressing, with increasing pain down her right leg, unsteadiness, and urinary urgency. Dr. Rerri opined that Petitioner's work activities aggravated and exacerbated Petitioner's degenerative disc disease causing progressive pain and instability and the need for surgery. Therefore, the Arbitrator applies a repetitive trauma analysis in evaluating the issues of accident and causal connection.

The Arbitrator first addresses the manifestation date of Petitioner's injuries. Petitioner testified that she initially injured her low back on 4/5/16 while working on the KC C-line making lens bezels for lamps. She related her low back symptoms to pulling and lifting containers of parts. Petitioner did not complete an accident report or seek medical treatment. Although Petitioner testified that she notified her supervisor of her symptoms at that time, she did not state what date she notified him.

Petitioner testified that she continued to work after 4/5/16 and her symptoms progressed. She notified her supervisor Rick Smith on 6/7/16 that her symptoms were progressing, and she was provided with an accident report. Petitioner reported she injured the middle of her back on approximately 5/5/16 while pulling down a tub off a bezel rack. (RX11) Petitioner testified that she may have written the wrong accident date of 5/5/16 on the report but she did not testify what date she thought her accident occurred. Within hours of completing the accident report Petitioner presented to her primary care physician and reported her symptoms started around 4/5/16 while

lifting tubs containing bezels at work that weighed approximately five pounds. Petitioner reported that she started doing more overhead lifting around that time and associated her pain with that activity. Nurse Nussmeyer noted Petitioner had not told her employer until today [6/7/16] and they gave her paperwork for her doctor to complete.

The date of an accidental injury in a repetitive trauma compensation case is the date on which the injury "manifests itself." Manifests itself means the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E2d 1026, 1029, 106 Ill. Dec. 235 (1987).

The Supreme Court has held that several factors must be considered to determine the manifestation date in repetitive trauma cases and found that employees should not be punished for diligently working through progressive pain until it affects their ability to work and necessitates treatment. *Durand v. IIC*, 224 Ill.2d 53 (2006).

The Supreme Court held that by their very nature, repetitive-trauma injuries may take years to develop to a point of severity precluding the employee from performing in the workplace. An employee who discovers the onset of symptoms and their relationship to the employment but continues to work faithfully for a number of years without significant medical complications or lost working time, may well be prejudiced if the actual breakdown of the physical structure occurs beyond the period of limitation set by statute. Similarly, an employee is also clearly prejudiced in the giving of notice to the employer if he is required to inform the employer within 45 days of a definite diagnosis of the repetitive-traumatic condition and its connection to his job since it cannot be presumed the initial condition will necessarily degenerate to a point at which it impairs the employee's ability to perform the duties to which he is assigned. Requiring notice of only a potential disability is a useless act since it is not until the employee actually becomes disabled that the employer is adversely affected in the absence of notice of the accident. *Oscar Mayer*, 176 Ill. App. 3d at 611.

The Appellate Court in *Oscar Mayer* stated that "fact of the injury" is not synonymous with "fact of discovery". *Oscar Mayer* at 611, citing *Peoria County*, 115 Ill. 2d at 531. That is, the date on which the employee notices a repetitive-trauma injury is not necessarily the manifestation date. Instead, the date on which the employee became unable to work, due to physical collapse or medical treatment, helps determine the manifestation date. The Appellate court noted that the standard remains flexible: Just as we reject the employer's contention the date of discovery of the condition and its relation to the employment necessarily fixes the date of accident, we reject any interpretation of this opinion which would permit the employee to always establish the date of accident in a repetitive-trauma case by reference to the last date of work. *Casteneda v. Industrial Comm'n*, 231 Ill. App. 3d 734, 738 (1992) (holding that an employee's last day of exposure to repetitive trauma is not, in and of itself, the day of accident for the purposes of repetitive injury cases).

The Supreme Court in *Durand* held that the Appellate court in *Oscar Mayer* correctly noted, "To always require an employee suffering from a repetitive-trauma injury to fix, as the date of accident, the date he became aware of the physical condition, presumably through

medical consultation, and its clear relationship to the employment is unrealistic and unwarranted". The inquiry is not so narrow. In short, courts considering various factors have typically set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. See *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 138 Ill. App. 3d 880, 887 (1985), aff'd, 115 Ill. 2d 524 (1987) (holding that determining the manifestation date is a question of fact and that the onset of pain and the inability to perform one's job, are among the facts which may be introduced to establish the date of injury). However, because repetitive-trauma injuries are progressive, the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work.

Although Petitioner testified that her symptoms began on 4/5/16 and she filed an Application for Adjustment of Claim related to a 4/5/16 date of accident as the result of "pulling and lifting containers of parts" (Case No. 16-WC-030863), she did not seek treatment or miss work until her symptoms progressed on 6/7/16. Petitioner related her increasing symptoms on 6/7/16 to lifting, moving, pushing, and pulling while performing her job duties for Respondent. Petitioner first sought treatment on 6/7/16 for increasing mid and low back pain that she associated with lifting tubs containing bezels at work. Petitioner reported that she started doing more overhead lifting around that time and associated her pain with that activity. Petitioner was placed off work for two weeks and was referred to physical therapy.

Based on the above facts and law, the Arbitrator finds that Petitioner's injuries manifested on 6/7/16.

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture*, 99 I.I.C. 0961. In order to better define "repetitive trauma" the Commission has stated: "The term "repetitive trauma" should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the variance in job duties is not as important as the specific three, flexion and vibratory movements requisite in Petitioner's job." *Craig Briley v. Pinckneyville Corr. Ctr.,* 13 I.W.C.C. 0519 (2013).

"[I]n no way can quantitative proof be held as the *sine qua non* of repetitive trauma case." *Christopher Parker v. IDOT*, 15 I.W.C.C. 0302 (2015). The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* further highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission recently noted in *Dorhesca Ranclell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day

on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines, supra.*

The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure or "dosage" (which in Petitioner's case would be force) would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Id.* at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . . would be meaningless" in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma." *Id.* at 1142. Additionally, the Court noted that such information "*may*" carry great weight "only where the work duty complained of is a common movement made by the general public. *Id. at 1142.* The evidence shows that Petitioner's job duties involve the performance of tasks distinctly related to her employment for Respondent, many of which are not activities that are even performed by the general public, let alone ones to which the public would be equally exposed.

In *City of Springfield v. Illinois Workers' Comp. Comm'n*, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five hours out of an eight hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 901 N.E. 2d 1066, (Ill. App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in the *City of Springfield,* "while [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id.*

Petitioner was hired by Respondent on 9/4/14. In April 2016, Petitioner worked on the KC C-line making lens bezels for lamps. Her medical records indicate she worked this position for six months. She put the lenses in a machine to be etched, removed the etched lenses and screwed bezels in them, and placed the finished lenses in a tub. Petitioner testified she assembled approximately 200 lenses per hour. Her duties required pushing and pulling tubs and bending down low to push the tubs under a rack. She described the rack as four feet high. She pulled a tub down and forward, took parts out, assembled the lenses, filled the tub with finished lenses, and lifted the full tub and placed it underneath to send down the line. The area where she worked was "turn around space". The tubs measured 4x4 and were stacked three high. She testified she had to reach "really high" on her tippy toes to pull the tubs down as she is 5'8" tall. She pulled 4 to 5 tubs down per hour. She estimated that a full tub weighed 5 to 10 pounds and possibly more depending on the light fixtures. She performed these duties eight hours per day with a 30-minute lunch break and two 10-minute breaks. No job duty description was offered into evidence and Respondent did not offer testimony that contradicted Petitioner's description of her job duties.

On 8/28/14, Petitioner underwent a preemployment physical and the history and exam were unremarkable. Petitioner reported she did not have any current conditions of the neck, back,

or lower extremities or had any previous injury or surgery to her neck, back, or lower extremities. Petitioner's prior medical history is void of any lumbar spine injuries or treatment or significant low back pain. Medical records from 6/4/15 through 10/15/15 were admitted into evidence. The first mention of back pain was on 10/5/15 when Petitioner presented to Clay County Hospital Medical Clinic (CCH) for back pain, abdominal pain, and urinary retention. She had sharp lower back and left flank pain that was aggravated by twisting. She rated her abdominal pain 7/10 that was located in the left lower quadrant and radiated to her left lower back. Her pain was sharp and stabbing and occurred on urination. Petitioner was assessed with a UTI and prescribed Bactrim. Petitioner did not receive any diagnosis or treatment related to her lumbar spine.

On 10/13/15, Petitioner presented to the emergency room with left flank pain with a sudden onset three days ago. (RX2) She reported nausea, decreased urine output, and pain from her left groin that radiated to her left lower back. Her pain was so severe she was unable to walk. She was positive for back pain with no falls. Physical examination and diagnostic studies of Petitioner's abdomen and pelvis were completely normal. Assessment was likely musculoskeletal and not a kidney stone. Petitioner declined pain medication and was discharged. Petitioner followed up with CCH on 10/15/15 and reported lower back and left flank pain when bending forward, changing positions, daily activities, and twisting. Petitioner reported she went to the emergency room and had a torn muscle in her back. She had significant pain if she did not take Norco, but she could not function well on the medication. Physical examination revealed moderate lumbar spine pain and tenderness with motion and left flank pain. She was assessed with low back pain and placed off work for four days. FMLA paperwork was completed. On 3/10/16, Petitioner returned to CCH with an upper respiratory infection. No back or flank pain was noted.

On 6/7/16, Petitioner presented to CCH and reported a gradual onset of low back pain that was mild, persistent, and achy. She reported her back pain started around 4/5/16 while she was lifting tubs containing bezels at work. She estimated the tubs weighed five pounds. Petitioner reported she started doing more overhead lifting at work around this time and associated her pain with that activity. Physical examination of Petitioner's lumbar spine revealed limited range of motion and tenderness. She was placed off work for two weeks and referred to physical therapy.

On 6/9/16, Petitioner was examined by Respondent's on-site physician Dr. Jeffrey Brower. Petitioner reported her back pain started in April while pulling tubs down. Dr. Brower performed a physical examination and assessed a thoracolumbar strain. He placed her on lifting and bending restrictions and prescribed physical therapy. Petitioner did not initially undergo physical therapy as her worker's compensation claim was denied.

On 7/21/16, Dr. Brower recommended that Petitioner work light duty for one more week and return to full duty work. On 8/3/16, Petitioner filled out another accident report indicating back pain and shooting pain in the middle of her back and leg numbness while bending over to put tubs in a shoot and her back snapped. (Case No. 17-WC-000629) She stated her injuries were due to repetitive lifting, moving, pushing, and pulling. She requested medical treatment and

advised that preventative measures could include changing the height of the tub shoot, changing the size of the tubs, or making it easier to return the tubs.

On 8/3/16, Petitioner returned to her primary care physician at CCH and reported she returned to full duty work and had recurrent back pain after three days. Physical therapy and x-rays were ordered, and Petitioner was placed back on light duty restrictions. Petitioner followed up with Dr. Brower on 8/4/16 who agreed light duty restrictions were appropriate and he noted Petitioner had tenderness across her lumbar spine at L4-5 bilaterally.

Petitioner underwent physical therapy and a lumbar spine MRI before being referred to Dr. Kovalsky. On 11/30/16, Dr. Kovalsky noted Petitioner had no prior history of lumbar spine injuries or treatment. He reviewed the MRI and opined it revealed an L5-S1 herniation and radiculopathy. Petitioner underwent an L5-S1 selective nerve root block by Dr. Smith that caused a cerebral spinal fluid leak and the need for a blood patch and hospitalization. Dr. Smith noted Petitioner had a brief reproduction of right lower extremity pain with needle placement into the L5 neural foramen. Petitioner sought treatment with Dr. Rerri on 3/13/17 who reviewed the MRI and diagnosed a tear at L4-5 and recommended a fusion.

Dr. Rerri testified that when he initially examined Petitioner on 3/13/17 she reported she injured herself at work by pushing and pulling tubs in confined spaces. Dr. Rerri did not recall a particular date of injury, but made a reference that Petitioner reported her injury and she had back pain for eight months. Petitioner returned to Dr. Rerri on 12/28/17 and she was getting worse, with increasing pain down her right leg, unsteadiness, and urinary urgency. Dr. Rerri was presented with a hypothetical of Petitioner's job duties that was consistent with Petitioner's testimony at arbitration. He opined that the repetitive lifting, bending, and transferring can lead to the back injury Petitioner presented to him with and the need for surgery. He opined that the work injury aggravated and exacerbated Petitioner's degenerative disc disease in her lumbar spine causing progressive pain and instability.

The Arbitrator finds the opinions of Dr. Rerri more persuasive than those of Dr. Kitchens. Dr. Kitchens noted Petitioner's symptoms started around 4/7/16. He opined that Petitioner's injuries were not causally connected to her employment because she failed to improve after she discontinued her job duties. However, Dr. Kitchens noted Petitioner's light job duties involved cleaning floors and packing light bulbs. He opined that none of Petitioner's medical treatment was related as she did not sustain a work-related injury and she did not report to him that her symptoms on 4/7/16 were related to repetitive duties. He opined that Petitioner's work duties were not supra-physiologic, or greater than normal amounts, which the Arbitrator does not find credible and is inconsistent with Petitioner's job duties which were unrebutted at arbitration.

Dr. Kitchens testified there was no evidence Petitioner sustained a neurologic injury or nerve type pain on 4/7/16 as she did not treat soon after the onset of her symptoms. Dr. Kitchens ignored the fact that Petitioner continued to perform her full job duties until her pain progressed to the point she sought medical treatment, completed an accident report, and was placed off work on 6/7/16. Dr. Kitchens testified that Petitioner denied prior back complaints which he found inaccurate. Petitioner's prior medical records were admitted into evidence which do not contain any evidence of a lumbar spine injury or treatment specifically related to her low back.

Dr. Kitchens did not see any radiologist's diagnosis of retrolisthesis at L4-5 with instability, a herniated disc, spondylolisthesis, or nerve root impingement and he did not appreciate any of these diagnoses on the MRI films. The MRI report dated 10/31/16 stated a history of "low back pain, bilateral leg pain for 1 month. Pulling injury". Nurse Mack reviewed the MRI and stated it revealed mild lumbar spondylosis and an annular bulge and foraminal narrowing at L4-5 and L5-S1. Dr. Kitchens agreed that the MRI showed an annular bulge, facet arthroplasty, and degenerative disc disease at L4-5, but he did not see an annular tear at L4-5. On 11/30/16, Dr. Kovalsky noted Petitioner had intermittent radiculopathy in her bilateral buttocks and legs. Physical examination revealed mechanical back pain and right buttock pain with forward flexion, positive Waddell's sign, positive straight leg raises on the right, some buttock pain with hyperextension, and positive provocative testing on the right SI joint. Dr. Kovalsky reviewed the MRI and diagnosed right lateral L5-S1 disc herniation and right lumbar radiculopathy. He recommended conservative treatment of medication, a selective nerve root block at L5 on the right, and light duty restrictions.

Another lumbar spine MRI was performed on 12/29/16 due to a cerebral spinal fluid leak. The radiologist report indicated a small posterior disc-osteophyte complex with mild facet and ligamentum flavum hypertrophy resulting in moderate bilateral foraminal stenosis; and mild facet hypertrophy and a small posterior disc-osteophyte complex with severe bilateral foraminal stenosis with no spinal stenosis. (RX3) Impression was multilevel degenerative disc disease with multilevel foraminal stenosis. Dr. Kovalsky interpreted the MRI as showing a far lateral disc bulge on the right at L5-S1 that appeared to be contacting the L5 nerve root. Petitioner reported paresthesia and tingling in her buttocks and thigh that stopped at her knee. Dr. Kovalsky noted a small collection of fluid posteriorly at L4-5 and L5-S1.

On 3/13/17, Dr. Rerri ordered x-rays that showed degenerative disc disease at L4-5 and L5-S1, a central annular tear and retrolisthesis at L4-5, and bilateral lateral recess stenosis worse on the right at L5-S1. He reviewed the first MRI and continued to recommend a transforaminal interbody fusion at L4-5.

Dr. Kovalsky testified that the earliest indication in Petitioner's medical records that she suffered from radiculopathy was on 9/28/16. This is untrue. On 7/21/16, Respondent's on-site physician Dr. Brower noted Petitioner's pain occasionally radiated down the back of her right thigh. On 8/3/16, Petitioner filled out another accident report and reported she had back pain and shooting pain in the middle of her back and leg numbness. The same day Petitioner presented to her primary care physician at CCH and it was noted that her back pain was fluctuating, persistent, aching, stabbing, and radiated to her left thigh and buttock.

Based on the above evidence, the Arbitrator finds Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent which manifested on 6/7/16, and further finds Petitioner's current condition of ill-being in her lumbar spine is causally connected to her work injury that manifested on 6/7/16.

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

Section 6(c) of the Act (820 ILCS 306/6(c)) requires that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. The notice required by Section 6(c) of the Act is jurisdictional and failure of the Petitioner to give notice will bar his claim. *Thrall Car Manufacturing Co. v. Indus Comm'n*, 64 Ill.2d 459, 356 N.E.2d 516 (1976). A claim is only barred if no notice whatsoever has been given. *Silica Sand Transport Inc. v. Indus Comm'n*, 197 Ill.App.3d 640, 554 N.E.2d 734 (1990). If some notice has been given, but the notice is defective or inaccurate, then the employer must show that he has been unduly prejudiced. *Id*.

On 6/7/16, Petitioner completed an accident report indicating she injured the middle of her back on approximately 5/5/16 while pulling down a tub off a bezel rack. (RX11) Petitioner sought treatment with her primary care physician on 6/7/16 and was placed off work for two weeks. Respondent's on-site physician Dr. Brower examined Petitioner on 6/9/16 and noted Petitioner related her back pain to pulling down tubs and her symptoms started in April 2016. Dr. Brower diagnosed a thoracolumbar strain and placed Petitioner on lifting and bending restrictions. Petitioner returned to work in a light duty position for Respondent.

The evidence is clear that Petitioner notified Respondent of her injury on 6/7/16, within the time limits set forth in Section 6(c) of the Act.

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

Issue (O): Did Petitioner exceed her choice of two physicians as provided by Section 8(a) of the Act? Maximum medical improvement date.

The Act entitles Petitioner to recovery for reasonable and necessary medical services for emergency care, services from any first choice of physician and referrals therefrom, and services from any second choice of physician and referrals therefrom. 820 ILCS 305/8(a).

The Arbitrator finds that Petitioner's first choice of physicians was her primary care physician at Clay County Hospital Medical Clinic (CCH). CCH referred Petitioner to Dr. Kovalsky.

Dr. Brower was Respondent's company physician whom Petitioner was ordered to treat with, and such treatment does not constitute a choice of physicians under Section 8(a) of the Act.

Petitioner's second choice of physicians was Dr. Rerri. The medical records and testimony support that Petitioner was not referred to his office but chose to treat with him to obtain a second opinion.

Based on the above, the Arbitrator finds that Petitioner did not exceed her choice of two physicians under the Act.

The factors to be considered in determining whether a claimant has reached maximum medical improvement include: a release to return to work with restrictions or otherwise; medical testimony or evidence concerning claimant's injury; the extent of the injury; and, most importantly, whether the injury has stabilized. *Westin Hotel v. Indus. Comm'n*, 372 Ill. App. 3d 527, 542 (2007).

Dr. Rerri released Petitioner without restrictions on 2/22/19 and ordered her to return on an as-needed basis. Petitioner testified she began working in the service plant for Respondent where she assembled headlights. Petitioner is able to perform her regular job duties, but she is slower and cautious not to aggravate her back. She testified that her current job duties are less physically demanding than the job duties she had in 2016. Petitioner testified that after she was released at MMI by Dr. Rerri in February 2019, she did not seek additional medical treatment for her lumbar spine until 1/20/22. She returned to Dr. Rerri with a history of back and right leg pain and numbness for two months. She reported she had been doing well until two months ago. She used a TENS unit that helped. X-rays showed a fusion at L4-5 and instability at L5-S1. Dr. Rerri suspected loosening at L4 and he ordered a lumbar spine CT scan which was not offered into evidence. On 4/15/22, Dr. Rerri ordered a bone stimulator due to a nonunion at L4-5; however, there was no office note admitted into evidence to support his orders. On 9/23/22, Dr. Rerri noted Petitioner's low back pain was worse lately with pain down her legs. X-rays showed stable implants and progressing lumbar fusion. He prescribed Norco. On 1/13/23, Dr. Rerri referred Petitioner to Dr. Bhandarkar for further treatment and Petitioner testified she did not elect to treat with Dr. Bhandarkar. Petitioner is not seeking prospective medical care. The Arbitrator finds that Petitioner reached maximum medical improvement on 2/22/19.

Based on the Arbitrator's finding as to causal connection and the opinions of Dr. Rerri, Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 10 and itemized and attached to the Request for Hearing (AX2), directly to Petitioner and pursuant to the Illinois medical fee schedule, as provided in Section 8(a) and Section 8.2 of the Act. Respondent shall receive a credit for medical expenses paid through its group medical plan in the amount of $109,856.14, as stipulated by the parties. Respondent shall further pay Petitioner out-of-pocket expenses in the amount of $528.87.

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

Petitioner claims entitlement to temporary total disability benefits from 12/22/17 through 1/2/18 and 2/22/18 through 4/15/18.

On 10/26/17, Dr. Brower agreed with Dr. Rerri's recommendation for light duty restrictions and noted Respondent was accommodating her restrictions. There were no subsequent medical records or work slips until Petitioner underwent a fusion on 2/22/18.

Respondent's HR Manager Barrie Ballentine testified that every year starting Christmas Eve through just after New Year's all production is shut down for preventative maintenance. She identified a time clock printout (RX17) that showed Petitioner worked 5.8 hours on 12/22/17, 8 hours on 1/2/18, and she did not work on the days in between. Ms. Ballentine assumed Petitioner did not work during this period due to the annual plant closure. The Arbitrator finds Ms.

Ballentine's testimony credible, and the medical records do not support Petitioner was placed off work for reasons related to her work injuries during that period of time.

Petitioner underwent a transforaminal interbody fusion at L4-5 by Dr. Rerri on 2/22/18. On 4/13/18, Dr. Rerri released Petitioner to return to light duty work.

Therefore, Respondent shall pay Petitioner temporary total disability benefits for the period 2/22/18 through 4/13/18, representing 7-2/7th weeks, pursuant to Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit in the amount of $2,949.39 in short-term disability benefits paid from 3/1/18 through 4/14/18.

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

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

(i) **Level of Impairment:** Neither party submitted an AMA impairment rating. Therefore, the Arbitrator gives no weight to this factor.

(ii) **Occupation:** Dr. Rerri released Petitioner to return to work without restrictions on 2/22/19. Petitioner began working in the service plant for Respondent where she assembled headlights. Petitioner is able to perform her regular job duties, but she is slower and cautious not to aggravate her back. She testified that her current job duties are less physically demanding than the job duties she had in 2016. The Arbitrator places some weight on this factor.

(iii) **Age:** Petitioner was 59 years old at the time of arbitration. She has a limited number of working years ahead of her and she continues to work full duty without restrictions for Respondent. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity:** There is no evidence of reduced earning capacity contained in the record. Petitioner was released to return to work without restrictions and continues to work for Respondent in a full duty capacity. The Arbitrator places some weight on this factor.

(v) **Disability:** On 2/22/18, Petitioner underwent a transforaminal interbody fusion at L4-5. Dr. Rerri released Petitioner without restrictions on 2/22/19 and ordered her to return on an as-needed basis. Petitioner testified she began working in the service plant for Respondent where she assembled headlights. Petitioner is able to perform her regular job duties, but she is slower and cautious not to aggravate her back. She

testified that her current job duties are less physically demanding than the job duties she had in 2016.

Petitioner testified she still has low back pain and uses a TENS unit and an ointment to alleviate her pain. She testified that since her accident she cannot sit, stand, or walk for prolonged periods without pain. Household chores increase her symptoms. Petitioner testified that her stabbing pain improved with surgery, but her back "snaps" and locks up and feels like a jolt.

Based on the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 22.5% loss of use of her body as a whole, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 2/22/19 through 6/12/23, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC000629
Case Name	Barbara Martin v. North American Lighting, Inc.
Consolidated Cases	16WC030863; 17WC000627;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0558
Number of Pages of Decision	23
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	David Moss, Martin Haxel
Respondent Attorney	Stephen Carter

DATE FILED: 11/21/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ 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

Barbara Martin,

Petitioner,

vs. No. 17 WC 000629

North American Lighting, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, the Arbitrator's rulings concerning various objections made during trial, the weight assigned to the opinions of the various doctors (and nurses) including Respondent's Section 12 IME physician, when did Petitioner reach MMI, and Petitioner's credibility, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 21, 2023, is hereby affirmed and adopted.

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

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

The bond requirement in §19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. 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 21, 2024

/s/ *Marc Parker*
Marc Parker

MP/mcp
o-11/07/24
068

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC000629
Case Name	Barbara Martin v. North American Lighting, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	David Moss
Respondent Attorney	Stephen Carter

DATE FILED: 8/21/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 15, 2023 5.29%

/s/Linda Cantrell, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BARBARA MARTIN
Employee/Petitioner

v.

NORTH AMERICAN LIGHTING, INC.
Employer/Respondent

Case # **17-WC-000629**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **6/12/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **8/3/16**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**30,128.80**; the average weekly wage was $**579.40**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **0** dependent children.

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

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

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

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

ORDER

Based on the Arbitrator's finding that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on 8/3/16 but remains related to her injuries that manifested on 6/7/16, and the Arbitrator having awarded Petitioner benefits in Case No. 17-WC-000627, the Arbitrator does not award further benefits herein.

The Arbitrator finds that Petitioner reached maximum medical improvement on 2/22/19. The Arbitrator further finds that Petitioner did not exceed her choice of two physicians under Section 8(a) of the Act.

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

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

AUGUST 21, 2023

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BARBARA MARTIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 17-WC-000629**
	)	
NORTH AMERICAN LIGHTING, INC.,	)	**Consolidated Case Nos. 16-WC-030863**
	)	**17-WC-000627**
Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Herrin on June 12, 2023. On 10/6/16, Petitioner filed an Application for Adjustment of Claim alleging injuries to her low back/man as a whole as a result of pulling and lifting containers of parts on or about 5/31/2016. (Case No. 16-WC-030863, AX4, RX10) The same day, Petitioner filed an Amended Application for Adjustment of Claim amending the date of accident to "on or about 4/5/2016". (AX4) On 1/9/17, Petitioner filed an Application for Adjustment of Claim alleging injuries to her low back/man as a whole as a result of pulling and lifting at work on 6/7/16. (Case No. 17-WC-000627, AX5) On 1/9/17, Petitioner filed an Application for Adjustment of Claim alleging injuries to her low back/man as a whole as a result of pulling and lifting at work on 8/3/16. (Case No. 17-WC-000629, AX6)

The parties stipulated that Respondent shall receive a credit of $109,856.14 in medical bills paid through its group medical plan, under Section 8(j) of the Act, and $2,949.39 in short term disability benefits paid. The issues in dispute in Case No. 17-WC-000629 are accident, notice, causal connection, medical expenses, temporary total disability benefits, the date Petitioner reached maximum medical improvement, whether Petitioner exceeded her choice of two physicians under the Act, and the nature and extent of Petitioner's injuries. The Arbitrator has simultaneously issued separate Decisions in Case Nos. 16-WC-030863 and 17-WC-000627.

TESTIMONY

Petitioner was 52 years old, married, with no dependent children at the time of the alleged accident. She is currently employed by Respondent and was hired on 9/4/14. In April 2016, Petitioner worked on the KC C-line making lens bezels for lamps. She put the lenses in a machine to be etched, removed the etched lenses and screwed bezels in them, and placed the finished lenses in a tub. Petitioner testified that she assembled approximately 200 lenses per hour. Her duties required pushing and pulling tubs and bending down low to push the tubs under

a rack. She described the rack as four feet high. She pulled a tub down and forward, took parts out, assembled the lenses, filled the tub with finished lenses, and lifted the full tub and placed it underneath to send down the line. The area where she worked was "turn around space". The tubs measured 4x4 and were stacked three high. She testified she had to reach "really high" to pull the tubs down. Petitioner identified photos of tubs and racks that were similar but not exactly like the tubs and racks she worked with for Respondent. (PX12) She performed these duties eight hours per day from 7:00 a.m. to 3:30 p.m. She had a 30-minute lunch break and two 10-minute breaks per shift.

Petitioner testified that because the tubs were stacked three high and they were placed so high she had to stand on her tippy toes to pull them down. Petitioner is 5'8" and the tubs were over six feet above her head. She pulled five to six tubs down per hour to make 200 parts per hour. Petitioner testified that she noticed mid-to-low back pain and numbness in her legs when pulling the tubs down. She stated she is sure she had back pain prior to April 2016 that she treated with rest.

Petitioner testified that she notified her supervisor Rick Smith about her symptoms. Petitioner continued to work after 4/5/16 and her symptoms progressed. On 6/7/16, Petitioner again notified her supervisor Mr. Smith that her symptoms were progressing. She filled out an accident report that day. She testified that she may have written the wrong accident date of 5/5/16 on the report. Petitioner sought treatment at Clay County Hospital on 6/7/16 and was placed on light duty restrictions. On 6/9/16, Petitioner was seen by Respondent's on-site physician Dr. Brower. She testified that she told Dr. Brower she had back pain and numbness in her legs from pulling down tubs and pushing them under the counter while assembling lens bezels. Dr. Brower ordered Petitioner to return to work. She continued to treat with her doctor, but also Dr. Brower because Respondent told her she had to. She underwent physical therapy and her symptoms continued to progress while she worked.

On 8/3/16, Petitioner filled out another accident report and reported she had low back pain and shooting pain down her leg. She testified she was sure she notified her supervisor Mr. Smith of her injury, or she would not have received an accident report to fill out. Petitioner believed she was working light duty at that time packing bulbs in the service plant. Her symptoms persisted and never resolved after June 2016. She treated with Dr. Brower on 8/4/16 and told him she still had back pain and numbness and tingling in her leg. She underwent x-rays at Clay County Hospital and returned to her primary care physician on 8/12/16 who recommended physical therapy. She continued to treat with Dr. Brower who recommended she continue physical therapy. On 9/15/16, Dr. Brower continued her light duty restrictions and physical therapy. On 9/29/16, Petitioner underwent a Fit for Duty exam and her light duty restrictions were continued. She underwent a lumbar MRI on 10/31/16. Petitioner was referred to Dr. Kovalsky at the Orthopedic Center of Southern Illinois who ordered physical therapy. On 12/29/16, Petitioner underwent a second lumbar MRI. On 3/13/17, Petitioner saw Dr. Rerri at Bonutti Clinic for a second opinion. She testified that she looked Bonutti Clinic up on the internet and was not referred to his office. Dr. Rerri prescribed Hydrocodone. She last treated with Dr. Brower on 10/26/17. On 8/11/17, Dr. Rerri recommended an L4-5 fusion. Petitioner was examined by Dr. Kitchen's at the request of Respondent on 7/28/17.

Petitioner underwent an L5 selective nerve root block that caused a reaction and resulted in her undergoing a "blood patch" at Crossroads Hospital. She was placed off work from 12/22/17 through 1/2/18. On 2/22/18, Petitioner underwent a fusion at L4-5 by Dr. Rerri at St. Mary's Hospital and was discharged on 2/24/18. She worked light duty up to the date of her surgery. Dr. Rerri prescribed a bone stimulator on 3/2/18 that she used every day. Petitioner testified that her pain and leg symptoms improved following surgery. She underwent physical therapy from 3/27/18 through 6/8/18. Petitioner returned to light duty work on 4/16/18 where she placed bulbs in bags. Her symptoms continued to improve while working light duty. Petitioner wore a back brace at work for one year following surgery.

On 2/22/19, Dr. Rerri released Petitioner to return to work without restrictions and discharged her from care. Petitioner testified she was almost back to normal at that time. Petitioner began working in the service plant for Respondent where she assembled headlights and performed a lot of manual work. She did not treat with her primary care physician, chiropractor, pain management, or Dr. Brower after being released by Dr. Rerri. Petitioner returned to Dr. Rerri on 1/20/22 for low back pain at the surgical site and her back was "snapping" like the cage was coming apart. She testified that she did not reinjure herself or lift anything heavy that brought on her symptoms. She testified she could perform her job duties at her own pace so it would not hurt her. Dr. Rerri ordered a CT scan and prescribed Hydrocodone again. She purchased a TENS unit that improved her symptoms. On 4/15/22, Dr. Rerri prescribed a bone stimulator. On 8/26/22, Dr. Rerri recommended continued use of the bone stimulator and advised Petitioner he was retiring. Her last treatment with Dr. Rerri's office was a telemedicine appointment on 1/13/23 and she was informed that Dr. Rerri left the medical practice.

Petitioner testified she still has low back pain and continues to perform full duty work. She testified that her symptoms feel like being stabbed 50 million times in her back and it hurts so bad she wants to cry. She uses a TENS unit and an ointment that helps alleviate her pain. Petitioner received short-term disability benefits following surgery. She stated her medical bills were paid by her group health insurer Blue Cross/Blue Shield through her employment with Respondent. Petitioner testified that since her accident she cannot sit, stand, or walk for prolonged periods without pain. Household chores increase her pain. Petitioner is able to perform her regular job duties for Respondent, but she is slower and cautious not to aggravate her back. Her current job duties are less physically demanding than the job duties she had in 2016.

On cross-examination, Petitioner testified she is claiming temporary total disability benefits from 12/22/17 through 1/2/18. She agreed that Respondent's facility is shutdown during that period for the holiday. She testified that not all departments shut down during the holiday, but she believed her department did. She testified she did not think she ever told her doctors she never had back pain prior to April 2016. She did not recall treating at Clay County Hospital on 10/5/15 for sharp stabbing low back pain or returning to the hospital on 10/13/15.

Petitioner did not recognize the FMLA form admitted into evidence. (RX18) She testified that it was not the same form employees took to their doctor. She did not know if she missed work during the period of time stated on the FMLA form. Petitioner did not recall going to the doctor in 2015.

Petitioner testified that when she filed her initial Application for Adjustment of Claim she alleged a date of accident of 5/31/16. She testified she could have said the wrong date. She stated she asked her supervisor for an accident report, and he refused to give her one. She did not complete an accident report for any injury dated 5/31/16. Petitioner testified that she amended the date of accident to 4/5/16 but did not complete an accident report for that injury. She testified that the 6/7/16 accident report that she completed states a date of injury of approximately 5/5/16. She agreed that she reported on 6/7/16 that she injured herself by bending over to put tubs in a chute and that her Application for Adjustment of Claim alleges she was pulling and lifting. She was unsure if she began treating with Nurse Nussmeier at Clay County Hospital in April or June 2016. She stated she could have told Nurse Nussmeier that her symptoms started around 4/5/16. She agreed that the accident report she prepared on 8/3/16 indicates she injured herself while bending over to put tubs in a chute and the Application for Adjustment of Claim alleges she injured herself pulling and lifting. Petitioner testified that she described her job duties to Dr. Rerri the same way she described them on direct examination. She agreed that Dr. Kovalsky never recommended surgery. She disagreed that her pain was 10/10 before and after the injection by Dr. Kovalsky. She did not receive treatment from Dr. Bhandarkar at Dr. Rerri's referral. She did not return to Dr. Kovalsky after he gave her the injection and "blew out her veins in both arms".

On re-direct examination, Petitioner testified that she received one tub full of lenses and one tub full of bezels. She removed the lenses and bezels, assembled the parts, and placed the assembled parts back in the tubs. She estimated that the full tubs weighed 5 to 10 pounds and possibly more depending on the light fixtures. She lifted the tubs and placed them underneath the rack that sent them to material handlers. Petitioner testified that the racks were permanent, and the tubs of lenses and bezels were placed on the racks by material handlers. She had to pull 4 to 5 tubs of lenses and bezels down from the racks per hour. She had to make rate of 200 completed bezels per hour. Petitioner clarified that she had stabbing pain prior to her surgery which has resolved. When her back "snaps" it locks up and feels like a jolt.

Barrie Ballentine testified on behalf of Respondent. Ms. Ballentine is currently the wellness and risk manager for Respondent which includes overseeing workers' compensation. In 2016, she was the HR manager of Respondent's Paris manufacturing facility. Ms. Ballentine testified that every year starting Christmas Eve through just after New Year's all production is shut down for preventative maintenance. She stated that Petitioner worked in the production department. She testified that the plant was shut down during the period Petitioner underwent her injection and was claiming TTD benefits. Ms. Ballentine identified a time clock printout admitted into evidence as RX17. She testified that Petitioner did not work from 12/22/17 through 1/2/18. She assumed it was because the plant was shut down during that period. The printout shows Petitioner worked 5.8 hours on 12/22/17, 8 hours on 1/2/18, and she did not work on the days in between.

MEDICAL HISTORY/ACCIDENT REPORTS

Medical records that pre-date Petitioner's alleged accidents were admitted into evidence. (PX4, RX1)

On 8/28/14, Petitioner underwent a preemployment physical at Respondent's on-site medical facility, MOHA. (PX4) Her history and exam were unremarkable. Petitioner reported she did not have any current conditions of the neck, back, or lower extremities or had any previous injury or surgery to her neck, back, or lower extremities.

On 6/4/15, Petitioner presented to Clay County Hospital Medical Clinic (CCH) to establish patient care and for a checkup. A physical examination was performed, and Petitioner was diagnosed with COPD and prescribed Chantix. No history of back complaints or treatment were noted. On 6/25/15 and 7/20/15, Petitioner followed up with CCH and her physical exam remained unchanged. Additional diagnosis were hyperlipidemia and polydipsia.

On 10/5/15, Petitioner presented to CCH for back pain, abdominal pain, and urinary retention. She had sharp lower back and left flank pain that was aggravated by twisting. She rated her abdominal pain 7/10 that was located in the left lower quadrant and radiated to her left lower back. Her pain was sharp and stabbing and occurred on urination. Her urinary retention radiated to her back. Nurse Harris assessed a UTI and prescribed Bactrim.

On 10/13/15, Petitioner presented to the emergency room at Good Samaritan Hospital for left flank pain with a sudden onset three days ago. (RX2) She reported nausea, decreased urine output, and the pain started in her left groin and radiated to her left lower back. Her pain was so severe she was unable to walk. She was positive for back pain with no falls. Physical examination and diagnostic studies of Petitioner's abdomen and pelvis were completely normal, but her pain was worse with movement. Assessment was likely musculoskeletal and not a kidney stone. Petitioner declined pain medication.

Petitioner returned to CCH on 10/15/15 and reported lower back and left flank pain when bending forward, changing positions, daily activities, and twisting. Petitioner reported she went to the emergency room last night and had a torn muscle in her back. She had significant pain if she did not take Norco, but she could not function well on the medication. Physical examination revealed moderate lumbar spine pain and tenderness with motion and left flank pain. She was assessed with low back pain and placed off work for four days. FMLA paperwork was completed. On 3/10/16, Petitioner returned to CCH with an upper respiratory infection. No back or flank pain was noted.

On 6/7/16, Petitioner completed an Accident Report indicating she injured the middle of her back on approximately 5/5/16 while pulling down a tub off a bezel rack. (RX11)

On 6/7/16, Petitioner presented to CCH with back pain. It was noted Petitioner had a gradual onset of low back pain without injury. Her symptoms were mild, persistent, and achy. Bending forward, bending over, and lifting heavy objects increased her symptoms. She reported her back pain started around 4/5/16 while at work lifting tubs containing bezels that weighed approximately five pounds. She started doing more overhead lifting around this time and associated her pain with that activity. Nurse Nussmeyer noted Petitioner had not told her employer until today and they gave her paperwork for her doctor to complete. Nurse Nussmeyer noted Petitioner was not sure if it was actually work comp or not. Petitioner requested to do light duty. Physical examination of Petitioner's lumbar spine revealed limited range of motion and

tenderness. Nurse Nussmeyer assessed low back pain and discussed physical therapy, massage, and acupuncture. She placed Petitioner off work for two weeks and referred her for a physical therapy evaluation to determine how much weight she could lift. Nurse Nussmeyer called Respondent's office to see if it was work comp since the possible injury date was more than two months ago. Respondent's office was closed and she did not speak to anyone.

On 6/9/16, Petitioner was examined by Respondent's on-site physician Dr. Jeffrey Brower at Midwest Occupational Associates (MOHA). (RX4) Dr. Brower noted Petitioner had back pain that she believed started in April. She was pulling tubs down and developed pain in her mid-back. She did not see anyone until two days ago and was placed off work and referred to physical therapy. Dr. Brower noted Petitioner's gait was normal and she had almost full range of motion of the lumbar spine. She had tenderness along the midline of the thoracolumbar junction and negative straight leg raises. Dr. Brower assessed thoracolumbar strain and placed Petitioner on lifting and bending restrictions. Petitioner reported that the prescribed restrictions would place her back on her regular line and her job duties were as easy as the restrictions but that is how she was injured. He discussed moving Petitioner to a different line and prescribed physical therapy.

On 6/29/16, Petitioner returned to CCH and Nurse Nussmeyer noted Petitioner was following up for repetitive work causing back pain. Petitioner did not qualify for work comp but did see the company doctor who placed her on restrictions. Petitioner was to start physical therapy soon at CCH. Nurse Nussmeyer noted from this point Dr. Brown would be taking over Petitioner's care for mid-back strain while at work.

On 7/8/16, Petitioner returned to Dr. Brower who noted no significant change since her last visit. She had tenderness along the L2-3 region and excellent range of motion. Dr. Brower diagnosed a lumbar strain and continued to recommend physical therapy.

On 7/21/16, Dr. Brower noted Petitioner's pain occasionally radiated down the back of her right thigh. Her claim was denied so she had not started physical therapy. Petitioner had pain with range of motion and extension. Dr. Brower recommended continued light duty with limited bending and no lifting over 10 pounds for seven days and attempting to return to regular duty.

On 8/3/16, Petitioner filled out an Accident Report and reported that on 8/3/16 she had back pain and shooting pain in the middle of her back and leg numbness while bending over to put tubs in a shoot and her back snapped. She stated her injuries were due to repetitive lifting, moving, pushing, and pulling. She requested medical treatment and advised that preventative measures could include changing the height of the tub shoot, changing the size of the tubs, or make it easier to return the tubs.

On 8/3/16, Petitioner returned to CCH for low back pain with an onset date of 6/6/16. Petitioner rated her pain 8/10 that was fluctuating, persistent, aching, stabbing, and radiated to her left thigh and buttock. Bending forward, lifting heavy objects, and twisting increased her symptoms. Nurse Mack noted Petitioner returned to work on Monday and has recurrent back pain after working three days. Physical examination revealed lumbar spine muscle spasms and moderate pain with motion. Nurse Mack prescribed Naproxen and ordered physical therapy and lumbar spine x-rays. Petitioner was placed on light duty restrictions of no lifting over 10 pounds

and no bending over five reps per hour for two weeks. Lumbar spine x-rays were unremarkable. (RX3)

On 8/4/16, Dr. Brower noted that yesterday Petitioner was moving a tote waist level down to floor level and felt a pop in her lower back with pain. She had to leave work and underwent x-rays. Petitioner stated the totes were very heavy but could not state how much they weighed. Dr. Brower noted tenderness across the L4-5 area bilaterally, full extension with no discomfort, no spasms, and negative straight leg raises. He did not appreciate evidence of a herniated disc. Dr. Brower continued Petitioner's light duty restrictions. (RX4)

On 8/12/16, Petitioner returned to CCH and Nurse Mack noted moderate low back pain with no radiating pain. Petitioner described her pain as localized and sharp. Physical therapy was scheduled to begin on 8/22/16. X-rays were unremarkable. Petitioner's symptoms were relieved with ice, pain medications, rest, and light duty. Musculoskeletal examination revealed a normal gait. Nurse Mack continued Petitioner's light duty restrictions for two weeks due to severe back pain and muscle spasms.

On 8/18/16, Dr. Brower noted Petitioner's condition was unchanged. She was taking Tramadol, Naproxen, and working light duty. Dr. Brower continued Petitioner's light duty restrictions and recommended physical therapy.

On 8/26/16, Petitioner reported her symptoms were improving but were persistent and aching. She reported difficulty getting in and out of a vehicle and kneeling. Physical examination revealed muscle spasms and moderate pain with motion. Nurse Mack recommended Petitioner continue physical therapy, pain medication, muscle relaxers, and light duty for one week.

On 9/15/16, Dr. Brower noted Petitioner had two therapy sessions with little improvement. Petitioner had axial pain, no radicular pain, and tenderness along the L2-3 area in the midline. Dr. Brower continued Petitioner's light duty restrictions and therapy.

On 9/28/16, Petitioner returned to CCH and reported her lower back pain radiated to her bilateral thighs and buttocks. Onset of symptoms was reported to be three months ago. Petitioner reported her symptoms were deep, sharp, and stabbing and increased with lifting, bending, twisting, walking, and working at NAL. Petitioner reported no improvement with physical therapy. Physical examination revealed muscle spasms and severe pain with motion. Nurse Mack instructed Petitioner to continue Naproxen, Tramadol, Methocarbamol, and Flexeril. A lumbar spine MRI was ordered, and Petitioner's light duty restrictions were continued for one month.

On 9/29/16, Dr. Brower noted physical therapy did not improve Petitioner's symptoms and treatment was discontinued. She presented for a fit for duty exam. Petitioner reported that she was prescribed a new pain medication she could take during the day and an MRI was ordered.

On 10/27/16, Petitioner returned to CCH with no change in lower back symptoms. Nurse Mack noted Petitioner missed her MRI appointment and had to be recertified with her insurance. Physical examination revealed Petitioner walked with a limp on the right side with no assistive

device, severe muscle spasms, moderate pain with motion, normal heel-and-toe-walk, no pain in her bilateral buttock or SI joint, and positive straight leg raise causing back pain only on the right and left. Petitioner's medications were refilled, and her light duty restrictions were continued for one month.

On 10/31/16, Petitioner underwent a lumbar MRI that revealed mild lumbar spondylosis with facet arthropathy and no stenosis; foraminal narrowing at L4-5 and L5-S1; and no compression disc herniation, fracture, or malalignment identified. (RX3) The history recorded on the MRI report stated "low back pain, bilateral leg pain for 1 month. Pulling injury".

On 11/3/16, Nurse Mack noted the MRI revealed mild lumbar spondylosis and an annular bulge and foraminal narrowing at L4-5 and L5-S1. Petitioner continued to have low back pain radiating to her bilateral thighs and buttocks. Nurse Mack continued Petitioner's medications, light duty restrictions, and referred Petitioner to Dr. Don Kovalsky for further evaluation. Nurse Mack noted Petitioner was not taking the prescribed Cyclobenzaprine, Methocarbamol, or Naproxen.

On 11/30/16, Petitioner was examined by Dr. Kovalsky for constant low back pain and intermittent radiculopathy in her bilateral buttocks and legs. (RX5) Dr. Kovalsky noted Petitioner was injured on 5/7/16 which he did not believe Petitioner reported as a work comp injury. Dr. Kovalsky noted clinical evidence of symptom magnification and Petitioner rated her pain excessively high at 8-9/10. She stated that most days her pain was 10/10 and on a good day it was 7/10, but she was able to work which he found to be inconsistent. Dr. Kovalsky noted an unremarkable past medical history. Physical examination revealed mechanical back pain and right buttock pain with forward flexion, positive Waddell's sign, positive straight leg raises on the right, some buttock pain with hyperextension, and positive provocative testing on the right SI joint. Dr. Kovalsky reviewed lumbar x-rays and the MRI. He diagnosed right lateral L5-S1 disc herniation and right lumbar radiculopathy. He advised Petitioner that 70% of disc herniations absorb over 6 to 9 months without the need for surgery. He prescribed a Prednisone taper, Flexeril, and Fioricet. Petitioner advised she could not tolerate narcotics. Dr. Kovalsky referred Petitioner to Dr. Smith for a selective nerve root block at L5 on the right to determine the pain generator. He advised that if she did not receive relief from the L5 injection, he would inject her SI joint. He placed Petitioner on light duty restrictions of no lifting greater than 10 pounds and no repetitive bending, lifting, twisting, or carrying for 8 to 9 weeks. Petitioner reported a date of injury of "5/7/16" on the intake form.

On 12/13/16, Nurse Mack noted Petitioner's symptoms were worsening. Petitioner reported that the pharmacist told her that the four medications prescribed by Dr. Kovalsky for back pain was interacting with the Cartia that her heart doctor prescribed. Petitioner had significant low back pain that increased with breathing deep. Nurse Mack advised there were no contraindications to Cartia and she should take the medications prescribed by Dr. Kovalsky. Petitioner expressed anxiety with an upcoming cortisone injection ordered by Dr. Kovalsky.

On 12/16/16, Petitioner underwent a right L5-S1 selective nerve block by Dr. Aiping Smith at the referral of Dr. Kovalsky. (RX3) Dr. Smith noted fluoroscopic pictures were obtained confirming the needle placement in the right L5 neural foramen. He noted Petitioner

tolerated the procedure well with no complications. She was discharged home in stable condition. Dr. Smith noted Petitioner had significant magnification behavior and she was screaming during IV placement. She reported brief reproduction of the right lower extremity pain when the needle advanced into the L5 neural foramen. She reported 10/10 pain before and after the injection.

On 12/27/16, Dr. Kovalsky ordered an urgent lumbar MRI. (RX5) The MRI was performed on 12/29/16 that revealed a small posterior disc-osteophyte complex with mild facet and ligamentum flavum hypertrophy resulting in moderate bilateral foraminal stenosis; and mild facet hypertrophy and a small posterior disc-osteophyte complex with severe bilateral foraminal stenosis with no spinal stenosis. (RX3) Impression was multilevel degenerative disc disease with multilevel foraminal stenosis. Dr. Kovalsky interpreted the MRI as showing a far lateral disc bulge on the right at L5-S1 that appeared to be contacting the L5 nerve root. Petitioner reported significant pain since the nerve root block with headaches, photophobia, and mild nausea. She reported paresthesia and tingling in her buttocks and thigh that stopped at her knee. Dr. Kovalsky noted a small collection of fluid posteriorly at L4-5 and L5-S1. Clinical impression was persistent right buttock pain which was most likely sacroiliac in nature given the injection provided no relief. Dr. Kovalsky suspected a cerebral spinal fluid leak. He referred Petitioner for a blood patch, followed by injections or physical therapy for the SI joint dysfunction, with Lidocaine and steroids.

On 1/19/17, Petitioner underwent a right L5-S1 transforaminal L5 perineural and epidurogram with transforaminal blood patch at Crossroads Hospital for cerebral spinal fluid leak. (RX3)

On 1/26/17, Petitioner returned to Dr. Kovalsky and reported her headaches resolved about one week after the blood patch. He felt that Petitioner's buttocks pain was not coming from her L5 nerve root or a radiculitis because she failed to improve with the injection. She refused additional injections by Dr. Smith. She rated her buttock pain 10/10 and sometimes 11 or 12, which was again a red flag. Petitioner walked with an antalgic gate on the right. She had positive provocative testing of the right SI joint, Fortin finger pointing, thigh thrust, Patrick's test, and pelvic distraction test. She had positive straight leg raising and Valsalva testing reproduced buttocks pain but no referred leg pain. Dr. Kovalsky advised that Lidocaine injections were necessary to diagnose SI joint dysfunction. Petitioner was very hesitant but agreed to be referred to Dr. Anderson for the injection. Dr. Kovalsky continued Petitioner's light duty restrictions.

On 2/3/17, Petitioner return to CCH and reported her low back pain radiated to her bilateral buttocks and right thigh/calf/foot. She had numbness and piercing pain. Petitioner reported she saw Dr. Kovalsky twice and had an injection by Dr. Smith that hit the wrong nerve and caused a great deal of pain. Petitioner was in worse pain than before. She had to undergo an epidural patch at Crossroads Hospital. Nurse Mack referred Petitioner to Dr. Bhaskara at Fairfield Pain Clinic for pain management. On 2/15/17, CCH noted Petitioner told Dr. Bhaskara's office she did not want to treat with their facility because she did not want injections to cover up her pain but wanted to find out what was causing her pain.

On 3/13/17, Petitioner presented to Dr. Bernard Rerri at Bonutti Orthopedic Services. (RX6) It was noted she referred herself to his office. Petitioner reported injuring herself pushing and pulling tubs at work. She worked in a confined space and had to bend and throw tubs. Petitioner reported low back pain that radiated to her lower extremities, greater on the right. X-rays were performed that showed degenerative disc disease at L4-5 and L5-S1, a central annular tear and retrolisthesis at L4-5, and bilateral lateral recess stenosis worse on the right at L5-S1. Dr. Rerri noted Petitioner had an occupational back injury as far back as June 2016. He noted that the instability at L4-5 was consistent with Petitioner's complaints. He recommended sedentary restrictions with a 10-pound lifting limit until further notice. Dr. Rerri recommended a transforaminal interbody fusion at L4-5.

On 3/30/17, Petitioner was examined by Dr. Gordon at Respondent's on-site medical clinic (MOHA). (PX4) Petitioner reported she injured her back on 6/7/16 while pulling product and felt a snap in her low back. She reported that repetitive pulling, pushing, bending, and twisting on the line further aggravated her back pain. She was waiting on approval for surgery. Petitioner denied any problems with her back prior to June 2016. Petitioner's work restrictions were continued.

On 7/28/17, Petitioner was examined by Dr. Daniel Kitchens pursuant to Section 12 of the Act. (RX8) Petitioner reported a date of injury of 4/7/16 on the Accident Information Sheet. She reported pulling tubs that were stacked three high, bending over to put tubs under a rack, bending, twisting, turning, lifting, and pulling tubs in a small area, and taking tubs from the top of the stack that sometimes fell and she had to catch them. She had worked that line for six months. She reported her symptoms started around 11:00 a.m. on 4/7/16 that included shooting, pulling, ripping-type pain in her mid-back, with no pain in her legs. She took Ibuprofen on her lunchbreak and thought she pulled a muscle. She worked light duty cleaning floors and packing light bulbs. Petitioner reported she was put back on the tub line in June 2016 and her pain increased after one day. Dr. Kitchens noted that Petitioner first sought treatment on 6/7/16. Petitioner could not recall when she initially saw her primary care physician but thought it was soon after her work accident. Dr. Kitchens opined that Petitioner's condition was not related to her work activities of lifting totes and bending since her pain did not improve with refraining from these activities. He opined that Petitioner had age-related degenerative disc disease which was not related to her work activities. There was no objective evidence of an acute injury, instability, disc herniation, or nerve root impingement. Dr. Kitchens opined that Petitioner did not require surgery and she did not have signs or symptoms of radiculopathy. He opined that Petitioner could work in a full duty capacity.

On 8/4/17, Petitioner returned to Dr. Rerri at his new medical practice. It was noted Petitioner was following up for low back pain and sciatica pain down both legs that was present for over one year. Petitioner reported her symptoms were getting worse. Dr. Rerri wanted to review his records from Bonutti Clinic and the MRI.

On 8/11/17, Dr. Rerri reviewed Petitioner's medical records and continued to recommend a fusion at L4-5. He recommended a 5-pound lifting restriction and no overhead work, bending, twisting, or climbing ladders or stairs until further notice.

On 9/14/17, Dr. Gordon at MOHA noted Petitioner continued to have 6/10 pain in the central lumbar back that radiated down her right leg to her calf. (RX4) Dr. Rerri had her on work restrictions which Respondent was accommodating. Dr. Brower noted Petitioner walked with an antalgic gait and had increased pain with lumbar flexion. Heel walking was difficult. Dr. Brower agreed with the light duty restrictions recommended by Dr. Rerri.

On 10/26/17, Petitioner returned to MOHA for repeat evaluation of chronic low back pain with radiation down her right leg. Her pain was constant and 10+/10. Physical examination was limited due to increased pain. Petitioner's restrictions were continued as recommended by Dr. Rerri which Respondent was accommodating.

On 2/22/18, Petitioner underwent a transforaminal interbody fusion at L4-5 by Dr. Rerri. (RX3)

On 3/2/18, Dr. Rerri noted Petitioner was doing well and was taking minimal pain medications. Dr. Rerri recommended a bone stimulator in view of multiple preop epidurals and smoking history. On 3/22/18, Dr. Rerri noted Petitioner was not taking pain medications and referred her to physical therapy. Petitioner began physical therapy at Salem Township Hospital on 3/27/18. (RX7) She reported numbness in her right great toe. She reported the tingling in her leg and back pain had resolved and she had no difficulty walking.

On 4/13/18, Dr. Rerri noted Petitioner had bilateral buttock pain for the past two weeks and numbness in her right big toe. She was undergoing physical therapy. Dr. Rerri allowed Petitioner to return to light duty work of no lifting greater than 10 pounds, no bending/twisting, and to wear her brace at work.

On 5/10/18, Dr. Rerri noted Petitioner had intermittent numbness in her legs even without activity. He ordered her to continue wearing the brace. X-rays showed stable implants with a slight screw halo. He prescribed Gabapentin and continued her light duty restrictions.

On 8/3/18, Dr. Rerri noted Petitioner was slowly improving and Gabapentin helped. He continued her light duty restrictions and ordered her to wean off her brace.

On 2/22/19, Dr. Rerri noted Petitioner was doing well one-year post-fusion. X-rays revealed partial bone fusion of the intervertebral space at L4-5; partial bone fusion of the left traverse process at L4 and L5; mild spondylosis; and no acute abnormality of the lumbar spine. (RX3) Dr. Rerri diagnosed stable implants and a solid fusion. He released Petitioner to full duty work and ordered her to discontinue the bone stimulator. He advised Petitioner to return on an as-needed basis.

On 3/14/20, Dr. Rerri authored a narrative report stating he initially treated Petitioner at Bonutti Clinic for back pain that radiated to her lower extremities. Petitioner described an injury at work around 4/4/16 while pulling and stacking tubs in a confined space. Dr. Rerri opined that Petitioner's injury at work aggravated and exacerbated degenerative disc disease that required surgical intervention.

On 12/18/20, Dr. Bernard Rerri testified by way of deposition. (PX7) Dr. Rerri is an orthopedic surgeon. He testified that when he initially examined Petitioner on 3/13/17 she reported she injured herself at work by pushing and pulling tubs in confined spaces. Dr. Rerri reviewed Petitioner's MRI from October 2016, performed a physical examination, and concluded that Petitioner's pain and instability was from L4-5. Dr. Rerri testified he left Bonutti Clinic in June 2017. When he examined Petitioner on 12/28/17 she was getting worse, with increasing pain down her right leg, unsteadiness, and urinary urgency. Dr. Rerri performed a minimally invasive fusion at L4-5 on 2/22/18. He testified that he usually prescribes a bone stimulator following surgery. Dr. Rerri opined that the work injury aggravated and exacerbated Petitioner's degenerative disc disease in her lumbar spine causing progressive pain and instability. He opined that the fusion was necessary to relieve and address Petitioner's symptoms caused by the work injury. Dr. Rerri was asked to consider a hypothetical consistent with Petitioner's testimony at arbitration, and assuming the full totes weighed approximately 10 pounds. He opined that the repetitive lifting, bending, and transferring can lead to the back injury Petitioner presented to him with and her condition required surgery.

On cross-examination, Dr. Rerri testified that the only history Petitioner provided him was that she moved and pushed tubs and worked in a confined space. He was not aware how much the tubs weighed, where she moved the tubs, what was in the tubs, how many tubs she moved per hour or day, etc. Dr. Rerri testified he did not recall a particular date of injury, but made a reference that an injury was reported and she had back pain for eight months when he initially examined her in March 2017. He testified that Petitioner's symptoms were caused by repetitive activities at work and she did not report a specific acute injury. He was not aware of other dates of accident Petitioner provided to other treating physicians. He was not aware Petitioner had any prior back complaints in 2015. He did not review any records from Clay County Hospital or Dr. Kovalsky. Dr. Rerri testified that he relied on Petitioner's history of injury and treatment and the diagnostics studies he reviewed prior to recommending surgery.

On 4/27/21, Dr. Kitchens authored a narrative response to a letter presented by Respondent's counsel. Dr. Kitchens reviewed the operative report, updated medical records from Dr. Rerri, films from the first MRI, and Dr. Rerri's deposition transcript. Dr. Kitchens opined that after reviewing the additional records his causation opinion was unchanged. He opined that none of Petitioner's medical treatment was related as Petitioner did not sustain a work-related injury. He opined that Petitioner's work duties were not supra-physiologic and there was no evidence of an acute injury to her lumbar spine. He stated that the history provided by Petitioner was not consistent with her medical records. He opined there was no evidence of injury to the L4-5 disc or SI joint dysfunction.

Dr. Daniel Kitchens testified by way of deposition on 5/5/21. (RX9) Dr. Kitchens is a board-certified neurosurgeon. He testified there was no evidence Petitioner sustained a neurologic injury or nerve type pain on 4/7/16 as she did not treat soon after the onset of her symptoms. He explained that patients are unable to function well without treatment of nerve pain and there was no evidence that she sought treatment until June. He did not find any evidence of radiculopathy as Dr. Rerri reported four months prior in March 2017. Dr. Kitchens testified that Petitioner did not report any other dates of injury to him, and she did not report that her 4/7/16 injury was a result of repetitive trauma. Petitioner did not state how much the tubs weighed or

how many tubs she lifted, but she did tell him some were empty and some had parts in them. He testified that Dr. Rerri's records do not contain any detail about Petitioner's work duties or repetitive activities. He testified that Petitioner denied prior back complaints which he found inaccurate. Dr. Kitchens did not see any radiologist's diagnosis of retrolisthesis at L4-5 with instability, a herniated disc, spondylolisthesis, or nerve root impingement and he did not appreciate any of these diagnoses on the MRI films. He testified that retrolisthesis would show on x-rays, MRIs, and physical examination. Dr. Kitchens testified that the radiologist's report to the 10/31/16 MRI showed mild lumbar spondylosis and facet arthropathy. He testified that "spondylosis" is an aging of the disc, whereas "spondylolisthesis" is an offset of the vertebrae where the disc is slid forward. He testified that the MRI did not provide any condition that he would operate on.

Dr. Kitchens testified he does not recommend injections for diagnostics purposes in his practice because they are invasive, risky, and unreliable in causing a false negative or false positive. His physical examination of Petitioner did not reveal any significant findings at any disc level of Petitioner's lumbar spine. He opined that none of Petitioner's treatment was reasonable or necessary or related to an alleged work accident or Petitioner's work duties. He testified that the x-ray ordered by Dr. Kovalsky dated 11/30/16 was unremarkable with normal alignment and well-maintained disc heights, with very minor anterior lipping at L4-5 which is degenerative changes and arthritis. He testified that the earliest indication in Petitioner's medical records that she suffered from radiculopathy was on 9/28/16.

Dr. Kitchens testified that after Dr. Kovalsky ruled out L5-S1 as a pain generator he directed his treatment to Petitioner's SI joint, not L4-5. He testified that Petitioner's subjective report that her symptoms improved following surgery was unreliable.

On cross-examination, Dr. Kitchens testified that Petitioner's initial report of a gradual onset of back pain without a specific injury did not equate to repetitive trauma. He based his opinions on Petitioner not sustaining an acute injury. Dr. Kitchens agreed that the MRI dated 10/30/16 showed an annular bulge and facet arthroplasty at L4-5. He agreed that Petitioner had degenerative disc disease at L4-5, but disagreed she had an annular tear at that level. He agreed that Petitioner had a good result from surgery.

On 1/20/22, Petitioner returned to Dr. Rerri with a history of back and right leg pain and numbness for two months. She reported she had been doing well until two months ago. She used a TENS unit that helped. Dr. Rerri ordered x-rays and prescribed Diclofenac.

On 3/4/22, Dr. Rerri noted x-rays showed a fusion at L4-5 and instability at L5-S1. He suspected the screw may be loose at L4. Dr. Rerri ordered a CT scan of the lumbar spine from L3 to S1 to verify fusion and check status of the screws. He opined Petitioner may require an epidural steroid injection, removal of the screws, or a revision from L4 to S1.

On 4/15/22, Dr. Rerri ordered a bone stimulator due to a nonunion at L4-5. There was no office note admitted into evidence to support his orders.

On 9/23/22, Dr. Rerri noted Petitioner's low back pain was worse lately with pain down her legs. X-rays showed stable implants and progressing lumbar fusion. He prescribed Norco.

On 1/13/23, Dr. Rerri noted Petitioner preferred not to take narcotics but kept an emergency supply for her pain as-needed. Petitioner agreed to be referred to Dr. Bhandarkar for further treatment. Dr. Rerri refilled her prescription for Nocro and advised her to return as-needed.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

In Consolidated Case No. 17-WC-000627, the Arbitrator found that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 6/7/16, and that her current condition of ill-being was causally connected to her injuries that manifested on 6/7/16.

On 6/7/16, Petitioner's primary care physician placed her off work for two weeks. On 6/9/16, Respondent's on-site physician Dr. Jeffrey Brower assessed a thoracolumbar strain and placed Petitioner on lifting and bending restrictions. Petitioner returned to work for Respondent within her light duty restrictions. Both doctors recommended physical therapy which Petitioner was not able to undergo as her worker's compensation claim was denied. Petitioner continued to work and returned to Dr. Brower on 7/21/16 with pain radiating down the back of her right thigh. Dr. Brower recommended light duty restrictions with limited bending and no lifting over 10 pounds for seven days followed by an attempt to return to regular duty.

Petitioner testified that on 8/3/16 she informed her supervisor that her symptoms were progressing. Petitioner filled out an accident report on 8/3/16 and reported back pain and shooting pain in the middle of her back and leg numbness while bending over to put tubs in a shoot and her back snapped. She stated her injuries were due to repetitive lifting, moving, pushing, and pulling. She requested medical treatment and advised that preventative measures could include changing the height of the tub shoot, changing the size of the tubs, or make it easier to return the tubs.

On 8/3/16, Petitioner returned to her primary care physician and reported low back pain with an onset date of 6/6/16. Petitioner reported that her pain was fluctuating, persistent, aching, stabbing, and radiated to her left thigh and buttock. Bending forward, lifting heavy objects, and twisting increased her symptoms. Nurse Mack noted Petitioner returned to regular duty on Monday and had recurrent back pain after working three days.

On 8/4/16, Dr. Brower noted that yesterday Petitioner was moving a tote waist level down to floor level and felt a pop in her lower back with pain. She had to leave work and underwent x-rays. Petitioner stated the totes were very heavy but could not state how much they

weighed. Dr. Brower noted tenderness at L4-5 bilaterally, full extension with no discomfort, no spasms, and negative straight leg raises. He did not appreciate evidence of a herniated disc. Dr. Brower placed Petitioner back on light duty restrictions.

Based on the above evidence, the Arbitrator finds Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 8/3/16, and further finds that Petitioner's current condition of ill-being in her lumbar spine is not causally related to her subsequent accident that occurred on 8/3/16 but remains related to her injuries that manifested on 6/7/16. (Case No. 17-WC-000627).

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

Section 6(c) of the Act (820 ILCS 306/6(c)) requires that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. The notice required by Section 6(c) of the Act is jurisdictional and failure of the Petitioner to give notice will bar his claim. *Thrall Car Manufacturing Co. v. Indus Comm'n*, 64 Ill.2d 459, 356 N.E.2d 516 (1976). A claim is only barred if no notice whatsoever has been given. *Silica Sand Transport Inc. v. Indus Comm'n*, 197 Ill.App.3d 640, 554 N.E.2d 734 (1990). If some notice has been given, but the notice is defective or inaccurate, then the employer must show that he has been unduly prejudiced. *Id*.

Petitioner testified that on 8/3/16 she informed her supervisor that her symptoms were progressing. Petitioner filled out an accident report on 8/3/16 and reported back pain and shooting pain in the middle of her back and leg numbness while bending over to put tubs in a shoot and her back snapped. She stated her injuries were due to repetitive lifting, moving, pushing, and pulling. On 8/4/16, Respondent's on-site physician Dr. Brower placed Petitioner back on light duty restrictions.

The evidence is clear that Petitioner notified Respondent of her injury on 8/3/16, within the time limits set forth in Section 6(c) of the Act.

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

Based on the Arbitrator's finding that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on 8/3/16 but remains related to her injuries that manifested on 6/7/16, and the Arbitrator having awarded Petitioner benefits in Case No. 17-WC-000627, the Arbitrator does not award further medical benefits herein.

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

Based on the Arbitrator's finding that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on 8/3/16 but remains related to her injuries that manifested on 6/7/16, and the Arbitrator having awarded Petitioner benefits in Case

No. 17-WC-000627, the Arbitrator does not award further temporary total disability benefits herein.

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

Based on the Arbitrator's finding that Petitioner's current condition of ill-being is not causally related to her subsequent accident that occurred on 8/3/16 but remains related to her injuries that manifested on 6/7/16, and the Arbitrator having awarded Petitioner benefits in Case No. 17-WC-000627, the Arbitrator does not award further permanent partial disability benefits herein.

Issue (O): Did Petitioner exceed her choice of two physicians as provided by Section 8(a) of the Act?
Maximum medical improvement date.

The Act entitles Petitioner to recovery for reasonable and necessary medical services for emergency care, services from any first choice of physician and referrals therefrom, and services from any second choice of physician and referrals therefrom. 820 ILCS 305/8(a).

The Arbitrator finds that Petitioner's first choice of physicians was her primary care physician at Clay County Hospital Medical Clinic (CCH). CCH referred Petitioner to Dr. Kovalsky.

Dr. Brower was Respondent's company physician whom Petitioner was ordered to treat with, and such treatment does not constitute a choice of physicians under Section 8(a) of the Act.

Petitioner's second choice of physicians was Dr. Rerri. The medical records and testimony support that Petitioner was not referred to his office but chose to treat with him to obtain a second opinion.

Based on the above, the Arbitrator finds that Petitioner did not exceed her choice of two physicians under the Act.

The factors to be considered in determining whether a claimant has reached maximum medical improvement include: a release to return to work with restrictions or otherwise; medical testimony or evidence concerning claimant's injury; the extent of the injury; and, most importantly, whether the injury has stabilized. *Westin Hotel v. Indus. Comm'n*, 372 Ill. App. 3d 527, 542 (2007).

Dr. Rerri released Petitioner without restrictions on 2/22/19 and ordered her to return on an as-needed basis. Petitioner testified she began working in the service plant for Respondent where she assembled headlights. Petitioner is able to perform her regular job duties, but she is slower and cautious not to aggravate her back. She testified that her current job duties are less physically demanding than the job duties she had in 2016. Petitioner testified that after she was released at MMI by Dr. Rerri in February 2019, she did not seek additional medical treatment for her lumbar spine until 1/20/22. She returned to Dr. Rerri with a history of back and right leg pain

and numbness for two months. She reported she had been doing well until two months ago. She used a TENS unit that helped. X-rays showed a fusion at L4-5 and instability at L5-S1. Dr. Rerri suspected loosening at L4 and he ordered a lumbar spine CT scan which was not offered into evidence. On 4/15/22, Dr. Rerri ordered a bone stimulator due to a nonunion at L4-5; however, there was no office note admitted into evidence to support his orders. On 9/23/22, Dr. Rerri noted Petitioner's low back pain was worse lately with pain down her legs. X-rays showed stable implants and progressing lumbar fusion. He prescribed Norco. On 1/13/23, Dr. Rerri referred Petitioner to Dr. Bhandarkar for further treatment and Petitioner testified she did not elect to treat with Dr. Bhandarkar. Petitioner is not seeking prospective medical care. The Arbitrator finds that Petitioner reached maximum medical improvement on 2/22/19.

Arbitrator Linda J. Cantrell DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025779
Case Name	Aldo Diaz DeLeon v. Reflections Windows + Walls
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0559
Number of Pages of Decision	11
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Matthew Coleman
Respondent Attorney	Christopher Jarchow

DATE FILED: 11/21/2024

/s/Kathryn Doerries,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALDO DIAZ DeLEON,

Petitioner,

vs. NO: 21 WC 025779

REFLECTION WINDOW + WALLS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, maintenance benefits, medical expenses, prospective medical, vocational rehabilitation, and all other applicable procedural and evidentiary issues, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327 (1980).

The Commission affirms and adopts the Arbitrator's Decision except to modify the Arbitrator's award of TTD and maintenance. Under the Arbitrator's Conclusion of Law, with Respect to "ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE," after the second sentence in the first paragraph, the Commission adds the following: "Petitioner saw Dr. Templin's PA, Kelly Burgess on April 19, 2023, and was assigned permanent restrictions pursuant to the results of the FCE and declared at MMI."

Further, the Commission strikes the second date in the first sentence in paragraph two, and substitutes "April 19, 2023,|" so that sentence now reads, "Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from August 31, 2021, through April 19, 2023."

In the fourth paragraph, the Commission strikes the first date, and substitutes, "April 20, 2023," so the sentence now reads, "Based on the above, the Arbitrator finds that Petitioner is entitled to maintenance benefits from April 20, 2023, through August 31, 2023.

The Commission further modifies the Arbitrator's Order below to comport with the afore-referenced TTD and Maintenance modifications.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on January 29, 2024, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's Orders of TTD and maintenance are hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,334.85 per week for a period of 85-2/7 weeks, commencing August 31, 2021, through April 19, 2023, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19 (b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner maintenance benefits of $1,334.85 per week for 19-1/7 weeks, commencing April 20, 2023, through August 31, 2023, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services totaling $457,235.95, as provided in Sections 8(a) and 8.2 of the Act. The parties stipulate that Respondent is entitled to a credit under Section 8(j) of the Act for any amount paid by Petitioner's union health and welfare fund's group plan.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide Petitioner a vocational rehabilitation assessment pursuant to Section 8(a) of the Act and Section 9110.10 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired

without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

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

November 21, 2024

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KAD/bsd
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/s/*Kathryn A. Doerries*
Kathryn A. Doerries

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025779
Case Name	Aldo Diaz DeLeon v. Reflections Windows + Walls
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Matthew Coleman
Respondent Attorney	Christopher Jarchow

DATE FILED: 1/29/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 23, 2024 5.02%

/s/Elaine Llerena, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Aldo Diaz DeLeon Case # **21** WC **025779**
Employee/Petitioner
v.
Reflection Window + Walls
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **August 31, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **August 20, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**104,118.04**; the average weekly wage was $**2,002.27**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **3** dependent children.

Respondent shall be given a credit of $**12,001.59** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**12,001.59**.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,334.85 per week for 83-1/7 weeks, commencing August 31, 2021, through April 4, 2021, as provided in Section 8(b) of the Act. Respondent is entitled to a credit for $12,001.59 in previously paid temporary total disability benefits as stipulated by the parties.

Respondent shall pay Petitioner maintenance benefits of $1,334.85 per week for 21-2/7 weeks, commencing April 5, 2023, through August 31, 2023, as provided in Section 8(a) of the Act.

Respondent shall pay reasonable and necessary medical services totaling $$457,235.95, as provided in Sections 8(a) and 8.2 of the Act. The parties stipulate that Respondent is entitled to a credit under Section 8(j) of the Act for any amount paid by Petitioner's union health and welfare fund's group plan.

Respondent shall provide Petitioner a vocational rehabilitation assessment pursuant to Section 8(a) of the Act and Section 9110.10 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission.

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

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

Elaine L Nowak

JANUARY 29, 2024

Signature of Arbitrator

FINDINGS OF FACT

This matter proceeded to hearing on August 31, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Petition for Immediate Hearing under Sections 19(b)/8(a). The issues in dispute were causal connection, medical expenses, temporary total disability benefits, maintenance, and vocational rehabilitation. Arbitrator's Exhibit 1 (AX1).

Accident

Petitioner testified he was employed as a journeyman carpenter by Respondent on August 20, 2021. (T. 7) Petitioner testified he had worked for this employer since 2017. *Id.* On August 20, 2021, Petitioner was assigned to replace a broken window on the 35th floor of a building. (T. 16) Petitioner explained that in order to install the window, he had to ascend the building on a swing stage, described as a platform that would ascend and descend outside of a high-rise building. *Id.* While ascending the building on the swing stage, Petitioner had to stop on the 31st floor to allow his co-worker to cut off a piece of plastic he saw sticking out through one of the windows. (T. 19) While standing at the 31st floor, Petitioner heard a low noise in the back of the swing stage which he initially thought was a tool falling off the building. (T. 21) The zip tie had broken causing the power cord to fall and causing the swing stage to jerk. *Id.* Petitioner estimated the cord weighed between the 150 and 180 pounds. *Id.* Petitioner testified that when the swing stage jerked, he felt a crush feeling in his lower back. (T. 22-23)

Petitioner went home and had back pain the following morning. (T. 24) Petitioner testified the accident occurred on a Friday and that he reported his back pain to his foreman the following Monday via telephone. (T. 25)

Job Duties

Petitioner testified his job responsibilities included installing windows, windowsills, balcony doors, and slab covers on high-rise skyscrapers. (T. 9) The windows weigh between 240 and 800 pounds. (T. 10) Petitioner and a co-worker were required to manually lift windows weighing between 240 and 350 pounds and use a machine for windows that weigh more than 350 pounds. (T. 10-11)

Prior Medical Condition

Prior to August 20, 2021, Petitioner's low back was in good condition. (T. 17) His left leg was perfect. *Id.* Petitioner had not undergone prior treatment for low back or left leg pain. (T. 17-18) Petitioner had not missed any work due to low back or left leg pain. (T. 18) Prior to August 20, 2021, Petitioner was able to fully perform his job duties and physical requirements as a commercial window installer with regard to his low back and left leg. *Id.*

Summary of Medical Records

Petitioner saw Dr. Sanjay Sinha on August 31, 2021, at Physicians Immediate Care. (PX2) Dr. Sinha diagnosed Petitioner as having sprain of the lumbar spine and pelvis and left side sciatica and released Petitioner to return to work with restrictions of no lifting more than 15 pounds. Petitioner was also to wear a brace while working. Petitioner followed up on September 7, 2021, and his work restrictions were kept in place.

Petitioner underwent an MRI of his lumbar spine on September 2, 2021, at Hawthorne Works Medical Imaging that revealed mild loss of lumbar lordosis, L4-5 asymmetric stenosis with component of disc extrusion, T11-12 and L5-S1 disc bulging, and bilateral neuroforaminal encroachment at L4-5 and L5-S1. (PX3)

On September 17, 2021, Petitioner saw Dr. Farooq Khan at Modern Pain Consultants. Petitioner described the August 20, 2021, work accident and Dr. Khan reviewed the MRI. Dr. Khan diagnosed Petitioner as having lumbar radiculopathy and low back pain, prescribed pain medications and pain cream and took Petitioner off work. On October 18, 2021, Jayci Dubic, APN, ordered a lumbar transforaminal epidural steroid injection at L4-5 and L5-S1, which Petitioner underwent on November 12, 2021. On December 22, 2021, Petitioner reported only temporary improvement in his symptoms.

On December 3, 2021, Petitioner underwent a Section 12 examination (IME) with Dr. Carl Graf at Respondent's request. (RX4) Dr. Graf diagnosed Petitioner with a lumbar strain and found that Petitioner has reached maximum medical improvement (MMI). Dr. Graf concluded that Petitioner did not require work restrictions, reasoning that his subjective complaints did not correlate to the objective findings as the physical examination was normal.

Petitioner started treatment with Dr. Cary Templin at Hinsdale Orthopedics on February 25, 2022. (PX4) Dr. Templin diagnosed Petitioner with degenerative disc disease, an annular tear at L4-5, and radiculopathy. Dr. Templin placed Petitioner on a 10-pound lifting restriction on Petitioner and ordered a discogram, which Petitioner underwent and revealed severe concordant pain at L4-5 and L5-S1. After the failure of conservative treatment, Dr. Templin performed an L4-5 lateral interbody fusion, L5-S1 anterior lumbar interbody fusion, interbody cage placement at L4-5 and L5-S1, posterior spinal instrumentation at L4, L5 and S1, anterior instrumentation of L5-S1, and allograft bond graft for fusion on July 21, 2022.
On October 13, 2022, Dr. Templin ordered physical therapy.

Petitioner underwent a Functional Capacity Evaluation (FCE) at Premier Physical Therapy on April 4, 2023. (PX5) The FCE determined that Petitioner was able to return to work with restrictions of 50 pounds of lifting from floor to waist, and 50 pounds from 2 inches to waist, 55 pounds from waist to shoulder, and 45 pounds from shoulder to overhead. Petitioner was able to carry a maximum of 60 pounds for 20 feet push 180 pounds and pull 180 pounds on a horizontal level.

On April 19, 2023, Dr. Templin found that Petitioner had reached MMI and released Petitioner to return to work with the restrictions outlined in the FCE. (PX4)

On July 17, 2023, Petitioner underwent a second IME with Dr. Graf at Respondent's request. (RX5) Dr. Graf examined Petitioner and reviewed his medical records. Dr. Graf stood by his findings and opinions during the December 3, 2021, IME.

Petitioner's Current Condition

Petitioner testified he is now able to assist with household tasks including taking his kids to school, washing dishes, cleaning a little bit of the house, and playing sports with his kids. (T. 32-33) Petitioner testified he did follow up with Respondent on May 19, 2023, and June 29, 2023, to return to work but a light duty offer was never tendered. *Id.*

Petitioner testified that since his surgery he does not require the use of assistive devices including crutches, a walker, or a back brace. (T. 41-42) Petitioner testified that he has not returned to Dr. Templin since

April 2023 and had no plans to see Dr. Templin in the foreseeable future. (T. 49) Petitioner had not seen Dr. Kahn since March 2022. (T. 50) Petitioner has not seen any physician for his low back since April 2023. *Id.*

Petitioner testified he does have certifications and training as a carpenter including welding, installation of doors and hardware, and acoustical ceiling designs. (T. 56-57) Petitioner testified he had not search for work as a welder or as a door or hardware installer. *Id.* Petitioner admitted he had not worked in ceiling designs. *Id.*

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

The Arbitrator notes that Petitioner did not have any back or radicular problems prior to the August 20, 2021, work accident. Additionally, the lumbar MRI taken after the accident showed mild loss of lumbar lordosis, L4-5 asymmetric stenosis with component of disc extrusion, T11-12 and L5-S1 disc bulging, and bilateral neuroforaminal encroachment at L4-5 and L5-S1 and the discogram revealed severe concordant pain at L4-5 and L5-S1. Following the fusion surgery on July 21, 2022, Petitioner's condition improved and the FCE ultimately determined that Petitioner required permanent lifting restrictions. These are all symptoms and physical limitations that Petitioner did not have prior to the August 20, 2021, work accident.

The Arbitrator notes that Dr. Graf opined that Petitioner suffered a back strain and did not require any work restrictions. However, the medical records and diagnostic exams do not support such a finding. As such, the Arbitrator finds the findings and opinions of Dr. Khan and Dr. Templin more persuasive than those of Dr. Graf.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the August 20, 2021, work accident.

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

The Arbitrator notes that Petitioner initially underwent conservative treatment following the August 20, 2021, work accident, including a transforaminal lumbar injection, which provided only temporary relief. Due to the failure of conservative treatment, Dr. Templin performed fusion surgery on Petitioner in July 2022, which relieved some symptoms and gave Petitioner some mobility back. The Arbitrator further notes her finding above that the findings and opinions of Dr. Khan and Dr. Templin are more persuasive than those of Dr. Graf.

Based on the above, the Arbitrator finds Petitioner's treatment following the August 20, 2021, work accident to be reasonable and necessary. Respondent shall pay for the following outstanding medical expenses pursuant to Sections 8(a) and 8.2 of the Act: $39,543.26 (Modern Pain Consultants), $32,170.00 (Premier Physical Therapy), $64,702.00 (Oak Brook Surgical Centre Inc.), $32,990.50 (Hinsdale Orthopaedics), $350.00 (Oak Brook Imaging), $1,869.18 (Rx Development), $11,063.16 (Epic Surgical Solutions), $3,750.00 (MD2X SC), and $270,797.85 (Center for Minimally Invasive Surgery) totaling $457,235.95. The parties stipulate that Respondent is entitled to a credit under Section 8(j) of the Act for any amount paid by Petitioner's union health and welfare fund's group plan.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes her finding regarding causal connection above. Additionally, the Arbitrator notes that from August 31, 2021 (when the medical records indicate Petitioner first sought treatment following the August 20, 2021, work accident) through April 4, 2023 (when Petitioner underwent the FCE), Petitioner had either work restrictions or was taken off work by his treaters. Petitioner put into evidence text messages that Petitioner sent to Respondent's safety guy regarding returning to work with restrictions which did not receive any reply regarding work. (PX8) Additionally, there is nothing in the record to indicate that Petitioner was offered any work within his restrictions by Respondent.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from August 31, 2021, through April 4, 2023. The parties stipulated that Respondent is entitled to a credit for $12,001.59 for temporary total disability benefits previously paid.

Regarding Petitioner's claim for maintenance benefits, the Arbitrator notes that Petitioner made a demand for vocational rehabilitation on May 12, 2023. (PX7) The Arbitrator further notes that Respondent failed to provide any vocational rehabilitation assessment as required under Section 8(a) of the Act and Section 9110.10 under the Rules Governing Practice Before the Illinois Workers' Compensation Commission (Rules). The Arbitrator further notes that Petitioner did not do his own job search after getting no response from Respondent. However, Petitioner attempted to go to work and find work with his employer, Respondent. Further, Petitioner received no response regarding work within his restrictions or his request for vocational rehabilitation. Respondent's failure to provide any response obviates Petitioner's requirement to search for work elsewhere since he had no answer one way or the other from Respondent on his current employment.

Based on the above, the Arbitrator finds that Petitioner is entitled to maintenance benefits from April 5, 2023, through August 31, 2023.

WITH RESPECT TO ISSUE (O), VOCATIONAL ASSESSMENT AND SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Section 9110.10 of the Rules sets forth that "[a]n employer's vocational rehabilitation counselor, in consultation with the injured employee and, if represented, with his or her representative, shall prepare a written assessment of the course of medical care and, if appropriate, vocational rehabilitation required to return the injured worker to employment. The vocational rehabilitation assessment is required when it can be reasonably determined that the injured worker will, as a result of the injury, be unable to resume the regular duties in which he or she was engaged at the time of injury. When the period of total incapacity for work exceeds 365 days, the written assessment required by this subsection shall likewise be prepared. *Ill. Admin. Code tit. 50 § 9110.10.*

The Arbitrator notes that Petitioner made a demand for vocational rehabilitation. Further, Petitioner had been off work for more than a year when the demand was made. Additionally, Petitioner has permanent work restrictions as a result of the injury sustained on August 20, 2021, that makes him unable to resume the regular duties he was engaged at the time of the injury.

Based on the above, the Arbitrator finds that Respondent shall provide Petitioner a vocational rehabilitation assessment pursuant to Section 8(a) of the Act and Section 9110.10 of the Rules.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019007
Case Name	Christina Brittin v. Value Add Partners
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0560
Number of Pages of Decision	16
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Jeffrey Powell

DATE FILED: 11/21/2024

/s/Maria Portela,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTINA BRITTEN,

Petitioner,

vs. NO: 22WC019007

VALUE ADD PARTNERS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses and temporary total disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

The Commission affirms the Arbitrator's finding that Petitioner's current condition is not causally related to his accident on June 10, 2022, and we affirm the denial of prospective medical care. However, we modify the date Petitioner reached maximum medical improvement (MMI) to March 21, 2023, the date of Dr. Weiss's §12 report, and award temporary total disability (TTD) benefits and medical expenses through that date.

We note that, although Dr. Garrigues had opined, on February 21, 2023, that Petitioner was at MMI and could return to work as tolerated, he also recommended a Functional Capacity Evaluation (FCE). And, more importantly, he did not examine Petitioner on that date because it was a telephone visit. In contrast, Dr. Weiss examined Petitioner on March 15, 2023 and concluded that Petitioner's objective findings had resolved, she was at MMI and could return to work full duty. We believe Dr. Weiss's opinion, which is supported by a physical examination, is most persuasive

in this case. However, we find that Petitioner is entitled to TTD and medical expenses through the date Dr. Weiss issued his report on March 21, 2023.

On page 2, we strike the third and fourth sentences in the second paragraph and replace them with the following:

Petitioner testified:

Q. What about driving, can you drive without any issues?
A. Yes.
Q. Open and shut your car door without any issues with the left arm?
A. No. It hurts when I close the door with my left arm, just the force of it.
Q. So do you only use your right arm or you sometimes do use your left arm?
A. I will sometimes, but most of the time I use my right arm to grab the door and shut it.

T.30.

Regarding the surveillance video (Rx5), we find that Petitioner did not move her left arm in an unrestricted manner. For example, the video does not depict her raising her arm above her shoulder, which is consistent with her testimony. We also find that Petitioner did not testify she does not use her left arm to open or close her door. Rather, she testified that she does so sometimes but it hurts. As for the white bag she was seen carrying with her left arm, Petitioner testified that it contained a sweater and a few pieces of candy that weighed "probably not even a pound." *T.42*. Petitioner is seen in the video holding the bag close to her body with her elbow bent. We find that the activities depicted in the video are not excessive, do not contradict Petitioner's testimony and are not a significant factor in our decision.

On page 7, in the second line after "FCE" we add "and ordered same." We strike the next sentence, which begins with "Again, the Arbitrator notes…." In the first full paragraph on page 7, we replace "Dr. Garrigues" in the second to last sentence with "Dr. Weiss."

Based on the above, we find Petitioner is entitled to 4-5/7 weeks of TTD benefits from February 17, 2023 through March 21, 2023 and medical expenses through March 21, 2023.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $576.92 per week for a period of 4-5/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit in the amount of $17,790.08 for temporary total disability benefits paid to date.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses in evidence through March 21, 2023 under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 21, 2024

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

SE/
O: 10/15/24
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019007
Case Name	Christina Brittin v. Value Add Partners
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	Jeffrey Powell

DATE FILED: 1/3/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 3, 2024 5.04%

/s/Kurt Carlson, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Christina Brittin
Employee/Petitioner

v.

Value Add Partners
Employer/Respondent

Case # **22** WC **19007**

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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington**, on **November 30, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **June 10, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**44,999.76**; the average weekly wage was $**865.38**.

On the date of accident, Petitioner was **38** years of age, ***married*** with **1** dependent children.

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

Respondent shall be given a credit of $**17,790.08** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $**17,790.08**.

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

ORDER

The Arbitrator finds Petitioner did sustain an accident that arose out of and in the course of her employment with Respondent on June 10, 2022. Petitioner's current condition of ill-being is not causally related to the June 10, 2022 accident.

The Arbitrator orders Respondent to pay medical bills that are reasonable, necessary and causally related for dates of service through February 21, 2023 per the Medical Fee Schedule.

The Arbitrator awards Petitioner 5/7th weeks of TTD benefits from February 17, 2023 through February 21, 2023. This is a total of $412.09 (5/7th weeks TTD x $576.92 TTD rate). The Arbitrator finds Petitioner reached maximum medical improvement as of February 21, 2023.

The Arbitrator denies Petitioner's request for any additional treatment, include the functional capacity evaluation. The Arbitrator finds Petitioner can return to work full duty without any restrictions.

The Arbitrator provides Respondent with a credit in the amount of $17,790.08 for TTD benefits paid to date.

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.

Kurt A. Carlson **JANUARY 3, 2023**

Signature of Arbitrator

FINDINGS OF FACT

Testimony – Christina Brittin

Petitioner, a 31 year old female, testified she received her GED and subsequently went on to get her Bachelor's degree in business management (T. 8). Petitioner testified her work history was mostly in restoration and construction. (T. 8). After working in the restoration industry for approximately 13 years, she was hired by the employer. (T. 9). With the employer, Petitioner testified she was a superintendent for the Rantool and Peoria areas. (T. 10). Petitioner oversaw the trades and what needed to be done on a day to day basis, which consisted of delivering inventory, picking up inventory, etc. (T. 10).

On June 10, 2022, Petitioner confirmed she was working for the employer. (T. 10). Petitioner testified she was bringing in the inventory for the trades walking on the right side of the driveway when her right foot slid off the concrete. (T. 11). Petitioner testified that while she did not fall, she threw her arms and the material she was carrying up to the left. (T. 11). Petitioner testified that she had a sharp pain in her clavicle area on the left side. (T. 11-12). She described the pain as a sharp, shooting pain. (T. 12). After the accident, Petitioner confirmed she finished out her day, but was not able to carry in the rest of the materials. (T. 12).

After taking the weekend to recovery, Petitioner returned to work on Monday. (T. 13). After trying to lift something, Petitioner confirmed she again felt sharp, shooting pain. (T. 13). Therefore, she did present for medical treatment. (T. 13).

While she was attending medical treatment, Petitioner continued to work light duty for the employer. (T. 14). Petitioner testified she would do as much as she could pursuant to her restrictions. She confirmed she could still oversee the trades to make sure everything was getting done promptly. (T. 14). Petitioner testified she was subsequently terminated. (T. 16). She confirmed she began receiving disability payments from workers' compensation following her termination. (T. 17).

Petitioner confirmed following her visit with Dr. Garrigues on February 21, 2023, she stopped receiving workers' compensation benefits. (T. 23). She confirmed she has not received any since that time. (T. 23). She also testified that she has not been back to work since that time. (T. 23). Petitioner testified that she does not believe she could perform her old job due to her intense pain. (T. 24). She did not feel as though she would be able to lift the inventory. (T. 24). Petitioner testified she had been looking for clerical work. (T. 24).

With regard to how she is today, Petitioner claims her current pain is about the same as it was when she last saw Dr. Garrigues in February 2023. (T. 25). She noted if she attempted to lift too much, or even grab a pillow the wrong way, there was sharp, shooting pain. (T. 25). Petitioner testified that she attempts to lift some stuff every now and then because she would like to be better. (T. 25).

On cross examination, Petitioner confirmed the last time that she interacted with Dr. Garrigues was on February 21, 2023. (T. 26). Petitioner confirmed she did not see Dr. Garrigues in person that day. (T. 27). She confirmed it was a telephone visit. (T. 27). Petitioner confirmed the last time she actually saw Dr. Garrigues in person in his office was on January 11, 2023. (T. 27). Petitioner confirmed she has not seen or interacted with any doctor since the telephone visit that occurred on February 21, 2023. (T. 27). She advised the only doctor she has seen is Dr. Weiss, the IME physician. (T. 27).

Petitioner testified that although she had been looking for work, she did not bring any job search logs. (T. 28). She was not able to provide any actual employers or specific jobs she had applied for since being terminated by the employer. (T. 28). With regard to her left arm, Petitioner testified she is not able to carry anything regarding that left arm. (T. 30). Petitioner testified that although she is able to drive without any issues, she is not able to open and shut her car door with her left arm. (T. 30). She testified she is able to only lift her left arm to under shoulder level. (T. 31). Petitioner testified she is not currently taking any pain medications for the left arm. (T. 31).

Petitioner was then asked about her activities on the night of Halloween, October 31, 2023. (T. 31). Respondent's attorney then showed the surveillance footage of Petitioner from October 31, 2023 pursuant to Respondent's Exhibit 5. (T. 32-38). After completion of the surveillance video, Petitioner confirmed it was her in the video. (T. 39). Petitioner did confirm she received TTD benefits from the insurance carrier for part of her claim. (T. 39). She also confirmed that she saw Dr. Weiss on two separate occasions. (T. 40).

On redirect examination, Petitioner's attorney reviewed part of the surveillance video from Respondent's Exhibit 5 with Petitioner. (T. 41). When asked what was in the white bag she was carrying, Petitioner testified that it was a sweater for her 10 year old and some candy. (T. 41). Petitioner testified that while holding the white bag and a coffee cup, her elbow was entirely tucked into her side. (T. 43).

Following redirect examination, the Arbitrator did have a few questions for Petitioner. The Arbitrator inquired as to Petitioner's work and diagnosis. (T. 45). Petitioner claimed that a disc inside of the two joints has come out. (T. 46). When asked what Dr. Li said to Petitioner was wrong with her left arm, Petitioner stated Dr. Li told her he did not know exactly what was wrong. (T. 47). Petitioner testified Dr. Li told her he did not really have any further options that he felt would be viable. (T. 47). Therefore, he recommended she get a second opinion from Dr. Garrigues. (T. 47). By that time, Petitioner confirmed that he had seen the MRI. (T. 47).

MEDICAL

Following the accident, Petitioner first presented to OSF Occupational Health on June 14, 2022. Petitioner advised she injured herself on June 10, 2022 when she was carrying light fixtures into a building. She noted she was walking on the edge of a

driveway and her right foot stepped halfway off of the edge. This caused Petitioner to lose balance. She advised she flung her arms with the objects to the left so that she would not drop them. She currently complained of experiencing pain in the left chest/collar bone area since that date.

On physical examination, Petitioner's chest wall was tender to palpation. She also had tenderness to the left collar bone area with limited range of motion of the left shoulder due to pain. Petitioner was assessed with a rib sprain and left shoulder sprain. X-rays of Petitioner's left shoulder were negative. (Px. 3).

Petitioner returned to OSF Occupational Health on June 21, 2022. Petitioner continued to complain of pain in the left collar bone area and left chest wall area. On physical examination, Petitioner was diagnosed with a left sternoclavicular joint sprain. It was recommended Petitioner attend chiropractic treatment. She was provided with work restrictions of no overhead work and no lifting more than 15 pounds. (Px. 3).

Petitioner first presented for chiropractic treatment with Dr. Zozzaro on July 13, 2022. Petitioner rated her current pain at 5+/10. Following examination, Petitioner was advised to continue with chiropractic treatment. (Px. 4).

After continuing to attend chiropractic treatment for the next month, Petitioner returned to OSF Occupational Health on July 26, 2022. Petitioner advised the pain was now traveling up to her neck and to the top of her shoulder. She advised she was unable to sleep due to her pain. On physical examination, Petitioner was tender to the left chest wall area below the proximal end of the left clavicular. Localized swelling was noted to the proximal left clavicle. Petitioner was assessed with an SC joint sprain. It was recommended Petitioner undergo an MRI. (Px. 3).

Petitioner was referred to see Dr. Lawrence Li, an orthopaedic surgeon. She first presented to Dr. Li on September 7, 2022. (Px. 5). She noted pain over the SC joint with pain that radiated up into her neck. Following physical examination, Petitioner was assessed with a left SC joint sprain. She received a corticosteroid injection. (Px. 5).

On October 6, 2022, Petitioner underwent an MRI of her left shoulder. The MRI demonstrated no acute or suspicious findings. The MRI further noted no evidence of inflammatory or post traumatic change at the left SC joint. (Px. 5).

Dr. Li subsequently recommended Petitioner see Dr. Garrigues as he did not see any objective reason for her continued pain and limited range of motion. Petitioner first saw Dr. Garrigues on November 28, 2022. (Px. 4). Petitioner confirmed she had been attending physical therapy and that her recent injection did not help her pain. She alleged pain directly over the left SC joint that radiated across her chest into her clavicle. On physical examination, mild swelling was noted over the left SC joint. Tenderness to palpation was also noted. Petitioner was assessed with left SC joint full instability. It was recommended Petitioner continue with physical therapy. (Px. 6).

On November 30, 2022, Petitioner was seen for an independent medical examination pursuant to Section 12 with Dr. Stephen Weiss. Following the examination, Dr. Weiss opined that Petitioner sustained an SC joint strain. He believed this was secondary to her work accident. Dr. Weiss believed all treatment to date was reasonable and necessary. Dr. Weiss recommended Petitioner receive another injection and an additional six to 12 weeks of physical therapy. He noted that the surgical resection of the SC joint was generally not recommended. He did not believe the Petitioner had reached maximum medical improvement to date. (Rx. 2).

Petitioner returned to see Dr. Garrigues on January 11, 2023. Petitioner noted she was much worse today and still had a sharp/shooting pain directly over the left SC joint. On physical examination, Petitioner had mild swelling and tenderness to palpation over the left SC joint. It was recommended that Petitioner receive another SC joint corticosteroid injection. Petitioner subsequently received same on January 27, 2023. (Px. 6).

On February 21, 2023, Petitioner had a telephone visit with Dr. Garrigues. Petitioner was not actually seen via video. It was only a telephone visit. Petitioner stated she received her second injection approximately three weeks ago and received zero relief. She advised that her pain had actually worsened. Dr. Garrigues explained that sine the injection gave her no pain relief, there was no further intervention that would be beneficial to her with regard to this injury. He confirmed that she had reached maximum medical improvement. Dr. Garrigues opined that Petitioner could return to work as tolerated. Petitioner advised she felt as though she was unable to return to work without restrictions. Pursuant to this representation, an FCE was ordered. (Px. 6).

On March 15, 2023, Petitioner was seen for a second IME pursuant to Section 12 with Dr. Weiss. Following an examination, Dr. Weiss confirmed that no further treatment or testing was indicated as the injury had objectively resolved. He noted that any objective findings Petitioner had during the initial IME were no longer present. He did not believe that Petitioner required any physical restrictions secondary to the work injury in question. Dr. Weiss believed that Petitioner's injury had resolved without any evidence of permanent and physical limitations or need for any restrictions. Dr. Weiss confirmed that Petitioner had reached maximum medical improvement. Specifically, he noted that the previous findings of swelling and crepitus of the SC joint were no longer present. (Rx. 3).

Depositions:

The deposition of Petitioner's treating physician, Dr. Grant Garrigues was taken on June 22, 2023. (Px. 1). Dr. Garrigues confirmed that he is an orthopedic surgeon with a practice that encompasses approximately 90% shoulder, a small amount of elbow, and some smaller amount of general orthopedics. (Px. 1, p. 5). Dr. Garrigues confirmed he initially saw Petitioner on November 28, 2022. (Px. 1, p. 6). Following an examination, Dr. Garrigues confirmed Petitioner had left sternoclavicular joint pain and possibly some painful instability. (Px. 1, p. 9). It was recommended that Petitioner attend physical therapy and Voltaren gel. Px. 1, p. 10). Dr. Garrigues confirmed that the next time he

saw the Petitioner occurred on January 11, 2023. (Px. 1, p. 10). Dr. Garrigues confirmed that Petitioner was recommended and did undergo the CT guided sternoclavicular joint injection in January of 2023. (Px. 1, p. 12). When asked whether he recommended an FCE during the February 21, 2023 visit, Dr. Garrigues responded that "technically I didn't." (Px. 1, p. 13). He confirmed that he told Petitioner to return back to work as this was a telehealth visit on February 21, 2023. (Px. 1, p. 13).

On cross-examination, Dr. Garrigues confirmed the October 6, 2022 MRI report demonstrated "no acute or suspicious findings, no evidence of inflammatory or post-traumatic change at the left sternoclavicular joint." (Px. 1, p. 17). Dr. Garrigues confirmed that with regard to Petitioner's specific injury, it typically will get better with physical therapy and corticosteroid injections. (Px. 1, p. 20). As Petitioner's first injection allegedly did not help her pain, Dr. Garrigues confirmed that surgery would not be effective. (Px. 1, p. 20). Dr. Garrigues noted that it was a bit of a "head scratcher" as to why she had pain because it tells you that what is causing the pain is not the joint itself. (Px. 1, p. 20). Dr. Garrigues noted it was not in the sternoclavicular joint. (Px. 1, p. 20). With regard to the February 21, 2023 appointment, Dr. Garrigues confirmed that this was a telephone visit. (Px. 1, p. 22). He confirmed that he did not even see Petitioner on video during that appointment. (Px. 1, p. 22). Therefore, Dr. Garrigues confirmed that he did not actually physically examine Petitioner on February 21, 2023. (Px. 1, p. 24). Dr. Garrigues again confirmed that based upon Petitioner's alleged reaction to the recent CT guided injection, he did not exactly know where Petitioner's pain was coming from. (Px. 1, p. 25). Based upon her response, Dr. Garrigues confirmed that there was nothing else he could think of medically that would help Petitioner. (Px. 1, p. 27). Dr. Garrigues confirmed that Petitioner did reach maximum medical improvement on February 21, 2023. (Px. 1, p. 27). Dr. Garrigues confirmed he did not recall whether Petitioner ever mentioned she had additional swelling during the February 21, 2023 telephone visit. (Px. 1, p. 27). Dr. Garrigues also confirmed it was his recommendation for Petitioner to return to work full duty as tolerated. (Px. 1, p. 28). He also confirmed that at no point in time during the February 21, 2023 telephone visit did he ever provide Petitioner with any work restrictions. (Px. 1, p. 29). He confirmed that Petitioner's belief that she could not go back to work would be her subjective belief and not objective. (Px. 1, p. 31). Dr. Garrigues also confirmed that since Petitioner never tried to actually go back to work, it is possible that she could return to work full duty. (Px. 1, p. 32). He confirmed there was no mechanical reason why Petitioner could not go back to work. (Px. 1, p. 33). He noted the only thing holding Petitioner back would be her subjective complaints of pain or pain avoidance behavior. (Px. 1, p. 33). He confirmed that he has only seen Petitioner twice in-person for examinations. (Px. 1, p. 34). He also agreed that it is possible that Petitioner's physical capabilities could have improved since the last time that he actually examined her in January of 2023. (Px. 1, p. 35). He also confirmed that he did not know exactly how heavy the items are that Petitioner has to lift for her job as a superintendent. (Px. 1, p. 36).

The deposition of the IME physician, Dr. Stephen Weiss, was taken on August 31, 2023. Rx. 1). Dr. Weiss confirmed that he is a board-certified orthopedic surgeon. He confirmed that his practice consisted of a general orthopedist. Dr. Weiss confirmed the

first time he saw Petitioner occurred on November 30, 2022. (Rx. 1, p. 9). Dr. Weiss confirmed he did have an opportunity to review Petitioner's MRI. (Rx. 1, p. 13). On physical examination, he diagnosed Petitioner with a sternoclavicular joint strain. (Rx. 1, pp. 15-16). He believed Petitioner's condition of ill-will being was causally related to the work injury. (Rx. 1, p. 17). He believed Petitioner did require additional treatment such as a repeat injection and another six to 12 weeks of physical therapy. (Rx. 1, p. 17). He also did not believe Petitioner had yet to reach maximum medical improvement. (Rx. 1, p. 18).

Dr. Weiss confirmed the second examination performed on Petitioner occurred on March 15, 2023. (Rx. 1, p. 20). Dr. Weiss confirmed that the physical examination findings when compared the first examination were different. (Rx. 1, p. 26). He confirmed that the swelling and crepitus that were previously present were no longer present. (Rx. 1, p. 26). Following an examination, Dr. Weiss confirmed that Petitioner did have a left sternoclavicular strain which had now resolved. (Rx. 1, p. 27). With regard to using the word resolved, Dr. Weiss confirmed that it meant there was no longer any objective findings consistent with the subjective complaints. (Rx. 1, pp. 27-28). Dr. Weiss testified Petitioner did not require any additional treatment and did not require any work restrictions. (Rx. 1, pp. 28-29). He also testified Petitioner had reached maximum medical improvement. (Rx. 1, p. 29). He confirmed that she had reached maximum medical improvement and did not require any work restrictions based upon the objective findings during his March 15, 2023 examination. (Rx. 1, p. 29).

CONCLUSIONS OF LAW

(F) IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, some causal relation between his employment and his injury. In *Mansfield v. Illinois Workers' Compensation Commission,* , 999 N.E. 2d, 832, 838 (2nd Dist. 2013). There is no dispute between the parties that Petitioner did sustain an accident to her left SC joint on June 10, 2022 while working for the employer. The current dispute is whether Petitioner's current condition of ill-being is still causally related to the accident and whether Petitioner requires an FCE.

In this case, the Arbitrator focuses on the medical records and depositions submitted into evidence at trial. The records confirm that Petitioner last saw Dr. Garrigues in person on January 11, 2023. At that time, Dr. Garrigues recommended Petitioner undergo a CT guided injection. Petitioner subsequently underwent same on January 27, 2023. Instead of returning to see Dr. Garrigues in person, Petitioner instead was involved in a telephone visit with Dr. Garrigues on February 21, 2023. The Arbitrator notes that there was no video on during that appointment. The Arbitrator also notes that there was no physical examination actually performed on Petitioner on that date. Following the telephone visit, the Arbitrator notes that Dr. Garrigues opined that Petitioner had reached maximum medical improvement. Dr. Garrigues recommended Petitioner return to work as tolerated. Instead of returning to work, Petitioner immediately told Dr. Garrigues during

that telephone visit she did not feel that she could do same. Therefore, Dr. Garrigues mentioned that Petitioner could undergo an FCE. Again, the Arbitrator notes that it was Dr. Garrigues' recommendations for Petitioner to return to work as tolerated. It was Petitioner's subjective decision not to return to work and instead request an FCE.

The Arbitrator further notes that Petitioner was actually seen in person for an examination by Dr. Weiss on March 15, 2023. During that in-person physical examination, Dr. Weiss confirmed that Petitioner only had subjective complaints. She no longer had the same objective findings during this visit as she did when compared to her earlier IME visit. Specifically, there was no longer any swelling or crepitus noted during the March 15, 2023 examination. Based upon his in-person examination and the fact that Petitioner's subjective complaints were out of proportion when compared to the physical examination findings, Dr. Garrigues opined that Petitioner had reached maximum medical improvement. He opined that Petitioner did not require any additional work restrictions and, in fact, could return to work full duty.

The Arbitrator further note that the depositions of Dr. Garrigues and Dr. Weiss need to be taken into consideration. During his deposition, Dr. Garrigues noted that it was a “head scratcher" as to why the injection Petitioner received did not improve her alleged SC joint payment. Dr. Garrigues noted that based upon her response, it did not appear as though Petitioner's pain was coming from the SC joint. He could not determine from where the pain was coming. Dr. Garrigues also confirmed that there was no increased signal anywhere else on the MRI other than at the SC joint. Therefore, it does not make sense as to where Petitioner's alleged pain was coming from pursuant to her subjective complaints. The objective testing does not align with Petitioner’s subjective complaints. Therefore, Dr. Garrigues confirmed that Petitioner had reached maximum medical improvement as of February 21, 2023.

The Arbitrator notes that Petitioner was actually seen for a physical examination in-person with Dr. Weiss March 15, 2023. Dr. Weiss testified that based upon his examination on March 15, 2023, Petitioner had reached maximum medical improvement. He confirmed any prior objective findings were no longer present on the March 15, 2023 examination. He opined that any issues Petitioner may have been experiencing were subjective in nature without any objective findings. Again, pursuant to his examination, Petitioner’s subjective complaints were out of proportion when compared to her objective findings. This would be consistent with Dr. Garrigues not knowing where Petitioner’s alleged subjective complaints were coming from as it did not match the MRI results.

The Arbitrator notes that both Dr. Garrigues and Dr. Weiss examined Petitioner on two separate occasions. The Arbitrator further notes that Dr. Weiss was the only doctor that examined Petitioner following her second injection she received on January 27, 2023. The Arbitrator provides greater weight to the opinions of Dr. Weiss as he actually had an opportunity to physically examine Petitioner in-person after the second injection. Dr. Weiss also performed the most recent in-person physical examination.

The Arbitrator finds that Petitioner did reach maximum medical improvement as of February 21, 2023. The Arbitrator also agrees that Petitioner could have returned to work full duty without any restrictions for the employer as of February 22, 2023, the date after which Petitioner reached maximum medical improvement. The Arbitrator further notes Dr. Garrigues did not provide any work restrictions to Petitioner following the February 21 2023 telephone visit. Therefore, the Arbitrator finds Petitioner required no work restrictions from February 22, 2023 through the present and does not require any additional medical treatment or testing.

In addition to the medical evidence above, the Arbitrator also notes that Respondent submitted a surveillance video identified as Respondent's Exhibit number 5. The Arbitrator notes that the majority of the video is from October 31, 2023. On that date, the video demonstrates Petitioner was trick-or-treating with her children. During that time, Petitioner was seen moving her left arm about in an unrestricted manner. Petitioner was also seen opening and closing her car door with her left arm. The Arbitrator notes that Petitioner testified that she does not use her left arm to open or close her door as it causes too much pain. The video demonstrates otherwise. The Arbitrator also notes that the video demonstrates that Petitioner is holding a bag in her left hand for the majority of the video. While holding the bag in her left hand, Petitioner did not exhibit any sign of pain as she allegedly did during the testimony she provided during trial. The Arbitrator notes that Petitioner's actions in the surveillance video are not consistent with her actions during trial. The Arbitrator provides greater weight to the surveillance video than Petitioner's actions during trial.

When taking into account the medical records, the depositions of both physicians and the surveillance footage, the Arbitrator finds that Petitioner's current condition of ill-being with regard to her left SC joint is no longer causally related to the June 10, 2022 accident. The Arbitrator finds that Petitioner did reach maximum medical improvement with regard to her left SC joint injury as of February 21, 2023 as opined by Dr. Garrigues. The Arbitrator further finds that the Petitioner is able to return to work full duty without any restrictions as of February 22, 2023.

(J) WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR REASONABLE AND NECESSARY MEDICAL SERVICES?

(K) IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

Pursuant to the Arbitrator's findings in Section (F) above, the Arbitrator finds that Petitioner's medical treatment through February 21, 2023 has been reasonable, necessary, and causally related to the June 10, 2022 accident. The Arbitrator finds that Respondent is liable for payment of all dates of service that are reasonable, necessary, and causally related to the accident in this matter through February 21, 2023, pursuant to the Medical Fee Schedule.

Petitioner's request for any additional medical treatment or testing after February 21, 2023 is denied. Specifically, the Arbitrator denies Petitioner's request for a functional capacity evaluation as the Arbitrator believes Petitioner can return to work full duty without any restrictions as of February 22, 2023 and that Petitioner reached maximum medical improvement as of February 21, 2023.

(K) WHAT TEMPORARY TOTAL BENEFITS ARE IN DISPUTE?

Pursuant to the Stipulation completed by the parties, Petitioner is requesting TTD benefits from February 17, 2023 through the trial date on November 30, 2023, a total of 40 6/7th weeks. The Arbitrator notes that pursuant to his findings in Section (F), Petitioner did reach maximum improvement as of February 21, 2023. Therefore, the Arbitrator does award Petitioner TTD benefits from February 17, 2023 through February 21, 2023, a total of 5/7th weeks. At Petitioner's TTD rate of $576.92, this equates to an award in the amount of $412.09 (5/7th weeks x $576.92 TTD rate).

As Petitioner has reached maximum medical improvement as of February 21, 2023, Petitioner is not entitled to TTD benefits after reaching maximum medical improvement pursuant to Illinois law. The Arbitrator again notes that there is no dispute between either Dr. Garrigues or Dr. Weiss that Petitioner has reached maximum medical improvement as of February 21, 2023. Again, Petitioner's treating physician, Dr. Garrigues has opined that Petitioner reached maximum medical improvement as of February 21, 2023. Therefore, pursuant to Illinois case law, no TTD benefits are owed to Petitioner after February 21, 2023 as that is the date she reached maximum medical improvement.

(N) IS RESPONDENT DUE ANY CREDIT?

Pursuant to the Stipulation for Hearing completed by the parties, Respondent is provided with a credit for TTD benefits paid to date in the amount of $17,790.08.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021625
Case Name	Gerardo Flores Hernandez v. Griffith Foods
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0561
Number of Pages of Decision	19
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	John Budin
Respondent Attorney	John Karis

DATE FILED: 11/21/2024

/s/Amylee Simonovich,Commissioner

Signature

24IWCC0561

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gerardo Flores Hernandez,

Petitioner,

vs. NO: 22 WC 21625

Griffith Foods,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability (TTD), and prospective medical treatment, and being advised of the facts and law, modifies the Amended Decision of the Arbitrator as stated below. The Commission otherwise affirms and adopts the Amended Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms the Arbitrator's conclusions regarding causal connection, medical expenses, TTD benefits, prospective treatment, and penalties and fees. However, the Commission makes certain modifications to the Decision. In the Order section of the Decision Form, the Arbitrator wrote, "Respondent to pay Petitioner directly for outstanding medical services…" The Commission adds the following after the above-referenced sentence:

> Pursuant to stipulation by the parties, Respondent shall hold Petitioner harmless from any payments made through Respondent's group insurer related to the August 9, 2022, work accident.

In the Order section as well as on page 15 of the Decision, the Arbitrator wrote that Respondent shall approve and pay for "left knee ACL reconstruction…as well as necessary pre- and post-operative care…" The Commission modifies the above-referenced sentences to read as follows:

> Respondent shall approve and pay for the left knee arthroscopy and possible ACL

reconstruction and the right shoulder arthroscopy prescribed by Dr. Levi as provided in Sections 8(a) and 8.2 of the Act.

Finally, in the fifth full paragraph on page 13 of the Decision, the Arbitrator wrote, "With respect to the right shoulder, the Arbitrator awards prospective care in the form of right shoulder arthroscopy." The Commission adds the following after the above-referenced sentence:

With respect to Petitioner's lumbar and cervical condition, the Arbitrator awards the MRIs of the cervical and lumbar spine recommended by Dr. Levi.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Amended Decision of the Arbitrator filed on September 12, 2023, is modified as stated herein.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of $734.93/week for 26-5/7 weeks, commencing January 2, 2023, through July 7, 2023, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical services, of $390.00 to Well Now Urgent Care, $1,073.00 to Advocate Health Care, $1,341.44 to Orthopedic and Rehabilitation Center, $76.00 to Integrated Imaging Consultants, and $45.00 to Advocate High Tech Medical Park, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to stipulation by the parties, Respondent shall hold Petitioner harmless from any payments made through Respondent's group insurer related to the August 9, 2022, work accident.

IT IS FURTHER ORDERED that Respondent shall approve and pay for the left knee arthroscopy and possible ACL reconstruction, the right shoulder arthroscopy, and the MRIs of Petitioner's cervical and lumbar spine prescribed by Dr. Levi as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that Petitioner's requests for penalties and fees and well as "prospective" TTD benefits are denied.

IT IS FURTHER ORDERED that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $22,700.00. 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 21, 2024

o: 9/24/24

AHS/jds

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021625
Case Name	Gerardo Flores Hernandez v. Griffith Foods
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Efi James, Arbitrator

Petitioner Attorney	John Budin
Respondent Attorney	John Karis

DATE FILED: 9/12/2023

/s/Efi James, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 12, 2023 5.30%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION
19(b)

Gerardo Flores Hernandez
Employee/Petitioner

v.

Griffith Foods
Employer/Respondent

Case # **22** WC **021625**

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 **Efi James**, Arbitrator of the Commission, in the city of **Chicago**, on **July 7, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **August 9, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**57,324.74**; the average weekly wage was $**1,102.40**.

On the date of accident, Petitioner was **31** years of age, ***married*** with **3** dependent children.

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

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

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

ORDER

Respondent to pay Petitioner directly for outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act and *Perez v. Illinois Workers' Compensation Comm'n, 2018 IL App (2d) 170086WC, 96 N.E.3d 524*: Well Now Urgent Care ($390.00); Advocate Health Care/Advocate South Suburban Hospital ($1,073.00); Orthopedic and Rehabilitation Center ($1,341.44); Integrated Imaging Consultants ($76.00) and Advocate High Tech Medical Park ($45.00).

Respondent to pay Petitioner directly for 26 5/7 weeks of TTD benefits (January 2, 2023 - July 7, 2023) at the weekly rate of $734.93.

Petitioner’s request for “prospective” TTD is denied.

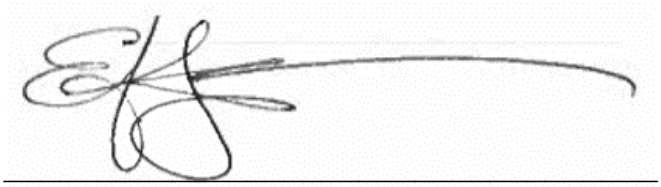
Petitioner’s request for penalties and attorney’s fees and costs is denied.

Respondent shall approve and pay for left knee ACL reconstruction and right shoulder arthroscopy as well as necessary pre- and post-operative care as prescribed by Dr. Levi and as provided in Section 8(a) and 8.2 of the Act. Respondent to approve and pay for MRIs on Petitioner’s lumbar and cervical spine as prescribed by Dr. Levi and as provided in Section 8(a) and 8.2 of the Act.

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

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

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



Signature of Arbitrator

September 12, 2023

ICAr
bDec19(b)

STATE OF ILLINOIS)
) SS.

COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GERARDO FLORES HERNANDEZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	IWCC No.: 22 WC 021625
	)	
GRIFFITH FOODS,	)	
	)	
Respondent.		

PROCEDURAL HISTORY

This matter proceeded to hearing on July 7, 2023, in Chicago, Illinois before Arbitrator Efi James on Petitioner's Request for Hearing pursuant to Section 19(b). Issues in dispute include Causal Connection, Medical and Medical Bills, TTD, Nature and Extent, Penalties, Prospective Medical Care and Prospective Post Surgical TTD. (Arbitrator's Exhibit "AX" 1).

FINDINGS OF FACT

It was stipulated by the parties that on August 9, 2022, Petitioner sustained accidental injuries that arose out of and in the course of his employment. (AX 1)

Job Duties

Gerardo Flores Hernandez (hereinafter "Petitioner") testified he had been employed by Griffith Foods (hereinafter "Respondent") as a mixing operator since October 2018. (Tr. 8-9) Respondent manufactures/produces food seasonings for different restaurant companies such as Kentucky Fried Chicken, McDonalds, Costco, and Giordano's. He testified his hours were 10 hours a day, four days a week with some overtime on Fridays. (Tr. 9) He worked the third shift, 8:00 pm to 6:00 am. (Tr. 14) Petitioner testified his job duties were to carry 50-pound bags on a regular basis of spices such as flour, salt, sugar, follow a formula, dump it in a mixer, mix it, pull it on a tow and do that throughout his shift. (Tr. 10)

Prior Medical Condition

Petitioner testified that prior to the August 9, 2022 accident, he was not taking any pain medication and had no restrictions or limitations, either at work or in his daily living activities outside of work. (Tr. 11) He would enjoy playing with his kids at the park, riding bikes and doing side jobs. (Tr.13) Petitioner testified that he had surgery on the left knee in 2007 due to a soccer injury to repair his ACL. (Tr. 46-47) He also had injured his left knee in 2013 but had made a complete recovery. (Tr. 12) Petitioner testified that he had never injured his right shoulder, head, low back, neck, and had never had any pain symptoms in his lumbar or cervical spine. (Tr. 11-12, 22)

Accident

On August 9, 2022, at approximately 3:30 am, Petitioner was walking back to his workstation after taking a break. (Tr. 14) While walking through the batching area, he slipped and fell on a dirty, slippery floor. His legs went out from underneath him, he became airborne and landed on the floor, hitting his head, his left knee twisted, and his right side hit the floor. (Tr. 14-15) His supervisor, Kevin Randolph, came to the area and almost slipped as well. Petitioner noticed that his clothing was covered in seasoning, which looked like mud. His body hurt from "head to toe". He felt nausea, dizzy, could not stand long and noticed he had blurred vision. His supervisor called an Uber to take Petitioner to the company clinic, Concentra. (Tr. 14-17, 48)

Summary of Medical Records

On August 9, 2022, Petitioner was seen by Dr. Cynthia Ross at Concentra. (PX 2) Petitioner stated he was walking to his station when he slipped on a wet, dirty floor. His legs flew up and he landed on his back towards the right side. (PX 2, pg. 28) Petitioner complained of pain along the right side of his back from his lower back upwards. (PX 2, pg. 28) He had pain along the posterior right shoulder as well. (PX 2, pg. 28) X-rays of the lumbar spine and right shoulder noted no significant radiologic findings. (PX 2, pg. 30) Petitioner was diagnosed with a lumbar contusion, right shoulder contusion and lumbar strain. (PX 2, pg. 33) He was prescribed cyclobenzaprine, Ibuprofen 800mg and a muscle rub. (PX 2, pg. 33) Physical therapy was ordered. Concentra returned him to work the following day with work restrictions no lifting more than 10lbs, push/pull up to 20lbs, bend occasionally and stand and walk frequently. Petitioner was to avoid excessive lifting and apply ice and heat to the affected areas. (PX 2, pg. 33-35)

Petitioner testified that the following day, he went to Well Now Urgent Care due to an increase in pain. (Tr. 19) Petitioner testified that prior to going to the Well Now Urgent Care he noticed he developed a limp due to left knee pain. (Tr. 20) In the emergency room, Petitioner complained of back pain, dizziness and headaches. (PX 3, pg. 4) It is noted in the records that Petitioner was in significant pain and was walking slowly. Swelling and bruising was observed in Petitioner's right shoulder and lumbar spine area. (PX 3, pg. 4) He was given an injection of ketorolac tromethamine in the back and prescription for prednisone. (PX 3, pgs. 5-6) The diagnosis was a contusion of the back and sprain of ligaments of the back. (PX 3, pg. 6)

On August 15, 2022, Petitioner was seen by Dr. Sonia K. Virparia, his primary care physician at Advocate Medical Group. (PX 4) He reported that he had neck, lower back and left knee pain from a slip and fall at work. (PX 4, pg. 3) Petitioner reported "feeling sore all over" and that his headaches were occurring 2-3 times a day, lasting a few hours and accompanied by blurred vision. (PX 4, pg. 3) Petitioner reported feeling something sharp poking his left knee and pain was reported in both shoulders, neck and back. (PX 4, pg. 3) Petitioner was diagnosed with acute bilateral low back pain, cervical pain, acute pain in both shoulders and a concussion without loss of consciousness, acute bilateral thoracic back pain, sacral pain and injury to the left knee. (PX 4, pgs. 6-7) Dr. Virparia referred Petitioner to an orthopedic surgeon, Dr. Gabriel Levi, M.D. (PX. 4, pg.19-20)

Petitioner was seen by Dr. Levi at Orthopedic and Rehabilitation Centers on August 19, 2022 and reported a slip and fall on a wet floor while at work. (PX 5, pg. 2) Petitioner complained of left knee pain and pain and numbness radiating from his low back into his right leg, pain in his cervical region and pain in the right shoulder with limited range of motion, numbness and tingling. (PX 5, pg. 2) Petitioner reported that he underwent a prior left knee ACL reconstruction in 2013 by Dr. Scott Seymour but stated the knee was fine prior to the recent incident. (PX 5, pg. 2-3) Petitioner reported that his left knee felt like it was "going to give out" while walking. The low back pain, with right leg radiculopathy and right shoulder pain was noted to have begun after his fall at work. X-rays of the bilateral knees, cervical spine, lumbar spine and right shoulder were mostly unremarkable except for post-surgical changes consistent with ACL reconstruction in the left knee. (PX 5, pg. 4) The MRI of the left knee and MRI Arthrogram of the right shoulder were ordered and Petitioner was prescribed a Medrol dose pack, meloxicam, tizanidine, a hinged left knee brace and physical therapy for the back. (PX 5, pg. 4) He was diagnosed with a complete rotator cuff tear or rupture of right shoulder, tear of the

medial meniscus of the left knee, primary osteoarthritis of left knee, radiculopathy of lumbar and cervical spine and back spasms (PX 5, pg. 4) He was to remain off work. (PX 5, pg. 5)

On August 22, 2022 Petitioner was again seen by Dr. Ross at Concentra with complaints of pain along the right side of his back from the lower back upwards and pain along the posterior right shoulder. (PX 2, pg. 88) On exam, Petitioner stated he felt better overall, he met his physical therapy goals and was released. (PX 2, pg. 88) He reported seeing his primary care physician for care and was not back at work. (PX 2, pg. 88) Petitioner was diagnosed with contusion and strain to his right shoulder. (PX 2, pg. 89) Petitioner was released from care at Concentra and would follow up with his primary care physician. (PX 2, pg. 90)

On that same date, Petitioner returned to Dr. Virparia. (PX 4, pg. 23) Petitioner reported worsening headaches and nausea and was recommended a CT scan for his head. (PX 4, pg. 26) On August 23, 2022, Petitioner underwent a CT scan without contrast. (PX 4, pg. 30) The findings were no acute intracranial process. (PX 4, pg. 31) On August 29, 2022, Petitioner returned to Dr. Virparia and reported his headaches had improved by 50 percent, his low back was getting better but his left knee was getting worse. (PX 4, pg. 34)

On September 7, 2022, Petitioner underwent an MRI arthrogram at Orthopedic and Rehabilitation Centers. (PX 5, pg. 22-23) The radiologist impressions were a full thickness rotator cuff tendon tear presumably of the anterior aspect of the distal supraspinatus tendon. (PX 5, pg. 22-23) On September 9, 2022, Petitioner underwent an MRI of the left knee at Orthopedic and Rehabilitation Centers. (PX 5, pg. 22-23) The radiologist impressions were extensive postsurgical changes of a prior ACL reconstruction, the ACL graft was torn, medial and lateral meniscus tears were seen along with a small joint infusion. (PX 5, pg. 25)

On September 12, 2022, Petitioner reported to Dr. Levi that his knee and shoulder were still painful and he had limited range of motion in the anterior aspect of shoulder. (PX 5, pg. 22-23) He was noted as having a limp while walking due to pain and instability of the knee. (PX 5, pg. 22-23) He was participating in therapy for the lumbar and cervical spine but he reported paresthesias in the right thigh area. (PX 5, pg. 26) Dr. Levi recommended conservative treatment of physical therapy three times a week for six weeks. The doctor requested authorization for left knee arthroscopy with possible ACL reconstruction. He was to remain off work. (PX 5, pg. 26)

On November 23, 2022 Petitioner presented to Dr. Hythem Shadid for an IME. (PX 5, pg. 79) Petitioner reported he slipped on a wet floor causing both feet to slide forward, then he lost his balance and fell onto his back hitting his head. (PX 5, pg. 80) It was noted that Petitioner was off work. Dr. Shadid opined that Petitioner's shoulder condition and left knee condition were not related to the accident as the mechanism of injury would not cause this type of injury. (PX 5, pg. 92-93) Additionally, Dr. Shadid did not agree with the surgical recommendation for the left knee. (PX 5, pg. 92)

On December 6, 2022 Petitioner returned to Dr. Virparia with complaints of continued headaches and a sharp pain in his neck. (PX 4, pg. 48) A brain MRI was ordered. (PX 4, pg. 48) On December 21, 2022, Petitioner underwent a brain MRI at Advocate High Tech. (PX 4) The radiologist impressions were no intracranial abnormality. (PX 4, pg. 63)

On January 23, 2023 an addendum opinion was authored by Dr. Levi. (PX 5, pg. 54) Dr. Levi disagreed with Dr. Shadid's opinions and found that Petitioner's condition was due to a fall at work which caused damage to his left knee and right shoulder. (PX 5, pg. 54) The next day, on January 24, 2023, a work status note by Dr. Levi placed Petitioner at light duty consisting of 10-lb. lifting restriction. (PX 5, pg. 61)

On April 12, 2023 Petitioner returned to Dr. Levi for follow up and reported his lumbar radiculopathy was worsening. (PX 5, pgs. 70) As a result, Petitioner was again given a note to remain off work. (PX 5, pg. 72)

Deposition Testimony of Dr. Gabriel Levi

Dr. Gabriel Levi, Petitioner's treating board-certified orthopedic surgeon, testified via deposition on March 3, 2023. (PX 4) Petitioner was first seen by Dr. Levi on August 19, 2022. He gave a history of slipping on a wet floor at work. (PX 4, pg. 6) Petitioner complained of left knee pain, right leg numbness, low back pain, cervical and right shoulder pain. (PX 4, pg. 6)

Dr. Levi testified that he recommended an MRI arthrogram of the right shoulder and MRI of the left knee. (PX 1, pg. 7) Petitioner was prescribed a Medrol dose steroid pack, anti-inflammatories, and muscle relaxants, as well as a left knee brace and physical therapy. (PX 1, pg. 7-8) Dr. Levi testified that Petitioner had a rotator cuff tear, medial meniscus tear of the left knee and radiculopathy of the cervical and lumbar spine. (PX 1, pg. 7) Dr. Levi further testified that those diagnoses were related to the fall on August 9, 2022. (PX 1, pg. 8)

Dr. Levi testified that as of the date of his deposition he had continued to place Petitioner off work due to the accident. (PX 1 at pg. 8) Dr. Levi testified that his diagnoses remained the same throughout his treatment records. (PX 1, pg. 8)

Dr. Levi saw Petitioner again on September 12, 2022 to review the MRI of the shoulder and left knee. (PX 1, pg. 9-10) Dr. Levi testified that the MRI results were consistent with his diagnoses of a complete full thickness rotator cuff tear and there was also a proximal portion of the long head of the biceps tendon, possible rupture. (PX 1, pg. 10) Dr. Levi also testified that the knee MRI confirmed his diagnosis of a medial meniscus tear. (PX 1, pg. 10) Dr. Levi testified that at that time, he recommended a left ACL reconstruction and a right shoulder arthroscopy. (PX 1, pg. 11) Dr. Levi testified Petitioner's diagnosis for the lumbar spine did not change throughout his treatment. (PX 1, pg. 11)

Dr. Levi testified that as of the deposition date, he was still waiting on authorization from the insurance company for Petitioner's surgery of the left knee and right shoulder. (PX. 1, pg. 14) Dr. Levi testified that he felt that both surgeries were necessary and related to the work accident. (PX 1, pg. 14)

Dr. Levi further testified he did not agree with the IME opinion of Dr. Hythem Shadid (PX 1, pg. 15) Dr. Levi testified that he felt Dr. Shadid had contradicted himself in his report by saying there was no objective evidence to support Petitioner's complaints of pain and limitations in the knee and shoulder and yet stated his conditions were pre-existing arthritis in the knee and degenerative changes of the shoulder. (PX 1, pg. 17) Dr. Levi noted that Dr. Shadid did admit that Petitioner's fall at work could cause pain in his shoulder and back. (PX 1, pg. 17)

Dr. Levi testified that he did not agree with Dr. Shadid's opinion that a twisting motion was required to tear a meniscus. (PX 1, pg. 21) Dr. Levi testified that "trauma to a knee from a fall could cause a meniscal tear". (PX 1, pg. 21) He opined that when someone tears their meniscus the pain does not have to be immediate but it should happen within the first few days. (PX 1, pg. 21-22) Dr. Levi testified that it didn't change his opinion that Petitioner did not complain of any left knee pain in the first few visits with his treaters. (PX 1, pg. 25-27). Dr. Levi testified that he always gives an opinion based only on his own evaluation of a patient. (PX 1, pg. 27-28)

Dr. Levi testified that he agreed with the radiologist's findings for the MRI arthrogram of the right shoulder (PX 1, pg. 28). Dr. Levi testified that the tear identified in the MRI arthrogram was towards the front of the shoulder. (PX 1, pg. 30) Dr. Levi disagreed that there was no joint effusion and disagreed with Dr. Shadid's opinion as there was contrast fluid in the joint due to the presence of an effusion. (PX 1, pg. 31)

Dr. Levi testified that he recommended a lumbar and cervical spine MRI since Petitioner has consistent pain and paresthesias and that he might even recommend a pain management specialist depending on the MRI findings. (PX 1, pg. 33-34)

Deposition Testimony of Dr. Hythem Shadid

Dr. Hythem Shadid, a board-certified orthopedic surgeon and Respondent's Section 12 examiner, testified via deposition on May 30, 2023. (RX 1)

Dr. Shadid testified that he examined Petitioner on November 23, 2022 at Respondent's request (RX 1, pg. 12) Dr. Shadid testified to the medical records he reviewed. (RX 1, pgs. 13-14 and pgs. 17-20) Dr. Shadid testified Petitioner reported he slipped on a wet floor causing both feet to slide forward, lost his balance and fell onto his back, hitting the back of his head. He rolled over, got up and, thought he was okay. He began to experience back pain within five minutes of the incident so he contacted his supervisor. (RX 1, pg. 15)

Dr. Shadid testified to the physical exam he performed and indicated that the exam itself took 10 minutes. (RX 1, pg. 22-24, pg. 91) Dr. Shadid also testified to the diagnostics he performed which consisted of X-rays of the right shoulder which revealed some mild degenerative findings and X-rays of the left knee which revealed severe degenerative changes. (RX 1, pg 25)

Dr. Shadid testified that there were two ways of tearing a meniscus, the most common way tends to be degenerative in nature and the other way is in a weight-bearing, squatted position with a twisting motion. (RX 1, pg. 28)

Dr. Shadid testified that Petitioner's conditions could generate some pain but he felt Petitioner exhibited some symptom magnification and malingering when he complained of pain and popping in his shoulder, headaches and dizziness. (RX 1, pg. 29) Dr. Shadid also testified the lack of correlation between his subjective complaints and the diagnostic imaging. (RX 1, pg. 30) Dr. Shadid testified x-rays and MRIs showed no evidence for any pathology that would be associated with his level of subjective complaints nor was there evidence of an acute injury to either the knee or shoulder. Dr. Shadid found that all diagnostic findings were consistent with pre-existing chronic degenerative changes. (RX 1, pg. 30)

Dr. Shadid testified the mechanism of injury reported was not a plausible cause for Petitioner's current shoulder or knee complaints. (RX 1, pg. 31)) He further opined that Petitioner's lack of response to treatment was another indication of possible symptom magnification or malingering. (RX 1, pg. 31) Dr. Shadid testified that Petitioner's lack of interest in returning to work in any capacity was also a factor in his opinion. (RX 1, pg. 31)

Dr. Shadid testified in order to tear your rotator cuff you need a traction injury, meaning the hand has to be holding onto something, such as when you're falling downstairs and you grab a guardrail or a handrail, and then all of your weight is being held by that arm or a fall forward on an extended arm with an outstretched arm. (RX 1, pg. 38-39)

Dr. Shadid testified for a significant injury like an ACL tear or meniscus tear there should have been immediate pain. (RX 1, pg. 31) Dr. Shadid testified that Petitioner not reporting pain either immediately or in the first couple of visits was a basis for his opinion of the condition not being related to his work accident. (RX 1, pg. 33)

Dr. Shadid testified he did not believe any restrictions were medically necessary as it pertained to the August 9, 2022 work incident. (RX 1, pg. 35)

Dr. Shadid testified that although Petitioner was at MMI, it would not be unreasonable to repair the shoulder, but it was not related to the work accident. (RX 1, pg. 35) Dr. Shadid opined that performing arthroscopic surgery on the left knee when Petitioner has advanced arthritis would most likely result in a poor outcome. (RX 1, pg. 36)

Dr. Shadid testified pertaining to the right shoulder that Petitioner suffered a contusion to the scapula after landing on his back. (RX 1, pg. 37) Dr. Shadid testified that the ongoing treatment for the right shoulder would not be associated with the August 9, 2022 accident. (*Id.*) Dr. Shadid testified the MRI findings also support both the left knee and right shoulder findings are degenerative and not acute injury. (RX 1, pg. 38)

Dr. Shadid testified the left knee was not related to accident on August 9, 2022 as the mechanism of injury did not fit as Petitioner's feet flew out and his foot was never planted as it did not have any traction on the ground. (RX 1, pg. 41-42) Dr. Shadid testified that an ACL graft tear also has a similar mechanism and that ACL graft was torn prior to the August 9, 2022 accident. (RX, pg. 77) Dr. Shadid testified that the MRI showed extensive degenerative changes in the knee and no acute findings. (RX 1, pg. 43) Dr. Shadid testified he did not believe Petitioner would require treatment for his left knee currently but may need to treat his arthritis in the future. (RX 1, pg. 52)

Dr. Shadid testified he did not feel that Petitioner had suffered any temporary aggravations or permanent disability for his right shoulder or left knee. (RX 1, pg. 45-46)

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 testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

A decision by the Commission cannot be based upon speculation or conjecture. *Deer and Company v. Industrial Commission,* 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission,* 68 Ill.2d 236, (1977).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission,* 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission,* 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him be a credible witness. Petitioner came across as a hard-working individual. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the histories given in the medical records. Petitioner's description of the accident and subsequent physical complaints remained consistent throughout. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions or internal inconsistencies that would deem the witness unreliable.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC, 11 N.E.3d 453. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

"Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence... The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. For the Commission's decision to be against the manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result." *Vogel v. Industrial Commission*, at 786 (2nd Dist. 2005).

In the present case, the Arbitrator concludes that the finding of causal connection is supported by the testimony of the Petitioner and his treating physicians. There is no dispute and it was stipulated by the parties that Petitioner suffered a work accident on August 9, 2022 when he slipped and fell on a dirty, slippery floor. His legs went out from underneath him, he became airborne and landed on the floor, hitting his head and back, his left knee twisted, and his right side hit the ground. Prior to the date of his accidental injuries, Petitioner was working in a full-time, full-duty job as a mixing operator for Respondent. Petitioner sustained accidental injuries to his head/brain as well as his left knee, right shoulder, and cervical and lumbar spinal injuries in a specific, definable incident. Although there is evidence that Petitioner had previously injured his left knee in a soccer accident in 2007 (15 years prior to the date of accident at issue) and again in 2013 (nine years prior to the date of accident at issue) and had surgery to repair his ACL, the Arbitrator finds there is no evidence that these prior injuries in any way effected his ability to do his job prior to August 9, 2022. Petitioner testified that he had not received seen a doctor in several years for those prior injuries. He further testified and had not injured his head, neck or back or shoulders prior to that date and there is no evidence in the record to suggest otherwise. In fact, before this accident, Petitioner was not taking any pain medication and was not under any restrictions at work or physical limitations in his personal life.

Petitioner's diagnosis of a torn right shoulder rotator cuff is supported not only by his subjective complaints but also by the objective findings in this case, specifically the MRI arthrograms ordered and reviewed by Dr. Levi, Petitioner's treating physician. The MRI of the right shoulder revealed a full thickness rotator cuff tendon tear of the anterior aspect of the distal supraspinatus tendon, and the MRI of the left knee revealed extensive post-surgical changes of an ACL reconstruction, the ACL graft was torn, medial and lateral meniscus tears and small joint infusion. (PX 5, pg. 28) The Arbitrator finds that Petitioner's left knee and right shoulder MRI results confirmed Dr. Levi's initial diagnoses, lending credibility to his opinions and treatment recommendations in this case. (PX 1, pg. 10)

Both treating physicians, Dr. Ross and Dr. Levi, agree that Petitioner suffered these injuries as a result of his work accident of August 9, 2022. The Arbitrator agrees. As a result of these injuries, Petitioner has been kept off work from August 9, 2022 through the present date. The only doctor disputing the causal connection and the nature and extent of the injuries is Dr. Shadid, who admittedly did not review any of the actual diagnostic films performed on the left knee and right shoulder of Petitioner. Dr. Shadid's findings that Petitioner suffered from "severe" arthritis in both his right shoulder and left knee is not supported by the MRI findings and there are no X-ray reports submitted by Respondent indicating arthritis in any body part.

"In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858,

867 (2010). "'[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment.'" *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, (2011) Further, "[e]very natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780 (2005).

The Arbitrator agrees with the Dr. Levi's opinion questioning Dr. Shadid's IME findings. Dr. Shadid made contradictory statements that there was no objective evidence to support Petitioner's pain complaints and at the same time opined that Petitioner's pain complaints were from a pre-existing condition. Dr. Shadid cannot have it both ways. Clearly, based on the MRI results of the shoulder and the knee, there is objective evidence that supports Petitioner's pain complaints.

Even if the Arbitrator were to find that Petitioner's condition was pre-existing specifically as it related to the left knee, this accident clearly worsened Petitioner's condition resulting in medical treatment, off work notes and a surgical recommendation – none of which were present on the date of accident. "In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 867 (2010). "'[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment.'" *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, (2011) Furthermore, "every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780 (2005). There is no evidence that any other incident has broken the chain of causation.
The Arbitrator therefore finds that Petitioner's left knee condition is causally connected to the accidental injuries of August 9, 2022.

The Arbitrator also discounts the opinions of Dr. Shadid as to the mechanism of injury as to the right shoulder injury specifically. Dr. Shadid opined that the mechanism of injury in this case could not "plausibly" cause Petitioner's shoulder and knee complaints. The Arbitrator disagrees and finds that Dr. Shadid's opinion that a fall such as the one described here could not have caused a rotator cuff tear to be incredible. His opinion that the injury's location (trauma to the back of the shoulder) leads to the conclusion that the accident could not have been the direct cause of the rotator cuff tear (in the front of the shoulder is disputed by Dr. Levi. The Arbitrator adopts the opinion of Dr. Levi that if an individual has a rotator cuff tear in one part of the shoulder, that does not mean he would not experience pain in another part of the shoulder….it can hurt throughout the shoulder". (PX 1, pg. 30)

Therefore, the Arbitrator finds that Petitioner's current condition of ill-being as it relates to the right shoulder is causally connected to the accidental injuries of August 9, 2022.

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

Under Section 8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers' Compensation Comm'n,* 409 Ill. App. 3d 258, 267 (1st Dist., 2011). Based upon the Arbitrator's finding with respect to casual connection, medical

treatment for the right shoulder, left knee, lumbar spine and head injuries through the date of hearing would be reasonable, necessary and causally related to the injury on August 9, 2022.

Therefore, Respondent is to pay Petitioner directly for the medical services rendered at Well Now Urgent Care for the date of service 08/15/22 billed in the amount of $390.00; Advocate Health Care/Advocate South Suburban Hospital for the dates of service 08/15/22 through 12/06/22 billed in the amount of $1,073.00; Orthopedic and Rehabilitation Center for the dates of service 08/19/22 through 05/10/23 billed in the amount of $1,341.44; Integrated Imaging Consultants for the date of service 08/23/22 billed in the amount of $76.00 and Advocate High Tech Medical Park for the date of service 12/21/22 billed in the amount of $45.00 pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. It was stipulated by the parties that respondent agrees to hold the Petitioner harmless for any related payments by Respondent's group carrier. (AX 1)

Issues K, the nature and extent of Petitioner's injuries and whether Petitioner is entitled to prospective medical as it relates to the left knee and right shoulder as well as lumbar and cervical MRIs and whether Petitioner is entitled to prospective TTD post surgery, the Arbitrator finds as follows:

The Arbitrator finds that as of the date of hearing, Petitioner has not reached maximum medical improvement. Therefore, no finding of nature and extent can be made. Petitioner continues to require medical care to cure and relieve him from his work condition of ill-being caused by his work accident.

Petitioner seeks prospective care in the form of a lumbar and cervical spine MRI recommended by Dr. Levi since Petitioner has consistent pain and paresthesias and that he might even recommend a pain management specialist depending on the MRI findings. Respondent maintains that Petitioner failed to establish causation as to the need for these measures. The Arbitrator has previously found in Petitioner's favor on the issue of causation. Dr. Levi saw Petitioner on September 12, 2022 to review the MRI of the right shoulder and left knee. (PX 1, pg. 9-10) Dr. Levi testified that the MRI results were consistent with his diagnoses of a complete full thickness rotator cuff tear and there was also a proximal portion of the long head of the biceps tendon, possible rupture. (PX 1, pg. 10) Dr. Levi also testified that left knee MRI confirmed his diagnosis of a medial meniscus tear. (PX 1, pg. 10) Dr. Levi testified that at that time, he recommended a left ACL reconstruction and a right shoulder arthroscopy. (PX 1, pg. 11) Dr. Levi testified Petitioner's diagnosis for the lumbar spine did not change throughout his treatment. (PX 1, pg. 11)

Dr. Levi testified that as of the date of his deposition, he was still waiting on authorization for Petitioner's surgery of the left knee and right shoulder and was still recommending the same. (PX. 1, pg. 14) Dr. Levi testified that he felt that both surgeries were related to the work accident. (PX 1, pg. 14)

With respect to the left knee, the Arbitrator awards prospective care in the form of the left knee ACL reconstruction recommended by Dr. Levi. With respect to the right shoulder, the Arbitrator awards prospective care in the form of right shoulder arthroscopy. The Arbitrator notes that Respondent's Section 12 examiner, Dr. Shadid, testified that although in his opinion Petitioner was at MMI, it would not be unreasonable to repair the shoulder, but that was not related to the work accident. (RX 1, pg. 65)

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

An employee is temporarily totally disabled from the time an injury incapacitates him until such time as he is as far recovered as the permanent character of the injury will permit. *Archer Daniels Midland Company v. Industrial Comm'n,* 138 Ill 2nd 107, 118 (1990). To be entitled to TTD benefits, the employee must establish not only that he did not work, but also that he is unable to work and the duration of that inability to work. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill 2nd 132, 146 (2010). Once an injured employee has reached maximum medical improvement, the disabling condition has become permanent, and he or she is no longer eligible for temporary total disability benefits. *Nascote Industries v. Industrial Comm'n*, 352

Ill. App 3rd 1067, 1072 (2004). The factors to be considered in determining whether an employee has reached maximum medical improvement include a release to work, medical testimony or evidence concerning he employee's injury, and the extent of the injury. Land & Lake Co. v. Industrial Comm'n, 359 Ill. App. 3rd 582, 594 (2005). The Act is a remedial statute which should be liberally construed to provide financial protection for injured workers. McAllister v. IWCC, 2020 IL 124848.

The Arbitrator finds prior to August 9, 2022, Petitioner was working 48-hours per week without any type of restrictions or limitations, either at work or outside of work. In the instant case, Petitioner's treating physician, Dr. Levi, has kept Petitioner off work through the date of hearing. The only physician that returned Petitioner back to work without restrictions and suspending Petitioner's TTD benefits was Respondent's Section 12 examiner, Dr. Shadid. (RX 1, pg. 35) The Arbitrator gives greater weight to the opinions of Petitioner's treating physician, Dr. Levi than Dr. Shadid whose examination of Petitioner admittedly only took 10 minutes.

Based upon the record as a whole, the Arbitrator finds by a preponderance of the evidence that Petitioner is entitled to temporary total disability from January 2, 2023, through July 7, 2023, the date of hearing, for a period of 26 5/7 weeks (at the rate of $734.93 per week) in the amount of $19,631.26. (AX 1)

Petitioner's claim for "prospective" TTD is denied.

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

The imposition of Section 19(l) penalties requires the Petitioner to make a written demand or payment of benefits under Section 8(a) or Section 8(b). It also requires the Respondent to fail, neglect, refuse, or unreasonably delay the payment of benefits without good and just cause. See *820 ILCS 305/19(l).* The Court has found that the act of submitting medical bills into evidence at hearing is not the same as tendering them to the employer for payment. Theis v. Illinois Workers' Comp. Comm'n, 2017 IL App (1st) 161237WC.

Regarding the imposition of Section 19(k) penalties and Section 16 attorney fees, the Courts have confirmed that the imposition of these penalties is where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. These penalties are appropriate when the delay was vexatious, intentional, or merely frivolous. These penalties and fees require a higher standard of proof. McMahon v. Industrial Commission, 183 Ill.2d 499, 515(1998). When the Respondent acts in reliance upon reasonable medical opinion or where there are conflicting medical opinions, penalties are not ordinarily awarded. USF Holland, Inc. v. Industrial Comm'n, 357 Ill.App.3d 798, 805 (2005).

Generally, when the employer acts in reliance upon reasonable medical opinion or when there are conflicting medical opinions, penalties ordinarily are not imposed; the relevant question is whether the employer's reliance was objectively reasonable under the circumstances. Global Products v. Workers' Compensation Com'n, 392 Ill.App.3d 408 (2009). Based upon the Arbitrator's finding that Respondent, in good faith, relied on its Section 12 examining physician, Dr. Shadid, to deny benefits, Petitioner's request for penalties and fees are denied.

CONCLUSION

In light of the above facts and considerations, the Arbitrator finds that Petitioner's condition of ill-being is causally related to his work accident on August 9, 2022. The Arbitrator further finds that the medical services provided to Petitioner have been reasonable and necessary. Respondent has not paid all appropriate charges for reasonable and necessary medical services. Respondent is to pay Petitioner directly for the medical services rendered at Well Now Urgent Care for the date of service 08/15/22 billed in the amount of $390.00; Advocate Health Care/Advocate South Suburban Hospital for the dates of service 08/15/22 through 12/06/22 billed in the

amount of $1,073.00; Orthopedic and Rehabilitation Center for the dates of service 08/19/22 through 05/10/23 billed in the amount of $1,341.44; Integrated Imaging Consultants for the date of service 08/23/22 billed in the amount of $76.00 and Advocate High Tech Medical Park for the date of service 12/21/22 billed in the amount of $45.00 pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent shall pay Petitioner temporary total disability from January 2, 2023, through July 7, 2023, for a period of 26 5/7 weeks (at the rate of $734.93 per week) totaling $19,631.26. Petitioner's request for "prospective" TTD is denied. Petitioner's request for penalties and attorney's fees and costs is denied. Respondent to approve and pay for left knee ACL reconstruction and right shoulder arthroscopy as well as necessary pre- and post-operative care as prescribed by Dr. Levi as provided in Section 8(a) and 8.2 of the Act. Respondent to approve and pay for MRIs on Petitioner's lumbar and cervical spine as prescribed by Dr. Levi as provided in Section 8(a) and 8.2 of the Act.

Arbitrator Efi Poziopoulos James

September 12, 2023

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	04WC048909
Case Name	Karen McKnight v. State of Illinois - Stateville Correctional Center & Rate Adjustment Fund
Consolidated Cases	04WC059752; 06WC009735;
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	24IWCC0562
Number of Pages of Decision	7
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Mark Weissburg
Respondent Attorney	Sidney Gui

DATE FILED: 11/22/2024

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Karen McKnight,

Petitioner,

vs.

NO: 04 WC 048909; 04 WC 059752;
06 WC 009735

State of Ill. Dept. of Corrections,

Respondent.

ORDER

This matter coming for hearing before the Commission on February 10, 2023, and June 15, 2023, on Petitioner's Motion for Penalties and Fees pursuant to Sections 19(k), 19(l) and 16 of the Act, the Commission having jurisdiction over the persons and subject matter, and after being advised by the parties, hereby orders Respondent to pay penalties pursuant to Section 19(l) of the Act, and in support thereof states as follows:

The Commission filed Decisions for all three (3) of the above captioned consolidated cases on September 18, 2019. In Case No. 04 WC 048909, the Commission found: "Petitioner was entitled to reasonable and necessary medical expenses as contained in PX27 and incurred from 8/1/03 through the day prior to the third and final accident on 2/6/06, pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act. The Commission further finds that Respondent shall be entitled to a credit for any and all payments made on account of this injury pursuant to §8(j) of the Act, and that Petitioner will be held harmless from any claims or demands by any providers for which Respondent is receiving credit under this order."

No award was made in Case No. 04 WC 059752. In Case No. 06 WC 009735, the Commission ordered "Respondent pay to Petitioner reasonable and necessary medical expenses subsequent to 2/6/06 as set forth in PX27, pursuant to Section 8(a) and the fee schedule provisions of Section 8.2 of the Act." There is no specific reference to §8(j) credit in this Commission Decision, but the Commission stated, "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; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order." PX27 demonstrated a total of $148,401.67 in medical services. While the Arbitrator awarded reasonable and necessary medical services of $148,401.67, the Commission awarded medical expenses as set forth in PX27.

Petitioner filed a Petition for Penalties and Fees on December 18, 2019, arguing Respondent had not paid the medical award. Subsequently, TriStar issued a draft for $1,101.13 on January 22, 2020, which was declared to be reimbursement for out-of-pocket medical expenses at Pain Treatment Surgical Suites and prescriptions from Osco Drug. This draft was issued four (4) months after the Commission Decision was rendered. TriStar issued a second draft for $18,082.50 on April 15, 2020. This draft was issued seven (7) months after the Commission Decision was rendered.

A hearing on Petitioner's Petition for Penalties and Fees was held before Commissioner Thomas J. Tyrrell on November 5, 2020. In his Order dated April 13, 2022, Commissioner Tyrrell found that Respondent failed to timely and properly pay the medical award without good and just cause and awarded Section 19(l) penalties.

Following Commissioner Tyrrell's Order, Petitioner filed the instant Petition for Penalties and Fees on August 1, 2022. In said Petition, Petitioner argues that she had been awarded $148,401.67 pursuant to Section 8(a) of the Act and that as of the date of filing, Respondent had not tendered complete payment of the award. Petition 8/1/22, p.2. Petitioner alleges that the Respondent's failure to tender the award constituted unreasonable and vexatious delay in payment of compensation. Petitioner also argues that pursuant to *Moore v. Industrial Comm'n*, 136 Ill.App.3rd 31 (3rd Dist. 1989) Petitioner was entitled to penalties under Section 19(k) in the amount of 50% of the entire amount of compensation whose payment was unreasonably withheld. Petitioner argued she was also entitled to penalties under 19(l) in the amount of $30.00 per day for each day Respondent failed, neglected, refused and/or unreasonably delayed payment of compensation without good and just cause. She also demanded attorney fees under Section 16 in the amount of 20% of the 19(k) award, plus 20% of the unpaid portion of the Arbitrator's award of compensation, or any other amount as may be deemed just. *Id*. Petitioner also requested the Commission "make clear to the State that the original award of $148,401.67, minus the payment in April 2020 of $18,082.50, must be paid along with fees and penalties immediately to petitioner's counsel, and that any delay in doing so will result in further imposition of fees and penalties."

Respondent issued an additional draft to Petitioner on January 17, 2023, 1218 days after the Commission Decisions of September 18, 2019, in the amount of $2,632.09. Commissioner Tyrrell started the hearing on Petitioner's motion on February 10, 2023, and Commissioner Simonovich completed the hearing on June 15, 2023.

At both hearings, Respondent called Mr. Adam Martay, who was employed as a claims examiner with TriStar. At the hearing on February 10, 2023, Mr. Martay testified that at the time of the prior Penalties Petition hearing, he had determined that all the bills had been paid. T. 2/10/23, p.34.

Respondent identified the checks issued in payment of the award as follows:

1. January 22, 2020, in the amount of $1,101.13
    a. $220.00 was to satisfy out-of-pocket expenses at Pain Treatment Centers
    b. $881.13 was to satisfy out-of-pocket expenses at Jewel-Osco Drug

2. April 14, 2020, in the amount of $18,082.50
    a. $16,157.50 was to satisfy the bill of Pain Treatment Centers (also referenced as Pain Treatment Surgical Suites)
    b. $1,925.00 was to satisfy the bill of Joliet Center for Clinical Research
3. January 17, 2023, in the amount of $2,632.09
    a. Payments to Dr. Jawich
    b. Payments to Pain Treatment Centers of Illinois
    c. $17.09 was to satisfy the bill of Northwestern Medicine

T. 6/15/23, p.16-18.

Analysis

A number of courts in Illinois have addressed the imposition of Sections 19(k) and 19(l) Penalties and Section 16 Attorneys' Fees. In *Jacobo v. Ill. Workers' Comp. Comm'n*, the court examined various histories of the application of Sections 19(k) and 19(l) Penalties and Section 16 Attorneys' Fees as follows:

> Penalties under section 19(l) are in the nature of a late fee. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 763, 800 N.E.2d 819, 828, 279 Ill. Dec. 531 (2003). In addition, the assessment of a penalty under section 19(l) is mandatory "[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 552, 234 Ill. Dec. 205 (1998). The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. *Mechanical Devices*, 344 Ill. App. 3d at 763, 800 N.E.2d at 829. The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. *Board of Education of the City of Chicago v. Industrial Comm'n*, 93 Ill. 2d 1, 9-10, 442 N.E.2d 861, 865, 66 Ill. Dec. 300 (1982). The Commission's evaluation of the reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence. *Crockett v. Industrial Comm'n*, 218 Ill. App. 3d 116, 121, 578 N.E.2d 140, 143, 161 Ill. Dec. 13 (1991).
>
> The standard for awarding penalties under section 19(k) is higher than the standard under 19(*l*). Section 19(k) of the Act provides, in pertinent part, as follows:
>
> "In case where there has been any *unreasonable or vexatious delay* of payment or intentional underpayment of compensation *** then the Commission *may* award compensation additional to that otherwise payable under the Act equal to 50% of the amount payable at the time of such award." (Emphasis added.) *820 ILCS 305/19(k) (West 2006).*

> Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under section 19(k) is appropriate. *820 ILCS 305/16 (West 2006)*. "The amount of [attorney] fees to be assessed is a matter committed to the discretion of the Commission." *Williams v. Industrial Comm'n*, 336 Ill. App. 3d 513, 516, 784 N.E.2d 396, 399, 271 Ill. Dec. 178 (2003). *Jacobo v. Ill. Workers' Comp. Comm'n*, 355 Ill.Dec. 358, 363-364, 959 N.E.2d 772, 777-778.

The Appellate Court has addressed late payments made after an award became final and notes an award of §19(k) penalties and §16 attorney's fees is discretionary and not mandated by statute or triggered after a certain statutory amount of time for late payment. *Armor Swift-Eckrich v. Indus. Comm'n (Williams),* 355 Ill.App.3d 708, citing *McMahan v. Industrial Comm'n*, 183 Ill.2d 499, 515 (1998).

Under Illinois law, Respondent has the burden of proving the delay in payment of benefits was reasonable. *Lester v. Indus. Comm'n,* 256 Ill. App. 3d 520 (1993). In determining whether such delay has been unreasonable or vexatious, regard must be had to the circumstances attending the delay, the nature of the case and the relief demanded, and also to the question whether the rights of the claimant have been prejudiced by that delay. *Board of Educ. v. Indus. Comm'n*, 351 Ill.128 (1932).

In the case at hand,. Petitioner argues the Commission ordered the Respondent to pay her $148,401.67 for unpaid medical bills, but they refused. T. 2/10/23, p. 7. She contends that the non-payment of $148,401.67 to Petitioner constitutes a non-payment of the award, justifying an award of Penalties and Fees. Petitioner further argues that Respondent is not entitled to an 8(j) credit. Petitioner fails to put forth any basis as to why or clarify how Respondent has not satisfied the Commission's award of medical expenses subsequent to 2/6/06 as set forth in PX27, pursuant to Section 8(a) and the fee schedule provisions of Section 8.2 of the Act.

Respondent's position is that Petitioner has the burden to show the medical bills detailed in PX27 remain outstanding. Respondent argues that it should receive a credit for payments made on behalf of Petitioner either by group insurance or some other medical benefit provider. Finally, Respondent claims the award has been properly paid, taking into account the TriStar payments and the payments made by the group carrier up to the Arbitration award entered on November 2, 2016. T. 6/15/23, p. 18-19.

First, we note that the Commission's award of medical expenses was not a dollar figure, but instead this Commission ordered "Respondent pay to Petitioner reasonable and necessary medical expenses subsequent to 2/6/06 as set forth in PX27, pursuant to 8(a) and the fee schedule provisions of 8.2 of the Act". Commission Decision 06WC009735, p. 2. This was echoed in the Commission's award in 04WC 048909, wherein the Commission found, "Petitioner was entitled to reasonable and necessary medical expenses as contained in PX27 and incurred from 8/1/03 through the day prior to the third and final accident on 2/6/06, pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act." Commission Decision 04WC048909, p. 33.

Second, we find the Commission's Orders of September 18, 2019 provide Respondent a

credit under 8(j)1. The Commission Decision for Case No. 04 WC 048909, stated, "The Commission further finds that Respondent shall be entitled to a credit for any and all payments made on account of this injury pursuant to §8(j) of the Act, and that Petitioner will be held harmless from any claims or demands by any providers for which Respondent is receiving credit under this Order." Likewise, in Case No. 06 WC 009735, the Commission indicated that, "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, provided Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this Order." The language of these Orders is unequivocal. As such, we find Respondent has been awarded an 8(j) credit.

We also find Respondent is entitled to a credit for the $21,81572 in payments made to Petitioner via her attorney (1/22/20 - $1,101.3, 4/14/20 - $18,082.50, and 1/17/23 - $2,632.09).

Ultimately, Petitioner has not provided the Commission with any evidence to show that the medical award remains unpaid and the Commission finds Petitioner has failed to meet her burden of showing a non-payment of the award. However, we do find the evidence supports penalties based upon an untimely payment of the award.

Respondent has maintained throughout the litigation on the pending and prior Penalties Petitions that all bills have been satisfied. Mr. Martay specifically testified that he recalled his prior testimony on November 5, 2020, that no medical expenses remained owing. T. 2/10/23, p. 34. However, despite Mr. Martay's assertion that "All the bills that we had received were paid" prior to the penalties hearing on November 5, 2020, Respondent issued additional funds in the amount of $2,632.09 on January 17, 2023. T. 2/10/23, p. 34, 6/15/23, p. 15. By Respondent's own admission at the June 15, 2023 hearing, this payment was made to satisfy the outstanding medical from Dr. Jawich, Pain Treatment Centers of Illinois, and Northwestern Medicine. T. 6/15/23, p.18. This payment came after the Commission's April 13, 2022 Order finding that Respondent had failed to timely and properly pay the medical award without good and just cause.

More importantly this payment was made 1218 days after the Commission's final Decisions were issued on September 18, 2019. Respondent provides no justification for this late payment.

Based upon the 1000+ day delay of payment for Dr. Jawich, Pain Treatment Centers of Illinois, and Northwestern Medicine, and the lack of any justification for the delay, the Commission again finds that Respondent failed to timely and properly pay the medical award without good and just cause. We award Section 19(l) penalties.

Penalties pursuant to §19(k) and §16 of the Act are reserved for situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose. *McMahon v. Industrial Comm'n*, 183 Ill. 2d 499 (1998). There has been no evidence submitted to show that Respondent's conduct rises to the level of vexatious underpayment of compensation pursuant to §19(k) and §16 of the Act.

1 As no award was made in Case No. 04 WC 059752 there is no applicable 8(j) credit.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner penalties pursuant to Section 19(l) of the Act in the amount of $8,370.00, as 279 days elapsed between the Commission's Order on April 13, 2022 and the January 17, 2023 payment.

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1) (West 2013)*.

November 22, 2024

H: 6/15/23
AHS/kjj
51

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	04WC059752
Case Name	Karen McKnight v. State of Illinois - Stateville Correctional Center & Rate Adjustment Fund
Consolidated Cases	04WC048909; 06WC009735;
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	24IWCC0563
Number of Pages of Decision	7
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Mark Weissburg
Respondent Attorney	Sidney Gui

DATE FILED: 11/22/2024

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Karen McKnight,

Petitioner,

vs.

NO: 04 WC 048909; 04 WC 059752;
06 WC 009735

State of Ill. Dept. of Corrections,

Respondent.

ORDER

This matter coming for hearing before the Commission on February 10, 2023, and June 15, 2023, on Petitioner's Motion for Penalties and Fees pursuant to Sections 19(k), 19(l) and 16 of the Act, the Commission having jurisdiction over the persons and subject matter, and after being advised by the parties, hereby orders Respondent to pay penalties pursuant to Section 19(l) of the Act, and in support thereof states as follows:

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Following Commissioner Tyrrell's Order, Petitioner filed the instant Petition for Penalties and Fees on August 1, 2022. In said Petition, Petitioner argues that she had been awarded $148,401.67 pursuant to Section 8(a) of the Act and that as of the date of filing, Respondent had not tendered complete payment of the award. Petition 8/1/22, p.2. Petitioner alleges that the Respondent's failure to tender the award constituted unreasonable and vexatious delay in payment of compensation. Petitioner also argues that pursuant to *Moore v. Industrial Comm'n*, 136 Ill.App.3rd 31 (3rd Dist. 1989) Petitioner was entitled to penalties under Section 19(k) in the amount of 50% of the entire amount of compensation whose payment was unreasonably withheld. Petitioner argued she was also entitled to penalties under 19(l) in the amount of $30.00 per day for each day Respondent failed, neglected, refused and/or unreasonably delayed payment of compensation without good and just cause. She also demanded attorney fees under Section 16 in the amount of 20% of the 19(k) award, plus 20% of the unpaid portion of the Arbitrator's award of compensation, or any other amount as may be deemed just. *Id*. Petitioner also requested the Commission "make clear to the State that the original award of $148,401.67, minus the payment in April 2020 of $18,082.50, must be paid along with fees and penalties immediately to petitioner's counsel, and that any delay in doing so will result in further imposition of fees and penalties."

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Analysis

A number of courts in Illinois have addressed the imposition of Sections 19(k) and 19(l) Penalties and Section 16 Attorneys' Fees. In *Jacobo v. Ill. Workers' Comp. Comm'n*, the court examined various histories of the application of Sections 19(k) and 19(l) Penalties and Section 16 Attorneys' Fees as follows:

> Penalties under section 19(l) are in the nature of a late fee. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 763, 800 N.E.2d 819, 828, 279 Ill. Dec. 531 (2003). In addition, the assessment of a penalty under section 19(l) is mandatory "[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 552, 234 Ill. Dec. 205 (1998). The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. *Mechanical Devices*, 344 Ill. App. 3d at 763, 800 N.E.2d at 829. The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. *Board of Education of the City of Chicago v. Industrial Comm'n*, 93 Ill. 2d 1, 9-10, 442 N.E.2d 861, 865, 66 Ill. Dec. 300 (1982). The Commission's evaluation of the reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence. *Crockett v. Industrial Comm'n*, 218 Ill. App. 3d 116, 121, 578 N.E.2d 140, 143, 161 Ill. Dec. 13 (1991).
>
> The standard for awarding penalties under section 19(k) is higher than the standard under 19(*l*). Section 19(k) of the Act provides, in pertinent part, as follows:
>
> "In case where there has been any *unreasonable or vexatious delay* of payment or intentional underpayment of compensation *** then the Commission *may* award compensation additional to that otherwise payable under the Act equal to 50% of the amount payable at the time of such award." (Emphasis added.) *820 ILCS 305/19(k) (West 2006).*

> Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under section 19(k) is appropriate. *820 ILCS 305/16 (West 2006)*. "The amount of [attorney] fees to be assessed is a matter committed to the discretion of the Commission." *Williams v. Industrial Comm'n*, 336 Ill. App. 3d 513, 516, 784 N.E.2d 396, 399, 271 Ill. Dec. 178 (2003). *Jacobo v. Ill. Workers' Comp. Comm'n*, 355 Ill.Dec. 358, 363-364, 959 N.E.2d 772, 777-778.

The Appellate Court has addressed late payments made after an award became final and notes an award of §19(k) penalties and §16 attorney's fees is discretionary and not mandated by statute or triggered after a certain statutory amount of time for late payment. *Armor Swift-Eckrich v. Indus. Comm'n (Williams),* 355 Ill.App.3d 708, citing *McMahan v. Industrial Comm'n*, 183 Ill.2d 499, 515 (1998).

Under Illinois law, Respondent has the burden of proving the delay in payment of benefits was reasonable. *Lester v. Indus. Comm'n,* 256 Ill. App. 3d 520 (1993). In determining whether such delay has been unreasonable or vexatious, regard must be had to the circumstances attending the delay, the nature of the case and the relief demanded, and also to the question whether the rights of the claimant have been prejudiced by that delay. *Board of Educ. v. Indus. Comm'n*, 351 Ill.128 (1932).

In the case at hand,. Petitioner argues the Commission ordered the Respondent to pay her $148,401.67 for unpaid medical bills, but they refused. T. 2/10/23, p. 7. She contends that the non-payment of $148,401.67 to Petitioner constitutes a non-payment of the award, justifying an award of Penalties and Fees. Petitioner further argues that Respondent is not entitled to an 8(j) credit. Petitioner fails to put forth any basis as to why or clarify how Respondent has not satisfied the Commission's award of medical expenses subsequent to 2/6/06 as set forth in PX27, pursuant to Section 8(a) and the fee schedule provisions of Section 8.2 of the Act.

Respondent's position is that Petitioner has the burden to show the medical bills detailed in PX27 remain outstanding. Respondent argues that it should receive a credit for payments made on behalf of Petitioner either by group insurance or some other medical benefit provider. Finally, Respondent claims the award has been properly paid, taking into account the TriStar payments and the payments made by the group carrier up to the Arbitration award entered on November 2, 2016. T. 6/15/23, p. 18-19.

First, we note that the Commission's award of medical expenses was not a dollar figure, but instead this Commission ordered "Respondent pay to Petitioner reasonable and necessary medical expenses subsequent to 2/6/06 as set forth in PX27, pursuant to 8(a) and the fee schedule provisions of 8.2 of the Act". Commission Decision 06WC009735, p. 2. This was echoed in the Commission's award in 04WC 048909, wherein the Commission found, "Petitioner was entitled to reasonable and necessary medical expenses as contained in PX27 and incurred from 8/1/03 through the day prior to the third and final accident on 2/6/06, pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act." Commission Decision 04WC048909, p. 33.

Second, we find the Commission's Orders of September 18, 2019 provide Respondent a

credit under 8(j)1. The Commission Decision for Case No. 04 WC 048909, stated, "The Commission further finds that Respondent shall be entitled to a credit for any and all payments made on account of this injury pursuant to §8(j) of the Act, and that Petitioner will be held harmless from any claims or demands by any providers for which Respondent is receiving credit under this Order." Likewise, in Case No. 06 WC 009735, the Commission indicated that, "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, provided Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this Order." The language of these Orders is unequivocal. As such, we find Respondent has been awarded an 8(j) credit.

We also find Respondent is entitled to a credit for the $21,81572 in payments made to Petitioner via her attorney (1/22/20 - $1,101.3, 4/14/20 - $18,082.50, and 1/17/23 - $2,632.09).

Ultimately, Petitioner has not provided the Commission with any evidence to show that the medical award remains unpaid and the Commission finds Petitioner has failed to meet her burden of showing a non-payment of the award. However, we do find the evidence supports penalties based upon an untimely payment of the award.

Respondent has maintained throughout the litigation on the pending and prior Penalties Petitions that all bills have been satisfied. Mr. Martay specifically testified that he recalled his prior testimony on November 5, 2020, that no medical expenses remained owing. T. 2/10/23, p. 34. However, despite Mr. Martay's assertion that "All the bills that we had received were paid" prior to the penalties hearing on November 5, 2020, Respondent issued additional funds in the amount of $2,632.09 on January 17, 2023. T. 2/10/23, p. 34, 6/15/23, p. 15. By Respondent's own admission at the June 15, 2023 hearing, this payment was made to satisfy the outstanding medical from Dr. Jawich, Pain Treatment Centers of Illinois, and Northwestern Medicine. T. 6/15/23, p.18. This payment came after the Commission's April 13, 2022 Order finding that Respondent had failed to timely and properly pay the medical award without good and just cause.

More importantly this payment was made 1218 days after the Commission's final Decisions were issued on September 18, 2019. Respondent provides no justification for this late payment.

Based upon the 1000+ day delay of payment for Dr. Jawich, Pain Treatment Centers of Illinois, and Northwestern Medicine, and the lack of any justification for the delay, the Commission again finds that Respondent failed to timely and properly pay the medical award without good and just cause. We award Section 19(l) penalties.

Penalties pursuant to §19(k) and §16 of the Act are reserved for situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose. *McMahon v. Industrial Comm'n*, 183 Ill. 2d 499 (1998). There has been no evidence submitted to show that Respondent's conduct rises to the level of vexatious underpayment of compensation pursuant to §19(k) and §16 of the Act.

1 As no award was made in Case No. 04 WC 059752 there is no applicable 8(j) credit.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner penalties pursuant to Section 19(l) of the Act in the amount of $8,370.00, as 279 days elapsed between the Commission's Order on April 13, 2022 and the January 17, 2023 payment.

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1) (West 2013)*.

November 22, 2024

H: 6/15/23
AHS/kjj
51

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	06WC009735
Case Name	Karen McKnight v. State of Illinois - Stateville Correctional Center & Rate Adjustment Fund
Consolidated Cases	04WC048909; 04WC059752;
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	24IWCC0564
Number of Pages of Decision	7
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Mark Weissburg
Respondent Attorney	Sidney Gui

DATE FILED: 11/22/2024

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Karen McKnight,

Petitioner,

vs.

NO: 04 WC 048909; 04 WC 059752;
06 WC 009735

State of Ill. Dept. of Corrections,

Respondent.

ORDER

This matter coming for hearing before the Commission on February 10, 2023, and June 15, 2023, on Petitioner's Motion for Penalties and Fees pursuant to Sections 19(k), 19(l) and 16 of the Act, the Commission having jurisdiction over the persons and subject matter, and after being advised by the parties, hereby orders Respondent to pay penalties pursuant to Section 19(l) of the Act, and in support thereof states as follows:

The Commission filed Decisions for all three (3) of the above captioned consolidated cases on September 18, 2019. In Case No. 04 WC 048909, the Commission found: "Petitioner was entitled to reasonable and necessary medical expenses as contained in PX27 and incurred from 8/1/03 through the day prior to the third and final accident on 2/6/06, pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act. The Commission further finds that Respondent shall be entitled to a credit for any and all payments made on account of this injury pursuant to §8(j) of the Act, and that Petitioner will be held harmless from any claims or demands by any providers for which Respondent is receiving credit under this order."

No award was made in Case No. 04 WC 059752. In Case No. 06 WC 009735, the Commission ordered "Respondent pay to Petitioner reasonable and necessary medical expenses subsequent to 2/6/06 as set forth in PX27, pursuant to Section 8(a) and the fee schedule provisions of Section 8.2 of the Act." There is no specific reference to §8(j) credit in this Commission Decision, but the Commission stated, "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; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order." PX27 demonstrated a total of $148,401.67 in medical services. While the Arbitrator awarded reasonable and necessary medical services of $148,401.67, the Commission awarded medical expenses as set forth in PX27.

Petitioner filed a Petition for Penalties and Fees on December 18, 2019, arguing Respondent had not paid the medical award. Subsequently, TriStar issued a draft for $1,101.13 on January 22, 2020, which was declared to be reimbursement for out-of-pocket medical expenses at Pain Treatment Surgical Suites and prescriptions from Osco Drug. This draft was issued four (4) months after the Commission Decision was rendered. TriStar issued a second draft for $18,082.50 on April 15, 2020. This draft was issued seven (7) months after the Commission Decision was rendered.

A hearing on Petitioner's Petition for Penalties and Fees was held before Commissioner Thomas J. Tyrrell on November 5, 2020. In his Order dated April 13, 2022, Commissioner Tyrrell found that Respondent failed to timely and properly pay the medical award without good and just cause and awarded Section 19(l) penalties.

Following Commissioner Tyrrell's Order, Petitioner filed the instant Petition for Penalties and Fees on August 1, 2022. In said Petition, Petitioner argues that she had been awarded $148,401.67 pursuant to Section 8(a) of the Act and that as of the date of filing, Respondent had not tendered complete payment of the award. Petition 8/1/22, p.2. Petitioner alleges that the Respondent's failure to tender the award constituted unreasonable and vexatious delay in payment of compensation. Petitioner also argues that pursuant to *Moore v. Industrial Comm'n*, 136 Ill.App.3rd 31 (3rd Dist. 1989) Petitioner was entitled to penalties under Section 19(k) in the amount of 50% of the entire amount of compensation whose payment was unreasonably withheld. Petitioner argued she was also entitled to penalties under 19(l) in the amount of $30.00 per day for each day Respondent failed, neglected, refused and/or unreasonably delayed payment of compensation without good and just cause. She also demanded attorney fees under Section 16 in the amount of 20% of the 19(k) award, plus 20% of the unpaid portion of the Arbitrator's award of compensation, or any other amount as may be deemed just. *Id*. Petitioner also requested the Commission "make clear to the State that the original award of $148,401.67, minus the payment in April 2020 of $18,082.50, must be paid along with fees and penalties immediately to petitioner's counsel, and that any delay in doing so will result in further imposition of fees and penalties."

Respondent issued an additional draft to Petitioner on January 17, 2023, 1218 days after the Commission Decisions of September 18, 2019, in the amount of $2,632.09. Commissioner Tyrrell started the hearing on Petitioner's motion on February 10, 2023, and Commissioner Simonovich completed the hearing on June 15, 2023.

At both hearings, Respondent called Mr. Adam Martay, who was employed as a claims examiner with TriStar. At the hearing on February 10, 2023, Mr. Martay testified that at the time of the prior Penalties Petition hearing, he had determined that all the bills had been paid. T. 2/10/23, p.34.

Respondent identified the checks issued in payment of the award as follows:

1. January 22, 2020, in the amount of $1,101.13
    a. $220.00 was to satisfy out-of-pocket expenses at Pain Treatment Centers
    b. $881.13 was to satisfy out-of-pocket expenses at Jewel-Osco Drug

2. April 14, 2020, in the amount of $18,082.50
    a. $16,157.50 was to satisfy the bill of Pain Treatment Centers (also referenced as Pain Treatment Surgical Suites)
    b. $1,925.00 was to satisfy the bill of Joliet Center for Clinical Research
3. January 17, 2023, in the amount of $2,632.09
    a. Payments to Dr. Jawich
    b. Payments to Pain Treatment Centers of Illinois
    c. $17.09 was to satisfy the bill of Northwestern Medicine

T. 6/15/23, p.16-18.

Analysis

A number of courts in Illinois have addressed the imposition of Sections 19(k) and 19(l) Penalties and Section 16 Attorneys' Fees. In *Jacobo v. Ill. Workers' Comp. Comm'n*, the court examined various histories of the application of Sections 19(k) and 19(l) Penalties and Section 16 Attorneys' Fees as follows:

> Penalties under section 19(l) are in the nature of a late fee. *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 763, 800 N.E.2d 819, 828, 279 Ill. Dec. 531 (2003). In addition, the assessment of a penalty under section 19(l) is mandatory "[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515, 702 N.E.2d 545, 552, 234 Ill. Dec. 205 (1998). The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. *Mechanical Devices*, 344 Ill. App. 3d at 763, 800 N.E.2d at 829. The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. *Board of Education of the City of Chicago v. Industrial Comm'n*, 93 Ill. 2d 1, 9-10, 442 N.E.2d 861, 865, 66 Ill. Dec. 300 (1982). The Commission's evaluation of the reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence. *Crockett v. Industrial Comm'n*, 218 Ill. App. 3d 116, 121, 578 N.E.2d 140, 143, 161 Ill. Dec. 13 (1991).
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> The standard for awarding penalties under section 19(k) is higher than the standard under 19(*l*). Section 19(k) of the Act provides, in pertinent part, as follows:
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> "In case where there has been any *unreasonable or vexatious delay* of payment or intentional underpayment of compensation *** then the Commission *may* award compensation additional to that otherwise payable under the Act equal to 50% of the amount payable at the time of such award." (Emphasis added.) *820 ILCS 305/19(k) (West 2006).*

> Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under section 19(k) is appropriate. *820 ILCS 305/16 (West 2006)*. "The amount of [attorney] fees to be assessed is a matter committed to the discretion of the Commission." *Williams v. Industrial Comm'n*, 336 Ill. App. 3d 513, 516, 784 N.E.2d 396, 399, 271 Ill. Dec. 178 (2003). *Jacobo v. Ill. Workers' Comp. Comm'n*, 355 Ill.Dec. 358, 363-364, 959 N.E.2d 772, 777-778.

The Appellate Court has addressed late payments made after an award became final and notes an award of §19(k) penalties and §16 attorney's fees is discretionary and not mandated by statute or triggered after a certain statutory amount of time for late payment. *Armor Swift-Eckrich v. Indus. Comm'n (Williams),* 355 Ill.App.3d 708, citing *McMahan v. Industrial Comm'n*, 183 Ill.2d 499, 515 (1998).

Under Illinois law, Respondent has the burden of proving the delay in payment of benefits was reasonable. *Lester v. Indus. Comm'n,* 256 Ill. App. 3d 520 (1993). In determining whether such delay has been unreasonable or vexatious, regard must be had to the circumstances attending the delay, the nature of the case and the relief demanded, and also to the question whether the rights of the claimant have been prejudiced by that delay. *Board of Educ. v. Indus. Comm'n*, 351 Ill.128 (1932).

In the case at hand,. Petitioner argues the Commission ordered the Respondent to pay her $148,401.67 for unpaid medical bills, but they refused. T. 2/10/23, p. 7. She contends that the non-payment of $148,401.67 to Petitioner constitutes a non-payment of the award, justifying an award of Penalties and Fees. Petitioner further argues that Respondent is not entitled to an 8(j) credit. Petitioner fails to put forth any basis as to why or clarify how Respondent has not satisfied the Commission's award of medical expenses subsequent to 2/6/06 as set forth in PX27, pursuant to Section 8(a) and the fee schedule provisions of Section 8.2 of the Act.

Respondent's position is that Petitioner has the burden to show the medical bills detailed in PX27 remain outstanding. Respondent argues that it should receive a credit for payments made on behalf of Petitioner either by group insurance or some other medical benefit provider. Finally, Respondent claims the award has been properly paid, taking into account the TriStar payments and the payments made by the group carrier up to the Arbitration award entered on November 2, 2016. T. 6/15/23, p. 18-19.

First, we note that the Commission's award of medical expenses was not a dollar figure, but instead this Commission ordered "Respondent pay to Petitioner reasonable and necessary medical expenses subsequent to 2/6/06 as set forth in PX27, pursuant to 8(a) and the fee schedule provisions of 8.2 of the Act". Commission Decision 06WC009735, p. 2. This was echoed in the Commission's award in 04WC 048909, wherein the Commission found, "Petitioner was entitled to reasonable and necessary medical expenses as contained in PX27 and incurred from 8/1/03 through the day prior to the third and final accident on 2/6/06, pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act." Commission Decision 04WC048909, p. 33.

Second, we find the Commission's Orders of September 18, 2019 provide Respondent a

credit under 8(j)1. The Commission Decision for Case No. 04 WC 048909, stated, "The Commission further finds that Respondent shall be entitled to a credit for any and all payments made on account of this injury pursuant to §8(j) of the Act, and that Petitioner will be held harmless from any claims or demands by any providers for which Respondent is receiving credit under this Order." Likewise, in Case No. 06 WC 009735, the Commission indicated that, "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, provided Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this Order." The language of these Orders is unequivocal. As such, we find Respondent has been awarded an 8(j) credit.

We also find Respondent is entitled to a credit for the $21,81572 in payments made to Petitioner via her attorney (1/22/20 - $1,101.3, 4/14/20 - $18,082.50, and 1/17/23 - $2,632.09).

Ultimately, Petitioner has not provided the Commission with any evidence to show that the medical award remains unpaid and the Commission finds Petitioner has failed to meet her burden of showing a non-payment of the award. However, we do find the evidence supports penalties based upon an untimely payment of the award.

Respondent has maintained throughout the litigation on the pending and prior Penalties Petitions that all bills have been satisfied. Mr. Martay specifically testified that he recalled his prior testimony on November 5, 2020, that no medical expenses remained owing. T. 2/10/23, p. 34. However, despite Mr. Martay's assertion that "All the bills that we had received were paid" prior to the penalties hearing on November 5, 2020, Respondent issued additional funds in the amount of $2,632.09 on January 17, 2023. T. 2/10/23, p. 34, 6/15/23, p. 15. By Respondent's own admission at the June 15, 2023 hearing, this payment was made to satisfy the outstanding medical from Dr. Jawich, Pain Treatment Centers of Illinois, and Northwestern Medicine. T. 6/15/23, p.18. This payment came after the Commission's April 13, 2022 Order finding that Respondent had failed to timely and properly pay the medical award without good and just cause.

More importantly this payment was made 1218 days after the Commission's final Decisions were issued on September 18, 2019. Respondent provides no justification for this late payment.

Based upon the 1000+ day delay of payment for Dr. Jawich, Pain Treatment Centers of Illinois, and Northwestern Medicine, and the lack of any justification for the delay, the Commission again finds that Respondent failed to timely and properly pay the medical award without good and just cause. We award Section 19(l) penalties.

Penalties pursuant to §19(k) and §16 of the Act are reserved for situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose. *McMahon v. Industrial Comm'n*, 183 Ill. 2d 499 (1998). There has been no evidence submitted to show that Respondent's conduct rises to the level of vexatious underpayment of compensation pursuant to §19(k) and §16 of the Act.

1 As no award was made in Case No. 04 WC 059752 there is no applicable 8(j) credit.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner penalties pursuant to Section 19(l) of the Act in the amount of $8,370.00, as 279 days elapsed between the Commission's Order on April 13, 2022 and the January 17, 2023 payment.

Pursuant to Section 19(f)(1) of the Act, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1) (West 2013)*.

November 22, 2024

H: 6/15/23
AHS/kjj
51

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021379
Case Name	Rosemary Johnson v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0565
Number of Pages of Decision	17
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	James Jackson

DATE FILED: 11/22/2024

/s/Amylee Simonovich,Commissioner

Signature

24IWCC0565

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rosemary Johnson,

Petitioner,

vs. NO: 22 WC 021379

Chicago Transit Authority,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Respondent and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, and temporary total disability ("TTD"), and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission agrees with the Arbitrator's overall analysis, however, makes some modifications to the language of the Decision. The Commission strikes the last sentence in the fifth paragraph on page 8 of the Arbitrator's Decision, which reads, "The Arbitrator infers that Petitioner's chronic health conditions were a cause of her deconditioned state."

The Commission further modifies the last paragraph of Section (F) at the bottom of page 8, extending to the top of page 9 of the Arbitrator's Decision, striking, "The Arbitrator finds that the Petitioner preexisting asymptomatic degenerative changes in her low back and right knee combined with her deconditioned state made her more vulnerable to injury and recovery. Petitioner was in the performance of her duties, and as a result of her accident, was suddenly disabled. An accidental injury was sustained by her on August 11, 2022 even though the result would not have obtained had she been young or in normal health. The Arbitrator concludes that Petitioner's accidental injury was a causative factor in the resulting condition of ill-being to her right knee and low back."

Additionally, the Commission modifies the first paragraph of page 10 of the Arbitrator's

Decision to read, "Because Petitioner's conditions to her back and right knee are causally related, and because she has not reached maximum medical improvement and because there is no evidence that she has reached maximum medical improvement, Petitioner is entitled to the prescribed prospective medical care."

Finally, the Commission modifies the first sentence of the second paragraph on page 10 of the Arbitrator's Decision to add "right knee" before the word "injection".

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of $1,333.33/week for a period of 54 5/7 weeks, commencing on August 12, 2022 through August 29, 2023, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay directly to the medical providers the reasonable and necessary medical services, pursuant to the medical fee schedule, of $3,022.00 to Chicago Fire Department, $4,469.57 to University of Chicago Medicine, $637.00 to University of Chicago, $11,949.00 to ION, $30,758.64 to Injury Centers of Illinois, $2,500.00 to Molecular Imaging Chicago, and $937.50 to Midwest Specialty Pharmacy, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for an additional 4-6 weeks of additional physical therapy for her right knee and if her pain persist, to another injection. Respondent shall also provide and pay for the radiofrequency rhizotomy as prescribed by Dr. Chunduri to cure and relieve her low back pain.

IT IS FURTHER ORDERED BY THE COMMISSION, that 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.

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 this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Under Section 19(f)(2), no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 22, 2024

o:9/24/2024
AHS/kjj
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021379
Case Name	Rosemary Johnson v. Chicago Transit Authority
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Jason M. Whiteside
Respondent Attorney	James Jackson

DATE FILED: 11/21/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 21, 2023 5.23%

/s/ Joseph Amarilio, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ROSEMARY JOHNSON
Employee/Petitioner

v.

CHICAGO TRANSIT AUTHORITY
Employer/Respondent

Case # **22 WC 021379**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of Chicago, on **August 29, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **August 11 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being to her **right knee and low back** ***are causally*** related to the accident.

In the year preceding the injury, Petitioner earned $**88,400.00**; the average weekly wage was **$1,700.00**.

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

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

Respondent shall be given a credit of $**$0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**$0.00**.

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

ORDER

TTD: Respondent shall pay Petitioner temporary partial disability benefits of $1,333.33 per week for 54 and 5/7TH weeks, commencing August 12, 2022 through August 29, 2023, as provided in Section 8(a) of the Act.

Medical Bills: Respondent shall pay directly to the medical providers the reasonable and necessary medical services, pursuant to the medical fee schedule, of $3,022.00 to Chicago Fire Department, $4,469.57 to University of Chicago Medicine, $637.00 to University of Chicago, $11,949.00 to ION, $30,758.64 to Injury Centers of Illinois, $2,500.00 to Molecular Imaging Chicago, and $937.50 to Midwest Specialty Pharmacy, as provided in Sections 8(a) and 8.2 of the Act.

Prospective Medical:: Petitioner is entitled to 4-6 weeks of additional physical therapy for her right knee and if her pain persists, to another injection. Petitioner is also entitled to receive the radiofrequency rhizotomy as prescribed by Dr. Chunduri to cure and relieve her low back pain. Respondent shall pay for the entitled prospective treatment.

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

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

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

/s/ *Joseph D. Amarilio* **NOVEMBER 21, 2023**

Signature of Arbitrator

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ATTACHMENT TO ARBITRATION DECISION
19(b)

Rosemary Johnson
Employee/Petitioner

v.

22 WC 021379

Chicago Transit Authority
Employer/Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY.

Ms. Rosemary Johnson (Petitioner) caused to be filed an Application for Adjustment of Claim for benefits under the Illinois Worker's Compensation Act (Act). Petitioner alleged that she sustained an injury on August 11, 2022 while working in her capacity with the Chicago Transit Authority (Respondent). This claim proceeded to hearing on August 29, 2023 pursuant to Section 19(b) of the Act before the Arbitrator in the City of Chicago, County of Cook.

The parties jointly submitted a Request For Hearing stipulating that the parties were prepared to try this matter to completion on August 29, 2023 on the following disputed issues: 1. Whether Petitioner sustained accidental injuries on August 11, 2022 that arose out of an in the course of her employment with Respondent. 2. Whether Petitioner's current condition of ill-being is causally connected to the accident. 3. Whether Respondent is liable for unpaid medical bills. 4. Whether Petitioner is entitled to temporary total disability benefits. 5. Whether Petitioner is entitled to receive prospective medical treatment.

The submitted exhibits and the trial transcript of the hearing were examined by the Arbitrator. The parties mutually requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (ARB X 1)

II. FINDINGS OF FACT

Background:

Petitioner testified that she lived in Chicago Heights and has two daughters. (T9). She has been employed by Chicago Transit Authority (CTA) since 2004 as a bus operator. (T10-11). In her typical day, she reports to work around five or six o'clock in the morning, clocks in at the front desk, pre-trips her bus, and proceeds to her route. (T11).

Prior to the work event, she reported that her low back and right knee were fine. (T11-12). She was not under any kind of pain medicine regimen. (T12). Prior to the crash, she enjoyed

going to the gym, doing workouts, swimming, the sauna and whirlpool. *Id*. After the accident she continues to use the sauna to ease her pain. *Id*.

August 11, 2012 date of accidental injury:

On August 11, 2022, Petitioner got her bus from the garage and headed northbound to 47th and Wentworth. (T13). When the light turned green she proceeded to make her left turn. *Id*. As she was making the left turn, she noticed a passenger doing something on the floor of the bus. *Id*. She told him to stand up because she was in motion and she did not want him to get hurt. *Id*. She then saw a vehicle up on the curb coming down in front of her, in front of the bus, and they collided. *Id*. Her right front bumper his the other vehicle's side back wheel by the wheel-well. (T14). During the collision, her body shifted when she hit the brakes and the impact from the car. *Id*. She felt pain in her low back and right knee because her knee hit the dashboard. *Id*.

She then got out of the bus because the other driver tried to reverse his vehicle. (T15). Her and the passengers exited the bus and thought the other driver was trying to run. *Id*. Then the ambulance arrived along with the police and Petitioner's supervisor. (T15-16). At that point her body felt adrenaline running and she felt nervous. (T16). She sat back down to calm down and that is when she started to feel pain. *Id*.

The Chicago Fire Department paramedic patient care report records that Petitioner was alert and oriented with complaint of right leg pain. Patient was restrained bus driver involved in a motor vehicle collision. She was assessed and found to be normal for deformities, contusions, or abrasions. She denied loss of consciousness. Petitioner was recorded to have said that she was driving a CTA bus at low speed and the bus has minimal damage. Petitioner was transported to University of Chicago emergency room. No passengers were at the scene at the time of the paramedic's arrival. (PX2, p. 7).

The University of Chicago Hospital emergency department medical records recorded that Petitioner was a CTA bus driver driving at low speed (approximately 10 mph) when car cut her off on the right causing the front end of her bus to collide with the car. She recalled hitting her knee against the dashboard. She was wearing a seatbelt and did not hit her head, chest, or abdomen against anything. She was able to ambulate independently following the accident. Her primary complaint is right sided knee/hip pain. (PX3, p.54) She also complained of right lower back pain. (PX3, pp 57, 62). Physical examination was negative except for mild tenderness at the right buttocks and right knee. (PX3, p. 55. X-rays to the hip and right knee did not reveal any fractures. (T17; PX3, pp. 65, 72). She was prescribed Tylenol and Lidocaine and discharged to go home. She was observed having steady gait. (PX3 pp. 65, 70, 72)

The Arbitrator notes that the emergency department obtained from Petitioner's medical providers electronic medical documentation regarding over 24 preexisting diagnostic health issues going back to 2009, many of which are chronic health conditions of ill-being but none of which involved the right leg, hip or back. (PX3, pp. 43, 49-50, 52)

Petitioner continued to experience pain when she arrived home from the emergency room. (T18). The next morning, she felt stiffness, pressure and strain in her low back and knee. *Id*. She called her union representative who suggested that she go to the ION clinic. *Id*.

On August 12, 2022, Petitioner was seen by Dr. Krishna Chunduri with the Illinois Orthopedic Network. She complained of low back, right hip, glute with muscle spasms, and right knee pain since the occurrence. (PX5). She was having difficulties ambulating with her right knee. *Id*. Dr. Chunduri prescribed therapy, Flexeril for the muscle spasms observed on physical examination as well as tenderness in the low back and right knee. He advised to continue taking Tylenol. *Id*. He placed her off work. *Id*.

Petitioner started physical therapy with Injury Centers and was sent for MRI scans of her right knee and low back. (T19). The right knee MRI showed a grade 2 injury of the anterior horn of the lateral meniscus, mild joint effusion extending to the suprapatellar bursa, and mild tricompartmental degenerative changes. (PX5). The low back MRI showed L3-L4 posterior disc bulge (3.6mm) associated with buckling of the ligament flava and facet joint arthropathy, causing moderate central canal stenosis and mild bilateral neural foraminal stenosis; L5-S1 central disc protrusion (4.2mm) indenting the ventral epidural fat yet without significant neural foraminal stenosis; and, multilevel facet joint arthropathy. (PX5).

Her understanding of her condition of ill-being was that she had arthritis and a sprain in her right knee and lower back. (T20). During her follow up consultation, Dr. Chunduri reviewed the MRIs and diagnosed her with lumbar spondylosis, lumbar strain and right knee pain and sprain. (PX5). Dr. Chunduri employed a medial branch block to her L4-L5 and L5-S1 levels, along with a right knee cortisone steroid injection. *Id*. Petitioner recalled then having an injection in her right knee, possibly a medial branch block. (T21). Her knee felt good for a couple of months. *Id*. The back one only lasted a few hours. *Id*.

On November 2, 2022, Petitioner had a telephonic conference with Dr. Chunduri to discuss her relief from the injections and block. (PX5). Dr. Chunduri informed her that he is waiting for approval for left L4-L5, L5-S1 MBB injections to treat her low back pain and kept her off work pending approval, and recommend she follow up with their orthopedic department regarding her persisting right knee pain. *Id*.

A few days later she saw Dr. Thomas Poepping at ION. *Id*. At that time he reported that she did well with the injection and advised she continue with therapy, and that in four to six weeks they'll consider an injection if her pain persists. *Id*. She followed up with Dr. Chunduri on December 1, 2022, with no change as they were waiting for treatment approval. *Id*.

On January 12, 2023, Dr. Chunduri wrote that he reviewed the video sent by her company, which reveals the patient's movement at the time of the accident. *Id*. He writes: "that it is very apparent in the video that on 8/11/2022 at about 7:33 and 31 seconds when the bus was hit patient did jerk back and forth and likely sustained a facet injury to her low back, in addition to hitting her knee on the dashboard in front of her. I strongly believe that after looking at this video that the treatment we have given is warranted and that patient should proceed ahead with continued

physical therapy and the medial branch block injection with likelihood of then proceeding with an RFA. ” (PX5).

Petitioner continued to follow up with no change in approval of treatment, but on April 13, 2023, she was given a left L4-L5, L5-S1 diagnostic medial branch block with lidocaine injected. *Id*. Five days later, she reported pain relief for eight hours following the block. *Id*. Based on that result, Dr. Chunduri recommended a left-sided medial branch rhizotomy to resolve the symptoms completely, and recommended Petitioner remain off work. *Id*.

Between the time of her first treatment until the date of the hearing, Petitioner had not been discharged to return to work. (T23). She has not completed her treatment. *Id*. She did not believe she was physically capable of returning to work because she cannot stand or sit a long time and does not want to injure anyone else with her condition. (T23-24). Once she finishes her treatment she would like to return to work at CTA. (T24). She testified that Petitioner’s Exhibit 1 fairly and accurately depicted all the treatment she had thus far. (T25).

On cross-examination, Petitioner admitted that her work-provided insurance paid for some of her treatment. (T26). Her bus has air brakes and air seats. (T28). After impact, she felt her adrenaline high and was nervous, but did not feel anything initially. (T29). Respondent then showed the video from the bus to which Petitioner responded that it fairly and accurately depicted the events she described that day. (T31).

On redirect, Petitioner testified that at the time of impact she was probably standing up, with her feet on the brake. (T33). She could not get the bus to stop easily, which is why she had to stand up. (T33-34).

Respondent introduced only one exhibit into evidence. Respondent’s defense mainly relies upon the video of the accident which the Respondent asserts was such a minor accident that in no way could have caused the injuries claimed. Respondent Exhibit 1 is the onboard video for the period starting at 7:31: 58 and ending at 7:45:19. The video contains 9 camara channels. Petitioner verified that the accident was accurately captured in the videos admitted in evidence. The video shows a low-speed motor vehicle accident involving Petitioner’s CTA bus and a car. Channel 2 and 3 best depict the Petitioner operating the bus before and at the time of the accident. Channels 1, 2 and 3 best show Petitioner actions post-accident. The video also depicts a few passengers on the bus. The video shows that the collision did not cause any dramatic movement by the two standing passengers nor of the Petitioner but did show movement in response to the collision. No passenger appeared to be injured or show pain behavior. driver driving at low speed (approximately 10 mph) when car cut her off on the right causing the front end of her bus to collide with the car. The collision occurred as the bus Petitioner was operating was making a left-hand turn. The car that struck the bus was also making a left hand in the outer lane. The driver’s side of the car struck the right front bumper of the bus. The collision occurred at 7:33:30. The collision caused movement of the Petitioner. She did not fall off her seat. She was a restrained by the seatbelt. Petitioner acknowledged that she was sitting on a shock absorbing seat. (Tx 32).

Viewing the video, it is unclear if Petitioner’s right knee co into contact with the dashboard as the Petitioner claimed. It may well have done so. The video does not corroborate her testimony

that she was standing while braking. After the collision, Petitioner did not exhibit any pain behavior. She got in and out of her seat without any difficulty. She got in and out of the bus without any apparent limitation. She walked normally. Nothing indicated that she was injured, experiencing pain or discomfort, or was physically affected in any way by the collision.

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. The Act provides that, in order to obtain compensation under the Act, the employee bears the burden of proving, by a preponderance of the evidence, all of the elements of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). It is well established that the Act is a humane law of remedial nature and is to be liberally construed to affect the purpose of the Act - that the burdens of caring for the casualties of industry should be borne by industry and not by the individuals whose misfortunes arise out of the industry, nor by the public. *Shell Oil v. Industrial Comm'n,* 2 Ill.2nd 590, 603 (1954).

In the case at bar, the Arbitrator observed Petitioner during the hearing and finds her to be a sincere witness. At first blush, video appears to show that the collision could not have caused injury. The video does not demonstrate a significant accident. And, yet the video does not appear to be helpful. Although the video does not depict a dramatic impact it also does not necessarily show all that occurred to Petitioner. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. The Arbitrator finds Petitioner's testimony to be straight forward, non-evasive and consistent with the record as a whole. The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47 Petitioner's testimony is found to be credible. She does appear to be an unsophisticated individual and any inconsistencies in her testimony are not attributed to an attempt to deceive the finder of fact. It is noteworthy that Petitioner gave a consistent history to all her medical providers. It is further noted that none of her treating medical providers found evidence of malingering or symptom magnification. Moreover, the medical records contain objective findings consistent with Petitioner's subjective complaints.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (LEXIS 2010). The "in the course of employment" element refers to "[i]njuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work…" *Metropolitan Water Reclamation District of Greater Chicago v. IWCC*, 407 Ill. App. 3d 1010, 1013-14 (1st Dist. 2011). Additionally, Petitioner must establish the "arising out of" component, which refers to the origin or cause of the claimant's injury and requires that the risk be connected

with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Metropolitan Water Reclamation District of Greater Chicago v. IWCC*, 407 Ill. App. 3d at 1013-14; citing to: *Caterpillar Tractor Co. v. Industrial Comm'n*., 129 Ill. 2d 52, 58 (1989).

In this case, Petitioner is a bus operator who was on the clock, operating a bus for her employer when she was involved in a car crash with a third party. Certainly, a car crash is a risk incidental to her employment as a bus operator. Therefore, the Arbitrator finds that the event the arose out of and in the course of her employment.

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

To establish causation under the Act, a claimant must show by a preponderance of the evidence that some act or phase of her employment was a causative factor in her ensuing injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill.App.3d 582, 592 (2d Dist. 2005), citing Illinois Supreme Court case *Sibro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193 (2003). An accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Id.* It is axiomatic that when the injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment. *Caterpillar, Inc. v. Industrial Comm'n*., 228 Ill. App. 3d 288 (3d Dist. 1992). "In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." R & D Thiel v. Illinois Workers' Compensation Comm'n, 398 Ill. App. 3d 858, 867 (2010). "'[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment.'" *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, (2011), quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36, (1982). Further, "[e]very natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780 (2005). "That other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant." *Vogel,* 354 Ill. App. 3d at 786.

It is axiomatic that employers take their employees as they find them. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 199 (2002). "When workers' physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment." *General Electric Co. v. Industrial Comm'n*, 89 Ill. 2d 432, 434 (1982). Thus, even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. *Williams v. Industrial Comm'n*, 85 Ill. 2d 117, 122 (1981); *Town of Cicero v. Industrial Comm'n*, 404 Ill. 487 (1949) (It is a well-settled rule that where an employee, in the performance of his duties

and as a result thereof, is suddenly disabled, an accidental injury is sustained even though the result would not have obtained had the employee been in normal health). Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Rock Road Construction Co. v. Industrial Comm'n*, 37 Ill. 2d 123, 127 (1967).

"A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.,* 93 Ill. 2d 59 (1982).

In *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853-54 (1996), the Appellate Court considered the applicability of this principle to a case involving a preexisting condition and reasoned as follows: "The employer also contends that the facts of the present case do not support the Commission's 'chain of events' analysis because [the claimant] had a preexisting condition. The employer cites no authority for the proposition that a 'chain of events' analysis cannot be used to demonstrate the aggravation of a preexisting injury, nor do we see any logical reason why it should not. The rationale justifying the use of the 'chain of events' analysis to demonstrate the existence of an injury would also support its use to demonstrate an aggravation of a preexisting injury." See also, *Walquist Farm Partnership v. IWCC*, 2021 IL App (5th) 190163 (Ill. App. Ct. 2021). *Walquist Farm Partnership* is a Rule 23 Illinois Appellate Court decision. However, since it was issued after January 1, 2021 the decision may be cited for its persuasiveness, but not as precedent.

The Arbitrator notes that Respondent voiced no complaints about Petitioner's pre-accident work performance. No evidence was introduced that that Petitioner missed time off work because of a preexisting right knee, hip or low back conditions of ill-being; no mention was made that she requested any accommodation because of a preexisting right knee, hip or low back pathology. Again, no evidence was introduced that she was taken off work before the accident. However, she was authorized off work after the accident. The Arbitrator also notes that no evidence presented of intervening or subsequent injuries to her knee and back that could explain Petitioner's injuries and current condition.

Here, Petitioner testified that impact was made between the front of her bus and the other car's rear wheel-well. She testified that her body shifted and that most of her pain following the crash was to her right knee, hip and low back. After the crash, adrenaline took over, but as time passed her pain started to become more prevalent. She adequately reported the mechanism of injury to all of her treaters and the location of her pain complaints were consistent. The Chicago Fire Department paramedics corroborated her right knee pain and the emergency room personnel corroborated her right knee, right hip and right low back pain. As well as Dr. Chunduri the next day.

The right knee MRI showed a grade 2 injury of the anterior horn of the lateral meniscus, mild joint effusion extending to the suprapatellar bursa, and mild tricompartmental degenerative changes. The low back MRI showed L3-L4 posterior disc bulge (3.6mm) associated with buckling of the ligament flava and facet joint arthropathy, causing moderate central canal stenosis and mild bilateral neural foraminal stenosis; L5-S1 central disc protrusion (4.2mm) indenting the ventral

epidural fat yet without significant neural foraminal stenosis; and, multilevel facet joint arthropathy.

Dr. Chunduri assessment was that Petitioner suffered from lumbar spondylosis and right knee pain. (PX5, p. 50). He opined that her conditions of ill-being were related to the accident.

On January 12, 2023, Dr. Chunduri wrote that he reviewed the video sent by her company, which reveals the patient's movement at the time of the accident. He wrote: "that it is very apparent in the video that on 8/11/2022 at about 7:33 and 31 seconds when the bus was hit patient did jerk back and forth and likely sustained a facet injury to her low back, in addition to hitting her knee on the dashboard in front of her. I strongly believe that after looking at this video that the treatment we have given is warranted and that patient should proceed ahead with continued physical therapy and the medial branch block injection with likelihood of then proceeding with an RFA." Respondent has not introduced any medical testimony to rebut Dr. Chunduri's findings. While the impact shown does not appear to be severe, the Arbitrator accepts Dr. Chunduri's uncontroverted opinion as to causation. Therefore, the Arbitrator finds that Petitioner's current condition of ill-being is related to the work event on August 11, 2022 based on the findings and opinions of Dr. Krishna Chunduri and based upon the chain of events.

The Arbitrator also finds it significant that Petitioner was capable of working full duty as a bus driver until the work accident. Petitioner also sought immediate treatment and continued to complain of back and knee pain throughout her care. The Arbitrator concludes that Petitioner proved causation based on the chain of events with no evidence of symptoms in the years prior to the accident and the development of a debilitating condition immediately thereafter, which was supported by the medical records.

Finally, the Arbitrator finds the IWCC case of *Eugene Hardimon v. CTA*, 18 IWCC 198, 2018 Ill. Wrk. Comp. LEXIS 170 to be of guidance and instructive. In *Hardimon* a CTA bus driver was involved in a motor vehicle accident. The driver's bus was rear-ended. The arbitrator noted that that the video did not display movement inside the bus and the impact was not significant enough to have caused injury to the claimant. The arbitrator also relied upon the opinion of Respondent's Section 12 examiner who opined upon viewing the video that there was no causal connection between the accident and driver's condition of ill-being. The Commission in *Hardimon* reversed the arbitrator's finding that the claimant failed to prove causal after having viewed the video. Like the Arbitrator in the case at hand, the Commission did not find the video to be of value in determining the significance of the trauma to Petitioner at the time of the collision.

The Arbitrator notes that the emergency department obtained from Petitioner's medical providers electronic medical documentation regarding over 24 preexisting diagnostic health issues going back to 2009, many of which are chronic health conditions but none of which involved the right leg, hip or back. The Arbitrator infers that Petitioner's chronic health conditions were a cause of her deconditioned state.

The Arbitrator finds that the Petitioner preexisting asymptomatic degenerative changes in her low back and right knee combined with her deconditioned state made her more vulnerable to injury and recovery. Petitioner was in the performance of her duties,

and as a result of her accident, was suddenly disabled. An accidental injury was sustained by her on August 11, 2022 even though the result would not have obtained had she been young or in normal health. The Arbitrator concludes that Petitioner's accidental injury was a causative factor in the resulting condition of ill-being to her right knee and low back.

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

Section 8(a) of the Illinois Workers' Compensation Act mandates that the Respondent shall provide and pay for all the necessary surgical services which are reasonably required to cure or relieve from the effects of the accidental injury. 820 ILCS 305/8(a). Medical care under Section 8(a) is continuous as long as such care is required to relieve the effects of the injury. *Freeman United Coal Mining Co. v. Industrial Commission*, 81 Ill.2d 335 (1980). Here, the conservative treatment Petitioner received thus far does not appear to be unreasonable. She has undergone physical therapy, diagnostic blocks and injections, was sent for radiological imaging and was prescribed medication. Petitioner also testified that she has benefited from her past treatment but that she continues to want additional therapy and the prescribed treatment.

Based on Dr. Chunduri's opinion as to causation, and that his treatment plan has not be rebutted, the Arbitrator finds that all claimed medical services provided to Petitioner were reasonable and necessary, and further finds that the Petitioner is entitled to payment of all related medical expenses.

Respondent shall pay directly to the medical providers the reasonable and necessary medical services, pursuant to the medical fee schedule, of $3,022.00 to Chicago Fire Department, $4,469.57 to University of Chicago Medicine, $637.00 to University of Chicago, $11,949.00 to ION, $30,758.64 to Injury Centers of Illinois, $2,500.00 to Molecular Imaging Chicago and $937.50 to Midwest Specialty Pharmacy, as provided in Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), PROSPECITVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Specific procedures or treatments that have been prescribed by a medical service provider are "incurred within the meaning of section 8(a) even if they have not been performed or paid for. *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill. App. 3d 650, 655-56 (1999). The claimant beards the burden of proving, by a preponderance of the evidence, his or her entitlement to an award of medical care under section 8(a). *Westin Hotel v. Industrial Comm'n*, 372 Ill.App. 3d 527, 546 (2007). Questions regarding entitlement to prospective medical care under section 8(a) are factual inquiries for the Commission to resolve. *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill.App. 3d 893, 903 (2004). Section 8(a) of the Act entitles claimant to compensation for all necessary medical, surgical, and hospital services "thereafter incurred" that are reasonably required to cure or relieve the effects of injury. *Certified Testing v. Industrial Comm'n*, 367 Ill.App.3d 938 (2006).

Because Petitioner's condition to her back is causally related, and because she has not reached maximum medical improvement and because there is no evidence that she has reached maximum medical improvement, Petitioner is entitled to the prescribed prospective medical care.

Dr. Thomas Poepping recommended based on Petitioner's report that she did well with the injection and upon his physical examination that she continue with therapy, and that in four to six weeks, he would consider an injection if her pain persists. Therefore, the Arbitrator finds that Petitioner is entitled to 4-6 weeks of additional physical therapy and if her pain persists, to another injection.

Dr. Chunduri anticipated that Petitioner would be able to return to work following the radiofrequency rhizotomy. Therefore, the Arbitrator finds that Petitioner is entitled to receive the radiofrequency rhizotomy as prescribed by Dr. Chunduri to cure and relieve her low back pain.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

In her request for hearing, Petitioner claims she is entitled to temporary total disability benefits at the rate of $1,133.22 per week for the period of August 12, 2022 to the date of hearing on August 29, 2023 for a total of 54 -5/7 weeks as provided in Section 8(b) of the Act.

Evidence that the employee has been or is able to earn occasional wages or to perform certain useful services neither precludes a finding of total disability nor requires a finding of partial disability. *Smallwood v. Industrial Comm'n*, 53 Ill. 2d 151, 156 (Ill. 1972). In *E.R. Moore Co. v. Industrial Comm'n.*, the Court held that for the purposes of section 8(f) [section 19(b)], a person is totally disabled when he cannot perform any services except those for which no reasonably stable labor market exists. *E.R. Moore Co. v. Industrial Comm'n.* 71 Ill. 2d 353, 361-62 (Ill. 1978).

Here, Petitioner was placed off work as of her first visit at ION on August 12, 2022 and testified that she has not been allowed to return to work and she has not worked. Her physician notes have not indicated any release even on a restricted basis. Because the Arbitrator finds that Petitioner's condition is causally related to the work injury, and she has not been discharged from medical care, Respondent is liable for unpaid TTD payments from August 12, 2022 to the date of hearing on August 29, 2023 for a total of 54 and 5/7 weeks as provided in Section 8(b) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025637
Case Name	Corey Marquardt v. City of North Chicago
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0566
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	John Rizzo
Respondent Attorney	Tammy Paquette

DATE FILED: 11/22/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

COREY MARQUARDT,

Petitioner,

vs. NO: 21 WC 025637

CITY OF NORTH CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

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

Petitioner was employed by the City of North Chicago (hereinafter "Respondent") as a Sergeant Police Officer on August 3, 2021, the date of the alleged incident. Among Petitioner's responsibilities was acting as the shift commander of the second shift until June 2020. In June 2020 Petitioner was notified by his direct supervisor, Lieutenant Brame, that he was being reassigned to third shift command due to concerns of unnecessary pursuits and use-of-force incidents under his command on second shift. This change in shift command arose from complaints received from other police sergeants on the police force. Petitioner had served as second shift commander for eight years before he was transferred to third shift by Lieutenant Brame.

The patrol officers assigned to third-shift were more experienced and mature than the second shift officers and Petitioner's skill-set was considered by Lt. Brame to be better suited to supervision of these more experienced officers. At all times relevant Perez was the Chief of Police of the City of North Chicago. Police Chief Perez testified that this shift reassignment was not a disciplinary action but intended to help develop and broaden Petitioner's command skills. Petitioner was switched to third-shift on the recommendation of his direct supervisor Lieutenant Brame. Lt. Brame informed Chief Perez that the second shift, which was comprised of younger officers was out of control under Petitioner's command.

Chief Perez became employed by the City of North Chicago as deputy chief in 2016 and became chief in 2018. Chief Perez was the highest-ranking officer in the department and had broad responsibilities and final authority on all recommendations and decisions.

Chief Perez testified that although he has the power to assign shifts to sergeants, he leaves those decisions to shift commanders. Lieutenants assign duties to sergeants and sergeants assign duties to patrol officers. Chief Perez oversaw the actions of all officers utilizing the chain of command.

Petitioner testified that it was his understanding that Lieutenant Brame made the shift change recommendation based upon complaints made by other sergeants. This was confirmed by Chief Perez. Petitioner texted and informed Chief Perez on July 26, 2020, that Lieutenant Brame asked Petitioner if he wanted to keep second shift and Petitioner told him no, that he would go to third shift and "try to get a fresh start and a chance to work on" himself. The evidence demonstrates that Petitioner was offered this opportunity to return to second shift in late July 2020 and Petitioner declined.

Petitioner testified that he began dating Maria Martinez on January 19, 2015. He and Ms. Martinez moved in together in 2016 and became engaged to be married on October 11, 2019. The destination wedding was to take place on October 29, 2021, in Cancun, Mexico. Petitioner testified that friends and family had been notified and "tickets had been purchased".

Petitioner testified that he maintained both a professional and cordial personal relationship with Chief Perez and that they would exchange friendly texts from time to time (PX3). In April 2020, Chief Perez, Petitioner and Maria Martinez vacationed together in Puerto Rico. Ms. Martinez was coincidently also employed by Respondent City of North Chicago in the fiscal department beginning in 2010. She was not an employee of the City of North Chicago Police Department.

It is Petitioner's contention at hearing that he was placed on third shift by Chief Perez to make his pursuit of Martinez easier. The Commission sees the evidence differently. Petitioner introduced no evidence to support this suspicion. A different interpretation of the evidence is that instead of subjecting Petitioner to reprimand for his command failures with the second shift

officers, Perez and Brame transferred him to third shift and instituted counseling with Lieutenant Brame, his direct supervisor with a goal of improving his performance.

Beginning in May 2020, Martinez and Chief Perez engaged in conversations via text messages and exchanged suggestive photos. Ms. Martinez on her own initiative prepared a sext video (Joint Exhibit 1) and sent it to Perez. Martinez testified that she recorded the video outside of work hours, and away from Respondent's premises. The provocative attire and the sexual apparatus displayed in the video were purchased by Martinez for her personal use and were not related to her employment with Respondent in any way.

The conduct engaged in between Perez and Martinez does not arise out of Petitioner's employment with Respondent. In her testimony Ms. Martinez states that after the trip to Puerto Rico her relationship with Chief Perez changed. Ms. Martinez testified that following the April 2020 trip, Chief Perez' demeanor toward her changed. Chief Perez sent her an explicit text in which he said he "wanted her". Perez and Martinez then proceeded to exchange the video, and sexts that were eventually discovered by Petitioner on or around August 3, 2021.

On September 17, 2020, Chief Perez sent a text to Petitioner which was a photo of the Chief with his arm around Ms. Martinez with the caption, "You have been replaced." Petitioner responded by text "Lol." Petitioner testified that at that time Petitioner regarded the text as a joke.

Martinez testified that she received a copy of the video that she had sent to Perez (JX1) on WhatsApp when it was sent to her by Deborah Waszak who was employed by Respondent as the Mayor's Chief of Staff. Waszak was "dating" Chief Perez at the time and discovered the video in early August 2021, when she was in possession of Perez' mobile phone at a golf outing. Waszak testified that she copied texts, naked photos, and the video off Perez' cellphone. Waszak testified that she forwarded Perez' cellphone to the City's attorneys.

Upon receiving the video from Waszak, Martinez testified that she "freaked out" and deleted the video. She then lied to Petitioner and told him she had deleted it, but he wanted to know the truth and he thereafter viewed the video. Petitioner confronted Chief Perez on August 3, 2021, in a text message.

A text exchange followed between Petitioner and Chief Perez wherein Petitioner expressed his anger and feelings of betrayal arising from his discovery of the duplicitous behavior of Martinez and Perez (PX3). Chief Perez offered to "tender his resignation" in order to pacify Petitioner. Petitioner accuses Perez of transferring him to third shift to keep Petitioner away from Martinez. Chief Perez denied this allegation and responded that he had raised the issue of transfer back to second shift several times to Lt. Brame but that there was opposition by others. Chief Perez further expressed his concern that the circulation of the offensive texts, photos, and video would damage Martinez' reputation. The exchange terminated with Petitioner informing Perez that he intended to get drunk and telling Perez not to resign.

Petitioner took time off work commencing August 4, 2021, through October 14, 2021. Petitioner filed his Application for Benefits with the Commission on September 14, 2021. On September 23, 2021, Petitioner submitted a Return to Work Status Form (PX1) to Respondent signed by his mental health therapist Dr. Jochem requesting medical leave and placing work restrictions secondary to "mood and anxiety disorders".

Petitioner initially consulted. John Jochem Psy.D., a mental health therapist on August 16, 2021. Petitioner reported to Dr. Jochem that the video (Joint Exhibit 1) of his fiancé had been widely circulated around City of North Chicago city government. The Commission notes the discrepancy between what Petitioner described in his sessions to his therapist i.e. the wide circulation of the video and the lack of evidence supporting this suspicion adduced at hearing. There was no evidence adduced at hearing that JX1 had been distributed around the City of North Chicago apart from Petitioner's speculation and conjecture.

According to Martinez' testimony her relationship with Petitioner has subsequently declined over time. Martinez and Petitioner however did travel as planned to Cancun, Mexico in October 2021 where they staged a "fake wedding for all their invited guests". Petitioner and Martinez continue to reside together and are still dating.

The Arbitrator found Petitioner to be a credible witness. He found Petitioner's testimony to be supported by the testimony of other witnesses at hearing as well as the therapy records kept by Dr. Jochem. The Commission views the evidence derived from Dr. Jochem's therapy notes differently. Dr. Jochem's notes on August 16, 2021, reflect that Petitioner denied significant alcohol usage. On August 23, 2021, Petitioner reported to Dr. Jochem that his total alcohol intake over the prior month as "one standard drink". This was contradicted at hearing however when Petitioner testified that he was drinking "badly" during this period due to the events.

On September 2, 2021, Petitioner told Dr. Jochem that his planned October marriage "is now cancelled". He reported that he had "minimal contact" with his fiancé, Maria Martinez and that he feels deeply betrayed and has no interest in continuing a relationship with her. This stands in stark contrast to Petitioner's conduct i.e. staging a fake wedding in Cancun, Mexico with Ms. Martinez for all invited guests. According to Petitioner's testimony the wedding was a ruse with a fake officiant and no marriage license. The Commission finds this behavior inconsistent with the Arbitrator's description of Petitioner as credible and "sincere". At the time of hearing two years after the "work related accident" however Petitioner and Martinez continue to reside together.

Petitioner continued in therapy with Dr. Jochem for a total of eight sessions extending from August 16, 2021, through September 23, 2021. He cancelled his last appointment with Dr. Jochem and testified that he subsequently participated in group therapy through the Veterans'

Administration. No records or documentation concerning these group sessions were introduced into evidence as they were informal and anonymous.

Petitioner asserts that he sustained a mental/ mental work-related injury on August 3, 2021. Petitioner's alleged work-related accident was Petitioner's discovery of the relationship between Ms. Martinez and Chief Perez when he viewed the video which Ms. Martinez sent to Chief Perez. The Commission notes that the video was never sent to Petitioner by Chief Perez. The Arbitrator's Decision references this event as an "extra-marital revelation". Petitioner claims that he suffered a psychological injury in that he lost trust in the administration of the police department when he learned of the relationship between his fiancé, Maria Martinez and Chief Perez. This belief held by Petitioner rendered him unable to continue his career as a police officer. Although Petitioner returned to work for Respondent in October 2021 he subsequently retired in December 2022.

Although Petitioner asserts that his resignation was not voluntary, the Commission notes Petitioner's testimony that he was represented by and was advised by counsel prior to his resignation from the police force and that he made the decision to resign in order to secure his pension rights.

The Arbitrator found that Petitioner sustained a work-related accident. Under the Arbitrator's analysis Petitioner suffered a "sudden, severe emotional shock traceable to a definite time, place and cause, which caused psychological injury or harm…" and suffered an accident within the meaning of the Act, Citing to *Moran vs. Illinois Workers' Compensation Comm'n, et. al,* 2016 IL App 151366WC, 59 N.E.3d 934, 406 Ill.Dec.156 (1st Dist. 2016) the Arbitrator concluded that Petitioner sustained a compensable mental/mental injury.

In order to be compensable under the Act, the injury complained of must arise out of and in the course of Petitioner's employment. *Baggett,* 201 Ill 2d at 194, 775 N.E. 2d at 912. In mental/mental cases, a claimant must be engaged in employment at the time and place of the precipitating cause of the injury and must prove that the injury occurred because of a work-related risk or because the employment placed the claimant at risk of exposure exceeding that of the general public. *Id.*at 195, 266 Ill.Dec. 836, 775 N.E.2d at 913.

The Commission finds that evidence introduced did not support Petitioner's burden of proving that the events surrounding Petitioner's discovery of the video on August 3, 2021, and the conduct of Martinez and Perez were related to his employment. The alleged breach of faith which has caused Petitioner's psychological suffering did not occur because of any work-related risk. Unlike the line of cases that interpret *Pathfinder* in this instance the injury arose from the conduct of Ms. Martinez and Chief Perez that is unrelated to either of their positions with Respondent or most significantly Petitioner's employment as a Police Sergeant with the City of North Chicago.

For the foregoing reasons the Commission finds that Petitioner failed to meet the burden of proving to a preponderance of the evidence that he sustained a work-related accident that arose out of or in the course of his employment and finds Petitioner's claim is not compensable.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 27, 2023, is hereby reversed.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

November 22, 2024
o-09/25/24
SM/msb

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025637
Case Name	Corey Marquardt v. City of North Chicago
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	John Rizzo
Respondent Attorney	Tammy Paquette

DATE FILED: 11/27/2023

THE INTEREST RATE FOR THE WEEK OF NOVEMBER 21, 2023 5.23%

/s/Gerald Napleton, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Corey Marquardt
Employee/Petitioner

v.

City of North Chicago
Employer/Respondent

Case # **21** WC **025637**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Napleton**, Arbitrator of the Commission, in the city of **Waukegan**, on **April 17, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **August 3, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**114,400.00**; the average weekly wage was $**2,200.00**.

On the date of accident, Petitioner was **51** years of age, ***single*** with **1** dependent children.

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

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

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

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

ORDER

Respondent shall pay to Petitioner the reasonable and necessary medical expenses (see Petitioner's Exhibits1 and 2) pursuant to Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $937.11 per week for a period of 50 weeks, as provided in Section 8d(2) of the Act, because the injuries sustained caused a 10% loss of use of the person as a whole.

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

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

/s/ Gerald W. Napleton
Signature of Arbitrator

NOVEMBER 27, 2023

ADDENDUM TO ARBITRATION DECISION
FINDINGS OF FACT and CONCLUSIONS OF LAW

FINDINGS OF FACT

Testimony at Hearing

Petitioner joined the police force in 2001, when he joined the Respondent, City of North Chicago's Police Department. Tx 76-77. His entire police career has been spent with the North Chicago Police Department. In 2010, he was promoted to sergeant. Tx 78. Petitioner is a certified Field Training Officer, a certified evidence technician, a firearms instructor for pistol, rifle, marksman rifle, and observer for North Chicago, having been at the FBI Academy. Tx 77-78. Petitioner is also a less lethal instructor and ran the entire training department of North Chicago for 7 years. Tx 79.

Petitioner was assistant shift commander for two years and then became shift commander. Tx 79-80. He was responsible for all day-to-day activities on a shift for patrol officers which included assignments of activities, monitoring activities, disciplinary action, and counseling. He was also responsible for maintenance of statistics, daily, weekly, and monthly. These were reported to Petitioner's direct supervisor, Lt. Brame. Tx 80. Petitioner has received awards for saving lives, outstanding performance awards, and commendation medals and awards for years of service. Tx 95.

Respondent Police department has three shifts: 5:30am until 2:00pm, 1:30pm to 10:00pm, and 9:30pm to 6:00am. Generally, the shift commanders arrive at least a half hour earlier to write up the assignments and to gather all the information or intelligence to pass on the new shift of what had happened in the last 24 hours. Tx 83.

Petitioner had served as second shift commander for eight-plus years before he was abruptly transferred to third shift in June of 2020. Tx 84. There was no disciplinary action taken against Petitioner or any officers on the second shift at the time Petitioner was transferred to third shift, or even after, for anything which allegedly occurred during second shift. Tx 87. No explanation was provided by Respondent for the sudden change at that time or changes to any other officers.

Petitioner began dating Maria Martinez on January 19, 2015. They moved in together sometime in 2016 and became engaged on October 11, 2019. Tx.59-60. Petitioner and Ms. Martinez planned a destination wedding in Cancun, Mexico which was scheduled for October 29, 2021. Tx 60-61. Friends and family had been notified and tickets had been purchased. Tx 96.

Chief Lazaro Perez started with the North Chicago Police Department as deputy chief in 2016 and became chief in 2018. The chief's responsibilities include running the day-to-day operations of the entire department. Chief Perez is the highest-ranking person in the department. Tx 6. Chief Perez has the power to assign shifts and has final authority on all recommendations and decisions. Tx 7. Chief Perez testified at hearing and stated that certain shifts and assignments may carry more dangers or risks than others. He has power to impose penalties, punishments, and to discipline officers. Tx 8.

Chief Perez testified that officers must have confidence in the Chief. Tx. 17. He further acknowledged that officers would need to feel that the Chief would "have their backs" in terms of personal safety while on the job. Tx 18. Chief Perez stated it is his responsibility to make sure the officers are safe in the job, make sure that officers are trained properly and have the equipment to do their job. He testified that he must make sure the officers have adequate back-up or an adequate number of officers on the street or in a particular section. Tx. 28-31.

Chief Perez was Petitioner's boss. They developed a cordial non-work relationship over time. Chief Perez testified that they would text each other from time to time and, specifically, that the texts in Petitioner's Exhibit 3 demonstrate text messages between the Chief and Petitioner. Tx. 11-12.

Chief Perez was also familiar with Maria Martinez and was aware that she was Petitioner's fiancée. Tx.9. Chief Perez knew Deb Waszak, the mayor's chief of staff. Chief Perez and Ms. Waszak engaged in a romantic relationship after he joined the force. Tx. 10-11.

Petitioner's fiancée, Maria Martinez, worked for Respondent from 2010 through 2021. Tx 56. Ms. Martinez was working for Respondent when Sgt. Marquardt was transferred to third shift in June of 2020. She worked regular hours for the administrative staff from 8:00am to 5:00pm. Tx. 83-84.

Ms. Martinez testified that after an April 2020 trip to Puerto Rico, Chief Perez's demeanor changed toward her. Tx. 60-61. She testified that Chief Perez sent her an elicit text in which he said that he had "been wanting her forever." Tx. 62. Prior to that text, Ms. Martinez testified that there had been nothing inappropriate between the Chief and her. Tx 62. A few months later in June of 2020, Petitioner was transferred to third shift. Petitioner testified that he was told by Lieutenant Brame that there were reports of excessive force but was never provided any proof. Tx. 85.

Petitioner was never disciplined for any alleged use-of-force issues or pursuit issues. Tx. 33. No other officers on second shift under Petitioner's command were ever disciplined for use-of-force issues or pursuit issues. Tx. 36-37. Chief Perez ordered Petitioner to have weekly meetings with Lt. Brame to discuss any problems and to advise as to his progress and in three months Chief Perez would change Petitioner back to second shift. Tx. 89-90.

Petitioner attempted to email Lieutenant Brame several times each week but was never provided with a meeting. Despite Petitioner's willingness to come in on his off time and additional messages to Chief Perez, he never heard back. Tx. 90-91. Petitioner asked Chief Perez to intercede on his behalf on several occasions to change him back to second shift, but Chief Perez did not intercede or help Petitioner transfer back to second shift. Tx. 11.

Chief Perez admitted that his relationship with Ms. Martinez changed to something more personal after Petitioner's change to third shift. Tx. 12-13. As a result of being moved to third shift Petitioner's work hours would begin as Chief Perez and Ms. Martinez's work hours in the administrative offices would be ending. Tx. 13-14.

Chief Perez stated that he may have sent Ms. Martinez a elicit text in which he said he "wanted her." Tx. 15. The two exchanged graphic, explicit personal photos. Tx. 15. Chief Perez did not recall sending pictures of his naked body or parts of his naked body but acknowledged receiving similar pictures from Ms. Martinez. Tx. 15. He acknowledged that he was "sexting" with Ms. Martinez at times and that he never told Petitioner. Tx. 31.

Ms. Martinez did not tell Petitioner about the text from Chief Perez that he wanted her, nor did she advise Petitioner of the sexting as she testified that she believed that it might help Petitioner or get him back to second shift. Tx. 62-64.

On September 17, 2020, Chief Perez sent a text to Petitioner at 11:40:13 a.m. which was a photo of the Chief with his arm around Ms. Martinez with the caption, "You have been replaced." PX3. Petitioner, thinking it was a joke, responded, "Lol". Petitioner then asked about being transferred back to second shift as Chief Perez had indicated. Chief Perez again deferred to Lt. Brame. PX3.

Chief Perez used a phone owned by Respondent while texting with Ms. Martinez. He no longer has that phone since it was broken by Ms. Waszak at a golf outing. Tx. 16. Chief Perez then turned the phone over to the city's IT department. He was aware that they were able to download some texts, photos and videos. Tx. 17. Ms. Waszak copied some of the texts, photos, and videos from the Chief's phone onto her phone. Tx. 46-47.

Prior to August 2, 2021, Ms. Martinez had a working, professional relationship with Ms. Waszak. They did not regularly text, nor send messages to each other on WhatsApp. Tx. 65-66. On August 2, 2021, Ms. Martinez received a message from Deb Waszak on WhatsApp (Tx. 65-66) which

contained a video (Joint Exhibit 1) that Ms. Martinez had taken of herself that she had sent to Chief Perez. Ms. Waszak had recorded the video on her phone from another phone. Tx. 66. Ms. Martinez testified that she "freaked out" and deleted the video. It was sent, again, by Ms. Waszak. After the video was sent a second time, Ms. Martinez then told Petitioner about the video. Tx. 66-67. Ms. Martinez spoke with Chief Perez the next day. Ms. Martinez testified that she and Chief Perez discussed a plan to handle telling people about the video and to falsely claim that it was sent by accident. Tx. 67. JX1 was submitted into evidence. It shows Ms. Martinez in a state of undress with an adult toy. JX1.

Ms. Martinez testified that Petitioner was upset about the video. Tx. 68. After learning about the video and the relationship, Petitioner spoke with Chief Perez in the Chief's office. Petitioner asked the Chief about the rumors he was hearing about the Chief and his fiancé, Ms. Martinez. Chief Perez denied anything was going on. Chief Perez said he would never do anything like that to Petitioner. Tx. 98-99.

The following day, Petitioner texted Chief Perez that he had seen everything and knows that Chief Perez had lied to him. After apologizing, Chief Perez responded that he was worried about their reputation and offered to resign. Tx 99-100. Chief Perez was disciplined following an investigation and received a two-week suspension without pay. Tx 18-19.

Petitioner testified that he researched therapists or doctors. Tx. 99-102. He found Dr. Jochem, whom he saw for counseling for a few months. Respondent did not pay for the treatment with Dr. Jochem. Petitioner's last visit with Dr. Jochem was in September of 2021. Tx. 102.

After Dr. Jochem, Petitioner sought further mental health care at the Veteran's Administration Hospital (VA), where he currently receives treatment. It is an informal set up with a group of others diagnosed with Post-Traumatic Stress Disorder (PTSD). Since it is informal group therapy, there are no records, and nothing is submitted to insurance. It is designed to help those who have combat stress, work stress, and/or relationship issues. It is meant to be confidential and private with first name use only. Nothing is reported to his personnel file. Tx. 103-104.

Petitioner testified that after learning about Chief Perez and his fiancé, he couldn't sleep well and was sleeping at different hours. Tx. 104, 106. He felt stressed and would imagine what was going on between the two of them. He felt that no one was telling him the truth. He started drinking heavily. He wondered why the Chief was acting like his friend. He is concerned about other videos which may be out there. Petitioner testified that withdrew from seeing his son and stopped visiting with him. He felt that he couldn't trust Ms. Martinez or anything she said. Tx. 104.

Petitioner had never received any mental health treatment as provided by Dr. Jochem prior to August 3, 2021. He had never been diagnosed with PTSD or depressive disorder prior to August 3, 2021. Tx. 104-105.

Petitioner testified that he and Ms. Martinez traveled to Cancun in October of 2021, the dates previously scheduled for their wedding. However, he was unable to be honest and never told his family or friends that he was not actually getting married. His embarrassment prevented him from disclosing the truth. Petitioner and Ms. Martinez participated in a faux or fake wedding. There was no wedding license and no officiant. A friend of Petitioner's administered the vows. Tx. 105.

Petitioner testified that after this incident his confidence in the command structure at the police department was "completely shattered." Tx. 106. The Arbitrator notes that Chief Perez testified that officers should be confident in their chief and that the chief would "have their back" in terms of personal safety. Tx. 17-18.

Petitioner testified that the third shift is a dangerous shift. He has previously been in charge of statistics. Tx. 93. Statistically, third shift had more shootings, more homicides, and more DUIs. Tx. 94.

Third shift had more car chases, more fights, more robberies, more overall felonies. Tx. 95. He testified that he was uncomfortable about the extra danger and violence associated with third shift. Tx. 107.

Petitioner testified that he became suspicious of the command structure after learning about the relationship between the Chief and his fiancée. Everyone in Petitioner's chain of command, including Deb Waszak, the Mayor's chief of staff, knew about the situation. Petitioner's entire trust in everything within the City of North Chicago and the Police Department was gone. Tx. 108.

When Petitioner returned to work, he testified that other officers were very standoffish and avoided him. Some came up to Petitioner to apologize, including a lieutenant that was not Lieutenant Brame. Tx. 112. Petitioner felt embarrassed and humiliated as a result this incident. Tx. 112.

Petitioner testified that before August 3, 2021 he was a generally happy person, but that has changed. Tx. 113. Petitioner stated he gets angry easier, although he was never an angry person. He feels like he is being attacked or disrespected quite easily now. Tx. 112-113. Petitioner testified that he used to have a good size group of friends, both professional and social. He has lost those relationships. He does not joke around anymore. He is uncertain who his friends are. Tx. 113. Petitioner testified that he feels isolated and like he has only himself. He doesn't trust anyone. His appetite has changed. He has lost weight, down to about 164lbs from 190lbs. Tx. 113-114.

Petitioner testified that he retired from the department in December 2022. He denies that it was a voluntary decision. Tx. 118-119. Upon his return to the department, Petitioner was met with two investigations.

Regarding the initial investigation, Petitioner testified that the police department received a call regarding an alleged video whereby someone allegedly threatened to "shoot up" North Chicago High School. Petitioner sent an officer to the high school to investigate the video. Petitioner also notified a detective to report to the school and requested that said detective to report back to him. Tx. 115. The alleged offender came to the station and spoke with the detective. The full investigation determined there was no substance to the threat. Tx. 115-118. Petitioner believes he fulfilled his duties and obligations as the sergeant and shift commander by having the alleged threat investigated promptly and thoroughly. Tx. 118.

The second issue leading to Petitioner's resignation was a call about a man with a gun threatening his parents. Petitioner, along with other officers, immediately responded and promptly arrested the suspect without incident. The gun recovered was reported as stolen. Tx. 121. The assistant state's attorney (ASA) denied the felony charges. Petitioner advised the ASA that he was going to hold the individual and discuss the case with ASA Schiller, her supervisor. Tx. 122-125. Petitioner then relayed things to the oncoming shift commander, Lt. Brame, who agreed with the action. A short time later, Chief Perez and Lt. Brame released the suspect. Tx. 123-125.

Petitioner testified he was told by his attorneys that the department was going to claim he lied regarding his reports of these incidents. Petitioner was further advised that the Chief can report to the State that he lied and even if he was found not to have lied, he could lose his certification as a police officer. Tx. 119-120. Regardless of if Petitioner prevailed at a hearing before the police board, his certification could be lost. Petitioner believed that if decertified then he would be fired, and his law enforcement career would be over. Tx. 119-120.

Petitioner testified that he felt that he had no choice but to retire. Tx. 126. By retiring, Petitioner was able to keep his pension. Tx. 118-119. Petitioner is not currently employed. Tx. 120. Petitioner testified that these two allegations surfaced after he filed his workers' compensation claim and the matter was scheduled for potential hearing. Tx. 142-143.

Petitioner's Medical Treatment

Sgt. Marquardt initially sought treatment with Dr. John Jochem on August 16, 2021, with a chief complaint of distress related to circumstances with his fiancé (former) as well as difficult circumstances in his place of employment. PX1. The history noted that Petitioner is a North Chicago police officer for 20 years, had been in a relationship with Ms. Martinez for three years and have plans to get married in October of 2021. PX1. Dr. Jochem noted in his history that a sexually explicit, self-recorded video of Petitioner's fiancé was circulated around the city government. Petitioner believed that other officers have heard about the video or have seen it. Petitioner told Dr. Jochem that he was experiencing shame and humiliation over the circulation of the video. Dr. Jochem noted that Petitioner infers and believes that the video demonstrates an affair between his fiancé and the Chief. Petitioner told Dr. Jochem that he became aware of the situation during the last week of July with additional details coming to light the first week of August. Petitioner feels deeply betrayed by his fiancé and the Chief. PX1.

Dr. Jochem documented that Petitioner was on leave of absence from the police department and does not feel like he can return. Petitioner indicated that he feels his level of distress is too pervasive and severe to permit him to function as a police officer at this time. He does not have confidence in his own judgment, concentration, and emotional stability. Petitioner describes shame, embarrassment, and an inability to interact with anyone associated with the police department or North Chicago. Px1. Additionally, Petitioner described sadness, intrusive thoughts, sadness over the loss of his relationship with his fiancé, impaired sleep, and concern about his future career plans. He further describes loss of appetite, anhedonia (loss of interest in activities, or inability to find pleasure in otherwise pleasurable activities), social withdrawal, impaired concentration, low energy, and apathy. Petitioner described morbid thought content, pessimism, hopelessness, and helplessness. He feels his law enforcement career has been irreparably damaged since he does not believe he can return to the police department. He has been reluctant to elicit help from friends or family due to his shame and embarrassment. He describes minimal contact with his fiancé. PX1.

Petitioner denied any other mental health issue other than brief counseling following the death of his brother-in-law 8 years prior. Dr. Jochem noted psychomotor retardation and that Petitioner's speech was slow, soft, and monotonous. His affect was constricted in range, characterized by sobbing at times, with a mood that is quite sad. Petitioner admitted to irritability. PX1.

Dr. Jochem's impression was adjustment disorder with mixed depressive and anxious features. Dr. Jochem's plan included supportive, cognitive, problem solving, educative intervention in a 1 to 1 setting. PX1. Dr. Jochem began counseling therapy. At subsequent visits, Dr. Jochem noted Petitioner remained unable to fulfill his responsibilities as a police officer and he still appeared bewildered and unsure what to do. (Pet. Tr. Ex. 1) It was noted that Petitioner felt isolated.

Dr. Jochem opined that Petitioner had a depressive episode and deemed to meet diagnosis impression of PTSD. He was unfit to fulfill the duties of a sworn police officer. PX1. Dr. Jochem noted that Petitioner had diminished trust in the police department and felt incapable of being a police officer and surrendered his service weapon to the police department. Dr. Jochem diagnosed major depression, moderate severity, single episode, adjustment disorder with mixed anxiety, and depressed mood and opined that Petitioner is unfit to work as a police officer. PX1.

On September 23, 2021, Dr. Jochem noted Petitioner's symptoms remained the same. Petitioner was frequently tearful when home alone and was tearful during the session. Dr. Jochem noted that Petitioner's dread of public forms of transportation, inability to drive on expressway, reclusiveness,

avoidance of North Chicago, and discomfort around crowds are consistent with an agoraphobic pattern. In addition to the diagnosis of major depression, single episode, moderate, nonpsychotic, along with adjustment disorder, with mixed anxiety and depression, Petitioner has agoraphobia, without panic disorder. Petitioner continues to feel betrayed by the Chief and the police department. Dr. Jochem reviewed Petitioner's job description. Dr. Jochem continued to opine that the severity of depressive and anxious symptoms precludes him from fulfilling the duties of a sworn law enforcement officer for North Chicago at the time of the session. PX1.

Dr. Jochem indicated that it was undetermined how long Petitioner's condition would last. However, Dr. Jochem estimated that Petitioner would remain disabled until January 1, 2022. Dr. Jochem opined that Petitioner could not work within the parameters of a paramilitary environment and could not work as a police officer for North Chicago. PX1.

Petitioner was off work from August 3, 2022, through October 12 or 14, 2022 (Tr. Tran. p. 109) at the recommendation from Dr. Jochem, who felt that going back to work was dangerous because of Petitioner's issues with the Chief. Dr. Jochem opined that small things could set him off. In fact, Dr. Jochem advised that Petitioner should remain off work (Tr. Tran. p. 110) Nevertheless, Petitioner was forced to return to work because, according to Petitioner, workers' compensation had denied the claim. (Tr. Tran. p. 110-111)

CONCLUSIONS OF LAW

Regarding Issues (C), whether an accident occurred that arose out of and in the course of Petitioner's employment, (D), the date of accident, and (F), whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

Decisions of an Arbitrator shall be based exclusively on the evidence in the record. 820 ILCS 305/1.1(e). It is the function of the Commission to judge the credibility of witnesses, resolve conflicts in the medical evidence, and assign weight to witness testimony. *O'Dette v. Industrial Comm'n, 79 Ill.2d. 249, 253 (1980)*. The Arbitrator finds Petitioner to be a credible and sincere witness whose testimony was supported by the testimony of the other witnesses at hearing along with the medical records of Dr. Jochem.

An employee who suffers a sudden, severe, emotional shock traceable to a definite time, place and cause which causes psychological injury or harm has suffered an accident within the meaning of the Act. This is known as the mental-mental theory of recovery. *Moran vs. Illinois Workers' Compensation Commission, et. al.,* 2016 IL App 151366WC, 59 N.E. 3d 934, 406 Ill. Dec. 156 (1st. Dist, 2016). In *Moran*, the court found that a firefighter, who was at a fire where a co-worker died, did sustain accidental injuries even though he did not witness the co-worker's death and was not involved in rescue efforts. Id.

Pathfinder does not permit recovery for every non-traumatic psychic injury from which an employee suffers merely because the employee can identify some stressful work-related episode which contributes in part to the employee's depression or anxiety. *General Motors Parts Division v. Industrial Comm'n,* 168 Ill.App.3d 678 (1988). *Pathfinder* is limited to the narrow group of cases in which an employee suffers a sudden, severe emotional shock which results in immediately apparent psychic injury and is precipitated by an uncommon event of significantly greater proportion or dimension than to which the employee would otherwise be subjected in the normal course of employment. *Id.*

The Court clarified its holding in *General Motors* in *Diaz* stating that whether a worker has suffered the type of emotional shock sufficient to warrant recovery should be determined by an objective, reasonable-person standard, rather than a subjective standard that takes into account the claimant's occupation and training. *Diaz v. Ill. Workers' Comp. Comm'n (Vill. of Montgomery*), 2013 IL App (2d) 120294WC, P33.

Recovery for a non-traumatically induced mental disease is limited to those who can establish that: (1) the mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tensional employees must experience; (2) the conditions exist in reality, from an objective standpoint; and (3) the employment conditions, when compared to with the non-employment conditions, were the major contributory cause of the mental disorder. *Anderson vs. Industrial Commission, et. al,* 321 Ill. App. 3d 463,469, 748 Ill. Dec. 339,343-344, 254 Ill. Dec. 893, 897-898 (5th Dist. 2001).

On August 3, 2021, Petitioner became aware that Police Chief Perez was engaged in an inappropriate and quasi-sexual relationship with his fiancée, Ms. Martinez. This was admitted and corroborated by all that testified in this matter. Prior to this, the record reflects that in April of 2020 Ms. Martinez testified that Chief Perez began pursing her romantically through text messages. In June of 2020 Petitioner was transferred to third shift, an arguably more dangerous and intense shift. In September of 2020 Chief Perez texted Petitioner a picture of Chief Perez and Ms. Martinez stating, "you have been replaced" to which Petitioner responded with "lol."

Chief Perez acknowledged that his officers, including Petitioner, must have confidence in the Chief and know that the Chief would "have his back" in terms of trust and matters of personal safety while on the job. It's reasonable to believe that rank-and-file officers must have faith in their Chief. While he did not act alone, the actions of Chief Perez resulted in what Petitioner had to endure.

The Arbitrator finds that the revelation experienced by Petitioner caused a sudden and severe emotional shock which required psychological intervention. Secondly, taking the view of an objective, reasonable person standard, it is reasonable to find that this extra-marital revelation is a sudden and severe emotional shock. Further, the Arbitrator finds that such this revelation is of greater dimension than day-to-day emotional strain of employees. There's no dispute that the events described happened in reality. Further, the employment conditions of Petitioner's role as a police officer and the Chief's role as a trusted superior, were a major contributory cause of the mental disorder. The Petitioner meets the burden of proof as required under *Pathfinder,* as clarified in *Diaz,* and as expounded on by *Anderson.*

Respondent argues that the revelation of infidelity involving his fiancée and his Police Chief does not meet the requirements under *Pathfinder* of a severe, sudden emotional shock and was more of an issue of temporary embarrassment. Respondent further argues that Petitioner's shift change was due to allegations of excessive force and not from any connection to Chief Perez's pursuit of Petitioner's fiancée. The Arbitrator does not find these arguments persuasive based on the record and reasonable inferences to be derived therefrom.

The Arbitrator notes that, as a result of this discovery, Petitioner sought specific medical and psychiatric treatment with Dr. Jochem for anxiety and depression. Dr. Jochem's records that Petitioner felt his level of distress was too pervasive and severe to permit him to function as a police officer at this time. He did not have confidence in his own judgment, concentration, and emotional stability. Petitioner described an inability to interact with anyone associated with the police department or North Chicago. (Px 1)

Dr. Jochem provided psychotherapy and ultimately diagnosed Petitioner with PTSD, along with major depression, single episode, moderate, non-psychotic and had symptoms of adjustment disorder

with mixed depression and anxiety. (Px 1) Dr. Jochem continued to opine that the severity of depressive and anxious symptoms precluded him from fulfilling the duties of a sworn law enforcement officer for North Chicago and opined that Petitioner would be disabled until at least January 1, 2022. The Arbitrator finds that Sgt. Marquardt continues to experience significant anxiety and depression. He continues to receive counseling through the VA.

Accordingly, the Arbitrator finds that Petitioner suffered an accident that arose out of and in the course of his employment and that his present condition of ill-being with regard to his psychological, mental, and emotional injuries is causally related to the circumstances of August 3, 2021.

Regarding issue (J), medical benefits, the Arbitrator finds as follows:

Petitioner submitted medical expenses totaling $2,365.00 for treatment from Dr. Jochem as evidenced in Petitioner's exhibit 2. No evidence was presented to dispute Petitioner's medical evidence. Having found that Petitioner sustained a compensable accident arising out of and in the course of his employment and that Petitioner's condition was causally related to that accident, the Arbitrator awards the medical benefits submitted in Petitioner's exhibit 2. Respondent shall pay the petitioner for these reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act.

Regarding issue (L), the nature and extent of the injury, the Arbitrator finds as follows:

Regarding subsection I of Section 8.1(b), the Arbitrator notes that there has been no AMA report submitted into evidence. This factor is given no weight.

Regarding subsection II, the Arbitrator notes that Petitioner served as a Police Sergeant and shift commander with Respondent. Petitioner's work life consisted entirely of his time in the armed services and law enforcement with Respondent. This factor is given a moderate amount of weight. While the Arbitrator acknowledges that Petitioner left the employ of Respondent and is no longer in law enforcement, the evidence suggests that Petitioner would have ongoing difficulty performing his required job duties due to his psychological injuries.

Regarding subsection III, the Arbitrator notes that Petitioner was 51 years old at the time of his injury. Petitioner may have issues obtaining employment should he wish to re-enter the work force. This factor is given some weight.

Regarding subsection IV, the Arbitrator notes that Petitioner was released to full duty work but was persuaded and encouraged into retirement from the police department. Petitioner denied that despite the wording in the agreement his decision to retire was not voluntary. The Arbitrator finds Petitioner to be a persuasive witness. Petitioner is a high school graduate and served in the military and then worked for Respondent in law enforcement for 20 years. Petitioner will likely have issues finding employment in police forces and may have issues working in law enforcement, regardless of the ability to find a municipality willing to hire him. Substantial weight is given to this factor.

Regarding subsection V, the Arbitrator notes evidence from Dr. Jochem's last record, that it was undetermined how long Petitioner's condition would last. Dr. Jochem noted reclusiveness, avoidance of North Chicago, agoraphobia, along with major depression, adjustment disorder, mixed anxiety, and depression. Dr. Jochem noted psychomotor retardation, that Petitioner's speech, was slow, soft, and monotonous. The Arbitrator noticed this as well but did not have a basis for comparison. Dr. Jochem continued to state that Petitioner's affect was constricted in range, characterized by sobbing at times, with a mood that is quite sad. Petitioner admitted to irritability. The Arbitrator noted Petitioner's

sad demeanor and occasional weeping at hearing. The record demonstrates that Dr. Jochem provided psychotherapy and opined that Petitioner was unable to fulfill work responsibilities. Petitioner was deemed to meet diagnosis impression of PTSD. Dr. Jochem stated at his last evaluation that Sgt. Marquardt was unfit to fulfill the duties of a sworn officer. (Pet. Tr. Ex. 1) Dr. Jochem noted that Petitioner exhibited diminished trust in the police department.

Petitioner credibly testified to his current mental state. The medical records corroborate much of which Petitioner stated.

For the above-mentioned reasons, the Arbitrator finds that Petitioner is entitled to Permanent Partial Disability benefits of $937.11/week for a period of 50 weeks reflecting 10% loss of use of the person as a whole as provided in Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC003727
Case Name	Julian Diaz v. All Systems HVAC
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	24IWCC0567
Number of Pages of Decision	4
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Nancy Shepard
Respondent Attorney	Steven L. Venit

DATE FILED: 11/22/2024

/s/Raychel Wesley,Commissioner

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JULIAN DIAZ,	)	
	)	
PETITIONER,	)	
	)	
v.	)	No. 20 WC 03727
	)	
ALL SYSTEMS HVAC,	)	
	)	
RESPONDENT.	)	

ORDER

A Petition for Enforcement of Settlement Contract and Penalties and Attorney Fees pursuant to §19(k), §19(l), & §16 having been filed by Petitioner's attorney herein, and due notice having been given, this cause came before Commissioner Raychel A. Wesley for hearing on July 12, 2024 in Chicago, Illinois. The Commission, having jurisdiction over the persons and subject matter, at least with respect to the issue of penalties and attorney fees, and after being advised in the premises, grants in part and denies in part Petitioner's motion for the reasons set forth below.

FINDINGS OF FACT

On August 22, 2023, a Settlement Contract Lump Sum Petition and Order was approved by the Commission and Arbitrator Gerald Napleton in the amount of $2,500.00. Subsequently, Petitioner made several demands for payment. *See Petitioner's Exhibit 2*. To date, Respondent has failed to pay the agreed amount. Respondent offered no reason or explanation for this failure at hearing.

Petitioner filed a Petition for Enforcement of Settlement Contract and Penalties and Attorney Fees pursuant to §19(k), §19(l), & §16 on February 20, 2024. The Commission notes that this Petition was filed approximately six (6) months after the approval of the settlement contract in question, well after the time for filing a review had elapsed.

A settlement contract approved by the Commission has the same legal effect as an award entered by the Commission. *Millennium Knickerbocker Hotel v. Illinois Workers' Compensation Commission*, 2017 IL App (1st) 161027WC, 76 N.E. 3d 825, 833 (1st Dist. 2017). Unless a petition for review of a settlement contract is filed in the circuit court, a settlement contract becomes a final award twenty (20) days after its approval by the Commission. *Id* at 833. In the present case, the settlement contract became a final award under the Act after September 11, 2023.

Accordingly, the Commission finds that the jurisdiction to enforce the terms of the settlement contract lies with the Circuit Court of Cook County. §19(g) of the Act states, in part:

> Except in the case of a claim against the State of Illinois, either party may present a certified copy of the award of the Arbitrator, or a certified copy of the decision of the Commission when the same has become final, when no proceedings for review are pending, providing for the payment of compensation according to this Act, to the Circuit Court of the county in which such accident occurred or either of the parties are residents… *820 ILCS 305/19g*.

Further, absent fraud or a clerical error, review of an approved lump sum settlement is specifically prohibited under §19(f) of the Act. See *Gillmore v. Ideal Industries*, *Inc.*, 74 Ill. App. 3d 143, 144 (4th Dist. 1979).

In response to an employer's failure or refusal to pay a final award from which no further appeal is taken, §19(g) of the Act provides a statutory remedy for a claimant to reduce the award to an enforceable judgment in the circuit court. *Aurora East School District v. Dover*, 363 Ill. App. 3d 1048, 1054 (2nd Dist. 2006).

Accordingly, the Commission lacks the statutory authority to enforce the settlement contract in question. Instead, the proper remedy for such a request lies with the circuit court pursuant to §19(g) of the Act. Therefore, the Commission denies this portion of Petitioner's Petition for Enforcement of Settlement Contract and Penalties and Attorney Fees pursuant to §19(k), §19(l), & §16.

However, the Commission notes that it does retain jurisdiction subsequent to settlement contract approval with respect to the imposition of penalties and/or attorney fees, and that in carrying out this obligation the Commission is allowed to interpret the settlement contract. See *Loyola University of Chicago v. Illinois Workers' Compensation Commission*, 31 N.E.3d 905, 913 (1st Dist. 2015).

Here, the terms of the settlement contract expressly set forth the specific amount Respondent agreed to pay to Petitioner. Despite this seemingly clear directive, Respondent has failed to satisfy its obligation without offering a justification for its inaction. Based on the foregoing, and the express terms of the agreement, the Commission finds that Respondent's delay and/or refusal to pay the settlement amount to Petitioner was unreasonable and vexatious under the circumstances. As a result, the Commission finds that Petitioner is entitled to additional compensation pursuant to §19(k) in the amount of $1,250.00 (50% of the amount outstanding).

Penalties imposed under §19(l) are in the nature of a late fee. *McMahan v. Industrial Commission*, 183 Ill. 2d 499, 515 (1998). These penalties are mandatory if the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay. *Id*. There being no justification offered by Respondent, we award Petitioner §19(l) penalties in the amount of $9,750.00, or $30.00 per day for 325 days (the day after approval of the settlement

contract through the hearing date of July 12, 2024). Based on the foregoing, we also award §16 attorney fees in the amount of $500.00 (20% of the amount outstanding).

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition for Enforcement of Settlement Contract is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petition for penalties pursuant to §19(k) of the Act is granted. Petitioner is entitled to additional compensation in the amount of $1,250.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petition for penalties pursuant to §19(l) of the Act is granted. Petitioner is entitled to additional compensation in the amount of $9,750.00.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Petition for attorney fees under §16 of the Act is hereby granted. Counsel for Petitioner is entitled to additional fees in the amount of $500.00.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $11,500.00. 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 22, 2024

/s/ *Raychel A. Wesley*

RAW/wde
D: 9/25/24
43

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC012697
Case Name	Penny Sizemore v. Liberty Village - Pekin Manor
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0568
Number of Pages of Decision	19
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Hania Sohail
Respondent Attorney	Andrew (AJ) Sheehan

DATE FILED: 11/25/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Penny Sizemore,

Petitioner,

vs. No. 21 WC 012697

Liberty Village - Pekin Manor,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Arbitrator awarded Petitioner, pursuant to the fee schedule, 17 medical bills totaling $80,704.56, itemized on pages 9 and 10 of the Arbitration Decision. The Arbitrator excluded from that award any bills or treatment related to prescription "creams" or "salves."

Petitioner stipulated in her brief on Review that of those awarded bills, 7 of them, totaling $22,913.18, were for treatment unrelated to her December 21, 2020 accident. Those bills are:

DATE OF SERVICE:	PROVIDER:	AMOUNT:
8/23/21	UnityPoint Health ER	$10,437.29
4/12/21	UnityPoint Health Primary Care-Pekin	$ 160.00
10/19/21	UnityPoint Health Primary Care-Pekin	$ 160.00
5/24/22	UnityPoint Health Primary Care-Pekin	$ 172.00
10/11/21	UnityPoint Health Lab	$ 169.00
5/18/22	UnityPoint Health Lab*	$11,248.89
4/11/22	Unity Primary	$ 566.00
	TOTAL:	$22,913.18

*(*The Arbitration Decision named this provider as, "UnityPoint Health Emergency Visit.")*

Pursuant to Petitioner's stipulation, we now exclude the above-listed bills, modify the Arbitrator's award of medical expenses accordingly, and order Respondent to pay Petitioner's reasonable and necessary medical bills in the amount of $57,791.38, per the fee schedule, as provided in §8(a) and §8.2 of the Act.

At arbitration, it was undisputed that Petitioner sustained a left second metatarsal fracture as a result of her December 21, 2020 accident. In addition, the Arbitrator found that Petitioner's Complex Regional Pain Syndrome (CRPS) was also related to her work accident or subsequent medical treatment. The Arbitrator awarded Petitioner 40% loss of use of her left foot as provided in §8(e) and §8(d)2 of the Act.

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

In determining Petitioner's permanent partial disability award, the Arbitrator did consider each of the §8.1b(b) factors, but neglected to assign weights to them. The Appellate Court has held that §8.1b(b) requires the Commission to explain the weights it places upon these factors. *Prairie Farms Dairy v. Ill. Workers' Comp. Comm'n,* 2017 IL App (3d), 160593WC-U.

Accordingly, the Commission has now considered the §8.1b(b) factors and assigns the following weights to them:

(i) **Impairment rating by a physician:** *no weight,* because no AMA impairment rating by a physician was offered into evidence.

(ii) **Employee's occupation:** *moderate weight,* because Petitioner's occupation as a cook requires her to stand on her feet for a considerable part of her workday.

(iii) **Employee's age:** *moderate weight,* because Petitioner was 50 years old at the time of her accident, and has many years left in the workforce during which she must deal with the effects of her work injuries.

(iv) **Future earning capacity:** *moderate weight,* because Petitioner admitted at arbitration that she voluntarily began working for a different employer and currently earns more than she did at the time of her accident.

(v) **Evidence of disability corroborated by the treating records:** *significant weight,* because Petitioner still has pain at the site of her left second metatarsal, even though it has healed. Dr. Rhode and Dr. Lubenow both opined that Petitioner developed CRPS to her left foot as a result of her work accident. Petitioner required lumbar sympathetic blocks which only provided partial relief, and she now has a permanent 20-pound lifting restriction. Petitioner still wears a post-op orthopedic shoe on her left foot, and experiences pain in her foot almost all of the time, for which she takes Tylenol.

Upon our consideration of relevance and weight of these factors, the Commission affirms and adopts the Arbitrator's permanency award of 40% loss of use of her left foot (66.8 weeks) as provided in §8(e) and §8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 9, 2023, is modified as stated above, and otherwise affirmed and adopted.

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

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

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

November 25, 2024

MP/mcp
o-11/07/24
068

/s/ *Marc Parker*
Marc Parker

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC012697
Case Name	Penny Sizemore v. Liberty Village - Pekin Manor
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Hania Sohail
Respondent Attorney	Andrew (AJ) Sheehan

DATE FILED: 8/9/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 8, 2023 5.26%

/s/Kurt Carlson, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Penny Sizemore
Employee/Petitioner
v.
Liberty Village – Pekin Manor
Employer/Respondent

Case # **21** WC **012697**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Peoria**, on **June 23, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **December 21, 2020**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**26,053.56** the average weekly wage was **$501.03**

On the date of accident, Petitioner was **50** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**5,405.95** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**5,405.95**

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

ORDER

Respondent shall pay reasonable and necessary medical services of $**80,704.56**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**334.02**/week for **34 3/7** weeks, commencing **December 22, 2020** through **January 13, 2021** and **February 10, 2021** through **September 15, 2021**.

Respondent shall pay Petitioner permanent partial disability benefits of $**300.6** /week for **66.8** weeks, because the injuries sustained caused the **40**% loss of the **left foot** as provided in Section 8(e) and 8(d)(2) of the Act.

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

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

Kurt A. Carlson **AUGUST 9, 2023**

Arbitrator

Penny Sizemore v. Liberty Village – Pekin Manor
21WC012697

Arbitrator Findings of Facts

Petitioner filed an Application for Adjustment of Claim claiming accidental injuries that she sustained on December 21, 2020. Petitioner alleged that at the time of the accident she was taking trash out when her left foot popped on an uneven ground injuring her left foot and whole body.

Prior to proceeding to hearing, party filled out a Request for Hearing and/or a Stipulation sheet. The Request for Hearing listed issues in dispute to be of medical causation. Parties on the record indicated and stipulated that the dispute regarding causation only related to the diagnosis of CRPS. Causation was accepted regarding the original injury involving the left foot which resulted in a second metatarsal fracture with no surgery of the foot.

With regards to the CRPS, the Arbitrator notes that not only is causation in dispute but so are medical bills, lost time and nature and extent of the accident. The Arbitrator further acknowledged that the nature of the accident is also in dispute pertaining to the second metatarsal fracture. The Request for Hearing sheet signed by both parties was entered and admitted into the evidence as Arbitrator's Exhibit 1.

The Arbitrator notes that the manner of the accident and the notice associated with it is not in dispute.

At the time of the hearing, the Arbitrator notes that Petitioner testified credibly. Petitioner testified that she is currently employed at Lodge in Manito. She started working there on March 9th of 2023. She testified that prior to working there she was employed at Liberty Village of Pekin, the Respondent in the present case. She testified that she left her job with the Respondent voluntarily to gain better employment. Petitioner testified that she started working at Liberty Village sometime in 2007 and continued to work there until 2023. She did indicate that she was gone for approximately two to three years from 2014 to 2017. At the time of the accident she was working as a cook and her job duties involved her to prepare meals, serve food to the tenants, clean up and take out trash.

As to the accident that Petitioner was involved in on December 21, 2020, she testified that she was doing a 9:30 am to 6:00 p.m. shift. That after serving the tenants and cleaning up she took out the trash, put the trash can back up by the building, it was very windy that day and she went and sat in the vehicle so she could have a break before clocking out to go home. She indicated that the wind blew and the trash can went down in the parking lot. She indicated to avoid an accident and avoid the trash can from hitting another car, she got out of the vehicle and ran and her left foot hit an unsurfaced part of the pavement. She heard a popping noise. She clarified as to the unsurfaced pavement and indicated that the unsurfaced pavement was uneven when she stepped on it and she heard a pop in her left foot. She described the area where she heard a pop to be on top of her foot.

Petitioner testified that this was a witnessed accident and her supervisor, Kevin Bell, was in the vehicle sitting with her at the time of the accident. She indicated that after this happened, her foot started to swell up inside her shoe. She notified her supervisor, Kevin Bell and also the Director of Nursing, Dip Snow.

Petitioner testified that after notifying the employer, she filled out an accident report. The Arbitrator acknowledged that the accident report was entered and admitted into the evidence as Petitioner's Exhibit 2. The Arbitrator notes that the accident description noted in the accident report is consistent with Petitioner's testimony.

Petitioner testified that after the accident she was wanting to seek medical attention and was instructed by her employer to seek medical treatment at Pekin PromptCare. The medical records of Pekin PromptCare were entered and admitted into the evidence as Petitioner's Exhibit 3. The Arbitrator notes that Petitioner's Exhibit 3 depicts a consistent history of accident. The history of accident noted in those records indicates that patient works at Pekin Manor Care, was taking out the trash, the trash can blew away due to winds, patient went to chase after the trash can and tripped on the concrete in the parking lot. It was note that she felt a pop in her foot when it occurred. X-rays of Petitioner's left foot were taken and Petitioner was diagnosed with a second metatarsal fracture of her left foot. Posterior splint was placed on her left foot, she was fitted with crutches, was prescribed tramadol for pain and was instructed to follow up with an orthopedic doctor.

Petitioner testified that after the referral to an orthopedic doctor was made, she contacted NHRMA, workers' compensation carrier for the Respondent and was told by an individual, Stacy Tobalaro, to see Midwest Orthopedics in Pekin, Illinois.

Petitioner testified that she first saw Midwest Orthopedics on January 5, 2021. The Arbitrator notes that Midwest Orthopedic medical records were entered and admitted into the evidence as Petitioner's Exhibit 4. Medical records reflect that Petitioner, on January 5, 2021, was seen by a podiatrist, Dr. Chami. Dr. Chami noted a consistent history of accident, noted a second metatarsal fracture to Petitioner's left foot. The physical examination that was performed by Dr. Chami noted a minimal edema on the dorsal aspect of the left foot, he also noted ecchymosis on the dorsal aspect of the foot. Pain was noted on palpation on the distal aspect of the second metatarsal on the left foot. Dr. Chami at that point applied an Ace bandage to the left foot. He placed her in a CAM walker, gave her restrictions from work and recommended that she follow up with him in four weeks. The Arbitrator notes that the work restriction given to Petitioner at that time was noted to be "must wear boot, must use crutches, must rest extremity as needed and no lifting over ten pounds."

Petitioner testified that after seeing Dr. Chami she did go back to work at a light duty/limited duty capacity. Petitioner testified that after this visit, she followed up with Dr. Chami on February 2nd of 2021. Dr. Chami during this visit noted that Petitioner was getting better. The lowery extremity examination still noted minimal edema on the dorsal aspect of the left foot. He noted some pain upon palpating dorsal aspect of the foot, mainly over the second and third metatarsal joints. Dr. Chami at that point recommended that Petitioner should be

weaned off slowly and as tolerated transition from the CAM walker to a post-op shoe. It does not appear that at that point she was being provided with any work restrictions per Dr. Chami.

Petitioner testified that she was still having pain when she saw Dr. Chami and it was at the top part of her foot where she had the fracture that was causing her to pain. The Arbitrator notes that this is consistent with the medical records. Petitioner also testified that at that point, because Dr. Chami was recommending fully duty, she was not happy with the services he was providing and contacted an attorney.

She indicated that at the recommendation of her attorney's office, she went and saw Dr. Blair Rhode's office.

The Arbitrator notes that Dr. Blair Rhode's medical records were entered and admitted into the evidence as Petitioner's Exhibit 6. Petitioner testified and the medical records reflect that Petitioner first started seeing Dr. Rhode on February 10, 2021. Dr. Rhode's office noted that Petitioner sustained left foot injury on December 21, 2020, that she tripped on uneven asphalt in the parking lot and plantar flexed her left foot and heard a pop. She had immediate pain and was sent to UnityPoint Urgent Care where x-rays of her foot were taken and she was diagnosed with distal second metatarsal fracture and was placed in a post mold splint and prescribed tramadol. She was placed off of work until she had an orthopedic consult. On January 5, 2021 she was seen by Dr. Chami and was placed in CAM boot and cleared to return to work the following day with restrictions. She returned to work on January 14, 2021 and was advanced to a WBAT in CAM boot. Petitioner testified that since returning to work she has had increased pain in her foot and increased swelling every day.

Dr. Rhode's office, after taking history from Petitioner, placed her off duty and indicated she is ok to transition off boot. Petitioner was noted to be unable to tolerate oral analgesics and was recommended a course of topicals. Physical examination of Petitioner's left foot indicated minimal edema of the left foot. Pain was noted along with distal second metatarsal.

After the initial visit with Dr. Rhode's office, Petitioner was seen by Dr. Rhode himself on March 3, 2021. Dr. Rhode at that point performed a physical examination and diagnosed Petitioner with closed second metatarsal fracture along with pain in her left foot. He recommended physical therapy and recommended Petitioner to remain off of work.

Petitioner then saw Dr. Rhode on March 31, 2021. At that point the physical examination \showed evidence of anhydrosis, the left foot appeared to mottled and dysesthetic to touch. Dr. Rhode during the visit indicated that patient appears to be begin to demonstrate early findings of CRPS. Her foot appears to be dysesthetic with dystrophic changes. He recommended aggressive physical therapy, potential synthetic block. She was to follow up with Dr. Rhode in four weeks.

At the recommendation of Dr. Rhode's office Petitioner testified that she started attending physical therapy at Athletico. The Arbitrator notes that Athletico medical records were entered and admitted into the evidence as Petitioner's Exhibit 10. Petitioner first started seeing Athletico as referred by Dr. Blair Rhode on April 7, 2021. Petitioner was seen until May 21, 2021 for eleven visits. Petitioner testified and medical records of Athletico indicate that

Petitioner was unable to further go to Athletico due to work comp denial/billing issues post an independent medical evaluation.

Petitioner next saw Dr. Rhode on April 28, 2021. During this visit Dr. Rhode once again diagnosed Petitioner with complex regional pain syndrome along with the left second metatarsal fracture. He indicated that Petitioner is now experiencing skin discoloration. He recommended Petitioner to undergo a lumbar synthetic block. Petitioner did undergo lumbar synthetic block as recommended by Dr. Rhode on June 1, 2021. Petitioner underwent a second lumbar sympathetic block as recommended by Dr. Rhode o July 13, 2021.

Petitioner then, after the two synthetic blocks, followed up with Dr. Rhode on July 21, 2021. At that point it was noted that Petitioner has 10% improvement after the second injection. Dr. Rhode at that point continued to recommend Petitioner off of work.

Petitioner then followed up with Dr. Rhode on August 18, 2021. At that point Dr. Rhode continued to diagnose Petitioner with complex regional pain syndrome and continued to recommend that she remain off of work.

Petitioner then followed up with Dr. Rhode on September 15, 2021. At that point he recommended that Petitioner undergo a functional capacity evaluation and allowed Petitioner to return to work modified duty.

On October 13, 2021 Petitioner was noted to be in a huge amount of pain to be asking for a toe removal. Dr. Rhode recommended against toe removal. At that point he continued to recommend a functional capacity evaluation.

Petitioner testified and the medical records reflect that the authorization for an FCE was never provided due to which, on December 8, 2021, Dr. Rhode provided Petitioner with permanent restrictions. The permanent restrictions as testified by Petitioner and noted by the medical records were those of modified light work duty restrictions. The restrictions included Petitioner to work with a maximum of twenty pounds or less lifting and carrying restrictions and frequent of ten pounds for lifting and carrying restrictions.

Petitioner testified that apart from providing Petitioner with permanent restrictions, Dr. Rhode also referred her to see Dr. Lubenow at Rush Pain Center. .

Petitioner testified that while she was seeing Dr. Rhode, her left foot looked a different color than her right foot. She testified that the left foot was colder than the other foot and it would swell up more than her right foot. Petitioner testified that her foot would swell up frequently while she would be on her foot. She testified that her foot would change color probably twice a day, that her foot looked a little bit shinier than the other foot. She also indicated that she would experience swelling on a frequent basis.

Petitioner testified that while she was seeing Dr. Rhode, she was off of work from the first time she saw him until September 15, 2021.

The Arbitrator notes that photographs of Petitioner's left foot were also entered and admitted into the evidence. Petitioner testified that she took these photographs in December of 2021. Petitioner indicated that she took the photographs in order to "just to have it" as the photographs showed her left foot swelling up and the issues that she was experiencing. There were two photographs that were submitted, Exhibits 13 and 14. Exhibit 13 is a photograph of the left foot only and Exhibit 14 is a comparison between Petitioner's right foot and left foot.

Petitioner testified that after she was released from Dr. Rhode's care, the employer continued to accommodate her light duty restrictions. Petitioner testified that she was able to see Dr. Lubenow on March 2, 2022.

The Arbitrator notes that medical records of Dr. Lubenow were entered and admitted into the evidence as Petitioner's Exhibit 11. Petitioner's Exhibit 11 indicates that Petitioner suffered a work related injury on December 21, 2020. She had a left second metatarsal fracture at work. She was taking out the trash in the back of the building and it was windy. The wind took the garbage can down the street and she ran after it. The parking lot was unleveled and she hit her foot on a spot in the cement when she felt a pop and tripped but did not fall. She felt that she broke her foot and needed assistance to get back to the building. She was seen at UnityPoint urgent care and x-rays showed a non-displaced fracture of the distal second metatarsal and was put in a temporary case and ace wrap. She saw an orthopedic three weeks later who evaluated her x-rays and her exam and stated that she is healing. She sought second opinion for orthopedic surgery with Dr. Blair Rhode who said she should not keep working while bearing weight on her foot. She should be on light duty sitting more often, lifting restrictions at twenty pounds and that she worked last on April 6, 2021. It was noted by Dr. Lubenow that Dr. Rhode was concerned of a diagnosis of CRPS, that on December 8, 2021 Dr. Rhode determined that her recovery was plateaued and recommended an FCE and recommended her to continue working light duty. FCE was never completed because insurance would not approve it.

Dr Lubenow noted that Petitioner can only walk one city block without stopping in casual space, can only stand for thirty minutes before having to sit down, can only tolerate tennis shoes for fifteen minutes at a time. She characterized pain as burning, knife like/electrical/stabbing. The pain was noted to be primarily in the left foot and ankle, it was noted to be associated with swelling/color changes. Left foot was noted to be fuller than the right foot. Hypersensitivity was also noted. She was noted to have issues with activities of daily living having. it was noted that it is painful for Petitioner to have pants and bedsheets rub against the skin.

Physical examination was performed by Dr. Lubenow. Dr. Lubenow's physical exam mentioned Budapest criteria for a diagnosis of CRPS. Dr. Lubenow's medical records noted that out of the three or more required history reported symptoms for CRPS Petitioner was positive for sudomotor (edema or asymmetry in sweating), vasomotor (skin discoloration or temperature asymmetry), sensory (allodynia or hyperalgesia) and also positive for motor/trophic (decreased ROM, tremor, weakness, dystonia, sin or nail changes).

He also noted that for physical examination, Budapest criteria requires two or more positive diagnosis and Petitioner was positive for sensory and vasomotor but was negative for motor/trophic and sudomotor.

Based on the physical examination, and based on meeting the Budapest criteria, Dr. Lubenow diagnosed Petitioner with complex regional pain syndrome due to a work-related injury. He recommended patient to start Cymbalta capsules and recommended patient to undergo lumbar synthetic blocks spaced out two weeks apart. He also recommended desensitization therapy for CRPS and discussed options of neuromodulation if the lumbar synthetic blocks do not provide relief.

Petitioner testified that she was never able to undergo treatment as recommended by Dr. Lubenow as it didn't get approved by the insurance.

Petitioner testified that when she saw Dr. Lubenow she was experiencing color changes in her left foot. She was also experiencing swelling, temperature changes and was having difficulty with range of motion pertaining to her left foot.

The Arbitrator notes that deposition of Dr. Blair Rhode was taken on September 15, 2021 and was entered and admitted into evidence as Petitioner's Exhibit 9. Dr. Rhode in his deposition testified consistent with his medical records. He testified that he diagnosed Petitioner with a second metatarsal fracture that was well healed but that patient continued to be significantly painful. He indicated that Petitioner continued to have relatively diffused pain. He was concerned that Petitioner was developing a component of CRPS, specifically on exam she had color changes. He described those to be as modeled, which would be that portions of the foot were red, portions were white, she had evidence of anhydrosis which is loss of normal oils to the skin, skin appeared pretty dry, flakey skin and she was dysesthesia to the touch. *Dr. Rhode Dep Tr. Pgs. 8-9.*

Dr. Rhode testified that the treatment for CRPS is relatively limited. That one can do synthetic blocks, local blocks, and aggressive physical therapy. He testified that her tried two synthetic blocks and then the last visit he did a regional block. He explained the regional block and indicated that basically "I tapped on the point of maximal tenderness. It's called a Tinel's, and then I injected some medicine." He indicated that each of the injections Petitioner received provided her with some relief but her symptoms returned. *Dr. Rhode Dep Tr. Pgs. 10-11.*

Dr. Rhode testified that Petitioner would require sequential synthetic blocks and a round of physical therapy here and there. He indicated that show would require a post-mold shoe. *Dr. Rhode Dep Tr. Pgs. 12-13.* Dr. Rhode testified that he was recommending a functional capacity evaluation, however, was never able to receive authorization for that. Dr. Rhode indicated that it is his opinion that the work-related injury, which caused a second metatarsal fracture, was causative to patient's complex regional pain syndrome. *Dr. Rhode Dep Tr. Pg. 13.*

The Arbitrator notes that at the request of the Respondent Petitioner submitted to an independent medical evaluation with Dr. Hythem Shadid on May 5, 2021. *See Respondent's Exhibit* 1. Dr. Shadid, diagnosed Petitioner with a healed second metatarsal neck fracture secondary to a work injury Petitioner sustained on December 21, 2020. Dr. Shadid noted during his physical examination that Petitioner did not have any swelling or tenderness to her second metatarsal and she was able to walk without the post-op shoe without difficulty. He indicated that Petitioner's toe was anatomically aligned. The Arbitrator notes this to be inconsistent with

what the Arbitrator observed during the trial. Dr. Shadid did not believe that Petitioner had complex regional pain syndrome as there was not significant stiffness, skin discoloration, swelling or exaggerated pain. He indicated that there was no vasomotor disturbance, trophic skin changes or hyperhidrosis. He believed that Petitioner had reached maximum medical improvement and is capable of working without restrictions.

The Arbitrator notes that after Dr. Lubenow had examined Petitioner in March of 2022, Petitioner was seen by Dr. Shadid for a second medical examination on June 30, 2022. During this visit Dr. Shadid continued to believe that Petitioner does not have CRPS and does not require any further treatment. *See Respondent's Exhibit* 1.

The Arbitrator notes that Dr. Shadid's was deposed twice, once on September 22, 2021 and then again on April 25, 2023. *See Respondent's Exhibit* 2. Dr. Shadid in his deposition of September 22 2021 testified that Petitioner has sustained second and third metatarsal neck fractures of her left foot. He believed that Petitioner did not have any findings of CRPS. *Dr. Shadid Dep Tr. Pg. 18.* Dr. Shadid during his direct examination continued to maintain that Petitioner did not exhibit any vasomotor, trophic changes or hyperhidrosis. *Dr. Shadid Dep Tr. Pg. 15.* He indicated that Petitioner did not meet the hallmark signs of CRPS and did not fit the criteria for CRPS syndrome.

During the second deposition of Dr. Shadid on April 25, 2023. During his deposition, he admitted that CRPS is a pain diagnosis. He indicated that he is an orthopedic surgeon and does see a few patients that come in with that diagnosis and that "we usually try to spend a little bit more time learning what, in fact is the cause of it" and that "actual CRPS is pretty rare to find overall." He indicated that he maybe sees two to three patients of CRPS diagnosis in a year. *Dr. Shadid Dep Tr. Pgs. 19-20.*

Dr. Shadid during his cross examination admitted that the Budapest criteria is a four-part test and that there are four factors that go into it. He agreed that the factors are sudomotor, vasomotor, sensory, and motor/trophic. *Dr. Shadid Dep Tr. Pg. 23*. He agreed that sudomotor refers to a dermal or asymmetry in sweating, vasomotor refers to skin discoloration or temperature or asymmetry, sensory refers to allodynia or hyperalgesia and that motor/trophic refers to decreased range of motion. *Id.*

Dr. Shadid agreed that sudomotor refers to the movement of the toe, the range of motion, edema can be involved with that. He agreed that the skin color changing would be a vasomotor finding, that one foot being colder than the other would also be a vasomotor finding. He agreed that feeling like electrical stabbing, burning, knife-like pain would be a sensory finding. He also indicated that decreased range of motion would be a motor finding. *Dr. Shadid Dep Tr. Pg. 24*.

The Arbitrator reviews Dr. Shadid's deposition transcript from April 25, 2023 from page 25 to page 31. The Arbitrator notes that Dr. Shadid seems somewhat inconsistent to what the Budapest criteria is for diagnosing CRPS. At first he indicated that "there is a total score sheet, it is not just a simple number, but we have to go through each of these criteria and come up with a total score." *Dr. Shadid Dep Tr. Pgs. 25-26.* Then he indicated that all of the four factors discussed have to be present in order for a diagnosis of CRPS to be formulated. *Dr. Shadid Dep*

Tr. Pgs. 27-28. Then he maintained that one has to have both physical examination findings and symptoms of the four mentioned factors *Dr. Shadid Dep Tr. Pg. 28.* Then he indicated that at least some physical examination findings need to be present. *Dr. Shadid Dep Tr. Pg. 30*. Then he indicated that the right criteria for CRPS and indicated that two of the three physical examination factors need to be present. *Dr. Shadid Dep Tr. Pg. 30-31.*

As to the present physical symptoms, Petitioner testified that she continues to experience temperature changes, continues to experience swelling and also range of motion issues with her left foot. She indicated that she continues to have problems with her left foot. She is unable to put on a shoe because it rubs the toe that was fractured and is now sticking out. She has issues with walking and still experiences pain on a frequent basis. Petitioner testified that she takes Tylenol for her pain as nothing else helps her. Her foot hurts when she is walking or when she is on it. She testified that she still experiences problems when she is putting pants on, has difficulty putting on a blanket or a sheet on top of her foot and has issues sleeping because of her left foot. Petitioner indicated that she continues to wear a post-op shoe. The Arbitrator notes that Petitioner was wearing a post-op shoe at the time of the trial. Petitioner testified that she is not able to wear a regular shoe.

The Arbitrator notes the various surveillance videos were provided by the Respondent; however, no video indicates Petitioner to have exceeded her restrictions. Petitioner indicated that she has also reviewed the surveillance video reports and there is no activity mentioned in the surveillance video that she was not allowed to do.

CONCLUSIONS OF LAW

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

Consistent with Arbitrator Finding of Facts, the Arbitrator finds Dr. Rhode and Dr. Lubenow's opinions on causation to be somewhat more credible than Dr. Shadid. The Arbitrator notes that the medical records of both Dr. Rhode and Dr. Lubenow documented some mild symptoms of CRPS. The Arbitrator further notes that the Arbitrator himself had the opportunity to examine Petitioner's foot. The Arbitrator on the record indicated "the first thing you notice about the Petitioner's left foot -- it is slightly darker than the right foot."

The Arbitrator also noted that "it may be a stretch to say this, but the left looks like it might be – there might be a little bit of swelling in it" and actually after having a closer look, indicated that the color differences are a little bit more pronounced. He indicated on the records that there are small capillary type of pores, the little red dots are more on the left foot than on the right foot. He also indicated color differences between the big toe and swelling on the big toe. He also indicated that the biggest difference is that her second toe where the second metatarsal is, is elevated and there is no way that Petitioner is faking it. He also indicated that the left toe is sticking out and that that is completely consistent with Petitioner's testimony. He did indicate that the symptoms do not appear to be as drastic as they are in the photos. The Arbitrator, in

examining the left foot with his naked eye and consistent with the medical records, do believe that the Petitioner does fit with at least some of the symptoms of CRPS, with the understanding that there can be a spectrum. Based on the consistent history of accident, the consistent complaints, the consistent notations made by different medical providers regarding physical findings, finds Petitioner's condition of ill-being with regards to her CRPS to be related to the work accident or subsequent medical treatment.

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

Regarding the issue of medical bills, the Arbitrator having found that there was causal relationship between the accident and the Petitioner's conditions of ill-being, the Arbitrator awards most of the medical bills as found in Petitioner's Exhibit 12 to the Petitioner with any credit given to the Respondent for any medical bills previously paid by the Respondent.

MEDICAL BILL LIST – LEVEL 1

CLIENT: Penny Sizemore

DATE: 6/14/23

NAME OF PROVIDER	ACCOUNT NUMBER	DATE OF SERVICE	AMOUNT OF BILL
Athletico Physical Therapy	1836018	4/7/21 – 5/14/21	$5,861.00
Bob Rady		7/13/21	$1,320.00
Infinite Strategic Innovations		6/1/21-7/12/21	$100.78
Midwest Orthopedic Center	0187552100	1/5/21 – 3/3/21	$875.00
Orland Park Orthopedics	SIZPEN0001	2/10/21 – 12/8/21	$13,548.88
Persistent Labs	XAZM86G9P6	4/28/21	$3,905.00
Rush Pain Center	67993	3/2/22	$759.00
RX Development		4/28/21-12/8/21	$10,499.47
Specialists in Medical Imaging	SMI353021	12/21/20	$92.00
Specialists in Medical Imaging		1/18/21	$455.00

South Chicago Surgical Solutions		6/1/21	$7,842.50
South Chicago Surgical Solutions		7/13/21	$7,842.50
UnityPoint Health - Radiology	363246300	12/21/20	$55.00
UnityPoint Health First Care Pekin	367728384	12/21/20	$207.00
UnityPoint Health First Care Pekin	367728407	12/21/20	$198.00
UnityPoint Health Emergency Visit	363990955	1/18/21	$2,514.00
UnityPoint Health Primary Care Pekin	366686230	4/12/21	$160.00
UnityPoint Health Emergency Visit	370886161	8/23/21	$10,437.29
UnityPoint Health Lab	372436229	10/11/21	$169.00
UnityPoint Health Primary Care Pekin	372808478	10/19/21	$160.00
UnityPoint Health Primary Care Pekin	378277340	4/11/22	$566.00
UnityPoint Health Emergency Visit	380493618	5/18/22	$11,248.89
UnityPoint Health Primary Care Pekin	380776311	5/24/22	$172.00
Vertex Anesthesia	VER.1911	6/1/21	$1,716.25
		TOTALS	**$80,704.56**

The Arbitrator orders the Respondent to pay the above pursuant to the fee schedule, excluding any bills or treatment related to prescription “creams” or “salves.”

The Arbitrator nots that Respondent submitted Exhibit 4, the medical payment's ledger outlining medical bills that have been paid. The Arbitrator finds that Respondent asserts a total credit of $14,064.57 towards the medical bills paid. The Arbitrator agrees that the Respondent is entitled to credit in the amount of $14,064.57.

(K) What temporary total benefits are in dispute?

Consistent with medical records that were submitted at the time of the trial, Petitioner testified that she was off of work from December 22, 2020 to January 13, 2021 and then from February 10, 2021 to September 15, 2021. Based on that, the Arbitrator finds that Petitioner is entitled to TTD benefits for a period of 34 3/7 weeks. The Arbitrator finds that Petitioner is entitled to TTD benefits in the amount of $334.02 per week.

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

Pursuant to 820 ILCS 305/8.1(b) the Arbitrator finds the following factors in considering the Petitioner's nature and extent of the injury in this case:

1. The reported level of impairment pursuant to an AMA assessment.

The Arbitrator notes that there has been no AMA assessment performed in this case by either party. Therefore, the Arbitrator does not have any facts to consider as it relates to an AMA assessment.

2. The occupation of the injured employee.

The Arbitrator notes that Petitioner at the time of the accident was working as a cook. She changed her jobs voluntarily. The Arbitrator also notes that that Respondent was accommodating Petitioner's restrictions. The Arbitrator will consider all of these factors in determining permanent partial disability.

3. The age of the employee at the time of the injury was 50 years old, single, with zero dependent children.

The Arbitrator is taking this into consideration in the nature and extent of the injury.

4. The employee's future earning capacity.

The Arbitrator notes that no evidence was presented to reflect that Petitioner sustained a loss of earning capacity as a result of the accident of December 21, 2020.

5. The evidence of disability corroborated with the treating physicians' medical records.

Petitioner testified regarding the issues that she still continues to experience with regards to her left foot and with regards to the diagnosis of CRPS. Based on that, the Arbitrator awards

In the Arbitrator's estimation, Petitioner sustained a 40% loss of use of her left foot pursuant to Section 8(e) of Illinois Workers' Compensation Act.

Kurt A. Carlson _____

Arbitrator Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007033
Case Name	Dajuan Miller v. RHM, LLC (loaning employer) and Dart Corporation (borrowing employer)
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0569
Number of Pages of Decision	27
Decision Issued By	Maria Portela, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Damian Flores, Alexandra Broderick
Respondent Attorney	Tina DiBenedetto, Andrew Rane

DATE FILED: 11/25/2024

/s/Maria Portela,Commissioner
Signature

DISSENT: /s/Kathryn Doerries,Commissioner
Signature

24IWCC0569

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAJUAN MILLER,

Petitioner,

vs. NO: 22WC007033

RHM, LLC & DART CORPORATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, temporary total disability, nature and extent, penalties, attorney's fees and "Respondent Due Credit," and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

We affirm the Arbitrator's finding regarding causal connection but edit the second to last sentence in that section to read: "However, given that Dr. Bauer cannot determine at what point he was at MMI, the Arbitrator finds the opinion of Dr. Novoseletsky, who determined Petitioner was at MMI on August 24, 2022 and could return to work full duty, to be more persuasive."

Regarding permanent partial disability (PPD), we modify the Arbitrator's analysis under §8.1b(b) of the Act:

- Factor (ii), Petitioner's occupation, we strike the word "heavy" and replace it with "lifting." We also give this factor "some weight."

- Factor (iii), Petitioner's age, we note that Petitioner had a pre-existing degenerative condition and a previous low back injury. We find there is no evidence that Petitioner's

current "low back pain" in any way aggravated or accelerated his pre-existing condition and his current condition seems to have resolved completely. Therefore, we give this factor "some weight."

- Factor (iv), future earning capacity, we add that there is no evidence that Petitioner's earning capacity was diminished and note that he was returned to work without restrictions.

- Factor (v), we find the Arbitrator's finding that Petitioner had been taken off work to be irrelevant since he was subsequently released without restrictions. Petitioner testified that he has difficulty sleeping, can't play with his kids like he wants to, can't play sports like he "usually" does, and he has terrible back pain. *T.31*. However, this testimony is not corroborated by Dr. Novoseletsky's final medical record, dated August 24, 2022, in which it was documented that Petitioner "is doing well" and "denies having pain at this time and any other associated symptoms" with 0/10 pain. *Px2, T.141*. We find the medical records do not corroborate any evidence of disability. Further, if Petitioner is currently having "terrible back pain" and difficulty with certain activities, we find this to be related to his underlying, pre-existing condition and not related to his February 22, 2022 work injury. We, therefore, give this factor "lesser weight."

Based on the preceding analysis, we reduce the PPD award to 3% of Petitioner as a whole.

We next turn to the issue of penalties and attorney's fees. We agree with the Arbitrator's conclusion that "throughout this entire claim, Respondent RHM has acted in bad faith. Despite various [pre-trialed], strong recommendations for the payment of benefits [and having] no basis for the refusal to pay TTD and medical care, the Respondent has sought to delay this matter at every corner with no justifiable excuse." *Dec. at 13 (unnumbered)*. We, therefore, affirm that Petitioner is entitled to awards under Sections 19(l), (k) and 16 for the late payment of undisputed medical expenses. However, under the circumstances of this case, we find Petitioner is also entitled to penalties and fees for the late payment of temporary total disability (TTD) benefits because Respondent had no basis to dispute payment of TTD from March 16, 2022 through July 15, 2022. March 16, 2022 is the date Petitioner's attorney emailed Respondent's attorney demanding TTD. July 15, 2022 is the date Respondent issued the check for 14 weeks, 2 days of TTD (2/23/22 – 6/23/22) in the amount of $6,217.14. This is a delay of 122 days, which we find to be without "good and just cause" under §19(l) and also "unreasonable or vexatious" under §19(k).

Therefore, we find Petitioner is entitled to the following penalties and fees:

§19(l) penalties for Respondent's failure to pay accrued TTD; Calculated from the 3/16/22 demand through the 7/15/22 check date.

122 days x $30 / day = $3,660.00

§19(l) penalties for Respondent's failure to pay

Undisputed medical bills through April 1, 2022 and which remained unpaid at time of hearing; Calculated from 7/16/22 (day after the §19(l) penalties are awarded for the unpaid TTD) through the hearing on February 8, 2023.

208 days x $30 / day = 6,240.00

Total §19(l) penalties = $9,900.00

§19(k) penalties for Respondent's unreasonable and vexatious failure to pay TTD benefits from the 3/16/22 demand through the 7/15/22 check date. Calculated as $6,217.14 (for 14-2/7 weeks for the period from 2/23/22 through 6/3/22), which is the amount Respondent offered to Petitioner in exchange for a continuance of the trial date.

$6,217.14 x 50% = $3,108.57

§19(k) penalties for Respondent's unreasonable and vexations failure to pay the undisputed medical bills through April 1, 2022 and which remained unpaid at time of hearing.

$1,688.56 x 50% = 844.28

Total §19(k) penalties = $3,952.85

§16 attorney's fees calculated as 20% of the §19(k) penalties.

$3,952.85 x 20% = Total §16 attorney's fees = $790.57

We acknowledge that a claimant's failure to appear for a §12 examination may result in a temporary suspension of benefits until such examination has taken place. *See R.D. Masonry, Inc. v. IC (Hunter)*, 215 Ill. 2d 397, 830 N.E.2d 584 (2005). However, we find that case distinguishable from the case at bar because there is no indication that *R.D. Masonry* induced the claimant to continue a scheduled trial by agreeing to pay a period of TTD benefits. Further, we are not awarding penalties and fees on any amounts that were disputed and incurred after Petitioner chose not to appear for the §12 examination on July 20, 2022. We are only awarding

penalties and fees on the undisputed medical expenses (per Dr. Bauer's opinion) and the TTD benefits which Respondent unreasonably and vexatiously withheld without any valid justification. We also find that Petitioner's failure to attend the §12 examination was not unreasonable since, despite its agreement to pay accrued TTD on June 27, 2022, Respondent waited to issue a check until July 15, 2022, which Petitioner did not receive until after the scheduled examination.

Finally, we correct a clerical error in the third paragraph of the Findings of Fact section (page 4, unnumbered), to reflect that the date of accident was "2/22/22" instead of "2/2/22."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $480.00 per week for a period of 23 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $480.00 per week for a period of 15 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 3% loss of use of Petitioner as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $4,136.17 for medical expenses under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $9,900.00 for penalties under §19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $3,952.85 for penalties under §19(k) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $790.57 for attorney's fees under §16 of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all 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 $31,000.00. 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 25, 2024

/s/ *Maria E. Portela*

SE/

O: 9/24/24

/s/ *Amylee H. Simonovich*

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DISSENT, IN PART

I agree with my colleagues in part, finding the opinion of Dr. Novoseletsky that Petitioner was at MMI on August 24, 2022, and could return to work full duty, is more persuasive than Dr. Bauer's opinion, but not because Dr. Bauer could not determine at what point Petitioner was at MMI. Dr. Bauer clearly opined that Petitioner's MMI date was either before or on the date of the April 1, 2022, lumbar MRI. (RX1) Dr. Bauer's opinion, that "there is no substantial difference between the April 1, 2022, MRI scan of the lumbar spine when compared to the MRI scan of the lumbar spine dated July 9, 2020" was never disputed by Dr. Novoseletsky. Further, Dr. Novoseletsky initially documented that Petitioner's injury is result of an overuse injury at work, which did not comport with Petitioner's work injury report; nonetheless, accident was not in dispute. However, Respondent did not obtain Dr. Bauer's medical opinion until November 2022, which was due to Petitioner's no-show to the first scheduled Section 12 evaluation appointment on July 20, 2022. Had Dr. Bauer seen Petitioner in July, his opinion that Petitioner was at MMI in April would have been more persuasive but under the circumstances of the no-show, the Section 12 evaluation was thwarted. In fact, by the time the Section 12 evaluation was rescheduled in November, Dr. Novoseletsky, who had been treating Petitioner's subjective complaints, had already determined that he reached MMI on August 24, 2022. Thus, I can agree that Petitioner reached MMI on August 24, 2022.

Further, I agree with the majority regarding the permanent partial disability reduction in large part because Petitioner was released without restrictions and testified to subjective complaints that were not corroborated by Dr. Novoseletsky's final medical record which speaks to Petitioner's credibility.

While Respondent paid the initial benefits late, it was not completely without justification. In my opinion, it is obvious that Respondent's delay in accepting this claim would be attributed to the discovery that Petitioner had a lower back claim with a different employer with treatment that extended only 11 months prior to the subject incident, through March 2021, and he never advised Respondent of his permanent restrictions as a result of that claim. Petitioner treated at Suburban Orthopaedics for both the 2020 injury and the subject, unwitnessed, accident. In fact, Dr. Novoseletsky's first office note on March 23, 2022, shows Petitioner's prior last visit was March 20, 2021. (PX2, T. 127) The April 1, 2022, MRI, was compared to the one done previously and the radiologist's Impression confirms that the 2022 lumbar spine MRI was similar to the previous July 2020 lumbar spine MRI, with a slight annular bulge at L4-5 with no stenosis or direct nerve root impingement. (PX2, T. 151) It is apparent Respondent questioned Petitioner's attorney about the prior accident and treatment on or before April 20, 2022, because Petitioner's attorney confirmed the prior accident and allegedly sent the prior treating medical records to counsel via email on April 20, 2022. (PX12) However, in the email, Petitioner's attorney led Respondent's attorney to believe that treatment was through January 27, 2021, and failed to mention that, as a result of that prior claim, there were permanent restrictions imposed in a later office visit on March 2021. *Id.*

While Respondent was then doing their due diligence investigating the prior accident, and until such time as they could get that information to an expert for a Section 12 medical causation opinion, Respondent's actions cannot be deemed so unreasonable as to warrant such hostile mischaracterization of Respondent's actions under the circumstances. Petitioner testified that he went back to Suburban Orthopaedics to clarify his work restrictions for his low back on March 10, 2021, and he was released with light-duty restrictions. (T. 33) Petitioner testified those work restrictions, for his prior low back accident were permanent and he did not advise Respondent of those restrictions. (T. 34) For that reason I take issue with the majority's opinion that Respondent acted "in bad faith" "throughout this entire claim." In finding bad faith, the majority relies on non-binding pretrial recommendations made by the Arbitrator for the payment of benefits but cites to no authority that supports a penalties award for ignoring pretrial recommendations.

The majority also emphasized that there was "no basis for the refusal to pay," when it is clear investigations were ongoing given the proximity to the Petitioner's prior workers' compensation claim which occurred while working for a different employer and discovery of pre-employment work restrictions that Petitioner failed to relay to Respondent. That said, I can agree to certain sanctions for late payments, but not others.

I take particular issue with the majority's award of Section 19(l) penalties for the non-payment of medical benefits for the time period Petitioner failed to appear for the Section 12 evaluation scheduled with Dr. Bauer on July 20, 2022, through the date he complied on November 16, 2022, despite receiving and cashing the mileage check. (T. 38-39, RX2, RX3) Petitioner's attorney emailed Respondents' attorneys on July 12, 2022, and advised Petitioner would not be attending the "IME" until TTD was paid, "as agreed upon." (PX17, T. 216) The check was issued on July 15, 2022. (RX4) On July 18, 2022, Attorney Poplin emailed Petitioner's attorney and advised the check was issued and sent a screen shot of the claim payment. (RX4) Petitioner testified that he chose not to attend the July 20, 2022, scheduled Section 12 appointment with Dr. Bauer. (T. 43-44)

Section 12 of the Act states, in pertinent part:

> If the employee refuses so to submit himself to examination or unnecessarily obstructs the same, his right to *compensation* payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this Act for such period. *820 ILCS 305/12*. (emphasis added)

Our Supreme Court has addressed the definition of "compensation." In *McMahan v. Illinois Industrial Comm'n,* 183 Ill. 2d 499, 512, 702 N.E.2d 545, 551 (1998), the Supreme Court held:

> Under section 8, the amount of "compensation" an injured employee is entitled to receive for an accidental injury not resulting in death is expressly defined to include not only compensation for lost wages (820 ILCS 305/8(b) (West 1992)), but also payment for medical services (820 ILCS 305/8(a) (West 1992)).

Further, our Illinois Supreme Court has reviewed cases with facts similar to those in the present case. In *R.D. Masonry, Inc. v. Indus. Comm'n (Hunter)*, 215 Ill. 2d 397 (2005), the

Supreme Court reviewed the history of Section 12 non-compliance when an employee is not receiving benefits and held that the employee must comply or he/she is not entitled to an award of benefits. Benefits would include TTD and medical. I would argue that without benefit entitlement, penalties and attorney's fees would likewise be excluded. The Court held as follows:

> That the provisions of section 12 must be complied with by the employee to entitle him to the benefits of the act was decided in *Hafer Washed Coal Co. v. Industrial Com.* 293 Ill. 425, 127 N.E. 752." *Jackson Coal Co.*, 295 Ill. 18 at 20-21 (1920).
>
> The holding of *Jackson Coal* was followed by this court in subsequent cases. See *Pocahontas Mining Co. v. Industrial Comm'n*, 301 Ill. 462, 134 N.E. 160 (1922), and *Paradise Coal Co. v. Industrial Comm'n*, 301 Ill. 504, 134 N.E. 167 (1922). In *Paradise Coal*, the claimant objected to the employer's request for a medical examination on the ground that no compensation was being paid and that he was not required to submit himself for examination until after it had been judicially determined that he was entitled to compensation. This court rebuffed that argument, holding that "the employer's right to require an injured employee to submit to an examination is not restricted to cases where the employer acknowledges his liability to make compensation payments, and if the employee refuses to submit to such examination at a time and place reasonably convenient his right to compensation payments is suspended until such examination shall have taken place." *Paradise Coal Co.*, 301 Ill. at 507.
>
> The critical language of section 12 at issue in this case has remained unchanged since the inception of the Act in 1913, despite numerous reenactments. *R.D. Masonry, Inc. v. Indus. Comm'n (Hunter)*, 215 Ill. 2d 397, 404-405 (2005).

In the subject case, Petitioner did not attend the Section 12 evaluation scheduled on July 20, 2022. He did not fulfill his obligation under Section 12 until November 16, 2022. Based upon the holdings in the cases discussed above, it is clear that Petitioner is not entitled to an award of TTD or medical expenses during that period. Therefore, I would vacate the award of the medical incurred for the August 24, 2022, office visit with Dr. Novoseletsky and adjust the penalties and fees awards accordingly. Further, I would vacate the award of TTD for the period July 20, 2022, through August 23, 2022, finding that Petitioner was not entitled to TTD for the same period of non-compliance. It then follows, that if the employee who is noncompliant with a scheduled Section 12 evaluation is not entitled to TTD or medical benefits, then certainly the employee is not entitled to penalties under Section 19(l), until he has complied with the requirements of Section 12.

Although not precedential, the Appellate Court has addressed this issue in *Warriner v. Ill. Workers' Comp. Comm'n*, 2012 IL App (5th) 110213WC-U, affirming a Commission decision reversing an award of TTD due to Petitioner's failure to attend a Section 12 evaluation and vacating penalties, including Section 19(l).

I would, therefore, subtract the days of non-compliance from the majority award of Section 19(l) penalties on the late payment of unpaid, disputed medical bills, that being during the period commencing July 20, 2022, through November 15, 2022 (118 days). I would

otherwise agree with an award of Section 19(l) penalties for the unpaid, undisputed medical bills incurred prior to April 1, 2022, for the period commencing June 25, 2022, (the day after the demand and bills were provided to counsel) through July 19, 2022, (the day before the first scheduled Section 12 evaluation) and beginning again on November 16, 2022, (after compliance/attendance at the second scheduled Section 12 evaluation) through the date of the Arbitration Hearing, on February 8, 2023, or 110 days x $30/day or $3,300.00.

Even if, arguendo, I agreed with the majority's award of Section 19(l) penalties for the entire period, the calculation of penalties in the majority opinion is incorrect. From June 25, 2022, the day after Petitioner demanded payment of medical, through the date of the Arbitration Hearing on February 8, 2023, is 229 days, not 232 days. Thus, the amount of the penalties would be calculated by taking 229 x $30 per day = $6,780.00, not the amount the majority awarded, $6,960.00.

I further disagree with the majority raising *sua sponte* the additional imposition of penalties pursuant to Sections 19(l) and 19(k) and attorney's fees under Section 16, for late payment of TTD for the period commencing March 16, 2022, through July 15, 2022, "because Respondent had no basis to dispute payment of TTD from March 16, 2022, through July 15, 2022." The majority based their calculations on the following: "March 16, 2022 is the date Petitioner's attorney emailed Respondent's attorney demanding TTD. July 15, 2022 is the date Respondent issued the check for 14 weeks, 2 days of TTD (2/23/22 – 6/23/22) in the amount of $6,217.14."

First and foremost, the Arbitrator did not award penalties or attorney's fees for the late payment of TTD. On June 22, 2022, Dr. Novoseletsky diagnosed Petitioner with lumbar pain and released him to return to work with restrictions pursuant to the June 2, 2022, FCE. (PX 2) Petitioner testified that as a result of his prior workers' compensation claim he was given permanent light-duty restrictions on March 10, 2021, which remained as of the date of the hearing. (T. 33-34) Thus, after Petitioner was released to return to work pursuant to the June 2, 2022, FCE, which confirmed "segmental inconsistencies resulting in mild sub-maximal effort" and "demonstrating the ability to perform 99.5% of the physical demands of his job as an Assembler," and demonstrated the ability to perform within the MEDIUM Physical Demand Category, (PX3, T. 154) ongoing entitlement to TTD was clearly at issue. However, Petitioner chose not to attend the Section 12 evaluation Respondent had scheduled to take place on July 20, 2022, thwarting the ability of Respondent to get a causal connection, or work capability, opinion as was their right under the Act. Of special note, Dr. Bauer noted that Petitioner did not provide full effort during the FCE on June 2, 2022 and he could not determine if Petitioner had any weight restrictions because of the sub-maximal effort. Dr. Bauer further opined that any weight restrictions Petitioner might have were not a result of this accident. (RX1)

The majority opinion notwithstanding, based upon the requirements of Section 12, it was absolutely unreasonable for Petitioner to not attend the scheduled appointment, whether or not he had received the accrued TTD payment. See *R.D. Masonry, Inc. v. Indus. Comm'n (Hunter)*, 215 Ill. 2d 397 (2005) ("The employer's right to require an injured employee to submit to an examination is not restricted to cases where the employer acknowledges his liability to make compensation payments.")

Most disconcerting is the fact that Petitioner did not file a review, nor did he argue in his brief that he should be awarded additional Sections 19(l) and 19(k) penalties and attorney's fees under Section 16 for late payment of TTD during that period beginning March 16, 2022, through July 15, 2022, or for any period of time.

Section 9040.70(d) of the Rules Governing Practice Before the Illinois Workers' Compensation Commission states, in pertinent part:

> Oral arguments will be limited to the issues raised in both the Review proceedings stipulation form or its equivalent for proceedings such as those under Section 19(h) and (f) of the Act and in the party's Statement of Exceptions and Supporting Brief, and to those in any complying response to those documents. 50 Ill. Adm. Code 9040.70.

Although, referring to Rule 7040.70, (now 9040.70) the Appellate Court held:

> It is well-settled that failure to present an issue before the Commission waives the issue. *Service Adhesive Co.*, 226 Ill. App. 3d 356. Absent an abuse of discretion, a reviewing court should not overturn an administrative decision of the Commission regarding its own procedural rules. *Jetson Midwest Maintenance v. Industrial Comm'n,* 296 Ill. App. 3d 314, 316-317, 694 N.E.2d 1037, 1038 (1998).

Given that Petitioner never filed a cross review, nor requested, prayed for, or asked for penalties or attorney's fees in his brief or during oral arguments, I would not impose any penalties under Sections 19(l) or 19(k) or attorney's fees under Section 16 for late payment of TTD in accordance with Rule 9040.70(d) and the Appellate Court holding in *Jetson Midwest Maintenance v. Industrial Comm'n*, 296 Ill. App. 3d 314.

Based upon all of the above, I dissent in part, and agree in part, with the majority opinion.

/s/*Kathryn A. Doerries*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007033
Case Name	Dajuan Miller v. RHM, LLC, loaning employer and Dart Corporation, borrowing employer
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	David Kane, Arbitrator

Petitioner Attorney	Damian Flores
Respondent Attorney	Andrew Rane, Blake Lynch

DATE FILED: 3/8/2023

/s/David Kane, Arbitrator

Signature

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Dajuan Miller
Employee/Petitioner

v.

RHM, LLC & Dart Corporation
Employer/Respondent

Case # **22** WC **007033**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **2/8/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **2/22/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $unknown; the average weekly wage was $**652.80**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **4** dependent children.

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

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

Respondent shall be given a credit of $**6,217.14** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**6,217.14**.

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

ORDER

Respondent shall pay reasonable and necessary medical services of $4,136.17, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $480.00/week for 23 weeks, commencing 3/16/22 through 8/23/22, as provided in Section 8(b) of the Act.

Respondent shall pay to Petitioner penalties of $**844.28**, as provided in Section 16 of the Act; $**1,688.56**, as provided in Section 19(k) of the Act; and $**6,960.00**, as provided in Section 19(l) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $480.00/week for 25 weeks, because the injuries sustained caused the 5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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

David A. Kane

Signature of Arbitrator

March 8, 2023

Findings of Fact

This matter was tried on February 28, 2023. The parties stipulated that on 2/22/22 the parties were operating under the Act, that an accident did occur, and timely notice was given. Additionally, an AWW of $652.80 was agreed, as well as the fact that Petitioner was married with 4 dependents at the time of the accident. Issues in dispute at the time of trial were causal connection, medical bills, TTD, nature and extent, penalties and attorney's fees, and credits for Respondent in regards to TTD and IME.

Petitioner was employed by Respondent RHM as of approximately October 2021. He was sent to work by RHM at Dart Corporation. He worked as a palletizer, which included lifting objects weighing up to 50 pounds (T. at 19). Petitioner testified that he had a prior workers' compensation claim in which he injured his back, last treated in March 2021 and was given permanent restrictions. He testified that he did not have treatment between his discharge in March 2021 up through the accident date in question on 2/22/22 (T. at 20, 49). Petitioner also testified that he did not have back pain during his employment for Respondent (T. at 49-50).

On 2/2/22, at approximately 9 or 10 PM, Petitioner was lifting a box of Dunkin Donuts cups, when he noticed immediate back pain (T. at 21). Upon noticing pain, Petitioner immediately reported the injury to Aaron and was sent to the inhouse physical therapist at Dart Corporation. On Wednesday, 2/23/23, Petitioner received a text message from Katherine at RHM checking in on how he was doing (T. at 25; *See* PX 11).

Petitioner treated with the inhouse therapist on approximately three occasions (T. at 23). Subsequently, Petitioner went to PCC Wellness on 3/15/22, complaining of back pain since 2/22/22 after lifting 70 pounds of material (PX 1). Post exam, Petitioner was referred for a sports medicine consult, and placed off work (PX 1). Petitioner testified that he gave the work status to Melissa Pappas at RHM, and continued to present each and every work status to his employer (T. at 28). On 3/16/22, an email was sent to a Ms. Pappas at RHM with a copy of the application, work status of 3/15/22 placing Petitioner off work, and asking that TTD be commenced (PX 10).

Next, Petitioner sought care with Dr. Novosoletsky of Suburban Orthopedics on 3/23/22 (PX 2). At that time, Petitioner complained of back pain rated a 10/10 on the right lower side of his low back (PX 2). Again, He was taken off work, and Dr. Novoseletsky further recommended that Petitioner undergo a lumbar MRI and an EMG study. On 3/24/22 an email was sent to Respondent's adjuster, Patricia Kelly, with the updated work status slips and records from 3/15/22 and 3/23/22 placing Petitioner off work; Ms. Kelly was also asked commence payment of TTD benefits (PX 11). Payment was not issued by Respondent. Follow up emails were sent to the adjuster on 3/28/22 and 4/5/22 again asking for TTD to be paid (PX 11).

On 4/8/22, Petitioner's counsel sent another follow up email to the adjuster asking for payment of TTD and providing notice of a pretrial hearing on 4/18/22 (PX 11). That same day, at 4:35 PM, an additional email was sent to another adjuster, Karey Kozin, who advised Petitioner's counsel the matter had been referred to counsel (PX 11). That same day,

at 4:49 PM, Petitioner's counsel forwarded Respondent's counsel copies of the medical records and notice of the upcoming pretrial date (PX 11). Petitioner's counsel, again, asked for payment of TTD benefits (PX 11).

Petitioner underwent the prescribed lumbar MRI on 4/1/22, which evidenced an L4/5 slight annular bulge that was similar to his previous MRI. He underwent the EMG on 4/16/22 which was not significant. The parties appeared before the Arbitrator on 4/18/22 for a pretrial at which time a recommendation was made by the arbitrator for the payment of TTD (See PX 13). On 4/26/22, another email was sent to counsel for RHM, asking if TTD had been sent. On 5/9/22, notice was sent to counsel for RHM of a pretrial on 5/17/22, and a follow up email regarding the ttd was sent to the same on 5/13/22 (PX 12).

At the follow up appointment of 5/11/22 with Dr. Novosoletsky, Petitioner was recommended to undergo an S1 injection. He declined as he was scared to undergo the procedure (T. at 29). Petitioner was therefore recommended to undergo an FCE, and kept off work. Petitioner's counsel followed up again regarding TTD on 5/13/22 (PX 12). As of the pretrial of 5/17/22, TTD still had not yet been paid. The Arbitrator again recommended that TTD be paid. On 5/18/22, the Arbitrator's recommendation for payment of TTD is documented within an email from Petitioner's counsel to the Arbitrator and Respondent's counsel (PX 13). Within the email to the Arbitrator, Petitioner's counsel requested a June 2022 arbitration date due to Respondent's failure to pay (PX 13). On 5/22/22, via email, this matter was assigned a trial date of 6/28/22 (PX 13).

Petitioner underwent an FCE at Team Rehab on 6/2/22 (PX 3). The FCE evidenced that Petitioner was capable of Medium physical demand

work, including limitations of frequent overhead lifting of 45 pounds, which was less than he was required to do for his job. On 6/8/22, Respondent sent notice of an IME scheduled for 6/8/22 and issued a mileage check (RX 2 & 3). On 6/15/22, another email was sent to RHM's counsel asking if TTD had been issued (PX 14). As of 6/20/22, TTD had not been paid, and Petitioner's counsel advised the Arbitrator that they were ready to proceed to hearing on 6/28/22 (PX 13).

During the 6/22/22 follow up, Dr. Novoseletsky diagnosed Petitioner with lumbar pain and released him to return to work with the restrictions of the FCE (PX 2). On 6/22/22, Petitioner's counsel sent an email to RHM's counsel with Petitioner's restrictions and asked if Respondent was able to accommodate the restrictions (PX 14). On 6/24/22, via email, copies of the outstanding medical bills for all providers were sent to both Respondents along with a demand for payment (PX 15).

On 6/27/22 at 4:41 PM, via email, counsel for RHM advised Petitioner's counsel that TTD for 14 & 2/7 weeks at a rate of $435.20, totaling $6,217.14 would be issued (PX 16). At 4:46 PM on 6/27/22, the day prior to the scheduled hearing date, Petitioner's counsel advised Respondent as follows, "With the understanding that you are also recommending that [Respondent] either provide light duty work or pay ongoing TTD, I will agree to RTC the matter (PX 16)."

Despite the written assertion and reliance by Petitioner that TTD would be paid, Respondent did not issue TTD as promised. Emails were sent to RHM's counsel on 7/7/22 an 7/11/22 asking for status on the TTD payment that was promised (PX 16). On 7/12/22, Petitioner's counsel asked for status of the TTD check and informed Respondent that Petitioner

would not attend the IME unless TTD was paid as the parties had agreed (PX 17). Respondent finally issued the TTD check on 7/15/22 (PX 18). On 7/19/22, 23 days after Respondent agreed to pay TTD, RHM's counsel wrote that the check had been issued. Petitioner did not attend the scheduled 7/20/22 IME. On 7/25/22, almost a month after the agreed continuance and 131 days from the original demand for payment (3/16/22), TTD was finally received by Petitioner (PX 18; See PX 10). The check paid Petitioner from 2/23/22 through 6/3/22. Moving forward, Respondent did not offer light duty work and did not pay TTD benefits as agreed by the parties.

Petitioner was again seen on 8/24/22 by Dr. Novoseletsky at which time he was discharged full duty and considered at MMI. Respondent subsequently rescheduled the IME and Petitioner was seen for an IME with Dr. Bauer on 11/16/22. Dr. Bauer noted that Petitioner did not exhibit symptom magnification. When asked what lumbar treatment had been reasonably necessary and causally related to the February 22, 2022 work accident, Dr. Bauer replied, "It was reasonable to undergo physical therapy for 5 weeks followed by a home exercise program for his subjective complaints of low back pain (RX 1)." Dr. Bauer stated it was difficult to determine when Petitioner could return to work full duty or when he was at MMI, but that he was at MMI as of the date of the exam, and likely at MMI as of 4/1/22. In forming his opinions, he relied on the MRI of 4/1/22.

Petitioner testified that he found a new job after his discharge in approximately November 2022. Petitioner testified that he has difficulty sleeping, and difficulties playing with his children. He noted that he continues to have back pain.

Conclusions of the Law

With respect to causal connection, the Arbitrator finds as follows:

The Arbitrator took into account Petitioner's testimony at Arbitration and deemed him to be a credible witness. The Arbitrator finds Petitioner met the burden of proof and established his lumbar condition of ill-being is causally related to the undisputed 2/22/22 work accident.

In finding causal connection, the Arbitrator takes into account the undisputed chain of events, the consistency of Petitioner's complaints of pain to the low back, and the credible opinions of Dr. Novosoletsky.

It is well-established law that proof of prior sound health and change immediately following and continuing after an injury may demonstrate that an impaired condition was due to the injury. Navistar International Transportation Corporation, 315 Ill. App. 3d 1197, 1206 (2000). The Court specifically stated that a causal connection between work duties and a condition may be established by a chain of events. This includes the Petitioner's ability to perform duties before the date of the accident and inability to perform the same duties following that date. Id.

In the case at hand, the Petitioner's testimony regarding the chain of events is well documented within the treating medical records and is undisputed. Although Petitioner had a previous lumbar injury for which he had a worker's compensation case, he testified that he last sought treatment in March 2021, and had not sought treatment for approximately 11 months prior to the accident at hand. Petitioner further testified that he had no back pain during the approximate 11 months. Furthermore, during the approximate 4 months he worked for Respondents, Petitioner had no

difficulties performing his work activities and was able to complete all duties including the lifting 50 pounds.

It is further undisputed that subsequent to the 2/22/22 incident, Petitioner immediately reported the accident to his employer RHM and was seen for in house therapy at Dart for a few visits. He received a text message from Respondent RHM's manager Katherine the day after the accident on 2/23/22, checking in on him and therapy at Dart (PX 11). He was subsequently seen at PCC wellness on 3/15/22 due to his continued complaints (PX 1). He complained of low back pain, was placed off work, and recommended to see a sports medicine provider. On 3/23/22 petitioner was seen by Dr. Novosoletsky of Suburban Orthopedics complaining of low back pain with numbness and tingling (PX 2). He was referred for an EMG and MRI, and continued off work. Dr Novosoletsky stated "In my opinion current injury is a result of overuse injury at work."

Upon review of the MRI, Dr. Novosoletsky recommended an SI joint injection which Petitioner elected to not undergo. He was therefore kept off work and recommended to undergo an FCE. He underwent the FCE on 6/2/22 at Total Rehab (PX 3). Ultimately, he was discharged full duty on 8/24/22 by Dr. Novosoletsky.

Petitioner was subsequently seen for an IME with Dr. Bauer on 11/16/22. He opined that Petitioner was at MMI but it was difficult to determine at what date he was at MMI. There is no dispute that Petitioner was at MMI as of the date of Dr. Bauer examination. However, given that Dr. Bauer cannot determine at what point he was at MMI, the Arbitrator finds the opinions of Dr. Novosoletsky to be more persuasive. The

Arbitrator therefore finds Petitioner's current condition of ill being of low back pain to be causally related to the work accident of 2/22/22.

With respect to the reasonableness and necessity of accrued medical, the Arbitrator finds as follows:

The Arbitrator finds the record as a whole to support a finding that all care rendered through the date of arbitration was reasonable, necessary, and causally related to the work accident.

Pursuant to Section 8.7(i)(3) of the Act, once the utilization review process is invoked by Respondent, "An employer may only deny payment of or refuse to authorize payment of medical services rendered or proposed to be rendered on the grounds that the extent and scope of medical treatment is excessive and unnecessary in compliance with an accredited utilization review program under this Section."

Respondent did not offer a single UR report into evidence to deny the necessity of any of the care rendered.

The issue of causal connection has already been addressed, therefore, there is no dispute as to the reasonableness and necessity of the care rendered. Respondent did not dispute the fee schedule analysis that Petitioner put into evidence as PX9. Therefore, the Arbitrator awards $4,136.17 in medical bills.

With respect to TTD benefits, the Arbitrator finds as follows:

The Arbitrator finds Petitioner satisfied his burden of proof and is awarded TTD benefits from 3/15/22 through 8/23/22.

The Arbitrator has already found causal connection on this matter. The only evidence that Petitioner submitted to dispute TTD, is Dr. Bauer's IME report. Dr. Bauer was unable to opine when Petitioner was unable to go back to work, only that he was at MMI as of that date he was seen.

Given, Dr. Bauer's lack of ability to determine Petitioner's work status, Respondent has no basis , whatsoever, for the refusal to pay TTD through the MMI date. The Arbitrator relies on the work status opinions of Dr. Novosoletsky that placed Petitioner either off work, or on light duty that Respondent was unable or unwilling to accommodate.

The Arbitrator therefore awards Petitioner TTD for the periods of 3/15/22 through 8/23/22 23 weeks at a minimum rate of $480 equals 11,040.00. Taken into account the previously paid $6,217.14, the Arbitrator awards Petitioner $4,822.86 in additional TTD benefits.

With Respect to Nature & Extent the Arbitrator finds as follows:

The Arbitrator having found causal connection, TTD, and the medical bills reasonable and necessary finds that Petitioner sustained lumbar pain, with a recommendation for an SI Joint injection. Taking into account Section 8.1.b(b) the Arbitrator notes as follows:

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Palletizer at the time of the accident and that he is able to return to work in his prior capacity as a result of said injury. The Arbitrator

notes the heavy requirements of the job. Because of the laborious job, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 40 years old at the time of the accident. Because of his young age, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner was returned to work . Because of this, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner was taken off work by his treating Physician and notes continued pain. Because of this, the Arbitrator therefore gives greater weight to this factor.

Accordingly, the Arbitrator awards the Petitioner 5% loss MAW totaling 25 weeks. Using a PPD rate of $480.00, the Arbitrator thus awards Petitioner $12,000.00 in PPD benefits.

With Respect to Penalties & Attorneys' fees the Arbitrator finds as follows:

Respondent RHM's handling of the case is inexcusable. The Arbitrator finds that the Respondent engaged in bad faith handling of this matter, and finds that the facts presented show penalties and attorneys' fees pursuant to Section 16, 19(l) and 19(k) of the Act are warranted.

Pursuant to Section 19(l) of the Act, penalties are appropriate if Respondent fails, neglects, refuses, or unreasonably delays payment of

benefits due. An employer withholding benefits has the burden of proving that its delay was reasonable. Jacobo v. Illinois Workers' Comp. Comm'n, 959 N.E.2d 772 (2011). In McMahan v. Indus. Comm'n, the Supreme Court held Section 19(l) penalties are "mandatory if the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." 183 Ill. 2d 499 at 515. When Respondent fails to meet its burden, Petitioner is to be awarded thirty dollars ($30) per day, with a maximum award of ten thousand dollars ($10,000.00).

Under a more stringent standard, penalties under Section 19(k) and Section 16 are appropriate if Respondent is guilty of delay or unfairness towards the employee in the payment of benefits, is unreasonable or vexatious in delaying payment of benefits, or engages in frivolous defenses which do not present real controversy. Unlike Section 19(l) penalties, these penalties are not mandatory, they are discretionary and "intended to address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose." Mech. Devices v. Indus. Comm'n, 344 Ill. App. 3d 752.

It is well documented that throughout this entire claim, Respondent RHM has acted in bad faith. Despite various pretriald, strong recommendations for the payment of benefits, no basis for the refusal to pay TTD and medical care, the Respondent has sought to delay this matter at every corner with no justifiable excuse.

On 3/24/22 an email was sent to adjuster Patricia Kelly, with the work status slips and records of 3/15/22 and 3/23/22 placing Petitioner off work, and asking that she commence TTD (PX 11). Follow up emails were sent to the adjuster on 3/28/22 and 4/5/22 asking for TTD to be paid (PX 11). A

follow up email was sent to the adjuster on 4/8/22 again asking for TTD, and provided notice of a pretrial hearing on 4/18/22. An additional email was sent to another adjuster Karey Kozin on 4/8/22, who indicated the matter had been referred to counsel on 4/8/22. On 4/8/22, medical records and notice of the upcoming pretrial date were forwarded to counsel for RHM, again asking for TTD (PX 11). At the 4/18/22 pretrial, TTD was recommended. (see PX 13)

On 4/26/22, another email was sent to counsel for RHM, asking if TTD had been sent. On 5/9/22, notice was sent to counsel for RHM of a pretrial on 5/17/22, and a follow up email regarding the ttd was sent to the same on 5/13/22 (PX 12).

At the pretrial of 5/17/22, TTD had not yet been paid and Petitioner's counsel sought a trial date. ON 5/22/22, this matter was assigned a trial date of 6/28/22 (PX 13). On 6/15/22, another email was sent to RHM's counsel asking if TTD had been issued (PX 14). As of 6/20/22, TTD had not been paid, and Petitioner's counsel advised the Arbitrator that they were ready to proceed to hearing on this matter on 6/28/22 (PX 13).

On 6/27/22, counsel for RHM wrote that TTD for 14 & 2/7 weeks at a rate of $435.20, totaling $6,217.14 would be issued (PX 16). Based upon this assertion, Petitioner's counsel agreed to continue this matter. Emails were sent to RHM's counsel on 7/7/22, 7/11/22, & 7/12/22 asking for the status of the TTD check and informing Respondent that Petitioner would not attend the IME unless the agreed upon TTD was paid (PX 16& 17.) On 7/19/22, over 3 weeks after the continuance agreement, RHM's counsel wrote that the check had been issued. On 7/25/22, TTD was finally received by Petitioner and petitioner's counsel (Px 18).

Petitioner provided all of the medical bills to Respondent on date 6/24/22 (PX 15). There is absolutely no dispute with regards to the medical bills through April 1, 2022, which include the office visit of PCC Wellness, the initial visit of Suburban Orthopedics, and the MRI. Dr. Bauer felt treatment through 4/1/22 was reasonable and necessary, and he relied on the MRI in forming his opinions. Despite this, Respondent did not pay a single medical bill. As of the date of arbitration, 232 days had passed since Petitioner made a formal demand for payment of the medical bills, including the undisputed bills through 4/1/22.

Under Section 19l an employer withholding benefits has the burden of proving that its delay was reasonable and section 19l penalties are "mandatory if the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay." There is absolutely no justification for Respondent's failure to issue payment for the undisputed bills. Essentially, Respondent has sat on this matter, and not progressed it any further. As there is no justification for failure to pay the undisputed bills, the arbitrator must award section 19l penalties at $30 a day.

Therefore the Arbitrator awards $6,960.00 in section 19l penalties.

This case is in a nutshell the perfect example of a Respondent engaging in delay or unfairness towards an employee. Not withstanding the fact that they engaged in a completely abhorrent manner with regards to TTD, they fail to have any basis whatsoever to deny payment of the bills. Section 19k and 16 are intended to address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose. Quite simply, the Respondent engaged in bad faith through the

entire case. These penalties are quantifiable using the 3/16/22 PPC visit, 4/1/22 Suburban Ortho office visit, and the MRI of 4/1/22. The bills that Respondent has no justification to fail to pay, and does not deny the fee schedule amounts total $1,688.56. Therefore the Arbitrator awards $844.28 in 19k penalties and $337.71 in 16 penalties.

With Respect to Credits claimed by Respondent, the Arbitrator finds as follows:

Respondent is entitled to credit for amounts it has paid, noting that the Arbitrator has awarded more than was paid in TTD, so there is a additional amount due.

With regards to credit for the first IME of July 15, 2022, the Arbitrator declines to award a credit for the IME for the missed appointment.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC001943
Case Name	Brian Banks v. McLane/Midwest
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0570
Number of Pages of Decision	2
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Haris Huskic
Respondent Attorney	Joseph D'Amato

DATE FILED: 11/26/2024

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRIAN BANKS,

Petitioner,

vs. NO: 23 WC 01943

McLANE MIDWEST,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, prospective medical, and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 19, 2024 is hereby affirmed and adopted.

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

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 26, 2024
O111924
AHS/ldm
051

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

/s/*Maria E. Portela*
Maria E. Portela

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC001943
Case Name	Brian Banks v. McLane/Midwest
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Joseph D'Amato

DATE FILED: 5/17/2024

/s/Elaine Llerena, Arbitrator

Signature

INTEREST RATE WEEK OF MAY 14, 2024 5.165%

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

Brian Banks
Employee/Petitioner
v.
McLane Midwest
Employer/Respondent

Case # **23** WC **001943**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **February 29, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☒ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **January 5, 2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**100,100.00**; the average weekly wage was $**1,925.00**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **0** dependent children.

Respondent shall be given a credit of $**15,399.96** for TTD, $**2,892.03** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**18,291.99**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary partial disability benefits for 18-5/7 weeks, commencing October 21, 2023, through February 29, 2024, totaling $6,779.87, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $1,283.33 per week for 32-2/7 weeks, commencing March 9, 2023, through October 20, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services of $34,688.15, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for medical expense previously paid.

Respondent shall authorize and pay for prospective medical care in the form of an L3 to L5 decompression and L5-S1 fusion as recommended by Dr. Mekhail pursuant to Sections 8(a) and 8.2 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Elaine L Llerena

MAY 17 2024

Signature of Arbitrator

ICArbDec19(b)

FINDINGS OF FACT

This matter proceeded to hearing on February 29, 2024, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Petition for Immediate Hearing under Sections 19(b)/8(a). The issues in dispute were causation, medical expenses, temporary total disability benefits, temporary partial disability benefits, and prospective medical. Arbitrator's Exhibit 1 (AX1).

Job Duties

Petitioner started working for Respondent as a CDL Class A driver in August 2021. (T. 9) Petitioner would operate different trucks for Respondent, such as tractor-trailer trucks, 53-footers, 48-footers, and 26-footers. (T.10) As a driver, Petitioner was in charge of doing pre-trip inspections of the truck, driving, and unloading. (T. 12) Petitioner testified that he would usually work between 12-16 hours per day. (T.12) All the trucks came equipped with ramps and air brakes. (T. 10) The ramps were manual, so he would have to go to the back of the truck and pull them out in order to unload products. *Id.*

Prior Medical Condition

Petitioner testified that did not undergo treatment or have any issues with his lumbar spine, left hip, and left hand prior to January 5, 2023. (T.14)

Accident

On January 5, 2023, Petitioner was taking product down the ramp of the truck when the ramp collapsed. (T. 12) The ramp flipped to the left and Petitioner fell about 4-5 feet. (T. 13) Petitioner tried to catch himself, injuring his wrist and falling on his left side and hip. *Id.* Petitioner could not move after the fall and remained on the ground for about 10-15 minutes. (T. 14)

Summary of Medical Records

On January 5, 2023, Petitioner saw Dr. Clifton Ward at Franciscan Health WorkingWell. (PX1, pgs. 10-12) Petitioner described the work accident and complained of left wrist and left hip pain. Dr. Ward diagnosed Petitioner as having a contusion of the left wrist and left hip. Dr. Ward prescribed pain medication, provided Petitioner with a left wrist cock-up splint, and released Petitioner to return to work with restrictions of no use of the left wrist. Petitioner followed up with Dr. Ward a couple more times. (PX1, pgs. 31-33, 36-38) Petitioner reported improvement, but continued to have left wrist pain. Dr. Ward subsequently adjusted Petitioner's work restrictions to no lifting more than 10 pounds with the left wrist.

On January 23, 2023, Petitioner saw Dr. Ravi Barnabas at RTB, S.C. (PX2, pgs. 98-99) Petitioner described the January 5, 2023, work accident and complained of ongoing left wrist, left hip and back pain. Dr. Barnabas diagnosed Petitioner with a left hip strain, left wrist strain, and lumbar strain. Dr. Barnabas opined that the diagnoses were causally related to the January 5, 2023, work accident, prescribed pain medication and ordered a proper brace and physical therapy. Dr. Barnabas continued Petitioner's work restrictions. Petitioner began physical therapy on January 25, 2023, at MTN ProActive Rehab. (PX3, pg. 157)

On February 15, 2023, Dr. Barnabas ordered MRIs of the left wrist and back. (PX2, pgs. 96-97) Petitioner underwent the MRIs on March 1, 2023. (PX2, 101-104) The left wrist MRI revealed subcutaneous edema along the palmar aspect of the left wrist. The lumbar MRI revealed broad based posterior disc herniation

superimposed on fact/ligamentum flavum hypertrophy at L4-L5 and grade 1 anterolisthesis causing severe central canal and moderate left/mild right foraminal stenosis; and broad-based posterior disc protrusion superimposed on facet/ligamentum flavum hypertrophy at L3-L4 causing moderate central canal and mild bilateral foraminal stenosis.

Dr. Barnabas reviewed the MRIs on March 6, 2023, and ordered additional physical therapy and referred Petitioner to a pain specialist. (PX2, pgs. 94-95) Dr. Barnabas also took Petitioner off work. On March 14, 2023, Petitioner saw Dr. Krishna Chunduri at Advanced Spine & Pain Specialists. (PX4, pgs. 318-319) Petitioner described the January 5, 2023, work accident and complained of pain in his low back with numbness and tingling radiating down his left buttock and thigh and pain radiating to the right. Petitioner also complained of some discomfort and swelling in his left wrist. Dr. Chunduri reviewed the MRIs, diagnosed Petitioner as having lumbar spondylosis with left radiculitis and a left wrist contusion, and recommended a transforaminal epidural steroid injection, which Dr. Chunduri administered at left L4 and L5 on March 21, 2023. (PX4, pg. 320; PX6, pg. 370)

On April 4, 2023, Petitioner followed up with Dr. Chunduri and reported complete pain relief in his left leg following the injection, but ongoing discomfort in the low back. (PX4, pgs. 325-326) Dr. Chunduri diagnosed Petitioner as having a left wrist contusion and lumbar spondylosis with left radiculitis, ordered that Petitioner continued with physical therapy, and kept Petitioner off work. Petitioner returned to Dr. Barnabas on April 5, 2023, and reported that the injection helped with his left-sided pain, but he was noticing right-sided pain in the upper part of the right buttock. (PX2, pgs. 92-93) Dr. Barnabas diagnosed Petitioner with lumbar spondylosis with right radiculitis, continued physical therapy and kept Petitioner off work.

On April 12, 2023, Petitioner underwent a Section 12 examination (IME) by Dr. Carl Graf at Respondent's request. (RX1, pgs. 83-87) Petitioner described the January 5, 2023, work accident and Dr. Graf examined Petitioner and reviewed Petitioner's medical records. Dr. Graf diagnosed Petitioner with preexisting lumbar spondylolisthesis at L4-L5 with spinal stenosis and opined that Petitioner suffered an exacerbation of a preexisting condition. Dr. Graf determined that Petitioner's condition and diagnosis was causally related to the work accident. Dr. Graf opined that the treatment Petitioner had undergone was reasonable, necessary and customary. Dr. Graf opined that the recommended additional month of physical therapy was reasonable, necessary and customary.

On May 4, 2023, Dr. Barnabas noted that Petitioner was having right sided back pain and that he was walking with an antalgic gait. (PX2, pgs. 90-91) Dr. Barnabas instructed Petitioner to follow up with Dr. Chunduri to discuss whether a second injection was warranted. Petitioner returned to Dr. Chunduri on June 20, 2023, complaining of continued right-sided back pain. (PX4, pgs. 323-324) Dr. Chunduri opined that it appeared likely that Petitioner had a facet injury on the right side and ordered a right L4-L5, L5-S1 diagnostic medial branch block to confirm. Petitioner underwent the diagnostic medial branch block on June 27, 2023. (PX6, pg. 365) On July 5, 2023, Petitioner followed up with Dr. Chunduri and reported that the right-sided diagnostic medial branch block did not relieve any of his pain and that he had ongoing pain on his right side that radiated into his right buttock and upper leg. (PX4, pgs. 321-322) Dr. Chunduri diagnosed Petitioner with lumbar spondylosis with right radiculitis and recommended an L4 and L5 transforaminal epidural steroid injection, which Petitioner underwent on July 25, 2023. (PX4, pg. 328) On August 8, 2023, Petitioner reported continued discomfort, especially at night when sleeping, despite the recent steroid injection. (PX4, pgs. 329-330) Dr. Chunduri diagnosed Petitioner with lumbar spondylosis with right radiculitis and referred Petitioner to Dr. Anis Mekhail for a surgical consultation/second opinion.

Petitioner saw Nurse Practitioner James Hanna at Dr. Mekhail's office on August 14, 2023. (PX6, pgs. 361-362) Hanna diagnosed Petitioner with low back pain with bilateral radiculopathy and recommended one

more injection. Hanna explained that if the injection failed to help, then surgery would be necessary. Petitioner returned to Hanna on August 28, 2023, indicating that he had forgone the injection. (PX6, pg. 360) Hanna recommended a posterior spinal fusion at L5-S1. Petitioner agreed with the recommendation.

Petitioner underwent a second IME with Dr. Graf on August 30, 2023, at Respondent's request. (RX1, pgs. 88-96) Petitioner complained of variable back pain in the central and right side of his low back. Petitioner indicated that his back was stiff and denied any radiating leg pain. Petitioner reported that his leg pain resolved after his initial injection. Dr. Graf examined Petitioner and reviewed the medical records provided to him. Dr. Graf found that Petitioner had reached maximum medical improvement (MMI) regarding his low back. Dr. Graf did not feel Petitioner was a surgical candidate given the resolution of his leg pain. Dr. Graf opined that Petitioner's treatment had been reasonable but prolonged. Dr. Graf recommended a functional capacity evaluation (FCE).

On August 31, 2023, Petitioner followed up with Dr. Barnabas. (PX2, pg. 107) Dr. Barnabas opined that Petitioner might be a candidate for fusion surgery due to his ongoing pain. Dr. Barnabas ordered work conditioning to be followed by an FCE. Petitioner began work conditioning on September 11, 2023. (PX3, pg. 117) Petitioner saw Dr. Mekhail on September 21, 2023. (PX5, pg. 359) Dr. Mekhail found that all of Petitioner's ongoing symptoms stemmed from the work accident and discussed the surgery, specifically extending it to an L3 to L5 decompression and L5-S1 fusion. Petitioner underwent the FCE on October 6, 2023, the results of which determined that Petitioner could perform within the heavy physical demand category. (PX5, pgs. 332-343) On October 11, 2023, Dr. Barnabas released Petitioner to return to work per the FCE results. (PX2, pg. 105) On October 16, 2023, Dr. Mekhail reviewed the FCE and noted that Petitioner reported that he had returned to work and was managing his pain with medication. (PX5, pg. 358) Dr. Mekhail determined that since Petitioner continued to have pain, he would still be a candidate for surgery.

On November 20, 2023, Hanna noted that Petitioner was working per the results of the FCE and that Petitioner requested a note restricting him to back hauling and shuttle driving. (PX5, pg. 359) Petitioner explained that he was unable to lift heavy weight and when he did it at work, it made his back pain and radiculopathy worse. Hanna provided the note, noting that Petitioner had been doing back hauling and shuttle driving without problems. Petitioner was to follow up once surgery was approved.

Dr. Mekhail's evidence deposition was taken on November 27, 2023. (PX10) Dr. Mekhail's testimony was consistent with the findings and opinions in his office notes. Dr. Graf's evidence deposition was taken on January 15, 2024. (RX1) Dr. Graf's testimony was consistent with the findings and opinions in his reports.

Testimony and Petitioner's Current Condition

On May 30, 2023, Respondent offered Petitioner light duty work within the restrictions supplied by Dr. Graf during his April 12, 2023, IME. (T. 4-5) The parties stipulated this offer was made and Petitioner indicated he would prefer to remain off work per the direction of Dr. Barnabas' on May 2, 2023. *Id.*

Petitioner testified that he returned to work for Respondent in October of 2023, however he was assigned different duties as a result of his injuries and limitations. (T. 29) Petitioner currently only drives and does no loading or lifting. *Id.* Prior to the accident, Petitioner would work up to 16 hours per day, but as a result of the accident, he is only able to work around 10 hours per shift with breaks in between. (T. 30) Petitioner testified that it was his supervisor who asked him to obtain the November 20, 2023, work note. (T. 37-39) Petitioner explained that when he first returned to work, he was put in as a shuttle driver because that is where he was needed most. (T. 39-40)

Petitioner testified that he wants to proceed with the spine surgery because he wants the quality of his life to get better and not have to deal with constant pain. (T. 28)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

A claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co.* The law is clear that Respondent takes Petitioner as it finds him. *Baggett v. Industrial Comm'n*, 201 Ill. 2nd 187, 199 (2002). It is necessary that the claimant show that a work-related accident was a causative factor in the claimant's condition of ill-being. *Sysbro, Inc. v. Industrial Comm'n*, 207 Ill. 2nd 103, 205 (2003). It is not, however, necessary that the employee demonstrate that the injury was "the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Land Lakes Co. v. Industrial Comm'n* 359 Ill. App 3rd 582, 592 (2005).

The Arbitrator notes that Petitioner did not have any problems with or treatment to his lumbar spine, left hip and left hand prior to the January 5, 2023, work accident. Following the accident, Petitioner gave a consistent history of injury to all medical providers. Further, the Arbitrator notes that Petitioner has consistently related that since the accident, he has experienced pain, numbness, decreased physical activity, instability, and leg pain. The Arbitrator also notes that Dr. Graf opined that Petitioner's lumbar spine condition was causally related to the January 5, 2023, work accident. Additionally, Dr. Mekhail found that all of Petitioner's ongoing symptoms stemmed from the work accident.

Based on the above, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the January 5, 2023, work accident.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes her finding above that Petitioner's current condition of ill-being is causally related to the January 5, 2023, work accident. Further, the Arbitrator notes that Petitioner was sent for treatment by Respondent following the accident and that Petitioner has undergone treatment as a result of the January 5, 2023, work accident. The Arbitrator also notes that Dr. Graf found the treatment Petitioner had undergone was prolonged, but reasonable.

Based on the above, the Arbitrator finds that Respondent shall pay outstanding medical expenses, totaling $34,688.15, pursuant to Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes her finding above that Petitioner's current condition of ill-being is causally related to the January 5, 2023, work accident. The Arbitrator further notes that on October 16, 2023, Dr. Mekhail determined that since Petitioner continued to have pain, he would still be a candidate for

surgery. Dr. Graf disagreed and found that Petitioner had reached MMI regarding his low back condition and did not feel Petitioner was a surgical candidate. However, the Arbitrator notes that Petitioner continues to have lumbar spine pain and problems. Further, Petitioner has exhausted conservative care and continues to have lumbar spine pain and problems. The Arbitrator finds based on the medical records, the diagnostic exams and Petitioner's ongoing pain and complaints, Dr. Mekhail's findings and opinions more persuasive than those of Dr. Graf regarding Petitioner's need for prospective medical care.

Based on the above, the Arbitrator finds that Petitioner is entitled to prospective medical care. Respondent shall authorize and pay for prospective medical care in the form of an L3 to L5 decompression and L5-S1 fusion as recommended by Dr. Mekhail pursuant to Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes her finding above that Petitioner's current condition of ill-being is causally related to the January 5, 2023, work accident. The Arbitrator further notes that Petitioner was off work from March 9, 2023, through October 20, 2023. (AX1) Then, from October 21, 2023, forward, Petitioner has been working, but only drives and does no loading or lifting as he did prior to the work accident, per the restrictions provided by Hanna/Dr. Mekhail.

The parties agreed that Petitioner's average weekly wage was $1,925.00. Respondent introduced 18 weeks of paystubs from the time Petitioner returned to work on October 21, 2023, through the date of the hearing. If Petitioner had returned to full duty work within the same role, he would have made $34,650.00 during those 18 weeks. However, based on the payroll ledger, Petitioner only earned $24,480.20.

Based on the above, Petitioner is entitled to temporary total disability benefits from March 9, 2023, through October 20, 2023. Additionally, Petitioner is entitled to temporary partial disability benefits for 18-5/7 weeks, from October 21, 2023, through February 29, 2023, totaling $6,779.87.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that Respondent has paid $15,399.96 in temporary total disability benefits and $2,892.05 in temporary partial disability benefits. Respondent shall receive a credit for the amounts paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC008890
Case Name	Patrick Kelley v. Gatehouse Media
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0571
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Jason Esmond
Respondent Attorney	Charles Knell

DATE FILED: 11/26/2024

/s/Raychel Wesley,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

☒ 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

PATRICK KELLEY,

Petitioner,

vs. NO: 18 WC 08890

GATEHOUSE MEDIA

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of accident, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 22, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The bond requirement in §19(f)(2) of the Act is applicable only when "the Commission shall have entered an award for the payment of money." 820 ILCS 305/19(f)(2). Based upon the denial of compensation herein, no bond for the removal of this cause to the Circuit Court is required. 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 26, 2024

/s/ *Raychel A. Wesley*

RAW/wde

O: 9/25/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC008890
Case Name	Patrick Kelley v. Gatehouse Media
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Jason Esmond
Respondent Attorney	Charles Knell

DATE FILED: 8/22/2023

THE INTEREST RATE FOR THE WEEK OF AUGUST 22, 2023 5.29%

/s/Stephen Friedman, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **Winnebago**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Patrick Kelley
Employee/Petitioner

v.

Gatehouse Media
Employer/Respondent

Case # **18** WC **008890**

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 **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Rockford**, on **July 26, 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 **December 31, 2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**23,089.04**; the average weekly wage was $**444.02**.

On the date of accident, Petitioner was **74** 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 $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

BECAUSE PETITIONER FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE SUSTAINED ACCIDENTAL INJURIES ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH RESPONDENT ON DECEMBER 31, 2017, PETITIONER'S CLAIM FOR COMPENSATION IS HEREBY DENIED.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

/s/ Stephen J. Friedman **AUGUST 22, 2023**

Signature of Arbitrator

Statement of Facts

Petitioner Patrick Kelly testified that on December 31, 2017, he was working for Respondent Gatehouse Media. He had worked for them for 5 years delivering newspapers. He applied through a newspaper ad and was interviewed. The route he was offered was set up by Respondent for his to take over. He worked 7 days a week starting at 1:00 AM. He testified for holiday and Sunday papers, he was told to get there early, around 8:00 PM to put the inserts into the papers, then go home and come back at 1:00 AM to get the papers. He would go to the distribution center in Machesney Park to wait for the truck to arrive. He was told to be there by the manager. Once the truck arrived, they had carts to take the bundles of newspapers to take to their vehicles in the parking lot, load the vehicles, bring back the carts, and proceed to deliver the newspapers on the route. The route was set by the company. He was given the addressed to deliver to. He could decide on what direction to go, but the papers needed to be delivered by 6:00 AM. His route was 100 to 120 papers. Some papers were doorstep delivers, but most were mail tube. If he was late, and a customer complained, the cost would be deducted from his pay. He did not collect payment from customers. He occasionally solicited customers, but the company would tell him if new customers were added or cancelled from his route. He was paid a certain amount for each paper delivered. He was paid by check. No taxes were taken out. He received a 1099, not a W-2 form. He testified he had medical insurance through Respondent. He testified that if he did choose not to work a day, he would get fired. He was never fired for any delivery issues.

Jerry Schlickman testified that he is employed by Respondent as the DC setup, setting up paperwork, unloading trucks. He was doing the same job in December 2017. He testified that December 31 was a Sunday and December 30 was a Saturday. So, for the 31st, they would start on the 30th. He testified he would go downtown to get the paperwork for each individual carrier and lay it out on the carrier stations at the distribution center. Carriers, contractors, and delivery persons are different designations for the same persons. Each carrier had a table with their name or route number. When the carriers came, they would go to the allotted spot. He would arrive back before midnight. The carriers would arrive before the truck got there, usually at 2:00 AM. The truck would usually arrive about 2:30 to 3:00. They were not required to arrive at 8:00 PM the night before. They were not required to come in early for special papers to put in inserts. They would not come in before midnight.

Gabriel Torres testified that he is the district manager for Respondent. He oversees the contractors. He closes out the warehouse, making sure everybody picks up their papers. The contractors usually do the inserts, primarily Sundays. He would want them their as soon as the papers arrive because daily delivery deadline is 6:00 AM, Sunday is 7:30 AM. The truck would arrive around midnight. If a carrier cannot make his route, it is acceptable to have a spouse or friend to it for them.

Petitioner testified to his prior medical conditions. He had a rotator cuff repair in 1997. He had a right hip replacement in 2006 and bilateral knee replacements in 2007. On May 2, 2011, he had a left hip replacement and a revision on October 13, 2011. Petitioner was kept off work at times for those surgeries. Petitioner had prior workers' compensation claims. He fractured his coccyx working for Amre Cabinet Resurfacing January 17, 1991. He received 52% loss of the person as a whole in settlement of 91WC002956 on September 21, 1994 (RX 13). He went to nursing school. He filed case 00WC050108 against Trinity Hospital for a date of loss of June 13, 1999. That case was settled October 5, 2001 for 1% man as a whole (RX 13). Petitioner filed case 03WC042767 against Children's Memorial Hospital for a right arm and shoulder rotator cuff injury. That case was settled for 20% loss of the right arm on June 2, 2002 (RX 13).

Petitioner presented to Dr. Braaksma on December 19, 2016 with low back pain starting September 2016 (RX 14). Petitioner had an MRI October 14, 2016finding degenerative spondylolisthesis at L3-4 and L4-5 right sided neural foraminal narrowing. Dr. Braaksma recommended a lumbar fusion (RX 14). Petitioner underwent an L3-4 fusion and L4-5 fusion on January 17, 2017 (RX 15). A lumbar spine MRI performed May 17, 2017anterolisthesis on L4-5 and L5-S1, disc bulge at L2-3 and L3-4, extensive post operative changes at L4-5, and broad-based right posterior lateral disc osteophyte contacts at L5-S1. The assessment note suspected disc extrusion above the level of the fusion at L3-4 (RX 16). Petitioner testified he had a right hip surgery in August 2017. On August 31, 2017, Dr. Jain notes a lot of right hip muscle pain. Petitioner's medication list included Hydrocodone-acetaminophen, 2 tablets 4 times per day (RX 17). Petitioner testified after these procedures he was doing fine. He had no issues making his deliveries. On November 30, 2017, Petitioner complained of back pain. His hydrocodone prescriptions were refilled (RX 18).

Petitioner testified that he arrived at the distribution center on December 30, 2017 at 8:00 PM. On December 31, 2017, he had just gotten his papers from the distribution center and was filling up the carts for the papers when an argument was going on inside the distribution center between a black lady and another black person, yelling, and it got physical for a short time. He was inside the building when it started. The papers had been delivered to the distribution center when the argument started. He testified he had already loaded his papers in his car. His cart was empty.

Then 3 or 4 cars pulled into the parking lot. One woman's family had come to settle the dispute. A gun was shown. Police were called and were in route with sirens. The lady to started the argument was pushing her fully loaded cart out into the parking lot, which is on an incline. Petitioner told her the police are coming, you better get your family out of here. He does not know exactly what he was doing at the time. Then he walked to his car. He testified she let go of her cart which rolled into him and struck him in the lower back. The cart weighs 200-300 pounds. It knocked him down and hit his car, denting the fender, and continued bumping 2 or 3 other cars. He testified he was laying in the parking lot and could not get up with severe pain in his back. He got up with help from his wife, who was sitting in the car watching this and sat there for a short time until the police were putting people in the cars and in custody. He testified there were 7 or 8 police cars. Then his wife made the deliveries. He rode with her. RX 4 notes that 6 officers responded to a call received at 2:14:39 AM on December 31, 2017. They arrived at 2:16:48 AM and left at 2:35:39. There were 7 people physically fighting in the parking lot. Looks like it's calming down. There was no notation of any weapons. The offense noted was disorderly conduct. No record of any arrest was noted (RX 4).

Petitioner testified he wrote an incident report. He went back inside and old Jerry who told him to write it up. He wrote it on a piece of notebook paper or something. He filled it out that night. He also talked to Gabe Torres that night on the phone. He had his cell number. He testified Gabe was not at the distribution center. He never talked to anyone else at Respondent about the incident after that.

Jerry Schlickman testified he was unaware of any type of fight. He was not aware until he saw the police report. He was unaware Petitioner injured his back by a cart. He testified that Petitioner did not tell him he slipped on and fell on ice. Petitioner did not tell him about an injury at work that early morning. He did not give Petitioner paperwork or tell him to prepare paperwork about an incident. He never, at any time, saw an injury report prepared. At no time since December 31, 2017, has Petitioner ever contacted him to report an accident that took place on December 31, 2017. Gabriel Torres testified he was working the early morning of December 31, 2017.He would be the person to notify if someone got hurt. He testified Petitioner never came to him to report an injury that morning. He never asked him to prepare a written report about an accident. Petitioner

never told him that early morning that he was struck by a cart and hit in the back and was injured. He never told him that he slipped on ice. He testified that he did not receive a call on his cell phone from Petitioner to tell him about an injury. If he had, he would have documented it. He has not seen any report concerning the incident. Petitioner has never communicated to him about an accident on December 31,2017 at any time subsequent. He was unaware of an incident with the police showing up.

Petitioner did not go to the hospital until a couple of days after. On January 3, 2018, Petitioner telephoned OrthoIllinois for complaints of severe back and hip pain. He reported his back went out on New Year's Eve, stating he felt a snap. He is unable to get out of bed. He reports new onset of left anterior numbness radiating down to his foot. Petitioner was told if the pain was too great to go to the emergency room (RX 10). Petitioner called an ambulance to go to the emergency room on January 5, 2017 (RX 5). Their report notes Petitioner was upstairs in bed. He reported he had a possible broken hip from a fall 5 days before. He said he slipped and fell on the ice outside (RX 5).

St. Anthony Medical Center Emergency Department records include a history of a fall on Sunday and since then is unable to ambulate (PX 4). Petitioner reported intractable left hip pain. X-ray showed no acute abnormality. CT of the left hip did not demonstrate findings to explain the severity of the pain. After several doses of intravenous opioids without relief, Petitioner was admitted. The Note from RN Oslund notes a history slipping on ice (PX 4, p 431). An MRI of the lumbar spine had demonstrated a disc herniation at the L3-4 level. He was provided physical therapy and medication until being discharged on January 9, 2018. The January 6, 2018 physical therapy initial evaluation history was patient is 74 year old male admitted 1/5/2018 s/p fall on ice (RX 8). The discharge note indicated that his hip pain was likely a muscular contusion. They note his pain was not consistent the finding on lumbar MRI of the L3-4 disc herniation (PX 4, p 434).

Petitioner was seen at Swedish American Hospital on January 12, 2018 with back and left-sided hip pain (RX 9). The record noted he had fallen approximately two weeks prior and had left sided hip pain. He had fallen outside his house on the ice. The record noted he had then stayed at home for four days without improvement in his pain, at which point he went to OSF Hospital where he was admitted. Petitioner complained of ongoing left hip pain and an inability to get out of bed for the past two days (RX 9). Petitioner testified that he had not reported he had fallen on ice and clarified that ice had nothing to do with his fall or his back pain.

On January 22, 2018, Petitioner was seen by Dr. Jain seeking an order for physical therapy. He notes that he has fallen 3 times in the past year (PX 5). Physical therapy notes indicate his method of injury was slipped on ice (RX 12). On February 2, 2018, Petitioner was seen by Dr. Braaksma, his spine specialist. The history notes this is a follow up. Dr. Braaksma recounts interval treatment prior to December 31, 2017. There is no history of the December 31, 2017 injury. His complaints were lower back pain that radiated into both legs with numbness and tingling. Dr. Braaksma noted the January 8, 2018 MRI demonstrated a large central, paracentral disc herniation with caudal extrusion above his prior L3 to transitional L4 fusion with moderate symptoms of canal and severe left lateral recess stenosis. Dr. Braaksma recommended a trial of left L3-4 injections with surgery to be considered if the injections did not alleviate his symptoms (PX 3). The physical therapy history noted is slipped on ice (PX 3, p 64, 61, 55, 49).

Petitioner underwent injections and physical therapy through March 15, 2018 (PX 3). Due to ongoing symptoms, he underwent surgery on March 20, 2018 in the form of a revision laminectomy at L3-4 with extension of decompression L2-3; revision of L3-4 fusion with extension to L2-3 (PX 3). On March 30, 2018, follow up visit noted that Petitioner's radicular symptoms had resolved. He noted moderate back pain and

restrictions were given to not lift more than 15 pounds (PX 3). On April 20, 2018, Dr. Braaksma recommended Petitioner begin physical therapy. He also noted that Petitioner could advance activities slowly and begin driving so long as not taking any narcotic pain medication and if he felt safe to do so (PX 3). On June 1, 2018, Dr. Braaksma noted Petitioner had complete resolution of all radicular symptoms and claudication though he continued to have low back fatigue which was improving with physical therapy (PX 3).

Petitioner was hospitalized at OSF St. Anthony from June 12, 2018 through June 18, 2018. Records noted pain in all his joints that started the day prior. It was noted he had been on a fishing trip and had potentially been exposed to ticks. He was discharged with polyarthropathy and possible Lyme disease (PX 4).

Petitioner continued in physical therapy through October 2018 and had a right SI injection on August 28, 2018. On October 8, 2018, Dr. Braaksma noted that Petitioner's lower back pain had returned post his injection. Physical therapy was continued, and Petitioner was referred to Valley Spine and Pain for possible injections or ablation (PX 3). Petitioner was seen by Dr. Uppal at Valley Spine on October 31, 2018 (PX 6). Radiofrequency ablation was done on November 16, 2018 (PX 6). A sacroiliac joint injection was performed on December 21, 2018. Records noted 10% relief (PX 6). On January 14, 2019, Dr. Braaksma noted the radiofrequency ablation had given Petitioner complete resolution of right-sided low back symptoms, but that he now complained of identical symptoms on the left side. An MRI was recommended and performed on January 22, 2019 (PX 3). On February 8, 2019, Dr. Braaksma indicated the MRI demonstrated complete decompression following surgery with mild stenosis at the supra-adjacent level secondary to epidural lipomatosis. He recommended radiofrequency on the left side with a spinal cord stimulator being a last option (PX 3).

Petitioner was seen by Dr. Gryfinski at Swedish American Neuro for neurosurgery evaluation and possible placement of a spinal cord stimulator on August 23, 2019 (PX 7). He reported lower back pain, right leg pain, and numbness in his right foot. It was noted he had undergone a trial with temporary thoracic spinal cord stimulator on July 31, 2019 with 70% improvement (PX 7). On September 20, 2019, Dr. Gryfinski noted that Petitioner's pain was well controlled with the stimulator (PX 7).

On February 7, 2020, Petitioner was seen by Jason Kadar, PA-C at OrthoIllinois. The history noted he had right hip pain post fall on ice on January 31, 2020 (PX 3). On February 28, 2020, Petitioner was seen by Dr. Barba to evaluate his right hip. Petitioner received a right SI joint injection with Dr. Ahmad on March 3, 2020. Dr. Braaksma noted that the injection provided 80% relief temporarily as of April 27, 2020 (PX 3). Dr. Braaksma performed a sacroiliac joint fusion on June 18, 2020 (PX 3). On August 17, 2020, Dr. Braaksma noted Petitioner was having significant right L5 radicular symptoms and recommended follow up lumbar CT scan and an injection. Petitioner underwent the injection on August 17, 2020 and the CT scan on August 26, 2020. Following review of the CT scan, Dr. Braaksma recommended another surgery (PX 3).

On September 15, 2020, Petitioner underwent exploration of the L3-5 fusion with hardware removal, decompressive laminectomy L2-3 and L5-S1, right L2-3 and L5-S1 facetectomy and diskectomy, and extension of posterior fusion to L2-3 and L5-S1. Postoperatively, Petitioner was ambulating with a walker on October 2, 2020 and recommended to maintain a 15-pound weight limit. On December 28, 2020, Dr. Braaksma noted Petitioner's pain was well controlled by Norco. Petitioner continued physical therapy through January 18, 2021 (PX 3).

Petitioner testified that he has not worked anywhere since December 31, 2017. He also testified he had worked as a registered nurse. Since January 2021, his back has been terrible. He cannot work more that 50

feet without having to hunch over or sit down and rest. He can no longer function as an RN. He cannot drive long distances, or his legs go numb. He continued to feel pain in the lower back. It feels disjointed and in constant pain. The stimulator has stopped it going down his legs. He takes 8 hydrocodone per day. He wears a brace. He walks with a cane and a walker.

Conclusions of Law

In support of the Arbitrator's decision with respect to (B) Employer/Employee, the Arbitrator finds as follows:

No rigid rule of law exists regarding whether a worker is an employee or an independent contractor. *Area Transportation Co. v. Industrial Comm'n,* 123 Ill. App. 3d 1096, 1099, 80 Ill. Dec. 421, 465 N.E.2d 533 (1984). Rather, courts have articulated a number of factors to consider in making this determination. Among the factors cited by the supreme court are: (1) whether the employer may control the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employer compensates the person on an hourly basis; (4) whether the employer withholds income and social security taxes from the person's compensation; (5) whether the employer may discharge the person at will; and (6) whether the employer supplies the person with materials and equipment. *Roberson*, 225 Ill. 2d at 175. Another relevant factor is the nature of the work performed by the alleged employee in relation to the general business of the employer. *Id.*; see also *Ware*, 318 Ill. App. 3d at 1122. The label the parties place on their relationship is also a consideration, although it is a factor of "lesser weight." *Ware*, 318 Ill. App. 3d at 1122. The significance of these factors rests on the totality of the circumstances, and no single factor is determinative. *Roberson*, 225 Ill. 2d at 175. Nevertheless, whether the purported employer has a right to control the actions of the employee is "[t]he single most important factor." *Ware*, 318 Ill. App. 3d at 1122; see also *Bauer v. Industrial Comm'n*, 51 Ill. 2d 169, 172, 282 N.E.2d 448 (1972). The term "employee," for purposes of the Act, should be broadly construed. *Chicago Housing Authority v. Industrial Comm'n,* 240 Ill. App. 3d 820, 822, 181 Ill. Dec. 312, 608 N.E.2d 385 (1992).

Petitioner's relationship with Respondent has elements of both employee and independent contractor. Petitioner could determine the exact order of his deliveries each day and the exact time he arrived to pick up his papers, but Respondent determined the route to which he was assigned, was responsible for providing the papers and required Petitioner to pick them up at the distribution center and have the deliveries completed by a specific time each day. Respondent provided the daily list of customers, the papers themselves and the inserts, and the carts to carry the papers to his vehicle. Petitioner provided his own vehicle. There was no evidence that Respondent reimbursed gasoline or any other expenses. Respondent witnesses considered the delivery drivers as independent contractors, but no written agreement was offered into evidence. Petitioner was paid by the number of papers delivered, not hourly. No taxes were taken out of his payments. Petitioner testified he would be docked for late deliveries and could be fired for failing to complete his route. Although elements of both employee and contractor exist, Respondent has clear control over Petitioner's duties. The Arbitrator finds the facts to be closest to those in *Skzubel v. Ill. Workers' Comp. Comm'n Div.*, 401 Ill. App. 3d 263; 927 N.E.2d 1247; 2010 Ill. App. LEXIS 379; 340 Ill. Dec. 236, where the Appellate Court found that these facts established an employee/employer relationship. See also *Hayes v. The State Journal Register*, 10IWCC0783; *Browning v. Peoria Journal Star*, 04IWCC0281.

Based on the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he was an employee of Respondent on December 31, 2017.

In support of the Arbitrator's decision with respect to (C) Accident, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must show, by a preponderance of the evidence, that he suffered a disabling injury that arose out of and in the course of the claimant's employment. An injury is accidental within the meaning of the Act when it is traceable to a definite time, place and cause and occurs in the course of employment unexpectedly and without affirmative act or design of the employee. *International Harvester Co. v. Industrial Comm*., 56 Ill. 2d 84, 89 (Ill. 1973). An injury occurs "in the course of' employment when it occurs during employment and at a place where the claimant may reasonably perform employment duties, and while a claimant fulfills those duties or engages in some incidental employment duties. An injury "arises out of" one's employment if it originates from a risk connected with, or incidental to, the employment and involves a causal connection between the employment and the accidental injury. For an injury to 'arise out' of the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission*, 44 Ill. 2d 214 (1969).

Petitioner claimed that he was injured early on December 31, 2017, when a co-worker's cart struck him in the Respondent's parking lot, injuring his hip and back. His testimony describing this injury is uncorroborated by any other evidence or medical history. While it is true that an employee's uncorroborated testimony will not bar a recovery under the Act, it does not mean that the employee's testimony will always support an award of benefits when considering all the testimony and circumstances shown by the totality of the evidence. *Caterpillar Tractor Co. v. Industrial Commission*, 83 Ill. 2d 213 (1980). In the present case, Petitioner's testimony is not only uncorroborated, but also contradicted by every other piece of credible evidence including medical histories, Respondent's witnesses, and the details and timeline of events.

Petitioner never provided any medical provider with the history of being struck by a cart. The paramedics and St. Anthony emergency providers consistently record a history of a fall on ice. It is reported this occurred at home. Petitioner unequivocally denied any involvement of ice. This history is then repeated to Swedish American, physical therapy and OrthoIllinois.

Petitioner's initial telephone to Dr. Braaksma's office simply states his back 'went out." When Petitioner sees Dr. Braaksma in February 2018, the visit is noted as a follow up to his pre-injury treatment. He simply notes his condition is getting worse. Despite Petitioner's claim of good health prior to December 31, 2017, his medical records note significant worsening of his condition and consistent ongoing treatment. On January 22, 2018, Dr. Jain notes that he has fallen 3 times in the past year. At the emergency room on January 5, 2018, Petitioner initially reports only pain in his left hip. His pain diagram is only the left hip. He reported he had a possible broken hip. The discharge notes that his symptoms are not consistent with the lumbar MRI findings at L3-4.

Petitioner's testimony of the timeline and events of the evening of December 30, 2017 through the morning of December 31, 2017 is contradicted by all of the other evidence. Petitioner alleged he needed to be at the distribution center at 8:00 PM the evening before to put the inserts into the paper. Respondent's witnesses deny this is true. The Arbitrator notes that the papers were not delivered until about 2:00 AM. There is no logical way the inserts would be there hours before and they could not be put into the papers that would not

arrive until much later. Petitioner's version of the details of the evening are also contradicted by the credible testimony of Mr. Schlickman and Mr. Torres. While it appears that there was a disturbance, it did not likely begin, as Petitioner testified inside. Both Mr. Schlickman and Mr. Torres denied hearing anything occurring in the building. Petitioner claimed 7 or 8 police cars arrived, but only 6 officers were present. Petitioner's claim to have told both Mr. Schlickman in person and Mr. Torres by cell phone are denied by each of them. The Arbitrator has difficulty reconciling Petitioner's testimony that he could barely move after being struck by the cart with his testimony that he apparently walked back into the building to report this. The lack of the claimed injury report further challenges Petitioner's testimony.

Claimant's "varied and inconsistent histories of the incident undermine his claim that he suffered accidental injuries arising out of and in the course of his employment. See: *Todd Werneburg v. George Young & Sons*, 2019 Ill. Wrk. Comp. LEXIS 147, 19 IWCC 0138, affirmed *Werneburg v. Ill. Workers' Comp. Comm'n,* 2020 Il App 3d 190529WC-U, 2020 Ill. App. Unpub. LEXIS 1710. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972). Having observed the Petitioner, evaluated his demeanor and reviewed the evidence inconsistent with his testimony, the Arbitrator finds Petitioner's testimony not credible and gives it no weight.

Based upon the record as a whole, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment with Respondent on December 31, 2017.

In support of the Arbitrator's decision with respect to (E) Notice, (F) Causal Connection, (J) Medical, (K) Temporary Compensation, and (L) Nature & Extent, the Arbitrator finds as follows:

Based upon the Arbitrator's finding with respect to Accident, the remaining issues of Notice, Causal Connection, Medical, Temporary Compensation, and Nature & Extent are moot.

Petitioner's claim for compensation is hereby denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC027599
Case Name	Maria Bordner v. Freeport Memorial Hospital
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0572
Number of Pages of Decision	10
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Kylee Miller
Respondent Attorney	Andrew Rane

DATE FILED: 11/26/2024

/s/Amylee Simonovich,Commissioner

Signature

24IWCC0572

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Maria Bordner,

Petitioner,

vs. NO: 20 WC 27599

Freeport Memorial Hospital,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses, temporary total disability, and prospective medical treatment, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below. The Commission otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

In the Findings Section of the Arbitration Decision Form, the Arbitrator wrote that Respondent is entitled to a "credit of $ under Section 8(j) of the Act." The Commission modifies this sentence to read as follows: "Respondent is entitled to a credit of $0 under Section 8(j) of the Act." In the Order section of the Decision Form, the Arbitrator wrote: "Respondent shall pay Petitioner temporary total disability benefits, as provided in Section 8(b) of the Act." The Commission strikes this sentence in its entirety. Also in the Order section, the Arbitrator wrote that Respondent shall pay reasonable and necessary medical expenses. The Commission modifies this sentence to read as follows: "Respondent shall pay reasonable and necessary medical expenses submitted in Petitioner's Exhibit 2 that remain outstanding, as provided in Sections 8(a) and 8.2 of the Act."

In the Order section, the Arbitrator wrote: "Petitioner is entitled to ongoing medical care." The Commission strikes this sentence in its entirety and replaces it with the following: "Respondent shall authorize a follow-up appointment with Dr. McNulty to direct further care, if necessary." On page 8 of the Decision, the Arbitrator wrote, "Having found that Petitioner's

condition…as needed to cure and/or relieve Petitioner's condition." The Commission modifies this sentence to read as follows: "Having found that Petitioner's condition of ill-being is causally related to the April 27, 2020, work accident, Respondent shall authorize a follow-up appointment with Dr. McNulty to direct further care, if necessary." Finally, in the first full paragraph on page 8 of the Decision, the Commission strikes "…— Respondent's choice of physician,…"

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 29, 2023, is modified as stated herein.

IT IS FURTHER ORDERED the Respondent shall pay Respondent shall pay Petitioner temporary total disability benefits of $357.67/week for 73-5/7 weeks, commencing April 27, 2020, through September 10, 2020, October 19, 2020, through December 9, 2020, and September 15, 2022, through September 29, 2023, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $21,641.21 for temporary total disability benefits that have been paid.

IT IS FURTHER ORDERED that Respondent shall pay reasonable and necessary medical expenses submitted in Petitioner's Exhibit 2 that remain outstanding, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall authorize a follow-up appointment with Dr. McNulty to direct further care, if necessary.

IT IS FURTHER ORDERED that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED that Respondent pay to Petitioner interest pursuant to §19(n) of the Act, if any.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $6,900.00. 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 26, 2024

AHS/jds
51

/s/ *Amylee H. Simonovich*
Amylee H. Simonovich

/s/ *Maria E. Portela*
Maria E. Portela

/s/ *Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC027599
Case Name	BORDNER, MARIA v. FREEPORT MEMORIAL HOSPITAL
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Kylee Miller
Respondent Attorney	Andrew Rane

DATE FILED: 7/9/2021

THE INTEREST RATE FOR THE WEEK OF JULY 6, 2021 0.05%

/s/ Paul Seal, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
X None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Maria Bordner
Employee/Petitioner

v.

Freeport Memorial Hospital
Employer/Respondent

Case # **20** WC **027599**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Rockford**, on **6/8/2021**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. **X** Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. **X** Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. **X.** Other **Is Petitioner Entitled to prospective medical**

FINDINGS

On the date of accident, **April 27, 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 $**23,512.32**; the average weekly wage was $**452.16**.

On the date of accident, Petitioner was **51** years of age, **married** with **2** dependent children.

ORDER

Respondent shall pay Petitioner temporary total disability benefits as needed, as provided in Section 8(b) of the Act.

TTD is not in dispute.

Respondent shall pay reasonable and necessary medical expenses, as provided in Section 8(a) and 8.2 of the Act.

Petitioner is entitled to ongoing medical care in the form of Pain Management.

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.

JULY 9, 2021

Signature of Arbitrator

ICArbDec19(b)

FINDINGS OF FACT

On April 27, 2020, Petitioner was a married, 51-year-old woman with two dependents under the age of 18. She was a 2-year employee working as a CNA for Freeport Memorial Hospital ("FHN"). She worked 36 hours a week making $12.56 an hour giving her an AWW of $452.16. Petitioner was tasked with caring for patients in the medical surgical unit, assisting patients with activities of daily living, and transferring patients. On the day of the injury Petitioner was asked by two technicians to assist in transferring a patient from one bed to another. Petitioner testified the patient resisted during the transfer and she held more of his weight than she was able to maintain. She felt immediate pain and a popping in her back. Petitioner testified she took over the counter pain medication and continued to work for six more hours before the pain in her back became too great. She reported the injury to her Duty Nurse Kelly Steward and Supervisor Rachel Walker. Ms. Walker instructed Petitioner to complete an accident report and to go to the FHN emergency room for an examination.

Petitioner testified she received medical care on April 27, 2020 at the FHN Emergency room. (PX 4/130). Petitioner gave a history of her accident to the emergency room personnel. The emergency room personnel performed a brief examination and recommended Petitioner talk to her floor supervisor regarding lifting restrictions. She was diagnosed with a lumbar strain. (Id.).

On April 30, 2020 Petitioner followed up with Dr. Diana McNulty at FHN Family Health Care Center. (PX 2). Petitioner testified that Dr. McNulty was not her regular primary care physician. Instead she'd been instructed by FHN to see Dr. McNulty specifically as a "workers compensation doctor." Dr. McNulty performed a physical examination and took a history of the accident. Dr. McNulty diagnosed low back pain with left sided sciatica and SI joint dysfunction. (PX 2/120). She recommended Petitioner undergo chiropractic care and that she may also benefit from physical therapy.

Petitioner began chiropractic care with Dr. Roger Sdao at Freeport Family Chiro and Acupuncture on May 4, 2020. (PX 3). She treated with Dr. Sdao through September 4, 2020. She was released from chiropractic care after Dr. Sdao felt Petitioner had plateaued and would not benefit from his ongoing treatment.

During the summer and fall of 2020 Petitioner continued to treat with Dr. McNulty. Dr. McNulty placed Petitioner on lifting and durational shift limitations. (PX 2/160). FHN was initially unable to accommodate these restrictions and TTD benefits were paid. Petitioner underwent two physical therapy visits on June 2, 2020 and on June 4, 2020 but testified these were discontinued when workers' compensation would not authorize both chiropractic care and physical therapy simultaneously.

On July 20, 2020 Petitioner underwent an MRI at FHN. (PX 4/168). The MRI diagnosed L5-S1 disc desiccation, disc bulging with left conjoined nerve root, disc desiccation and central annual tear at L4-5. (*Id.*). Dr. McNulty continued Petitioner's restrictions.
On September 10, 2020 Petitioner reported to Dr. McNulty that she continued to have significant pain in her lower back extending down her left leg that had developed into numbness in the left

leg and left big toe. (PX 2/176). Dr. McNulty noted petitioner needed to shift from sitting to standing several times during the visit. On examination Petitioner was able to fully flex forward but was unable to extend. Dr. McNulty requested a referral to the FHN pain clinic for consideration of a steroid injection.

On October 22, 2020 Dr. McNulty increased Petitioner's restrictions from 4 hours a shift to 6 hours a shift with 20 pound lifting restrictions and a need to walk, stand, and sit at will. (PX 2/ 180). Dr. McNulty continued to list annual tear of lumbar disk and low back pain with left sided sciatica as the diagnosis. (*Id.*).

Petitioner testified that in October of 2020 FHN was able to place her at a light duty position taking patient temperatures as a covid precaution. Eventually she was transitioned to a customer relations position that remained within her light duty limitations. She testified that she has been unable to return to her full position as a CNA since her accident on April 27, 2020.

On November 12, 2020 Dr. McNulty drafted a letter documented Petitioner's condition, limitations, and need for ongoing treatment. (PX 5). Dr. McNulty opined Petitioner had not yet reached MMI and that a steroid injection was a necessary next step in Petitioner's treatment. She issued an addendum including updated restrictions on November 18, 2020. (PX 6).

Petitioner continued to follow up with Dr. McNulty in December 2020 and January 2021.

At Respondent's request Petitioner was examined by Dr. Stanford Tack who issued a report on May 5, 2021. Dr. Track diagnosed a lumbar sprain/ strain. He opined Petitioner's MRI was remarkable for age related degeneration at L4-L5 and L5-S1 only. He opined Petitioner was required no further medical treatment.

To date Respondent has not authorized Petitioner's treatment or evaluation for pain management.

CONCLUSIONS OF LAW

In regard to Issue (F) – IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELEATED TO THE INJURY?, the Arbitrator finds the following:

Neither party disputes Petitioner injured her back on April 27, 2020. Petitioner credibly testified that she felt pain and a pop in her lower back when transferring the patient. She immediately sought out medical treatment and has cooperated with all medical care. Petitioner treated with Respondent's choice of physician Dr. McNulty who ordered an MRI which Petitioner underwent on July 20, 2020. Both Dr. McNulty and the MRI interpreting physician (Dr?) diagnosed L5-S1 disc desiccation, disc bulging with left conjoined nerve root, disc desiccation and disc bulging and a central annual tear at L4-5. (PX 4/168). Petitioner also credibly testified that she had not injured her back prior to the accident. The medical evidence supports Petitioner's testimony. There is no evidence that Petitioner was involved in any intervening accident.

Petitioner has been unable to return to her regular line of work. Further the opinions of Dr. Tack make no mention of the annual tear and therefore render no opinion as to treatment needed to alleviate that condition.

There has been no break in the causal chain, therefore the Arbitrator find Petitioner's condition of ill being remains casually connected to her accident of April 27, 2020.

In regard to (K): Perspective Medical

Petitioner has been referred to Pain Management for a possible steroid injection. Respondent's choice of physician, Dr. McNulty made the recommendation clarifying that conservative treatment had not been completed and Petitioner had not reached MMI. Dr. McNulty is not a spinal surgeon or pain management expert. Therefore, her referral to an expert in pain management in an effort to rule out all conservative options is reasonable.

Dr. Track's finding that Petitioner only suffered a lumbar sprain/ strain is not supported by the evidence of record. Dr. Track has not treated Petitioner. He reviewed Petitioner's MRI report finding Petitioner had a degenerative condition. Even if Petitioner did have a degenerative condition, the accident and resultant pain is undisputed. Two treating physicians have opined Petitioner suffered an annual tear of the lumbar spine. Further, Dr. Track's opinion that Petitioner does not require any additional medical treatment and has reached MMI is incorrect. In weighing Dr. Track's opinion against Respondent's choice of physician Dr. McNulty, the Arbitrator favors Dr. McNulty. She has followed Petitioner from the beginning and is recommending ongoing conservative care with an expert at this time.

Having found that Petitioner's condition of ill being remains casually connected to her work-place accident of April 27, 2020, Respondent is instructed to authorize ongoing medical treatment as needed to cure and/or relieve Petitioner's condition.

In regard to (O): Petitioner's Entitlement to Pain Management Treatment

The Arbitrator finds that Petitioner's referral to Pain Management to complete conservative treatment is both reasonable and necessary to cure and/ or relieve Petitioner's condition of ill being.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC029227
Case Name	Kimberly Henson v. Kreider Services
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0573
Number of Pages of Decision	13
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Brad Reynolds
Respondent Attorney	Ryan M. Regan

DATE FILED: 11/26/2024

/s/Amylee Simonovich,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANKAKEE)

☒ 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

KIMBERLY HENSON,

Petitioner,

vs. NO: 21 WC 29227

KREIDER SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 24, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The bond requirement in Section 19(f)(2) is applicable only when "the Commission shall have entered an award for the payment of money." 820 ILCS 305/19(F)(2). Based upon the denial of compensation herein, no bond is set by the Commission.

November 26, 2024
O111924
AHS/ldm
051

/s/*Amylee H. Simonovich*
Amylee H. Simonovich

/s/*Maria E. Portela*
Maria E. Portela

/s/*Kathryn A. Doerries*
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC029227
Case Name	Kimberly Henson v. Kreider Services
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Brad Reynolds
Respondent Attorney	Ryan M. Regan

DATE FILED: 7/24/2023

THE INTEREST RATE FOR THE WEEK OF JULY 18, 2023 5.25%

/s/ Paul Cellini, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF **KANKAKEE**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

KIMBERLY HENSON
Employee/Petitioner
v.
KREIDER SERVICES
Employer/Respondent

Case # **21** WC **29227**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Kankakee**, on **May 30, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **April 17, 2021**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**35,360.00**; the average weekly wage was $**680.00**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $**29,112.69** under Section 8(j) of the Act.

ORDER

The Petitioner has failed to prove that she sustained accidental injuries on April 17, 2021 which arose out of and in the course of her employment with Respondent.

The Petitioner has failed to prove that she sustained accidental injury arising out of and in the course of her employment as the result of an alleged repetitive trauma. The Petitioner has failed to prove that her bilateral carpal tunnel syndrome condition is causally related to her employment with Respondent.

No benefits are awarded.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

JULY 24, 2023

STATEMENT OF FACTS

Petitioner worked for Respondent as a Direct Support Person (DSP) since 1996 and worked at its facility in Dixon, Illinois ("Apple Street") for the developmentally disabled since 10/7/15. It is a ranch house with 6 residents split into two sections. She typically worked second shift with varying hours. She worked four days per week, two days working 9-1/4 hours, one day working 10-1/2 ours, and one other day which swings between 10 or 11 hours. While she technically is responsible for both sides of the facility, in general she only works on one side of the facility with 3 residents, though she doesn't always work on the same side all the time.

She testified to various activities she performs in the job with her hands. As to the use of a pen, this would be with completing daily medication recording sheets (MARs) each time she distributes medication, and monthly drill forms evaluating resident responses to fire/storm alarms, etc. At times she has to prepare shopping lists for residents if they cannot do so. She estimated she spends one to one and a half hours per shift handwriting.

With regard to keyboard data entry, this includes entering messages for upper management, "household stuff", documentation of daily notes, and communications with nurses, managers, or the maintenance department. Incident and behavior reports regarding residents also involve data entry, which Petitioner estimated approximately 30 minutes of entry per incident.

With regard to cleaning duties, she does sweeping and mopping, and assists residents with bedroom cleaning and laundry. Mopping involves a bucket with spinner and five room areas, and she may have to change the water a couple of times. Laundry typically involves washing towels and clothes, and bed pads for one resident who has incontinence. They assist residents with folding, as their role there is to teach basic living skills. When a DSP has to sometimes work third shift, there is cleaning of windows and bathrooms. Spray bottles are used for windows and to clean skin on residents if they have an accident. Petitioner testified that she sometimes she has to move furniture like chairs and couches to clean, and that she sometimes has to rearrange the rooms of residents if they choose. Petitioner estimated she spends about 2 to 3 hours of her shift cleaning.

With regard to assisting residents, Petitioner testified they shower daily except Fridays. One resident at Petitioner's facility needs significant assistance, including dressing/undressing. She weighs about 160 pounds and while she uses a walker, she is not very stable and a gait belt is used to assist that resident, walking with the person and holding her elbows. She did not testify to what degree of assistance she provides to the other 5 residents.

With regard to medication, Petitioner testified she typically has to hold a small cup with bubble-packed medications on top of them while the residents push them out of the packaging. er-hand is assistance with clients who do not typically put their own pills. She testified this makes your hands "pretty sore" in the process of distributing 17 pills two times per day, noting she uses both hands to do this. (The Arbitrator notes the parties indicate the 178 pills noted in the initial transcript was a typo and should have been 17).

Other activities at work include cutting vegetables and fruits almost daily, noting she is left hand dominant. She has to wash dishes after each meal, though they do use a dishwasher. She has to use force with heavier pans. While scrubbing pads are available her personal preference is to use a dish rag.

As to activities involving a firm grip/grasp, Petitioner testified to walking clients with a gait belt, cutting with a knife, using a can opener, and opening jars of food. When an incontinent resident is in bed, they have to move the resident to change bed pads. Petitioner testified the only down time at work where she is not using her hands is maybe sixty to ninety minutes after the residents are in bed by about 10 p.m. and the work has been

completed, she basically just makes sure all is well. Petitioner testified she believed she used her hands for approximately 85% of her shift.

Petitioner testified that on 4/17/21 she was opening a half gallon of orange juice, and the next day she awoke with a swollen right hand and wrist. She testified she developed numbness and tingling about a week later, and shortly thereafter developed symptoms in the left hand/wrist.

Petitioner testified she went to immediate care at Respondent's direction and was seen there two or three times. Ultimately, an EMG was performed. She testified she had not been diagnosed with carpal tunnel and had not undergone any prior EMGs before being hired by Respondent.

Petitioner's primary care provider referred her to surgeon Dr. Gabriel, who performed bilateral carpal tunnel release surgeries CTS in October (right) and November (left) 2021. Petitioner testified she was released to return to work and returned to her regular job with Respondent on 11/27/21. Despite surgery and "slight" improvement, she continues to have bilateral intense wrist-to-palm pain and tingling bilaterally. Slight improvement with surgery. Prior to April 2021, Petitioner testified she had no prior diabetes or thyroid disorder diagnoses, and she was not pregnant. She was in the beginning stages of menopause. She testified she was a smoker in April 2021, over 40, and was about 5'3" and 192 pounds, though she agreed on cross exam that she may have weighed 206 pounds if that's what's reflected in her medical records. She continues to smoke cigarettes.

On further cross, Petitioner agreed, as per her 4/19/21 report from PIC, her pain started on 4/18/19, not the alleged 4/17/21 accident date. She agreed she initially had no left hand complaints. She agreed with her 4/26/21 history (PIC) of right hand pain attempting to open orange juice and that she again had no left hand complaints at that time. The 4/26/21 and 5/5/21 reports of PIC also indicated her pain had resolved and she had 0 out of 10 pain at that time and at the latter visit was found to be at maximum medical improvement with no residual disability. (See Px5).

As to her 5/10/21 visit with Dr. Myers (PCP) not reflecting complaints of her hands or wrists, Petitioner testified she didn't recall what she saw him for at that time. Petitioner acknowledged that the first time she complained of her left wrist to a medical provider was to Dr. Myers on 7/1/21. The history indicated in his report was that she was she was in the process of moving and also that she was performing repetitive hand motions. On 7/15/21, she complained to Dr. Myers of both bilateral hand pain and a three week history of bilateral knee pain, agreeing the latter is not related to her workers' compensation claim and that it is due to an old softball injury.

Petitioner testified she initially saw Dr. Gabriel on 8/17/21 and the next time she saw him was for her first surgery. She testified she hadn't seen him since November 2021 but followed up with his assistants after each surgery. She agreed that she does a lot of the same activities at home as she does at work, things like cutting vegetables and fruits, handwriting, washing dishes, laundry, and cleaning. She testified she has a computer at home but doesn't use it. She continues to clean her house "the best that I can." She agreed that five of the residents for the most part do their own laundry, with one needing a lot of assistance versus the others, and that three of them are able to move their own furniture. She testified that the Respondent did not obtain a device for opening jars until after she complained of her hands, not before.

On redirect, as to her change of residence in 2021, Petitioner testified she didn't perform the actual moving herself and that her sons and a friend of hers did the moving.

The 4/19/21 report of Physician's Immediate Care (PIC) notes complaints of right hand and wrist pain since 4/18/21. X-ray was normal, Petitioner was diagnosed with a strain and issued a wrist splint and prescribed NSAIDs. She was released to return to work with restrictions. On 4/26/21, the report states: "patient reports right hand pain that began after opening orange juice has resolved" with 0 out of 10 pain. She was working light duty without problem and was released to return to regular duty and to discontinue the brace. On 5/5/21, Petitioner returned to PIC, who indicated she reported her pain was better than at the last visit again with 0/10 pain. Petitioner was released from care at maximum medical improvement (MMI). (Px5).

The 5/10/21 report of Dr. Myers notes complaints of right wrist and hand pain with tingling and numbness: "She reports that several weeks ago she injured herself at work. She was treated with naproxen and a wrist brace. Last week she was sent back to work without restrictions. She injured her wrist again opening a bottle of orange juice. This is not work comp today." A wrist sprain was diagnosed, and Prednisone was prescribed. Petitioner had difficulty wearing the contoured wrist splint and wanted to try compression braces. A 5/12/21 note indicates a history of coronary artery disease and hypertension. On 7/1/21, Petitioner reported bilateral hand numbness and tingling with bilateral wrist pain. The report states: "She stated the symptoms have been present for the last several months and comes and goes. She states that the recent flare up has been over the last month or so. She describes the pain and paresthesia as worse at night. She is currently in the process of moving and has been doing repetitive hand motions." The right side was worse than the left. Possible carpal tunnel syndrome was noted, and EMG was prescribed along with another round of prednisone. On 7/15/21, Petitioner complained of bilateral hand and knee pain and numbness in the hands and forearms. Petitioner noted her symptoms were intermittent and her left sided pain was minimal ("…when one is better she will start to experience symptoms of the other hand."). EMG still had not been performed and Petitioner was referred to an orthopedic physician. She had temporary relief with prednisone. (Px4).

Petitioner saw orthopedic surgeon Dr. Gabriel on 8/17/21, who noted Petitioner reported progressive worsening with neurologic symptoms at night in her hands. EMG was positive for bilateral carpal tunnel. Dr. Gabriel performed on the left on 10/27/21 and on the right side on 11/10/21. On 11/4/21, Dr. Gabriel noted Petitioner was doing fine with the left hand with improved neurologic symptoms but some ongoing tingling. On 11/18/21, Dr. Gabriel noted Petitioner indicated very little to no pain and improved numbness, and she wanted to return to work the following Monday. She was allowed to do so unrestricted "at her request" but she was advised to work as light as she could with the wrist. She was to follow up in 4 weeks or as needed. (Px4).

Patricia Howard, a 41 year employee of Respondent and the current Director of Residential Services, testified she was working as the Program Manager on 4/17/21. In this position she would travel from facility to facility (23 locations), noting that if a facility supervisor was out for any reason, she would fill in, so she has worked directly with Petitioner, including at the Apple Street location. Ms. Howard testified she has worked as a DSP (DS "professional") herself. She testified that the job duties do vary in intensity at Respondent's different locations. She testified that the hand use at each facility generally is similar, and that the main difference is facilities where individuals have to be lifted with Hoyer lifts, which is a lot more physical job. At Apple Street, 5 of the 6 residents are very independent, while it is more physically intense at other facilities. Each facility varies in terms of how many residents are there (up to 10) and how profound their disabilities are. Ms. Howard testified she was not aware that Petitioner changed residences in 2021, and she was not aware of the date Petitioner returned to work in November 2021. Petitioner did not report any left hand symptoms to her in the two months after 4/17/21.

On cross examination, Ms. Howard testified that in 2021, due to the Covid pandemic and workers being out, she would stop in at Apple Street about twice a week, and she would sometimes have to do direct care services due to workers being out. At that time, she might spend anywhere from 10 minutes to an entire 6 hour shift at Apple Street, but on average it would be about an hour.

With regard to whether Petitioner's testimony about her job duties was accurate, Ms. Howard testified: "would say that the documentation – I just want to make sure that's clear. The documentation that we do with the daily documentation she was referring to, a lot of that is information that is initialed or has like a code with it, like it could be an alphabet, something like that or a plus or minus. That's the documentation that we do with the books. If she's talking about using a pen when it comes to the documentation on the computer, that does vary as far as what happens day-to-day, and there are daily summaries that the staff are responsible to enter in there. If there is a behavior of some sort, they have to document the behavior. So, as she said -- she is right. It can vary to what happens during the day with each individual." The residents at Apple Street are encouraged to participate as much as possible in activities like laundry, cooking and cleaning. DSPs at Apple Street rotate sides of the facility. On one side the residents are very independent and perform activities like washing dishes, cleaning, setting the table, etc. On the other side, two of the individuals are independent though they don't always choose to be, while the other resident has to be bathed and requires use of a gait belt. While the door between the sides is usually locked, it is open for outings/activities and a DSP may work on both sides during that time. Ms. Howard agreed she has no ergonomic studies of hand use at Apple Street and that her testimony was her estimate of hand use based on her experience working at the facilities. The last time she was employed as a DSP was 1985, but she last performed DSP activities about 6 weeks prior to the hearing and she was performing DSP activities more often during the pandemic.

Orthopedic hand surgeon Dr. Vender testified via deposition on 8/19/22. At the 9/30/21 examination of Petitioner, she reported injuring both hands on 4/17/21 opening a half gallon of orange juice. At the time she noted right hand symptoms and a day or two later noticed left hand symptoms. She reported initial swelling in the middle fingers bilaterally and she developed numbness and tingling. Current symptoms were pain from the middle fingers into the palm and distal forearm, intermittent tingling and almost constant numbness, and night symptoms. X-rays were normal. She reported being left hand dominant and she was wearing bilateral splints. Following exam and review of her medical records and EMG, Dr. Vender diagnosed bilateral carpal tunnel syndrome, supported by Petitioner's reported symptoms and the EMG study. Asked about the orange juice incident, Dr. Vender testified that carpal tunnel would not be caused by a single incident unless it involves a broken wrist or other major trauma. He opined that the incident did not cause, accelerate, or aggravate a carpal tunnel condition. Numerous daily activities involve similar activities, "and to say that one or any of these activities is what caused or accelerated a condition does not make sense. . . That would be speculation." (Px2; Rx1).

Dr. Vender was asked about a written job description for a "Direct Support Professional", purportedly Petitioner's job duties, and whether such job duties could have caused Petitioner's bilateral carpal tunnel, noting the Petitioner also discussed her job duties with him ("She indicates working in a group home where she teaches daily living skills and will assist or support clients while undergoing therapy."). For a repetitive trauma to be contributory to carpal tunnel, the activities need to be forceful and exertional over a period of time: "Her job is neither repetitive nor forceful, and therefore does not fit a definition of being an exertional activity over a reasonable period of time." Dr. Vender testified that carpal tunnel is one of those conditions that happen for no known reason, and that about half of the people who get it have no risk factors for the condition, i.e., it is idiopathic. She does, however, have what studies identify as two of the major risk factors with obesity and cigarette smoking. Females tend to get it more than males and it becomes more common after one has reached their 40's. Dr. Vender opined that Petitioner's carpal tunnel is unrelated to her work duties. At the time of his examine he believed Petitioner did not need work restrictions and further opined that if she had been issued such restrictions they would be unrelated to her work with Respondent. (Px2; Rx1).

On cross examination, Dr. Vender agreed that regardless of causation, Petitioner's treatment through the 9/30/21 exam was reasonable for her condition and that the surgical recommendation was appropriate. His

knowledge of her job came from the two page job description he reviewed, which had been prepared in 2002. He agreed this was not an ergonomic evaluation. He agreed it indicated up to 100 pounds of force occasionally, up to 50 pounds of force frequently, and up to 20 pounds constantly to move objects. He agreed the document doesn't describe the amount of grasping or wrist flexion involved. Carpal tunnel is not well understood, but Dr. Vender agreed that flexor tendon synovial swelling and/or inflammation could result in carpal tunnel symptoms. Gout or inflammatory disease can inflame the synovium. Again, while he believes it is somewhat speculative, "there are certain activities that we think can contribute. It's not so much the repetition. It's the force that is associated with the repetition." The activity needs to ne performed on a regular basis with duration. Dr. Vender testified that gripping and squeezing type activities of the hand/fingers activate the flexor tendons at the wrist. He agreed there probably is some activity of the flexor tendons in holding a pencil/pen, more of a static position. While he agreed that a hypothetical where occasional use of the hands leading to chronic inflammation of the tendon synovium could be related to a carpal tunnel condition, but that the hypothetical presented was not realistic – ". . . you are, sort of, defining the end result." (Px2; Rx1).

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, and WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

In the Arbitrator's view there are four key issues in this case. First, did a specific incident occur on 4/17/21 that would constitute a compensable accident which arose out of and in the course of Petitioner's employment? Secondly, if so, what did that accident cause? Third, did the Petitioner's general work duties constitute a repetitive trauma which arose out of and in the course of her employment? Finally, if so, did any possible compensable repetitive trauma cause Petitioner's carpal tunnel condition?

The Arbitrator finds that the Petitioner failed to prove that she sustained accidental injuries on 4/17/21 as the result of a specific trauma. She testified that on that date she was attempting to open a bottle of orange juice, developing right hand pain the next day. The initial 4/19/21 report of PIC notes complaints of right hand and wrist pain since 4/18/21 with no indication of what caused the onset, and she was diagnosed with a strain. At the next visit of 4/26/21, PIC's report indicates Petitioner said the right hand pain that began after opening orange juice had resolved, and this was reiterated in the last visit of 5/5/21 where she was noted to be at MMI with 0/10 pain. On 5/10/21, she saw her own primary provider, Dr. Myers, reporting not only right wrist pain but also numbness and tingling, the latter of which was not noted in the PIC reports. Additionally, his report states that she had already injured herself at work, without further information, and that it was after she was sent back to regular duty work that she re-injured her wrist opening a bottle of orange juice. This history is inconsistent with the report of PIC and the Petitioner's testimony. Additionally, the report of Dr. Myers states: "This is not work comp today." In Dr. Myers' 7/1/21 report, after not seeing the Petitioner since 5/12/21, it states: "She stated the symptoms have been present for the last several months and comes and goes. She states that the recent flare up has been over the last month or so. She describes the pain and paresthesia as worse at night. She is currently in the process of moving and has been doing repetitive hand motions." This sounds to the Arbitrator like she was doing well until she was involved with moving her home. The Petitioner's denial of being involved in her move is rebutted by this report, which specifically notes repetitive hand motions in the context of moving. Based on this evidence, the Arbitrator finds that the Petitioner has failed to prove a specific accident on 4/17/21 which arose out of and in the course of her employment.

The only expert testimony regarding carpal tunnel syndrome and how it may be caused by trauma or workplace activities was from Section 12 examiner Dr. Vender. He testified that the incident Petitioner described as opening a half gallon of orange juice would not have caused Petitioner's carpal tunnel condition.

The most significant portion of the Petitioner's testimony was attempting to establish what activities she performed at work with her hands and how often she performed them. Thus, Petitioner is alleging an alternative theory of accident on the basis of repetitive trauma in her work activities. The Arbitrator finds the Petitioner has failed to prove that she sustained a repetitive trauma which arose out of and in the course of her employment with Respondent.

An injury is considered an accident under the Illinois Workers' Compensation Act if the injury is caused by the performance of a claimant's job, even though it develops gradually over a period of time as a result of repetitive trauma. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 529-30 (1987) The question of whether a claimant's work activities are sufficiently repetitive must be decided on a case-by-case basis on the particular facts presented in each case, and it is the function of the Commission to judge the credibility of the witnesses, determine the weight to be given to their testimony and to draw reasonable inferences from that testimony. *Williams v. Industrial Commission*, 244 Ill.App.3d 204, 614 N.E.2d 177, 185 Ill.Dec. 43 (Ill. App. 1st, 1993) citing *Berry v. Industrial Commission*, 459 N.E.2d 963 (1984). A claimant alleging injury based upon repetitive trauma must show that the injury is work-related and not a result of the normal degenerative aging process. *Peoria County Belwood Nursing Home*, 115 Ill. 2d at 530. In cases involving repetitive trauma, the claimant generally relies on medical testimony establishing a causal connection between the claimant's disability and the work performed. *Id* at 530. In *Nunn v. Industrial Commission*, 157 Ill. App. 3d 470 (1987), the Appellate Court noted that expert testimony is necessary when the question can only be answered by experts only and not by the common knowledge of laypersons. Nunn, 157 Ill. App. 3d at 477-478. The *Nunn* decision also stands for the proposition that expert testimony is necessary in repetitive trauma cases as "there must be a showing that the injury is work-related and not the result of a normal degenerative aging process." *Nunn*, 157 Ill.App.3d at 470.

A repetitive trauma claim like this ultimately involves an intertwining of the issues of accident and causation in terms of whether the activities at work were such that they could have caused or contributed to a carpal tunnel condition. The Arbitrator notes that Petitioner testified she did not develop right-sided symptoms on the accident date, but rather a day later and that she didn't develop left hand symptoms for some time after that. It is unclear how the Petitioner associated her right wrist condition to the orange juice bottle incident given she had no symptoms until the next day. The medical records do not reference any left hand/wrist complaints until her 7/1/21 visit, and the report states this happened after repetitive movement of her hands while moving residences.

While Petitioner testified to using her hands approximately 85% of the workday, her testimony did not establish that these work activities were performed in a manner that was repetitive and forceful. Dr. Vender, the only expert physician to testify in this case and to offer an opinion as to causation, testified that half of all carpal tunnel cases are idiopathic. He testified that for work activities to be considered contributory to the condition, they would need to be forceful and exertional over a period of time, and that her job to his knowledge was neither repetitive nor forceful. The Arbitrator agrees. While the Petitioner obviously uses her hands in her job, there is no indication of any significant forcefulness or repetitiveness. She may have moments of forceful activity, such as dealing with one resident who needs a gait belt, but this is only one resident of 6, and there are many days, given the rotation to the sides of the building, where she does not have to address that individual. Otherwise, her duties vary significantly. The nature of the activities are primarily activities that Petitioner performs within her daily life. Petitioner's use of a pen/pencil, cleaning activities, laundry and food preparation are all activities Petitioner performs at home, and do not, on their face, involve repetitive forceful activity over

time. Given the testimony of Ms. Howard, the Arbitrator also believes that the Petitioner somewhat exaggerated her amount of hand use given the fact that several of the residents are encouraged to and do perform some of the tasks she testified to. The fact that the Petitioner's condition occurred bilaterally also plays a role in this decision. She indicated that she initially only had right hand symptoms on and after 4/17/21 and noted left hand symptoms in the following days. Handwriting and cutting vegetables, for example, unless one is ambidextrous which was not testified to here, typically involves the use of only one hand. The preponderance of the evidence here does not support the development of bilateral carpal tunnel syndrome.

Again, as there is no opinion in the record from Dr. Gabriel as to causation, the only expert opinion offered was that of Dr. Vender. Dr. Vender testified that he spoke with Petitioner about her job duties and reviewed a written job description, and that the duties as he understood them were neither repetitive nor forceful, and therefore "does not fit a definition of being an exertional activity over a reasonable period of time." Dr. Vender testified that Petitioner had two major risk factors, increased body mass index and Petitioner's smoking history, for contracting carpal tunnel, and also that the Petitioner's sex and age also constituted a risk for contracting carpal tunnel. The unrebutted testimony of Dr. Vender was that the Petitioner's bilateral carpal tunnel syndrome and treatment were not, in any way, causally related to either the specific incident of 4/17/21 or Petitioner's work activities or duties.

Based on the above analysis, the Arbitrator finds that the Petitioner has failed to prove she sustained accidental injury arising out of and in the course of her employment with Respondent either on a specific trauma or on a repetitive trauma basis.

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:

Based on the Arbitrator's findings with regard to accident and causation, this issue is moot.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to accident and causation, this issue is moot.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to accident and causation, this issue is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC001162
Case Name	John Pawinski v. Joe and Frank Deli
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	24IWCC0574
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Haris Huskic
Respondent Attorney	Emily Schlecte

DATE FILED: 11/26/2024

/s/Carolyn Doherty,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Pawinski,

Petitioner,

vs. NO: 23 WC 1162

Joe and Frank Deli,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, and evidentiary rulings, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 23, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the

Commission. 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 26, 2024

O: 11/21/24
CMD/ma
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC001162
Case Name	John Pawinski v. Joe and Frank Deli
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Allison Schaeffer

DATE FILED: 5/23/2024

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 21, 2024 5.16%

STATE OF ILLINOIS)
)SS.
COUNTY OF **COOK**)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

John Pawinski
Employee/Petitioner
v.
Joe and Frank Deli
Employer/Respondent

Case # **23** WC **001162**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **August 31, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **January 15, 2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

In the year preceding the injury, Petitioner earned $**7,663.72**; the average weekly wage was $**383.19**.

On the date of alleged accident, Petitioner was **44** years of age, ***married*** with **0** dependent children.

Respondent shall be given a credit of $**807.76** for TTD, $**0** for TPD, $**0** for maintenance, and $**2,852.13** for other benefits, for a total credit of $**3,659.89**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that Petitioner failed to prove that he sustained accidental injuries arising out of and in the course of his employment with Respondent on January 15, 2023.

Petitioner's claim for compensation is denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

May 23, 2024

ICArbDec19(b)

FINDINGS OF FACT

This matter proceeded to hearing on August 31, 2023, in Chicago, Illinois before Arbitrator Elaine Llerena on Petitioner's Petition for Immediate Hearing under 19(b)/8(a). The issues in dispute were accident, causal connection, medical expenses, temporary total disability benefits, and prospective medical care. Arbitrator's Exhibit 1 (AX1).

Testimony

Petitioner testified that prior to working for Respondent, he did demolition work for about 20 years. (T. 9) He testified that he had an accident in 2015 where he fell into a hole, which resulted in a fusion surgery. *Id.* In 2019, he went back to work at a deli, but ultimately left because he had a hard time working and standing on his feet for a long time. *Id.*

Petitioner testified that when he started working for Respondent in August 2022, he told them that he had a prior fusion surgery. (T. 9-11) After his fusion surgery, Petitioner was given permanent restrictions and told that he could not pick up 9-10 pounds. *Id.*

Petitioner testified that he had prior treatment with Dr. Sokolowski and Dr. Kalina for his back. (T. 16-17) The last time that he saw a doctor for his back prior to January 15, 2023, was on August 23, 2022. *Id.* He testified that he did not remember seeing any doctors during the period of August 23, 2022, until January 15, 2023. *Id.* Petitioner testified that he also had prior left shoulder treatment, for which he had an injection. (T. 18) He did not remember the date of the injection, but testified that it was before August 23, 2022. *Id.*

Petitioner reviewed the text messages between him and Bruno Koziel (RX7) and testified that he did not have a child, but confirmed that he it was his phone number on the text messages and that he recalled the text messages. (T. 38-39) Petitioner confirmed that he fell at Christmas on ice and that he told the workers about his fall. (T. 39-41) Petitioner confirmed that he had sent multiple text messages to Mr. Koziel on January 16, 2023, but that at no time did he notify Mr. Koziel that he had retained an attorney and filed a workers' compensation claim. (T. 42-43)

Petitioner testified that he had filed prior workers' compensation claims, but was not sure how many claims he had filed. (T. 47-48) He testified that the October 2021 case involved his back. (T. 50) He did not recall any of the claims being dismissed by the Commission. *Id.*

Petitioner testified that he always worked 35 to 40 hours per week for Respondent. (T. 51) He denied asking for time off frequently prior to January 15, 2023. (T. 54-59) When asked about the text messages that he sent to Mr. Koziel on September 30, 2022, and October 4, 2022, where he asked for time off due to a back injection and getting medication, he testified that he did not have treatment or get medication, but lied to get the day off. *Id.* When asked about the text messages that he sent on November 9, 2022, and November 10, 2022, where he stated that he was going to a chiropractor and needed time off, he denied that he went to a chiropractor. *Id.* He admitted that he called off work or was late to work for various reasons in November and December 2022, and lied to Mr. Koziel about the reasons just to get a day off. *Id.* He testified that on December 22, 2022, his back was hurting very much. *Id.*

Petitioer testified that he had an L4-5 laminectomy and fusion in 2019. (T. 61) He testified that he did not have much pain after the surgery in 2019, but also confirmed that he continued treatment with Dr. Sokolowski and at Kalina pain after the 2019 surgery. *Id.* Petitioner testified that when he went to work for Respondent he was perfect and had no pain. (T. 62) He did not recall considering another back surgery in June

2022. (T. 63) He did not recall having additional back injections in July and August 2022. (T. 66) He denied that after August 23, 2022, he had back injections and saw a chiropractor, and admitted that he lied to Mr. Koziel when he texted him regarding same. (T. 67)

Petitioner confirmed that he was in a car accident on February 13, 2021. (T. 68-71) He testified that he had back pain and left shoulder pain following the accident and was treated at the emergency room. *Id.* Petitioner denied that he had any left shoulder issues after February 13, 2021, and testified that he never had any left shoulder treatment after Feburary 13, 2021. *Id.* He testified that he did not remember treating at Midcity Rehabilitation. *Id.*

Petitioner testified that he was hired at Respondent on August 28, 2022, and that he submitted a paper application to be hired at Respondent. (T. 72-73) He testified that he notified Respondent that he had been taken off work by Dr. Kalina on August 23, 2022. *Id.* He stated that he told Mr. Koziel and all of the managers, and they helped him with lifting. *Id.* He testified that Mr. Koziel stated that he would not make Petitioner lift anything. *Id.*

Petitioner testified that he worked plenty of Saturdays and Sundays. (T. 74) He testified that he would request to work weekends when he was short on work hours. *Id.* Petitioner stated that when he had worked 35 hours, he always wanted 40-50 hours, so he would request to work more hours. *Id.*

Mr. Koziel testified that he is a partner at Respondent business and had worked at Respondent since 2016. (T. 82) As a partner, his job duties include producing product for the deli, doing scheduling for the employees, and managing the managers. *Id.*

Mr. Koziel testified that he hired Petitioner as a deli clerk in August 2022. (T. 83-86) He testified that the job duties of a deli clerk involve servicing the customers from behind the deli counter, either by weighing the product, slicing the product, or packaging the product. *Id.* On occasion, if a product needed to be restocked, the deli clerk would go into the cooler area to refill an item, but this was on rare occasions because there is another employee who restocks the deli case. *Id.* He testified that most of Petitioner's time would be spent behind the deli counter servicing the customers. *Id.* He testified that in terms of lifting, the maximum deli clerks would have to lift would be between 20-30 pounds, but most products weigh 6-8 pounds max. *Id.*

Mr. Koziel testified that at the time of hire, Petitioner mentioned that he was in an accident years prior on a construction site, but that was the extent of the conversation. (T. 86-87, 91) He stated that he hired Petitioner on the spot and that Petitioner did not submit a paper application. *Id.* Petitioner did not provide any medical notes showing that he had any physical restrictions. *Id.* Mr. Koziel testified that when he hired Petitioner, it was his understanding that he would be able to perform the full duties of the deli clerk position. *Id.* Petitioner was typically scheduled to work between 3-4 days per week Monday through Friday. *Id.* He did not typically work Sundays, and if he worked a Sunday, he would have had to specially request it. *Id.*

Mr. Koziel testified that prior to January 15, 2023, Petitioner's attendance was not great. (T. 87, 90, 94) He stated that Petitioner called off work and came in late frequently and left work early. *Id.* He stated that Petitioner would usually call off work via text or phone call, but that sometimes he would just no-show without a call or text. *Id.*

Mr. Koziel confirmed that Petitioner sent him various text messages in September 2022 and November 2022, stating that he needed days off of work due to medical treatment for his back, including an injection and chiropractic adjustments. (T. 92-93) He testified that when he got the text messages, he gave Petitioner the

benefit of the doubt that he was telling the truth, but he did question them due the frequency of these types of texts. *Id.*

Mr. Koziel testified that there are no cameras in the cooler area. (T. 97-98) He explained that the protocol for any potential spills in the cooler area is that employees, specifically Joel and Mike, maintain the cooler and would clean and squeegee the area if needed. *Id.*

Mr. Koziel testified that he found out about the alleged January 15, 2023, accident when Betty, a manager, called him and told him about it. (T. 96-102, 111) He testified that Betty told him that before she was able to speak with Petitioner, an ambulance had been called and no one in the store said they called the ambulance, so they believed that Petitioner called the ambulance himself. *Id.* He testified that he sent a text to Petitioner the following morning asking him if he was okay and asking Petitioner to call him. *Id.* Once Petitioner reported a fall and sent Mr. Koziel the medical records regarding his injuries, Mr. Koziel reported the claim to insurance, which is the company protocol when a work injury is alleged. *Id.* Mr. Koziel then provided the insurance information to Petitioner. *Id.* Mr. Koziel did not have any contact with Petitioner after January 24, 2023. *Id.*

Mr. Koziel testified that Mike typically worked every Sunday and that he was the person who typically stocked the deli. (T. 106-107, 110) He testified that most of the time, Joel and Mike would refill the deli case, and only occasionally, if they were not available, would someone else be asked to refill the deli case. *Id.* He testified that Mike was working on January 15, 2023. *Id.*

Mr. Koziel testified that there are cameras inside the deli, but not in the cooler. (T. 108-109) He testified that he reviewed the video footage that was available, which showed Petitioner walking into and out of the cooler area several times. *Id.* Mr. Koziel testified that it was possible that Petitioner had been instructed to stock something from the cooler area on January 15, 2023. Id.

Michael Zasadni testified that he has worked for Respondent since late 2015 as a deli clerk. (T. 113-114) He stated that he does a little bit of everything, including serving customers during the weekdays. *Id.* On the weekends, he would work as the butcher, and he would also work the register as needed. *Id.* He testified that on the weekends, he was almost always in the cooler area. *Id.* His job duties included sealing product, taking care of the store, and making sure everything was stocked. *Id.*

Mr. Zasadni testified that he worked with Petitioner on January 15, 2023. (T. 113-114) He testified that on January 15, 2023, he was in the cooler area pretty much all day. (T. 116-117) In the morning, he was running in and out of the cooler area, stocking up the store, which he completed around 9:30 a.m. *Id.* After that, he took a short break and then was in the cooler for the rest of the day sealing product until about 3:30 p.m. *Id.* Mr. Zasadni testified that he was the person who would be in charge of cleaning up any grease or water on the floor in the cooler. (T. 124-125) He testified that the floors would get wet and/or blood from the meat could get on the floor and when he noticed something on the floor, he would clean it up right away. *Id.* He testified that on January 15, 2023, he did not notice anything wet or slippery on the cooler floor. (T. 116-117) He testified that if he had noticed anything wet or slippery on the cooler floor, it was his job to clean up the area. *Id.* He explained that because he was running in and out of the cooler pretty much all day, he did not want to fall, especially since he was working with knives all day. *Id.* So, according to Mr. Zasadni, if the floor is slippery, he cleans it up. *Id.* He testified that on January 15, 2023, he did not clean up anything wet or slippery on the cooler floor. *Id.*

Mr. Zasadni testified that on January 15, 2023, he spoke with Petitioner in the morning in the cooler area. (T. 117-119) He testified that he remembered Petitioner coming into the cooler area a couple times after Mr. Zasadni had stocked up the store and was back in the cooler area sealing product. *Id.* He testified that when

Petitioner came into the cooler area, he asked Petitioner what he needed, and Petitioner said that he did not need anything and was just coming to say hi. *Id.* Mr. Zasadni did not notice Petitioner carrying anything in or out of the cooler area when he saw him at any point that day. *Id.* Mr. Zasadni testified that he did not see Petitioner fall. (T. 119-121) He testified that he heard Petitioner groan and say "oh, shit." *Id.* When he heard Petitioner groan, he turned around and saw Petitioner sitting on the floor with his legs and arms outstretched, leaning backwards on both arms. *Id.* He testified that Petitioner was on the ground for no more than two minutes and did not say anything to him. *Id.* Once Petitioner stood up, he left the cooler. *Id.* Mr. Zasadni testified that he continued working and then he walked out of the cooler area about five minutes after Petitioner left the cooler. (T. 126-131) When Mr. Zasadni walked out of the cooler, he did not notice anything on the cooler floor. *Id.* Mr. Zasadni testified that he did not call an ambulance. (T. 119-121)

Job Duties

According to Petitioner, his job duties included bringing out the cheese, sausages and meats in the morning and stocking the deli department. (T. 11-12) Mr. Koziel testified that Petitioner's duties as a deli clerk involved servicing the customers from behind the deli, either by weighing the product, slicing the product, or packaging the product. (T. 83-86) On occasion, if a product needed to be restocked, the deli clerk would go into the cooler to refill an item, but this was on rare occasion because there is another employee who restocks the deli case. *Id.* Mr. Koziel explained that most of the deli clerk's time would be spent behind the deli counter servicing the customers. *Id.* According to Mr. Koziel, the maximum that the deli clerk would have to lift is 30 pounds, but most products weight 6-8 pounds. *Id.*

Petitioner testified that he had permanent restrictions limiting him from lifting more than 10 pounds. (T. 9-11) He testified that the employees at Respondent were accommodating and helped him with picking up items. *Id.* Petitioner claimed that there is always water, grease and fat on the cooler floor. (T. 11-12)

Prior Medical Condition

Petitioner sought a pain medicine consultation at Kalina Pain Institute on May 2, 2016. (RX2, pg. 297) He had been referred by Dr. Sokolowski for what is noted to be a May 19, 2015, injury resulting from falling into a 25-foot hole. He landed on his left side and had a sudden onset of back pain. Petitioner denied prior injury at that time. Petitioner was diagnosed as having myalgia and lumbar spondylosis. An MRI of the lumbar spine was completed on August 31, 2017, which showed progression of multilevel disc bulges causing a varying degree of foraminal/canal stenosis at L3-4 and L4-5, most pronounced at L4-5; progression of the disc bulges with exacerbating spondylosis from L1-3 and L5-S1 causing neural foraminal and central canal stenosis; and progression of the multilevel spondylosis. (RX2, pg. 708) This MRI was compared to a previous MRI from May 29, 2015. Petitioner continued to follow up and treat at Kalina Pain Institute for lumbar pain with radiation into both legs throughout 2017, 2018 and 2019. (RX2) On September 4, 2019, Dr. Sokolowski performed an L4-5 laminectomy and fusion. (PX2, RX2)

Petitioner followed up, post-operatively, with Dr. Sokolowski and at Kalina Pain Institute in 2020 and 2021. On April 13, 2020, Petitioner underwent a CT scan of the lumbar spine that revealed L5-S1 disc herniation with underlying bulge causing foraminal stenosis; L4-5 residual disc bulge causing foraminal stenosis; L3-4 disc bulge and retrolisthesis causing foraminal stenosis; L2 retrolisthesis causing foraminal stenosis; and moderate spinal stenosis. (PX2, pg. 122). Dr. Kalina noted on October 14, 2020, that Petitioner's spine surgery was not successful, and that he continued to have lumbar radicular pain into the thighs. (RX2, pg. 87)

On February 13, 2021, Petitioner was treated at Advocate Christ for injuries related to a car accident. (RX1, pgs. 122-165) Petitioner hit his shoulder on the left side of the vehicle and complained of worsening lower and upper back pain that radiated to the left buttock and thigh. X-ray of the left shoulder showed mild arthritic changes, small subacromial spur, and prominent osteophyte at the medial humeral head.

Notes from Kalina Pain Institute, dated February 19, 2021, confirm the car accident and noted that Petitioner complained of ongoing back pain and a new onset of left shoulder pain. (RX2, pg. 70) Petitioner was prescribed pain medication and continued physical therapy.

Petitioner saw Dr. Lipov at ION on October 11, 2021, for low back pain and right leg pain. (RX3, pg. 9) Petitioner reported a work injury that occurred on October 8, 2021, due to heavy lifting. Dr. Lipov diagnosed Petitioner as having low back pain with associated right lower extremity pain, recommended physical therapy and a lumbar MRI and took Petitioner off work. Petitioner underwent physical therapy at Midcity Rehabilitation. (RX11) An MRI of the lumbar spine was completed on October 25, 2021, the results of which showed loss of the lumbar lordosis suggesting paraspinal muscle spasm, multilevel disc desiccation and Schmorl's nodes with endplate changes; evidence of anterior spinal fusion and disc prosthesis at L4-L5, postsurgical changes in the soft tissues and posterior elements; a diffuse disc bulge in combination with grade 1 AP subluxation causing mild spinal canal stenosis and mild bilateral neuroforaminal stenosis in conjunction with hypertrophic facet joints and ligamenta flava at L2-L3; a diffuse disc bulge with osteophytes causing moderate spinal canal stenosis and mild to moderate bilateral neuroforaminal stenosis and lateral recess attenuation in combination with grade 1 AP subluxation and facet joint and ligamentum flavum hypertrophy at L3-L4; a diffuse disc bulge with osteophytes causing thecal sac indentation, moderate spinal canal stenosis and moderate bilateral neuroforaminal stenosis in combination with facet joint and ligamentum flavum hypertrophy at L4-L5; a diffuse disc bulge with osteophytes causing thecal sac indentation, moderate to severe right and moderate left neural foraminal stenosis, in combination with hypertrophic facet joints at L5-S1. (RX3, pg. 13)

On October 29, 2021, Dr. Day from ION diagnosed Petitioner as having ongoing spondylosis and radicular complaints with an MRI consistent with compression of spinal nerves. (RX3, pg. 15) Dr. Day recommended physical therapy, medications, and consideration of an epidural steroid injection. During his follow up visits at Kalina Pain Institute, Petitioner continued to complain of severe, sharp low back pain with burning into the right leg. (RX2) Dr. Kalina recommended trigger point injections, lumbar epidural steroid injection, physical therapy, medications, and kept Petitioner off work. (RX2, pg. 60-67) On November 27, 2021, Dr. Kalina referred Petitioner to a spine surgeon. On December 13, 2021, Dr. Day recommended an L5-S1 injection and physical therapy, and noted that Petitioner had discontinued treatment at ION. (RX3, pg. 24-27) Petitioner continued to treat at Kalina Pain Institute and underwent a lumbar injection. (RX2, pg. 36) On April 19, 2022, Petitioner reported temporary improvement from the injection. Dr. Kalina recommended additional injections and an orthopedic spine consultation. On June 25, 2022, Petitioner reported ongoing back pain with burning into his lateral thighs and calf and indicated that he was eager to consider surgery. (RX2, pg. 28) On August 23, 2022, Dr. Kalina continued to recommend lumbar epidural steroid injections and told Petitioner to follow up in month. (RX2, pg. 10)

Accident

Petitioner testified that on January 15, 2023, while at work at Respondent, Petitioner went into the cooler area to get sausage that a customer wanted. (T. 12-15) Petitioner explained that he had walked about 5-6 feet into the cooler when he wiped out and fell on his back and left side. *Id.* Petitioner testified that a co-worker saw him fall and asked the co-work for help getting up, but the co-worker had ear buds in his ears. (T. 34-35) Petitioner testified that he was on the floor for about 5-10 minutes. *Id.*

Petitioner testified that he was transported to Christ Medical Center by ambulance. (T. 36) Petitioner testified that he did not know who called the ambulance. *Id.*

Summary of Medical Records

On January 15, 2023, Petitioner was taken to Advocate Christ Medical Center. (PX1, pg. 8-11) Petitioner reported left-sided body pain after a slip and fall at work. He reported that he landed on his left side and that he had pain in the left hip, left lower back, left shoulder, and rib cage. On physical examination, Petitioner had no swelling or deformity in general. He had mild tenderness to palpation to the left shoulder joint, but had full range of motion. His neurovascular exam was normal, and he had normal strength and sensation. He had very mild tenderness to palpation along the left mid axillary line, but no crepitus or skin changes and no midline spinal tenderness, just paraspinal lumbar pain. X-rays of his ribs showed no left-sided rib fracture. X-rays of his left shoulder as compared to the x-rays from February 13, 2021, showed no acute osseous abnormality and mild osteoarthritis of the glenohumeral joint. X-rays of the left hip showed no acute osseous abnormality of the pelvis and hip. X-ray of the lumbar spine, compared to x-rays from June 24, 2021, showed post-surgical changes at L4-5 with no evidence of hardware complication, severe degenerative disc disease throughout the lumbar spine, and no acute findings. Petitioner was discharged home with instruction to follow up with his primary care physician.

Petitioner saw Dr. Goldvekht at AMCI on January 19, 2023. (PX4, pg. 592, RX5) Petitioner complained of left shoulder, low back, and left leg pain. He alleged that he was working in a cooler when he slipped on grease, lost his balance, and fell backward, landing on his back and left shoulder. Petitioner reported a prior accident in 2015 with an injury to the low back, which required surgery and that he was last symptomatic approximately 5 months prior to this alleged accident. Dr. Goldvekht diagnosed Petitioner as having a lumbar sprain, lumbar radiculitis, and left shoulder sprain. Dr. Goldvekht prescribed medication, ordered physical therapy, and took Petitioner off work.

Petitioner underwent physical therapy with a chiropractor at AMCI in January and February 2023. (PX4) On February 16, 2023, Dr. Goldvekht ordered MRIs of the lumbar spine and left shoulder. (PX4, pg. 600)

Petitioner underwent the lumbar spine MRI on February 28, 2023, the results of which showed post operative status with hardware from L3 to S1 level causing susceptibility artifacts; broad-based posterior herniation at L1-2 causing mild central canal and moderate bilateral neural foramina stenosis; broad-based posterior herniation with acute annular tear at L2-3 and L3-4 causing severe central canal and bilateral neural foramina stenosis; broad-based right paracentral herniation with acute annular tear at L4-5 causing severe central canal and right neural foramina stenosis and moderate left neural foramina stenosis; broad-based posterior herniation with acute annular tear at L5-S1 causing moderate central canal and severe bilateral neural foramina stenosis. (PX2, pg. 100) Petitioner underwent the left shoulder MRI on February 28, 2023, the results of which showed moderate supraspinatus and infraspinatus tendinosis, suggestion of low grade partial interstitial tearing; marked AC arthrosis; and glenoid labrum that appeared circumferentially torn with cleavage of the anterior and superior labrum. (PX2, pg. 97)

Petitioner saw Dr. Sokolowski on March 3, 2023. (PX2, pg. 88) Petitioner described the alleged work accident. Dr. Sokolowski noted that he last saw Petitioner in December 2020. Petitioner reported a motor vehicle accident and another work injury after December 2020 resulted in left shoulder and lumbar pain. Dr. Sokolowski reviewed the MRIs and diagnosed Petitioner as having lumbar pain, lumbar radiculopathy, and left rotator cuff tendinitis and tears. Dr. Sokolowski ordered physical therapy, recommended an evaluation with a shoulder specialist and took Petitioner off work.

Petitioner underwent physical therapy from March 6, 2023, through April 2023. (PX2, pg. 153-163)

On March 23, 2023, Petitioner saw Dr. Kurzydlowski at Pain Care Advisors LLC. (PX2, pg. 77; PX6, pg. 674) He reported that he slipped and fell in a meat cooler injuring his left shoulder, left lower extremity, and lumbar area. He reported that he had a work accident in 2015 where he injured his lumbar spine which was eventually successfully treated with anterior posterior fusion and that his previous symptoms were quiescent prior to the January 15, 2023, fall. Petitioner complained of low back, leg and left shoulder pain. Dr. Kurzydlowski diagnosed Petitioner as having left sided sciatica, lumbar radiculopathy, and pain in the left shoulder. Dr. Kurzydlowski recommended an epidural steroid injection at L2 and L3.

Petitioner underwent a Section 12 examination (IME) with Dr. Hennessy on April 26, 2023, at Respondent's request. (RX5) Petitioner reported that he slipped and fell in a cooler on either wet liquid or grease. Dr. Hennessy examined Petitioner and reviewed Petitioner's medical records. Dr. Hennessy diagnosed Petitioner with long-standing degenerative disc disease throughout the lumbar spine with multi-level degenerative stenosis from the degenerative changes. In terms of the left shoulder, he diagnosed Petitioner as having end stage glenohumeral osteoarthritis. He opined that Petitioner had a temporary exacerbation of his pre-existing lumbar condition, which returned to baseline on February 28, 2023, when the MRI showed no acute findings in his lumbar spine. He noted the prior treatment and did not find it credible that after seven years of nearly continuous treatment to the lumbar spine that it somehow almost resolved in the month leading up to his starting work for Respondent. Dr. Hennessy noted that while Petitioner returned to full duty work without restriction in October 2022 until January 2023, it strained credibility that Petitioner's back pain after seven years was almost non-existent. He opined that, accepting that the fall took place as reported, would be a capable of causing an exacerbation, but pointed out that the February 2023 MRI showed no acute findings. Regarding the left shoulder. Dr. Hennessy opined that the osteoarthritis was preexisting and found that the February 2023 MRI was of fair to poor quality and did not show tendinosis or partial thickness tears. He noted severe osteoarthritis of the glenohumeral joint and mild osteoarthritis in the AC joint. He reviewed x-rays of the left shoulder taken in his office, and noted that they showed complete bone-on-bone osteoarthritis with subchondral cysts in the glenoid and humerus and slight flattening of the humeral head. The AC joint had a small superior osteophyte off the distal clavicle, but was otherwise normal. He noted a small inferior osteophyte off the humeral head. Dr. Hennessy noted that the physical exam was consistent with osteoarthritis of the left shoulder. He explained that the circumferential tear of the labrum as described by the radiologist is a degenerative finding consistent with osteoarthritis and not an acute labral tear. Dr. Hennessy diagnosed Petitioner as having suffered a temporary exacerbation of pre-existing osteoarthritis of the left shoulder. Dr. Hennessy opined that treatment to date had been reasonable, necessary, and causally related to the alleged work accident up to February 28, 2023. Any treatment after that date, according to Dr. Hennessy, was related to the natural progression of Petitioner's preexisting and symptomatic lumbar pain and radiculopathy. With regard to the shoulder, he opined that treatment to date had been reasonable and necessary and related to the temporary exacerbation of the preexisting glenohumeral osteoarthritis. Dr. Hennessy opined that Petitioner had reached MMI for the back, but was not at MMI for the shoulder. He stated that MMI would occur after a glenohumeral cortisone injection. He opined that Petitioner had been capable of light duty work and never needed to be taken completely off work. He stated that he would give Petitioner work restrictions for the lumbar spine, but that those were not related to the January 2023, work accident. He gave light duty work restrictions for the left shoulder that he related to the alleged work injury, assuming it occurred as alleged, and stated that they would be in place until completion of a cortisone injection to the left glenohumeral joint.

On June 1, 2023, Petitioner saw Dr. Tu for evaluation of the shoulder. (PX5, pg. 634-646) Petitioner reported that on January 15, 2023, he slipped on some grease on the floor and landed on his left side, including his shoulder. He reported that since the injury, he had difficulty with overhead and reaching activities. He

denied any prior left shoulder symptoms. Dr. Tu reviewed the MRI of the left shoulder from February 28, 2023, and diagnosed Petitioner as having a partial-thickness rotator cuff tear. He recommended a cortisone injection, which he administered, and recommended physical therapy. Dr. Tu provided work restrictions of no lifting greater than 10 pounds and no overhead activity with the left arm. On July 6, 2023, Petitioner reported a 10% improvement in his symptoms following the injection and physical therapy. (PX5, pg. 633, 638, 655) Dr. Tu recommended a left shoulder arthroscopic subacromial decompression with possible rotator cuff repair.

On August 28, 2023, Dr. Hennessy issued an addendum report where he opined that Petitioner reached MMI and could perform full duty without restrictions after the June 1, 2023, injection. (RX5) Upon reviewing the February 13, 2021, x-rays of the left shoulder and the x-rays taken at the emergency room on January 15, 2023, he opined that the degenerative findings of the glenohumeral joint were preexisting as there was a subchondral cyst, sclerosis and inferior osteophyte off the humeral head. He reiterated that his review of the MRI found little to no pathology to the rotator cuff tendons. Dr. Hennessy opined that Petitioner returned to baseline after the cortisone injection on June 1, 2023, and reached MMI for the left shoulder injury allegedly sustained on January 15, 2023.

Petitioner's Current Condition

Petitioner is currently seeking continued treatment for his lower back and left shoulder.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks,* 08 ILWC 004187 (2010).

The Arbitrator finds Petitioner's testimony was not credible. The Arbitrator notes numerous inconsistencies within Petitioner's own testimony during the hearing, as well as inconsistencies between Petitioner's testimony and the admissible evidence of record, indicating unreliability. Additionally the Arbitrator notes additional credibility factors that have been considered in evaluating Petitioner's credibility overall. The Arbitrator notes that although the circumstances are unclear, it does appear that Petitioner fell at Christmas 2022, showing another potential mechanism of injury prior to the alleged date of accident. He confirmed that he sent a text message to Mr. Koziel on January 16, 2023, which mentioned that he fell at Christmas. He testified that he did fall at Christmas on ice. Regardless of who he told, it appears that he fell on ice at Christmas 2022, and based on the time card, he was not working on December 25, 2022, so that fall did not occur at work. Per the time card, he did not work again until January 6, 2023, and then only worked four

more shifts prior to the alleged date of accident. (RX7, RX8). Given the frequency with which he called off work prior to January 15, 2023, due to ongoing back treatment, it strains credulity that he was in zero pain until January 15, 2023, as he claimed.

Further, given Petitioner's propensity to be untruthful to his employer, the Arbitrator finds the testimony of Mr. Koziel and Mr. Zasadni credible over that of Petitioner's testimony.

Finally, in reviewing the medical evidence, it is clear that Petitioner misrepresented his prior condition to his doctors on numerous occasions. For instance, he told Dr. Goldvekht in January 2023 that he was last symptomatic approximately five months prior to the alleged work accident, which is contrary to his testimony that on December 22, 2022, his back was hurting and the text messages that he was sending to his employer regarding medical issues in September, October, November, and December 2022. In addition, he told Dr. Sokolowski in March 2023 that he had been working without restrictions at Respondent prior to January 15, 2023, which is not consistent with his testimony that he had permanent work restrictions and that he could not pick up more than 10 pounds. Another example is when Petitioner told Dr. Tu on June 1, 2023, that he had no prior left shoulder issues, which is not consistent with his medical history.

Based on the numerous credibility issues addressed above, the Arbitrator finds Petitioner's testimony was not credible.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF THE PETITIONER'S EMPLOYMENT BY THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner attempted to prove that an accident occurred through his testimony and medical records. The evidence Petitioner presented at trial, however, was not credible for the reasons noted above. As such, the Arbitrator does consider Petitioner's testimony in making the determination of whether Petitioner sustained his burden of proving that an accident occurred that arose out of and in the course of his employment with Respondent. Instead, the Arbitrator finds Mr. Zasadni' account of what happened on January 15, 2023, to be credible over Petitioner's account of the alleged accident. Therefore, the Arbitrator notes that Mr. Zasadni was at work on January 15, 2023, and stocked the store in the morning, thus there would be no need for Petitioner to have to go into the cooler area to stock in the morning. Also, Mr. Zasadni was available to subsequently restock, if needed, which is his job. The Arbitrator further notes that when Petitioner entered to cooler, it was simply to say hi to Mr. Zasadni and that Mr. Zasadni noticed that Petitioner was not carrying anything in or out of the cooler. The Arbitrator further notes that Mr. Zasadni, who had spent the majority of his day in the cooler, did not notice anything wet or slippery on the cooler floor and did not notice anything out of the ordinary in the area where Petitioner allegedly fell.

It is a well-settled principle of law that it is the Petitioner's burden to prove all of the elements of his case by the preponderance of credible evidence. Moreover, liability cannot rest on imagination, speculation or conjecture, but must be based on the facts. *Arbuckle v. Industrial Comm'n*, 32 Ill.2d 581, 585 (1965).

Based on the above, the Arbitrator finds that Petitioner has presented no credible evidence that an accident occurred which arose out of and in the course of his employment with Respondent on January 15, 2023. As such, the Arbitrator finds Petitioner failed to prove that he sustained a compensable work accident on January 15, 2023.

All other issues are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC018851
Case Name	Shelby Spath v. Sonoco Alloyd
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0575
Number of Pages of Decision	11
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Bradley Melzer
Respondent Attorney	Peter Havighorst

DATE FILED: 11/26/2024

/s/Carolyn Doherty,Commissioner
Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Shelby Spath,

Petitioner,

vs. NO: 22 WC 18851

Sonoco Alloyd,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19(b) having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, jurisdiction, and penalties and fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 8, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 26, 2024
O: 11/21/24
CMD/ma
045

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

/s/ *Christopher A. Harris*
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC018851
Case Name	Shelby Spath v. Sonoco Alloyd
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Bradley Melzer
Respondent Attorney	Peter Havighorst

DATE FILED: 5/8/2024

/s/ Paul Cellini, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 7, 2024 5.155%

STATE OF ILLINOIS)
)SS.
COUNTY OF **KANE**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)/8(a)

SHELBY SPATH Case # **22** WC **18851**
Employee/Petitioner
v.
SONOCO ALLOYD
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Geneva**, on **March 27, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Respondent's Motions for Continuance and/or Bifurcation**

FINDINGS

On the date of accident, **May 5, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**Unknown**; the average weekly wage was $**875.00**.

On the date of accident, Petitioner was **27** years of age, ***married*** with **0** dependent children.

Respondent shall be given a credit of $**N/A** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**N/A**.

Respondent is entitled to a credit of $**N/A** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that the Petitioner's lumbar condition of ill-being is causally related to the May 5, 2022 accident.

The issues of temporary total disability and incurred medical expenses are reserved by the parties and not issues in the current hearing by the agreement of the parties.

Respondent shall authorize the left L5/S1 microdiscectomy revision as prescribed by Dr. Jacoby pursuant to Sections 8(a) and 8.2 of the Act.

Petitioner's Petition for Penalties and Attorney Fees, as provided in Section 16 of the Act, Section 19(k) of the Act and Section 19(l) of the Act are denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator May 8, 2024

STATEMENT OF FACTS

Petitioner began working for Respondent in November 2018. On 5/5/22 she worked as a process technician, involving loading 400 to 950 pound rolls of plastic onto a machine, which then converts the plastic into parts ("blisters"). Once a job is completed, the tech then retools the machine for the next job. The plastic rolls are moved by the tech via pallet jacks. She worked the third shift (10 pm to 6 am), Monday through Friday. She testified that she had no back or leg problems, and no lost time related to back problems, prior to 5/5/22.

On 5/5/22, Petitioner was pulling a plastic roll with a pallet jack, felt a pop and "it instantly shut down my leg." She reported the injury to lead supervisor Rosa Cortez and completed a written accident report. Cortez gave it to the department manager, Tyler Garrett, who came to Petitioner when her shift ended at 6 a.m. and advised her to go home and if she had ongoing pain to let him know. She went home and took over the counter pain medications. She continued to work and was sore over the next few days, then developed significant pain one or two weeks later. She reported this to her supervisor, who told the plant manager, who then told her to go home for the night. The next morning, she received a text to meet Human Resources' Tim Barris at Physician's Immediate Care (PIC) at 10 a.m. She did so and testified she was provided with a back brace and anti-inflammatories.

The initial 5/17/22 report from PIC referenced Petitioner pulling a pallet with a 700 pound roll of plastic around midnight on 5/5/22 and feeling a pop in the left lower back with continuing pain with some tingling in the left leg. She reported no prior similar symptoms, though prior left knee and ankle surgeries were referenced. X-rays noted some bone abnormality, sclerosis, and mild scoliosis. She was diagnosed with a lumbar/pelvic strain, medications were prescribed, she was to wear a back brace and was to return to full duty work. (Px1). She was advised to follow up on 5/24/22, and while billing records show visits on 5/24/22 and 6/15/22, Px1 does not contain any progress noted from these dates. Petitioner testified she followed up at PIC with ongoing symptoms and was prescribed an MRI and was to continue brace use.

A lumbar MRI was performed on 6/14/22, showing multilevel spondyloarthropathy, primarily L3 to S1, with acquired and congenital stenoses (noting congenitally small spinal canal). Most significantly, the report states: "Patient's reported left radicular symptoms is likely related to a sizeable disc herniation at L5/S1 which contacts and displaces the descending L5 nerve root." (Px2).

Petitioner testified that PIC referred her to Northwestern, where after the MRI she saw Dr. Katta, an interventional pain management specialist, on 6/30/22. His review of the MRI indicated a broad-based L5/S1 disc bulge contacting the L5 nerve root. She had positive left straight leg raise test and slight reduction in left EHL, otherwise normal on exam. Petitioner reported her symptoms began with the 5/5/22 work injury and that she'd had a couple of chiropractor visits. Radiculitis was diagnosed, Gabapentin was prescribed, and she was limited to light duty (no lifting over 10 pounds, limited bending, and twisting). She was referred to both physical therapy and to chiropractor Dr. Anderson. (Px2). No chiropractic records were noted in the evidentiary record by the Arbitrator.

On 7/7/22, Petitioner called Dr. Katta's office reporting severe pain and asking for pain medication. She was advised that he did not write narcotic pain medication prescriptions and was prescribed a Medrol dosepak. She again called on 7/20/22 due to severe pain and returned to Dr. Katta on 7/26/22. She also reported left leg pain with tingling in the left foot and no improvement with therapy or chiropractic treatment. An epidural injection was prescribed, and she was held off work. (Px2).

Petitioner testified she attended physical therapy at Northern Illinois Rehabilitation in DeKalb. It appears that on 8/11/22 there was some confusion about whether injections had been recommended, and Dr. Katta ordered left L5 and S1 epidurals. She returned on 8/22/22, and the report noted she was continuing to take Gabapentin and that the Medrol dosepak helped temporarily but her pain returned. (Px2). Epidural injections were performed at left L5 and S1 by Dr. Katta on 9/7/22, and he advised Petitioner could work with a 10 pound restriction. (Px2).

Petitioner testified the Respondent did not accommodate light duty restrictions. She also testified she saw Dr. Singh at Respondent's request on 9/9/22, however neither party submitted a report related to this visit.

On 9/29/22, Respondent contacted Northwestern Medicine requesting a drug screen and were advised they did not do this and would normally refer someone to a lab.

Petitioner testified she had no further treatment after seeing Dr. Singh until March 2023. She had a lot of pain up to that point and received oral medications while surgery was recommended. However, the evidence indicates that on 10/7/22, Dr. Katta's office contacted Petitioner multiple times leaving messages attempting to schedule a telehealth visit. (Px2). A 11/29/22 note from Dr. Jacoby restricted Petitioner to light duty work (5 pounds and no repetitive bending). (Px4). As it appears from the records, however, that Petitioner initially saw Dr. Jacoby at Fox Valley Orthopedics on 3/27/23, it is unclear how the 11/29/22 note was issued.

On 3/27/23, Petitioner underwent surgery with Dr. Jacoby at Fox Valley Ortho involving left L5/S1 microdiscectomy. Petitioner testified that after surgery she felt sore and then after some physical therapy she remained in a lot of pain.

On 4/18/23, Petitioner reported no further leg symptoms or numbness and tingling. She was to attend therapy and remain off work for 6 weeks. On 5/31/23, Petitioner reported middle back pain into the left buttocks with numbness but no symptoms in her legs. Dr. Jacoby ordered 6 more weeks of therapy and released Petitioner to return to work the following Monday and to follow up as needed. (Px4).

Petitioner called Fox Valley on 6/6/23 stating she returned to work and worked for 10 hours that day, developing significant pain after about 7.5 hours. She asked if she should be working when she had 6 more weeks of therapy to still complete. She didn't know if the pain was related to the surgery or "the other two hernias I have from the same workcomp injury." A 6/7/23 work note was then issued by Fox Valley, again restricting Petitioner to light work duty with a 5 pound weight restriction. (Px4).

On 7/25/23, Dr. Jacoby noted complaints of mid back pain that did not radiate and no numbness or tingling. Petitioner had intermittent left buttock pain but the symptoms into the left leg resolved with surgery. He restricted Petitioner to 5 pounds, noting no likely surgical indications and his plan was for pain management for injections. An MRI was prescribed and performed on 8/3/23, reflecting L5/S1 left paracentral disc protrusion impinging the descending left S1 nerve root, a central L3/4 disc protrusion, and a diffuse L4/5 disc bulge resulting in mild spinal canal stenosis at both levels with mild L4/5 foraminal stenosis. (Px4).

On 8/9/23, Dr. Jacoby reviewed the MRI and recommended epidurals and a 5 pound weight restriction. He also prescribed Flurbiprofen and Lidozen patches. He continued to recommend bilateral L5/S1 epidurals on 9/12/23 and 10/20/23 and the 5 pound weight restriction. Also in evidence was a 9/20/23 work note of Dr. Jacoby continuing the 5 pound restriction. (Px4). Petitioner testified the referral to pain management led her to Dr. Unger.

Petitioner initially saw Dr. Unger on 9/12/23. He noted Petitioner reported minimal relief with pre-surgery epidural. He performed repeat bilateral L5/S1 epidurals on 10/20/23. On 10/31/23, Petitioner reported epidurals provided temporary improvement, but she still had pain and weakness in the low back and legs, left greater than right. (Px4). She testified she had two sets of injections with Dr. Unger, which helped a little bit but only temporary before all of her leg pain returned. Dr. Jacoby noted a recurrent L5/S1 herniation and recommended a revision left L5/S1 microdiscectomy surgery and restricted Petitioner off work. (Px4). Petitioner testified she has since remained off work.

According to Petitioner, the 6/5/23 full duty release from Dr. Jacoby's office came from his assistant (PA). When she went back to work, she was sore the first day, which she thought was due to being deconditioned, but she then had more pain the next day and contacted the doctor, who on 6/7/22 again took her off work.

Petitioner saw Dr. Ghanayem at Respondent's request on 11/2/23.

Petitioner testified she hasn't returned to Dr. Jacoby as he indicated there isn't much more to do pending surgery. She reported ongoing symptoms. She can't sleep on her back or left side. If she stands too long, such as doing dishes, pain shoots down her leg. Prolonged walking, lying on couch, and prolonged standing all trigger pain. When driving she props her left leg up on the side of the door. She takes Flexeril, a muscle relaxer prescribed by Dr. Jacoby, for pain usually between 2 and 3 times a day. She wants to undergo surgery and return to normal life, and she wants to return to work as she likes it and is tired of sitting at home.

Petitioner denied any car accident injuries since May 2022. She agreed her TTD payments were current as of the hearing date. She reiterated she hasn't worked since May 2022 other than the attempt she testified to. She can drive a car. When she saw Dr. Ghanayem in November 2023 at Loyola he examined her and asked questions, which she fully answered. She has two bills from Fox Valley that, to her knowledge, are being handled through workers' compensation. She has not applied for Social Security Disability or any other type of disability benefits. She agreed her medications and therapy thus far have been covered by the Respondent and she hasn't been denied the ability to see new doctors.

CONCLUSIONS OF LAW

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner's current lumbar condition of ill-being remains causally related to the 5/5/22 work accident.

The Petitioner testified she had no prior low back or leg symptoms or treatment. No evidence was presented which rebuts this testimony. Petitioner credibly testified she developed symptoms performing what appears to be a heavy activity of moving a large plastic roll weighing between 400 and 900 pounds. While she obviously was not lifting this item, she was having to push and pull it, which seems to be a competent mechanism for a

lumbar injury. Petitioner's symptoms have remained essentially unabated since that time. Therefore, the preponderance of the evidence supports via a chain of events analysis that Petitioner's lumbar condition of ill being is causally related to the 5/5/22 accident.

The radiologist for the initial lumbar MRI indicated a sizeable L5/S1 disc herniation displacing the L5 nerve root. L5/S1 microdiscectomy was performed in March 2023. Petitioner reported relief of her leg symptoms but ongoing back pain. The post-op lumbar MRI of 8/3/23 showed a L5/S1 left paracentral disc protrusion impinging left S1 nerve root, a central L3/4 disc protrusion, and a diffuse L4/5 disc bulge with mild spinal canal stenosis at both levels and mild L4/5 foraminal stenosis.

The Arbitrator also believes it is more than reasonable to presume that Section 12 examiner Dr. Singh agreed with causation and the reasonableness of the first surgery given Respondent's delay in treatment pending that visit and then subsequent surgical approval with no provision of the report to Petitioner's counsel nor submission into evidence at this hearing. It would be very unusual for a Respondent not to provide evidence of a dispute following a requested Section 12 exam. It is unfortunate that Section 12 examiner Dr. Ghanayem's opinion was not available at the time of trial, but the Penalties and Fees section below further discusses this issue.

Based on the preponderance of the evidence, the Petitioner's ongoing lumbar condition of ill-being is causally related to the 5/5/22 work accident.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner is seeking authorization of a recommended left L5/S1 revision surgery, involving microdiscectomy as prescribed by Dr. Jacoby. Given the Arbitrator's findings above with regard to causation, given Petitioner's unrebutted testimony that she has remained in pain since the work accident and despite the prior surgery with Dr. Jacoby, given the post-operative MRI findings, and given no opinion which rebuts this recommended procedure, the Arbitrator finds that Respondent shall authorize the left L5/S1 revision microdiscectomy.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, and 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:

Any issue of temporary total disability and/or credit to Respondent for payment of temporary total disability benefits prior to the hearing has been reserved by the parties by agreement. Any issue regarding medical expenses incurred prior to the hearing and/or credit to Respondent for payment of such medical expenses prior to the hearing has been reserved by the parties by agreement. (See Arbx1).

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The intent of sections 16, 19(k), and 19(l) is to implement the Act's purpose to expedite the compensation of industrial workers and to penalize employers who unreasonably, or in bad faith, delay or withhold compensation due an employee. *Avon Products, Inc. v. Industrial Comm'n*, 82 Ill. 2d 297, 301 (1980).

Awards under section 16 and 19(k) are proper only if the employer's delay in making payment is unreasonable or vexatious. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 504-05 (1998). That is, the refusal to pay (or any benefits) must result from bad faith or improper purpose. *Id* at 183 Ill. 2d at 515. An award under section 19(l) is more in the nature of a late fee, so an award under that section is appropriate if an employer neglects to make payment without good and just cause. *Id*. The employer has the burden of showing that it had a reasonable belief that the delay was justified. *Roodhouse Envelope Co. v. Industrial Comm'n*, 276 Ill.App.3d 576, 579 (1995). If the employer possesses facts that would justify its position, fees and penalties are usually inappropriate. *Id*.

In this case, based on the evidence presented, the Respondent was making a good faith challenge to liability by seeking a Section 12 examination and opinion. The recommended revision surgery has not been specifically denied by Respondent. Respondent has essentially been in a holding pattern while awaiting its expert's report. While it is true that the Respondent is missing a significant potential part of their defense due to the lack of a report from Dr. Ghanayem, the evidence also supports that Respondent's inability to produce this report lies with the physician pursuant to the evidence presented. There is no evidence that the Respondent in this case was purposefully delaying the authorization of surgery on an unreasonable or vexatious basis. Since Petitioner's injury, per her own testimony, Respondent has paid for medical and made continued TTD payments on a consistent basis through the hearing date other than authorize surgery. The Arbitrator believes the Respondent has provided a reasonable basis for not authorizing the surgery prior to the hearing and concludes Respondent has not acted unreasonably, or vexatious given no control over the timeliness of the physician's report. Penalties and Attorney Fees are denied.

WITH RESPECT TO ISSUE (O), RESPONDENT'S MOTIONS TO CONTUNUE THE HEARING AND/OR TO BIFURCATE THE HEARING, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner was examined by Dr. Ghanayem at Respondent's request on or about 11/2/23 pursuant to Section 12 of the Act. According to Respondent, this report had still not been completed and provided by the physician as of the 3/27/24 hearing date.

Respondent initially objected to proceeding with hearing on 3/27/24 based on not yet having receipt of the report of Dr. Ghanayem. At the end of the hearing, Respondent requested that the matter be bifurcated for the purpose of leaving proofs open until obtaining the report. The Arbitrator overruled the initial objection and denied the request for bifurcation. In the Arbitrator's view, the Petitioner has been waiting for approximately 5 months for this report. The Arbitrator notes that the Respondent was advised that if the receipt could be obtained prior to the decision issuing, a motion to reopen proofs would be entertained. As of the date of the Arbitrator's signature on this document, no such motion has been received and it now 6 months since the examination. While the Respondent is certainly entitled to due process, the Arbitrator believes it would be unreasonable to continue the matter further at this point in fairness to the Petitioner, who testified to significant ongoing pain and disability.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC033700
Case Name	Everado Aceves v. Truong Entrprises Inc
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0576
Number of Pages of Decision	17
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Sandra Loeb
Respondent Attorney	Patrick Jesse

DATE FILED: 11/27/2024

/s/Christopher Harris,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EVERARDO ACEVES,

Petitioner,

vs. NO: 21 WC 33700

TROUNG ENTERPRISES,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability, and prospective medical treatment, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed February 5, 2024, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 27, 2024

CAH/tdm
O: 11/21/24
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC033700
Case Name	Everado Aceves v. Truong Entrprises Inc
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Sandra Loeb
Respondent Attorney	Patrick Jesse

DATE FILED: 2/5/2024

/s/Crystal Caison, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JANUARY 30, 2024 4.985%

STATE OF ILLINOIS)
)SS.
COUNTY OF **Cook**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION (19b)

Everado Aceves
Employee/Petitioner

v.

Truong Enterprises
Employer/Respondent

Case # **21** WC **33700**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago**, on **June 8, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On **11/23/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**35,181.90**; the average weekly wage was $**703.64**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **1** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**0.00**.

Respondent is entitled to a credit of $**0.00** under Section 8(j) of the Act.

ORDER

The Arbitrator finds that the Petitioner has met his burden of proving that his current condition of ill-being is causally related to the work accident of November 23, 2021.

The Arbitrator orders the Respondent to pay reasonable and necessary medical services as set forth in Petitioner's Exhibits 20, 21, 22, 23, 24 & 26 for causally related treatment Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act and more specifically as follows:

$1,421.00 to Advocate Aurora Health, $46,808.11 to Skyline Orthopedics, $1926.00 to Prime Medical Imaging, LLC, $122,318.69 to Preferred Surgicenter LLC, $2,640.00 to Core Anesthesia PLLC and $1, 695.00 to Medi Dimensions LLC

Petitioner is entitled to prospective medical under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.

Respondent shall pay Petitioner temporary total disability benefits of $469.09 /week for 80 weeks, commencing November 25, 2021, through June 8, 2023, as provided in Section 8(b) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Crystal L. Caison

Signature of Arbitrator

February 5, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Everardo Aceves	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21WC33700
Troung Enterprises.	)	
	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter proceeded to hearing on June 8, 2023 before Arbitrator Crystal L. Caison. Issues in dispute include causal connection, medical bills, temporary total disability benefits (TTD) benefits and prospective medical care. (AX 1).

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner's Testimony

Everardo Aceves ("Petitioner") was a 46-year-old married male with one dependent child on November 23, 2021. He alleges that he sustained an accidental injury to his left shoulder that arose out of and in the course of his employment with Respondent on November 23, 2021.

Petitioner testified that he was a picker and had worked in this role for Respondent about 1.5 years prior to the date of the alleged accident. (Tr.11) He testified that his job responsibility includes picking out items listed on an order sheet, putting them on a pallet to be placed on a shelf in the warehouse. *Id*. Petitioner testified that he worked more than 40 hours each week, his scheduled varied either Mon-Fri or Mon-Sat and that his shift was 9-10 hours. (Tr. 13) Petitioner testified that the picture showed to him during the trial was an accurate depiction of the Troung Enterprises warehouse as it existed on November 23, 2021. (Tr. 14)

Petitioner testified that he would have to lift items to be placed on the shelf and that depending on the weight of the items, the range would go from five to eight feet. (Tr. 15)

He said that he injured his left shoulder when a co-worker's "electric rider," collided with the "electric rider" he was operating.

Petitioner testified that he held onto the rider with his left hand at the time of the impact. (Tr. 20). Petitioner testified that he heard a pop in his left shoulder at the time of impact. *Id.*

Both parties offered copies of the accident surveillance video into evidence. There are two different angles of the incident. The videos are timestamped and begin at 4:06 am. The first video from camera "C105 Shipping 4" shows petitioner on his electric rider. Petitioner has an empty pallet on the front of the rider. Petitioner backs up out of a stall where product is stored. Petitioner backs up to his left. There is another fork truck seen on the video carrying approximately 10-12 empty pallets. As petitioner tries to pass the fork truck, the forks contact petitioner's rider. The rider moves to the left and closer to the camera. (RX 1, PX 25)

The second angle shows petitioner loading the empty pallet on his rider. (PX 25) Petitioner is holding on to the rider with his left arm. As petitioner backs out of the stall, the fork truck collides with the front of the petitioner's electric rider. Petitioner then stops and appears to say something to the other driver. The two men talk for a few seconds. Petitioner then drives away. Petitioner stops at the end of the video and kicks the pallet back onto the fork truck. (RX 1, PX 25)

Petitioner testified that he reported the accident after it occurred. (Tr. 28) Petitioner testified that he continued working and completed his shift that day. (Tr. 29) Petitioner testified that he returned to work the following day but could not complete his full shift due to his left shoulder pain complaints. *Id*.

Petitioner testified his pain worsened in severity as compared to his pain in 2019 and that he sought treatment in the ER. (Tr. 39) Petitioner testified that after the ER visit, he did not seek treatment for another month because he was waiting on his "lawyer to approve the appointment" *Id*.

Petitioner testified that he never returned to work for the respondent after November 24, 2021. Petitioner reported for work on November 29, 2021 and had been sent home. (Tr. 43). Petitioner said that he never heard from respondent after that date. (Tr. 43).

On cross-examination, petitioner testified that his left shoulder symptoms "completely resolved" prior to working for Troung Enterprises. (Tr. 45). Petitioner agreed that he started working for respondent on April 20, 2020. (Tr. 53). Petitioner agreed that Dr. Tu continued to

recommend shoulder surgery throughout the entire course of treatment from May of 2019 through September of 2020. (Tr. 48-49). Petitioner admitted that Dr. Tu kept him on work restrictions that entire time. (Tr. 49).

On cross, Petitioner denied having any work restrictions imposed by Dr. Tu at the time he began working for respondent. Petitioner testified that he had "no pain". (Tr. 54-55) Petitioner testified that he never disclosed any of his prior left shoulder history or treatment to Dr. Watson. (Tr. 55-56)

Petitioner said that he told Dr. Saltzman that his left shoulder symptoms from the prior case completely resolved at the time petitioner started working for respondent. (Tr. 59).

Medical

April 19, 2019, Petitioner sought treatment with Dr. Mark Gerber of Fullerton Drake Medical Center for an alleged left shoulder injury he sustained with a former employer. (RX 9)

April 25, 2019, Petitioner presented before Dr. Gerber for an initial evaluation. Dr. Gerber ordered an MRI of the left shoulder, physical therapy, and restricted Petitioner to no use of the left arm. (RX 9)

April 27, 2019, Petitioner underwent an MRI of the left shoulder. The MRI findings proved positive for a partial thickness articular surface tear of the supraspinatus tendon. (RX 11)

May 11, 2019, Petitioner returned to Dr. Gerber and received a referral to Dr. Kevin Tu, an orthopedic surgeon. Dr. Gerber kept Petitioner's work restrictions in place and ordered continued physical therapy. (RX 9)

May 15, 2019, Petitioner presented to Dr. Tu for treatment. Dr. Tu ordered Petitioner to undergo left shoulder arthroscopic surgery to address a torn rotator cuff tendon. Petitioner was continued off work until the insurance carrier authorized the surgery. (RX 9)

May 29, 2019 & June 28, 2019, Dr. Gerber reevaluated Petitioner. During each of the evaluations with Dr. Gerber Petitioner complained of left shoulder pain and weakness as well as numbness and difficulty lifting the left arm above shoulder level. (RX 9)

August 6, 2019, Dr. Gerber's notes reflect that Petitioner continued to await approval for the left shoulder surgery. (RX 9)

August 14, 2019, Petitioner returned to Dr. Tu and reported continued difficulty with overhead and reaching activities. Dr. Tu reviewed an Independent Medical Examination report of

Dr. Matthew Saltzman. (RX 11) Dr. Saltzman opined that Petitioner's April 2019 MRI revealed a small degenerative articular tear that was neither caused by his workplace injury, nor the cause of Petitioner's ongoing symptoms. Dr. Saltzman opined that Petitioner had suffered a trapezius strain as a result of his April 19, 2019 work injury and that Petitioner's partial rotator cuff tear was an incidental, degenerative finding. He opined that as of July 2, 2019, Petitioner was not a surgical candidate and that Petitioner's trapezius strain would resolve with a home exercise program. He stated that Petitioner could return to full duty work as of July 19, 2019.

September 6, October 7, November 5, and December 7 of 2019, Petitioner continued with care under Dr. Gerber. The notes indicate that Petitioner could continue to work light duty with a 10-pound lifting restriction. (RX 9)

October 30, 2019, Petitioner returned to Dr. Tu. The records reflect that petitioner continued to report difficulty with overhead and reaching activities. Dr. Tu documented decreased rotator cuff strength per the physical exam. Dr. Tu continued to diagnose petitioner with a left shoulder partial-thickness rotator cuff tear. Dr. Tu continued to recommend surgery. Dr. Tu continued petitioner's work restrictions. (RX 11)

April 8, 2020 and July 6, 2020, Petitioner returned to Dr. Tu. Dr. Tu continued to recommend surgery and kept Petitioner on work restrictions of no lifting greater than 10 pounds and no overhead activity with the left arm. (RX 11)

September 23, 2020, Petitioner presented to Dr. Tu for a final visit.

November 24, 2021, Petitioner presented to the Emergency Department at Advocate Christ Medical Center where he provided a history of left shoulder pain that began at work on the previous day when riding a vehicle at work that was struck by another vehicle. The Emergency Department record indicates that Petitioner felt a pop in his left shoulder and heard a cracking noise at the time of the collision. Petitioner was diagnosed with an acute injury to his left shoulder, and he was advised to stay off of work until November 29, 2021.

December 30, 2021, Petitioner sought treatment with Dr. Jonathan Watson. (PX 15) Petitioner reported a left shoulder injury as a result of the collision between the standing forklift and the fork truck. Petitioner denied any prior medical history. Petitioner reported 10 out of 10 shoulder pain. Exam findings revealed grossly limited range of motion with pain. Petitioner also demonstrated decreased rotator cuff strength with impingement signs. Dr. Watson ordered

petitioner to undergo a left shoulder MRI. Dr. Watson provided petitioner with work restrictions of no use of the left arm. (PX 15)

January 16, 2022, Petitioner underwent an MRI study of the left shoulder. The findings revealed a complete tear of the supraspinatus tendon with restriction. The radiologist visualized edema compatible with a recent injury. There were no findings of significant muscle atrophy. Petitioner also had findings of an undersurface infraspinatus tear as well as a degenerative posterior labrum tear. Lastly, petitioner had findings of moderate osteoarthritis of the AC joint. (PX 16)

January 17, 2022, Petitioner returned to Dr. Watson. Dr. Watson reviewed the MRI study and concluded that petitioner had a traumatic rotator cuff tear. Dr. Watson indicated in his note that petitioner had no prior shoulder issues. Dr. Watson recommended petitioner undergo surgery to repair the rotator cuff tear. (PX 17)

October 17, 2022, Petitioner returned to Dr. Watson and Dr. Watson continued to recommend surgery. (PX 18)

November 30, 2022, Petitioner attended a section 12 examination at Respondent's direction with Dr. Bryan Neal, an orthopedic surgeon and hand surgery specialist. Dr. Neal reviewed Petitioner's past medical records and the radiologists' reports from Petitioner's pre and post-injury MRI studies. Dr. Neal also reviewed the video surveillance of the November 23, 2021 accident and conducted his own examination of the Petitioner's left shoulder. Dr. Neal concluded in his report that Petitioner's diagnosis was as follows:

> subjectively constant left shoulder/left shoulder girdle/left arm pain and range of motion limitation, elements medically unexplainable and non-physiological (even for a full-thickness rotator cuff tear as depicted on his most recent MRI imaging study), with suspected issues of symptom magnification/ amplification (and possible secondary gain confounders) superimposed upon a probable preexisting (in my opinion) chronic left shoulder impingement syndrome/cuff tendinopathy condition.

Dr. Neal opined that Petitioner's current complaints were unrelated to the accident of November 23, 2021, and that his left shoulder condition was rather related to his pre-existing left shoulder impingement syndrome. Dr. Neal was also of the opinion that though Petitioner's treatment to date had been reasonable and necessary, the need for it was unrelated to the accident of November 23, 2021. Dr. Neal further opined that Petitioner did not require any additional treatment or any work restrictions related to the accident of November 23, 2021. However, he also opined that Petitioner was a surgical candidate.

February 7, 2023, Petitioner was examined by Dr. Matthew Saltzman at the request of Petitioner's counsel. Dr. Saltzman reviewed his prior IME report from July, 19, 2019, the records he had reviewed prior to composing the July 19, 2019 report, the records from Petitioner's ED visit on November 24, 2021, Dr. Watson's medical records and the images from the January 13, 2022 MRI study, and Dr. Neal's November 30, 2022 IME report prior to formulating his opinions. Dr. Saltzman opined that Petitioner suffered a new full thickness supraspinatus tear without atrophy that was likely caused or aggravated by the November 23, 2021 accident. He further opined that Petitioner's medical treatment from the date of accident forward was reasonable, necessary, and causally related to that accident and that Petitioner's present need for surgery was also causally related. He also opined that Petitioner's present left shoulder condition necessitated work restrictions that included no overhead lifting, no lifting more than 5 pounds, no repetitive pushing and pulling, and that those restrictions should be enforced until Petitioner underwent surgery.

May 17, 2023, Petitioner underwent surgery performed by Dr. Watson. The operative report reflects that Dr. Watson performed a left shoulder arthroscopy with a rotator cuff repair, a biceps tenodesis and a subacromial decompression. (PX18)

May 30, 2023, Petitioner returned to Dr. Watson and Dr. Watson kept petitioner on work restrictions of no use of the left arm. Dr. Watson ordered petitioner to begin post-operative physical therapy. (PX 19)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the

quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant's testimony, as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. Gilbert v. Martin & Bayley/Hucks, 08 ILWC 004187 (2010).

The Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. Petitioner's testimony at arbitration was consistent with the medical records regarding history of accident, history of complaints and physical findings. He did not appear to be exaggerating his complaints.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Although Petitioner's medical report supports that he had a pre-existing condition in his left shoulder at the time of his November 23, 2021 accident, he was not diagnosed for a full thickness rotator cuff tear until January 13, 2022. Moreover, the MRI on that date reflected that it was traumatic in nature. The Arbitrator relies on the opinions expressed by Dr. Watson, Dr. Saltzman, and the radiologist's finding that the muscle body lacked atrophy to conclude that the tear was a result of an acute injury rather than an ongoing impingement syndrome. The Arbitrator also relies on the unrebutted testimony that Petitioner was working without issue for over a year prior to the November 23, 2021 accident. The videos submitted by both parties shows that Petitioner that there is no evidence that Petitioner suffered from any left shoulder symptoms for over one year prior to the November 23, 2021 accident and the fact that Petitioner exhibited no difficulty performing a fulltime job that involved lifting heavy items overhead and above shoulder height for approximately one and a half years prior to his November 23, 2021 accident.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his condition of ill-being in the left shoulder is casually connected to the accidental injury of November 23, 2021.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Section 8(a) of the Act states a Respondent is responsible …"for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury…" A claimant has the burden of proving that the medical services were necessary, and the expenses were reasonable. See Gallentine v. Industrial Comm'n, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Having found the Petitioner's current condition of ill-being as it relates to his left shoulder is causally related the injuries sustained on November 23, 2021, the Arbitrator finds the Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. As such, the Arbitrator orders the Respondent to pay reasonable and necessary medical services as set forth in Petitioner's Exhibits 20, 21, 22, 23, 24 & 26 for causally related treatment Petitioner underwent, as provided in Sections 8(a) and 8.2 of the Act and more

specifically as follows: $1,421.00 to Advocate Aurora Health, $46,808.11 to Skyline Orthopedics, $1926.00 to Prime Medical Imaging, LLC, $122,318.69 to Preferred Surgicenter LLC, $2,640.00 to Core Anesthesia PLLC and $1, 695.00 to Medi Dimensions LLC.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

The medical record from Petitioner's most recent visit with his surgeon, Dr. Watson, dated May 30, 2023 indicates that Petitioner presented for a post-op check with pain rated 4 out of 10 with the assistance of medication. A referral was made for physical therapy and/or occupational therapy according to "post-operative protocol" which Petitioner had yet to begin at the time of trial.

Having found the petitioner's current condition of ill-being as it relates to his left shoulder is causally related to the injuries sustained on November 23, 2021, the Arbitrator finds Petitioner is entitled to prospective medical under Section 8(a) of the Act, and therefore, Respondent is responsible for authorizing and paying for same.

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Westin Hotel v. Indus. Comm'n, 372 Ill.App.3d 527, 542 (1st Dist. 2007).

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

Petitioner claimed to be entitled to temporary total disability (TTD) benefits for the period between November 25, 2021 and June 8, 2023. It is undisputed that Petitioner has not worked since November 24, 2021. Petitioner's treating physician, Dr. Watson, has opined that Petitioner's condition necessitated the restriction of no use of his left arm from the date of injury forward. Moreover, it is undisputed that Petitioner has not been offered any light duty work by Respondent.

Based upon the foregoing and the record as a whole, the Arbitrator finds Respondent liable for temporary total disability benefits of $469.09 /week for 80 weeks, commencing November 25, 2021, through June 8, 2023, as provided in Section 8(b) of the Act.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

February 5, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC020789
Case Name	Bettena Washington v. Cook County Sheriff
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0577
Number of Pages of Decision	13
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Michael Rom, Ruth Stelzman
Respondent Attorney	James Lumene

DATE FILED: 11/27/2024

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BETTENA WASHINGTON,

Petitioner,

vs. NO: 20 WC 20789

COOK COUNTY SHERIFF,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses and prospective medical care, and being advised of the facts and applicable law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission hereby remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 7, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall receive a credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Under Section 19(f)(2) of the Act, no "county, city, town, township, incorporated village, school district, body politic, or municipal corporation" shall be required to file a bond. As such, Respondent is exempt from the bonding requirement. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

November 27, 2024

CAH/pm
O: 11/21/24
052

/s/ *Christopher A. Harris*
Christopher A. Harris

/s/ *Carolyn M. Doherty*
Carolyn M. Doherty

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC020789
Case Name	Bettena Washington v. Cook County Sheriff
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Jose Rivero, Ruth Stelzman
Respondent Attorney	James Lumene

DATE FILED: 2/7/2024

/s/ Rachael Sinnen, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 6, 2024 5.045%

STATE OF ILLINOIS)
)SS.
COUNTY OF **Cook**)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Bettena Washington
Employee/Petitioner

v.

Cook County Sheriff
Employer/Respondent

Case # **20** WC **020789**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **12.5.23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **8.15.20**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**72,147.13**; the average weekly wage was $**1,387.60**.

On the date of accident, Petitioner was **58** years of age, ***married*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**14,801.12** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**14,801.12**.

Respondent is entitled to a credit of $**6,193.01** under Section 8(j) of the Act.

ORDER

Respondent to pay Petitioner directly for the outstanding BCBS liens in the amount of $10, 475.20 and $1,717.54 as contained in Petitioner's Exhibit 7, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall approve and pay for a right knee arthroscopy and necessary pre- and post-operative care as prescribed by Dr. Erickson as provided in Section 8(a) and 8.2 of the Act.

The Arbitrator finds that Petitioner was temporarily and totally disabled for 15 3/7 weeks from August 16, 2020 through December 1, 2020. The parties stipulate that there are no unpaid TTD benefits.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

February 7, 2024

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Bettena Washington,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 20WC020789
Cook County Sheriff,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on December 5, 2023 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing pursuant to Section 19b/8a of the Illinois Workers' Compensation Act "Act." Issues in dispute include causation, unpaid medical bills, temporary total disability "TTD" benefits, and future medical treatment. (Arbitrator's Exhibit "Ax" 1).

Bettena Washington ("Petitioner") is a 62-year-old female employed by Cook County Department of Corrections as a correction officer. (Petitioner's Exhibit "PX" 1, p. 1; Transcript T" 9). Petitioner testified that she was employed as a correction officer for 13 years prior to the date of accident of August 15, 2020. (T. 10). Petitioner's last level of education received is a college BA from National Lewis University. (T. 9-10). Petitioner did not have any relevant pre-existing conditions. (Respondent's Exhibit "RX" 6, p. 4).

Accident of August 15, 2020

Petitioner testified that on August 15, 2020, she was involved in an undisputed accident where Petitioner turned to come down from her workstation and in the process of coming down the two steps, she missed the last step with her hands full because she was carrying a large commissary bag and fell to the ground. (T. 13). Petitioner was unable to break her fall due to her hands being full. (T-13-14). Petitioner landed on the jail's concrete floor. (T. 14). Petitioner testified that she felt pain radiating from the top of her head to the bottom of her feet following her fall. (T. 13-14). Petitioner filed an accident report that same day and reported her lower back, knees, head, and neck as being the injured body parts. (RX 1, p. 2). The incident report indicated that video of Petitioner's fall was captured on stationary camera and showed her falling to the ground, which is consistent with her testimony. (RX 1, p. 5).

Summary of Medical Records

The next day, on August 16, 2020, Petitioner presented to Dreyer Medical Clinic. (T. 15). Records from Dreyer Medical Clinic contain a consistent history of the accident. (PX 5, p. 3). Petitioner was diagnosed with neck strain, shoulder strain, and bilateral knee contusion. (PX 5, p. 4).

On August 19, 2020, Petitioner followed up with Dr. Kiranjit Deol at Dreyer. (PX 1, p. 15) Petitioner was diagnosed with strain of neck muscle, tension headache, acute bilateral low back pain, hip flexor tightness, trochanteric bursitis of right hip, and bilateral knee strain. (*Id.*)

On September 2, 2020, Petitioner was again evaluated by Dr. Deol. (PX1, p. 16) Petitioner was diagnosed with concussion without loss of consciousness, strain of neck muscle with tension headache, acute bilateral low back pain, hip flexor tightness, trochanteric bursitis of right hip, and bilateral knee strain. (*Id.*). Petitioner was to remain off work and was prescribed physical therapy. (*Id.*).

On September 18, 2020, Petitioner followed up with Dr. Marc Hilgers. (PX 1, p. 17) Petitioner was diagnosed with concussion without loss of consciousness, cervical strain, vision abnormalities, and vestibular dysfunction. (*Id.*). Petitioner was to remain off work and was given referrals for physical therapy and ophthalmology. (*Id.*).

On September 30, 2020, Petitioner followed up with Dr. Deol. (PX 1, p. 18) Petitioner was diagnosed with concussion without loss of consciousness, cervical strain with tension headache, acute bilateral low back pain, hip flexor tightness, trochanteric bursitis of right hip, and bilateral knee strain. (*Id.*). Petitioner was to remain off work. (*Id.*).

On October 5, 2020, Petitioner followed up with Dr. Hilgers. (PX 1, p. 19). Petitioner was diagnosed with concussion without loss of consciousness, cervical strain, vision abnormalities, and vestibular dysfunction. (*Id.*) Dr. Hilgers prescribed Petitioner ice, a home exercise program, and medications. (*Id.*) Petitioner was to remain off work. (*Id.*)

On October 9, 2020, Petitioner was sent by Respondent for a Section 12 examination performed by Dr. Vijay Thangamani. (RX6). His opinions are detailed further below.

On October 26, 2020, Petitioner followed up with Dr. Hilgers. (PX 1, p. 20). Petitioner was diagnosed with concussion without loss of consciousness, cervical strain, vision abnormalities, and vestibular dysfunction. (*Id.*).

On November 2, 2020, Petitioner followed up with Dr. Deol. (PX 1, p. 21). Petitioner was diagnosed with concussion without loss of consciousness, somatic dysfunction of spine, lumbar pain, right and left hip flexor tightness, right side piriformis syndrome, and tinnitus of right ear. (*Id.*). Petitioner was to remain off work.

On December 2, 2020, Petitioner saw Dr. Erickson for an initial evaluation of her right knee, low back pain, right foot pain (unrelated), left shoulder pain, and neck pain. (PX 2, p. 88-89, 98-99).

Petitioner indicated that she did not have the kind of back pain she is experiencing now prior to her fall. (*Id.* at p. 88). On exam of Petitioner's back Dr. Erickson noted tenderness in the lower lumbar spine, predominantly on the right side, which extended to the gluteal region and trochanteric regions. (*Id.* at p. 89). On exam of Petitioner's right knee Dr. Erickson found some minor crepitation of the patellofemoral joint. (*Id.* at p. 99). Dr. Erickson diagnosed Petitioner with lumbar paraspinal muscle strain, lumbar degenerative disc disease, cervical disc strain, contracture of the cervical spine, and posttraumatic chondromalacia patella right knee. (*Id.* at p. 89 & 99). (*Id.*). Dr. Erickson allowed Petitioner to return to work while noting that she was at an increased risk of reinjury. (*Id.* at 99). Dr. Erickson opined that Petitioner's cervical spine, left shoulder, and right knee complaints are related to her accident at work. (*Id.*).

On December 22, 2020, Petitioner followed up with Dr. Erickson for her right knee, neck, and lower back. (PX2, p. 56-57, 67-68). Dr. Erickson reviewed Petitioner's back imaging and found a deformity of C5 that might be indicative or reflective of a compression fracture. (*Id.* at p. 56). On exam Dr. Erickson noted tenderness along the medial border of the scapula, tenderness diffusely across the lower back, and a negative straight leg raising test. (*Id.* at p. 56-57). He also noted her nonantalgic gait. (*Id.* at p. 67). On exam of her knee Dr. Erickson noted mild to moderate crepitation of the patellofemoral joints. (*Id.*) Dr. Erickson's impressions as to Petitioner's back remained the same, and he recommended she undergo an MRI of her back and to proceed with conservative treatment with chiropractic treatment or physical therapy. (*Id.* at p. 57). His diagnosis of her knee was stable chondromalacia of the patellofemoral joints bilaterally. (*Id.* at p. 67). He recommended she continue to work but gave her restrictions of avoiding excessive kneeling, crouching, or squatting. (*Id.*).

On January 12, 2021, Petitioner underwent x-rays for her shoulder, right knee, and cervical spine. (PX 4, p. 143, 151, & 167). The x-ray of her shoulder demonstrated no acute disease. (*Id.* at p. 143) The x-ray of her knee demonstrated mild tricompartmental osteoarthritis of the right knee. (*Id.* at p. 151). The x-ray of her cervical spine demonstrated moderate osteoarthritic changes at the C4-C6 level without significant spinal canal stenosis and reversal of the normal cervical lordosis with chronic vertebral body height loss of C5. (*Id.* at p. 167).

On February 16, 2021, Petitioner followed up with Dr. Erickson. (PX 2, p. 41) Petitioner reported that she seems to be losing some range of motion of her lumbar spine and was having more difficulty standing more erect because of the pain. (*Id.*). Dr. Erickson opined, based on the imaging reports, that Petitioner might have suffered a compression fracture from her fall. (*Id.*). Dr. Erickson noted lack of cervical flexion 2 to 3 cm between her chin and her chest. (*Id.*). On exam of her lumbar spine, Dr. Erickson noted tenderness across the mid to lower lumbar spine region. (*Id.*). On exam of her right knee, Dr. Erickson noted tenderness on the medial joint line and minimal effusion. (*Id.*). Dr. Erickson's impressions of Petitioner's back remained the same but suspected a medial meniscus tear of the right knee. (*Id.*). Dr. Erickson advised Petitioner to undergo an MRI of the right knee to assess for meniscal tear. (*Id.*). He again causally connected her injuries to her accident at work. (*Id.*).

On March 5, 2021, Petitioner underwent an MRI of her right knee. (PX2, p. 152) The MRI demonstrated an oblique tear of the posterior horn of the lateral meniscus without displaced meniscal fragment; extensive marrow edema posterior lateral tibial plateau adjacent to the

meniscal tear, possibly representing bone contusion, micro trabecular fracture, or reactive edema related to the meniscal tear; moderate to high-grade cartilage loss in the patellofemoral compartment and lateral compartment of the knee joint; and cruciate and collateral ligaments intact. (*Id.*)

On March 23, 2021, Petitioner followed up with Dr. Erickson. (PX2, p. 32) Dr. Erickson reviewed the MRI and found a lateral meniscus tear of the right knee. (*Id.*) He recommended cortisone injection to the right knee. (*Id.*)

On July 21, 2021, Petitioner followed up with Dr. Erickson. (PX2, p. 19) Petitioner reported she was still having pain in both the anterior and posterior aspects of her right knee. (*Id.*) On exam, Dr. Erickson noted tenderness on lateral joint line, positive McMurray test, and minimal crepitation of the patellofemoral joint. (*Id.*) Dr. Erickson again recommended proceeding with an arthroscopy of the knee. (*Id.*)

On May 23, 2023, Petitioner followed up with Dr. Erickson for the last time before the date of hearing. (PX 2, p. 6). Petitioner also underwent x-rays for her right knee, which showed well-maintained tibiofemoral patellofemoral joints of the right knee as well as some narrowing of the patellofemoral joint of the left knee. (*Id.*). On exam Dr. Erickson noted tenderness along the lateral aspect of the right knee and mild to moderate crepitation patellofemoral joint right knee. (*Id.*) Dr. Erickson's impression remained that Petitioner had a lateral meniscus tear posttraumatic right knee. (*Id.*). He once again recommended Petitioner proceed with an arthroscopy of the right knee. (*Id*; T. 21). He did not see any need to send Petitioner to repeat an MRI despite the delay in treatment. (PX 2, p. 6; T. 21).

Respondent's Section 12 Examiner, Dr. Vijay Thangamani

On October 9, 2020, Petitioner was sent by Respondent for a Section 12 examination performed by Dr. Vijay Thangamani. (RX6) Dr. Thangamani's records indicate a consistent history of Petitioner's fall. (RX6, p. 1-2) Dr. Thangamani reported Petitioner's main complaints as being a burning sensation in her right knee as well as pain in her left shoulder and neck. (*Id.*) Dr. Thangamani reported Petitioner had no preexisting conditions. (RX 6, p. 4). Dr. Thangamani reported Petitioner denied doing any activities outside of work that could be contributing to her symptomatology. (RX 6, p. 2). Dr. Thangamani opined both that the diagnoses made are not causally related to the incident in question and that a fall is a reasonable mechanism of injury for the diagnoses made. (RX 6, p. 3). Dr. Thangamani felt the treatment and diagnostic testing Petitioner had undergone had been medically necessary and not excessive. (*Id.*). Dr. Thangamani recommended Petitioner undergo further imaging of her left shoulder and right knee. (*Id.*)

On September 22, 2021, Dr. Thangamani wrote an IME addendum. (RX 7) Dr. Thangamani only reviewed medical records for the addendum. (*Id.* at p. 1). In reviewing the MRI dated March 5, 2021, Dr. Thangamani noted meniscal tearing of the lateral meniscus, posterior horn, as well as mild meniscal degeneration medially. (*Id.* at p. 1-2). Dr. Thangamani did not change his diagnoses— status post fall with a neck sprain, low back strain, right hip contusion, and bilateral knee contusions. (*Id.* at p. 2). Dr. Thangamani noted that the diagnoses were consistent with a fall and missed step being the mechanism of injury. (*Id.*). However, Dr. Thangamani found that

Petitioner's current condition was not related to the work injury. (*Id.*). Dr. Thangamani placed Petitioner at MMI 3 months from the date of injury. (*Id.* at p. 3).

Petitioner's Current Condition

Petitioner testified that since returning to work, she has worked in a division that includes maximum security detainees. (T. 28). Petitioner also testified that since returning to work, she has had to restrain detainees in the course of her duties. (*Id*.). Petitioner has been working full duty for more than two years since the work accident that occurred on August 15, 2020. (RX 10).

Petitioner testified that it is her desire to undergo the right knee meniscus repair as recommended by Dr. Erickson. (T. 21).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Issue F, whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds as follows:

Petitioner sustained injuries to multiple body parts as a result of her work accident but the crux of the instant 19b/8a Petition is causation of the right knee.

The Arbitrator acknowledges that Dr. Erickson's initial evaluation occurred approximately four months after her August 15, 2020 work accident but does not find this fact prejudicial to Petitioner's claim because her complaints of pain were consistent. Petitioner reported knee pain soon after her accident not only in her incident report to Respondent (See RX 1, p. 2) but also to her treating doctors at Dreyer Medical Clinic through September 30, 2020. (See PX 5, p. 4). When Petitioner presented to Dr. Erickson on December 2, 2020, her complaints of knee pain were similar to the complaints she reported to Dreyer Medical Clinic.

The Arbitrator relies on the medical opinions of Dr. Erickson. His initial diagnosis included posttraumatic chondromalacia patella right knee which he related to her work accident. (See PX 2, p. 88-89, 98-99). The fact that Dr. Erickson allowed Petitioner to continue working after his initial evaluation does not undermine Petitioner's injury. Petitioner's MRI confirmed a lateral meniscus tear of the right knee. (See PX2, p. 152). On May 23, 2023, Petitioner last follow up with Dr. Erickson before the date of hearing, Dr. Erickson's impression remained that Petitioner had a lateral meniscus tear posttraumatic right knee and continued to recommend an arthroscopy. (See PX 2, p. 6).

The Arbitrator finds the medical opinions of Respondent's Section 12 examiner, Dr. Thangamani, to be unpersuasive. Although Dr. Thangamani opines that Petitioner's right knee complaints are not casually related to her work injury, he writes that "the diagnosis is consistent with the mechanism of injury." (RX 6, p. 3). While noting that the March 2021 MRI shows "no evidence of major structural damage" (RX 7, p. 2-3), Dr. Thangamani agrees with the radiologist and Dr.

Erickson that the MRI demonstrates a lateral meniscus tear of the right knee. These contradictions render his opinions unreliable.

While there is no evidence of an intervening accident, the Arbitrator acknowledges that Petitioner had been working full duty for approximately 2 weeks when she first presented to Dr. Erickson in December 2020. Dr. Erickson even allowed Petitioner to continue working during treatment. Petitioner has been working full duty for more than two years since the work accident on August 15, 2020. (See RX 10; T. 28). Petitioner testified that since returning to work, she has worked in a division that includes maximum security detainees and has even had to restrain detainees in the course of her duties. (See T. 28). As of Dr. Erickson's last evaluation of Petitioner on May 23, 2023, Petitioner demonstrated positive physical examination findings. The Arbitrator does not find Petitioner's injury and need for treatment to be undermined by her ability to continue working.

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the injury.

Issue J, whether the medical services that were provided to Petitioner were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds as follows:

Petitioner alleges outstanding Blue Cross Blue Shield "BCBS" liens in the amount of $10, 475.20 and $1,717.54 that are outlined in Petitioner's Exhibit 7. Respondent submitted into evidence a medical payment ledger as Respondent's Exhibit 9.

Having found Petitioner's current condition of ill-being to be causally related to the injury and relying on the opinions of Petitioner's treating physicians over those of Dr. Thangamani, the Arbitrator finds Petitioner's treatment to be reasonable and necessary. The Arbitrator notes that on October 9, 2020, Respondent's Section 12 examiner, while disputing causation, opined that Petitioner's treatment had been medically necessary and not excessive. He even recommended Petitioner undergo further imaging of the right knee. (RX6, p. 3).

The Arbitrator compares Respondent's medical payment ledger (RX 9) with the BCBS liens (PX 7) and finds that Respondent has not paid for said bills.

As such, the Arbitrator orders Respondent to pay Petitioner directly for the BCBS liens in the amount of $10, 475.20 and $1,717.54 as contained in Petitioner's Exhibit 7, pursuant to Sections 8(a) and 8.2 of the Act and Perez v. Illinois Workers' Compensation Comm'n, 2018 IL App (2d) 170086WC, ¶ 17, 96 N.E.3d 524. Petitioner agrees that Respondent is entitled to a Section 8(j) credit for any amounts paid under its group medical plan. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Having found Petitioner's current condition of ill-being to be causally related to the injury and relying on the opinions of Dr. Erickson over those of Dr. Thangamani, the Arbitrator finds that Petitioner is entitled to prospective medical care.

Dr. Erickson credibly opined that Petitioner had a lateral meniscus tear posttraumatic right knee requiring arthroscopy. Although Petitioner has been able to work, her last examination with Dr. Erickson before trial was on May 23, 2023. (See PX 2, p. 6). Dr. Erickson noted tenderness along the lateral aspect of the right knee and mild to moderate crepitation patellofemoral joint right knee. He did not see any need to send Petitioner to repeat an MRI and continued to recommend surgery which Petitioner agreed to. (See PX 2, p. 6; T. 21).

Respondent shall approve and pay for a right knee arthroscopy and necessary pre- and post-operative care as prescribed by Dr. Erickson as provided in Section 8(a) and 8.2 of the Act.

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Petitioner claims to be entitled to TTD benefits from August 16, 2020 through December 1, 2020. Respondent does not disagree to the TTD period only contending that there is no additional liability as Petitioner's full wages were paid to Petitioner from August 16, 2020 through August 25, 2020 and TTD benefits were paid from August 26, 2020 through December 1, 2020. Respondent claims a credit of $14,801.12 in TTD benefits paid. AX1.

Respondent submitted into evidence pay slips (RX2) and a ledger of TTD paid (RX3).

The Arbitrator finds that Petitioner was temporarily and totally disabled for 15 3/7 weeks from August 16, 2020 through December 1, 2020. The parties stipulate that there are no unpaid TTD benefits.

It is so ordered:

Arbitrator Rachael Sinnen

February 7, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011291
Case Name	Tolleyne Ray v. State of Illinois - Murray Development Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0578
Number of Pages of Decision	18
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 11/27/2024

/s/Raychel Wesley,Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
JEFFERSON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TOLLEYNE RAY,

Petitioner,

vs. NO: 22 WC 11291

STATE OF ILLINOIS,
MURRAY DEVELOPMENT CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current right knee condition is causally related to the undisputed March 25, 2022 work accident, entitlement to incurred medical expenses, and the nature and extent of any permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 13, 2023 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Pursuant to §19(f)(1), this decision is not subject to judicial review.

November 27, 2024

/s/ *Raychel A. Wesley*

/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

RAW/mck
O: 11/6/24
43

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011291
Case Name	Tolleyne Ray v. State of Illinois/Murray Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Kenton Owens

DATE FILED: 7/13/2023

THE INTEREST RATE FOR THE WEEK OF JULY 11, 2023 5.27%

/s/ Linda Cantrell, Arbitrator
Signature

CERTIFIED as a true and correctcopy
pursuant to 820 ILCS 305/14

July 13, 2023

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation

STATE OF ILLINOIS)
)SS.
COUNTY OF **JEFFERSON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

TOLLEYNE RAY
Employee/Petitioner
v.
STATE OF ILLINOIS / MURRAY CENTER
Employer/Respondent

Case # **22** WC **011291**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Mt. Vernon** on **5/17/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **3/25/22**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**38,818.10**; the average weekly wage was $**746.50**.

On the date of accident, Petitioner was **60** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**6,398.30** for TTD, $**0** for TPD, $**0** for maintenance, and **five service-connected days and two regular days paid**, for a total credit of $**6,398.30, plus five service-connected days and two regular days paid**

Respondent is entitled to a credit of $**TBD and any and all paid** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Respondent shall pay Petitioner's medical bills contained in Petitioner's Group Exhibit 1 as they relate to date of accident 3/25/22, directly to the medical providers and pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $**497.67**/week for **1-6/7th** weeks, commencing **10/21/22 through 11/2/22**, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for TTD benefits paid prior to 10/21/22 in the amount of $6,398.30, plus five service-connected days and two regular days.

Respondent shall pay Petitioner permanent partial disability benefits of $**447.90**/week for **59.125** weeks, because the injuries sustained caused **27.5%** loss of use of her right leg, pursuant to Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 11/28/22 through 5/17/23, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

JULY 13, 2023

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

TOLLEYNE RAY,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 22-WC-011291**
	)	
STATE OF ILLINOIS/	)	**Consolidated Case No. 23-WC-003771**
MURRAY CENTER,	)	
	)	
Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on May 17, 2023. On 4/29/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to her right knee/leg as a result of being pushed by a patient into a wall and falling on 3/25/22. (Case No. 22-WC-011291, AX3) On 2/9/23, Petitioner filed an Application for Adjustment of Claim alleging injuries to her right knee, right leg, ribs, chest, and body as a whole as a result of being attacked by a combative patient on 1/10/23. (Case No. 23-WC-003771, AX4). The cases were consolidated by this Arbitrator on 4/10/23.

The parties stipulated that Respondent shall receive credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act. The parties stipulated that if any medical bills are awarded, that they be paid directly to the medical providers pursuant to the Illinois medical fee schedule. With respect to Case No. 22-WC-011291, Petitioner claims entitlement to unpaid temporary total disability benefits from 10/21/22 through 11/2/22. Respondent disputes liability for TTD benefits after 10/20/22. The parties stipulated that Respondent shall receive credit for TTD benefits paid in the amount of $6,398.30, plus five service-connected days and two regular days paid.

The issues in dispute in Case No. 22-WC-011291 are causal connection, medical expenses, temporary total disability benefits, and the nature and extent of Petitioner's injuries. The Arbitrator has simultaneously issued a separate Decision in Case No. 23-WC-003771.

TESTIMONY

Petitioner was 60 years old, single, with no dependent children at the time of the accident. Petitioner was employed by Respondent as a Mental Health Tech II at the time of accident. She was recently promoted to Rehabilitation Program Coordinator. Petitioner testified that on 3/25/22

she was escorting an inmate when the inmate pushed her into a wall and she fell on her right knee. She testified that she underwent a prior meniscus surgery by Dr. McIntosh for which she last treated on 6/17/21. Petitioner admitted she still had problems with her right knee after surgery but did not seek treatment for her symptoms from 6/17/22 until her injury on 3/25/22. She worked full duty and did not miss any time from work for her right knee during that period.

Petitioner testified that immediately following the accident on 3/25/22 she had a lot of pain in her right knee and could not walk. She was placed off work and was paid workers' compensation benefits. Petitioner underwent a total knee replacement by Dr. Bradley that improved her condition tremendously. Petitioner returned to full duty work for Respondent.

Petitioner testified that she sustained another work-related accident on 1/10/23 when an inmate charged her, and she fell on the concrete on her right side and knee. She was transported to the hospital by ambulance. Petitioner was paid three service-connected days while she was off work. Petitioner testified that her symptoms improved, and she returned to work.

Petitioner testified that her right knee is stiff in the morning, and it is difficult to turn over in bed. Her biggest difficulty is running which she occasionally has to do in emergency situations at work. She stated that on 6/17/21 Dr. McIntosh recommended that she lose weight and she has lost 45 pounds. She has increased pain with working 16-hour shifts as her job duties require her to walk a lot and bend to give patients showers. Petitioner underwent training last October that required her to kneel on both knees and it was difficult. She occasionally takes Naproxen for her symptoms that was prescribed by Dr. McIntosh.

On cross-examination, Petitioner testified that she returned to Dr. Bradley on 3/20/23 after her second accident and she told him her pain resolved. Petitioner returned to full duty work following her second injury. She testified that when she initially saw Dr. Bradley after her fist accident, she weighed 240 pounds. Petitioner stated she lost weight after her knee replacement surgery and weighed 210 pounds at the time of her second accident. Petitioner agreed that when she last treated with Dr. McIntosh in June 2021, she still had swelling and pain with standing and sitting.

Petitioner testified that she worked 8 to 16-hour shifts after Dr. Bradley released her following her first accident, which she continues to work. Petitioner testified that she is planning a trip to Europe.

MEDICAL HISTORY/ACCIDENT REPORTS

On 3/26/22, Petitioner completed a Notice of Injury stating she was pushed by a resident into a wall/door and she hit her head and back, fell to the floor, hyperextended her leg/knee, and fell on her right knee. (RX1)

On 3/31/22, a witness report was completed by Mental Health Tech II Amanda Lafour. Ms. Lafour reported that the patient aggressively threw himself and shoved Petitioner into a wall, causing Petitioner to hit the fire door and fell to the ground on her right knee. (RX1)

On 3/29/22, a witness report was completed by Edward Jones who stated the patient ran directly into Petitioner, causing her to fall into the wall and fall to the ground very hard on her back side and knee. Mr. Jones stated Petitioner remained on the floor until she was examined by nursing staff and was assisted into a wheelchair before being transported to the emergency department.

Respondent submitted medical records from Dr. Jeffrey McIntosh/Justin Northcutt, PA-C that predated Petitioner's March 2022 work injury. (RX5) On 1/6/21, Petitioner was examined for right knee pain with no known injury. Petitioner reported her knee was stiff, with swelling, popping, and locking. Examination revealed swelling, crepitus with range of motion, pain to palpation in the lateral joint line, full extension, 100° of flexion, 4/5 strength, no instability, positive McMurray's, and an antalgic but independent gait. PA-C Northcutt performed a corticosteroid injection to Petitioner's right knee, prescribed Mobic and physical therapy, and recommended a compression knee sleeve.

On 2/24/21, Petitioner reported significant pain since the injection wore off. Another corticosteroid injection was administered, and Petitioner was provided with a cane to help her ambulate. It was noted that Petitioner lost seven pounds since her last visit. On 3/4/21, Petitioner's knee was not improving. An MRI showed severe degeneration of the anterior lateral horn of the meniscus, as well as a contusion to the lateral tibial plateau and femoral condyle. Arthroscopic surgery was performed by Dr. McIntosh on 3/24/21. The Arbitrator notes that the operative report was not admitted into evidence. Physical therapy notes dated 4/6/21 indicate Petitioner had been walking better and experiencing less pain since surgery.

On 5/6/21, Dr. McIntosh noted Petitioner completed physical therapy, she was doing well, and she wished to return to work. She was released to return to work and instructed to return in six weeks. On 6/17/21, Petitioner reported some stiffness and a little swelling in her right knee. Dr. McIntosh aspirated 25 mL of clear fluid off Petitioner's knee and performed a cortisone injection. He placed her on Celebrex, encouraged her to lose weight and to continue her exercise program, and instructed her to return for reevaluation in six weeks. There are no records that indicate Petitioner returned to Dr. McIntosh's office.

Immediately following the work accident on 3/25/22, Petitioner presented to the emergency room at SSM Health St. Mary's Hospital and reported a resident pushed her down and she fell on her right knee. (PX3, p. 4) She complained of right knee pain and tenderness that had worsened since the incident. Physical examination of the right knee revealed swelling, bony tenderness, decreased range of motion, and tenderness over the medial and lateral joint lines. She had discomfort bearing weight. X-rays of the right knee revealed degenerative changes and no fracture. Petitioner was placed in a knee brace, prescribed Norco, and instructed to use rest, ice, elevation, and crutches. She was placed off work and referred to Dr. McIntosh for examination.

On 4/5/22, Petitioner presented to the office of Dr. McIntosh and was examined by PA-C Justin Northcutt. She reported a consistent history of injury. PA-C Northcutt noted Petitioner's right knee arthroscopic surgery in March 2021 and that she was doing pretty well until her recent fall. Petitioner had pain over the front and back aspect of her knee that was waking her at night. She walked with a significant limp and she was taking Tylenol and Naproxen. Physical

examination revealed swelling, pain to palpation over the lateral and medial joint lines, reduced flexion and extension compared to the left knee, and difficulty performing a straight leg raise test. PA-C Northcutt was not able to perform stress testing due to Petitioner's pain. Petitioner was placed on light duty restrictions of no prolonged walking or standing, and an MRI was ordered.

On 4/9/22, Petitioner underwent a right knee MRI at Crossroads Community Hospital. (PX5) The impression was a suspected meniscal tear, possible displaced meniscal fragment, suspected ACL ganglion cyst, difficulty excluding an ACL tear, joint effusion, degenerative changes, and a loose body posterior to the distal femur.

On 4/21/22, Petitioner was examined by Dr. Matthew Bradley at Metro East Orthopedics. (PX6) Petitioner reported a consistent history of injury and severe right knee pain. She stated she returned to light duty work but was not able to continue. Petitioner disclosed her prior knee arthroscopic surgery in March 2021 and indicated she made a full recovery, was able to return to full duty work without complications, and she had not had significant pain or dysfunction since returning to work. Physical examination revealed decreased active range of motion, severe pain on Lachman's test, medial and lateral pain with McMurray's testing, and a small click or catch on the lateral aspect of her knee. Dr. Bradley reviewed the MRI and performed x-rays that showed severe lateral bone on bone deformities with subchondral sclerosis. Dr. Bradley assessed right knee arthropathy with medial and lateral meniscus tears. He recommended a home exercise program and anti-inflammatory medications. He administered a corticosteroid injection to Petitioner's right knee, placed her on work restrictions of desk work only, and instructed her to follow up in four to six weeks.

On 6/2/22, Petitioner reported that the injection worked for about a week before her symptoms returned. She had pain with every step and a lot of pain while working. Petitioner had significant swelling and was icing and elevating her knee while at work and home. Dr. Bradley recommended a right total knee arthroplasty and continued her work restrictions.

On 8/30/22, Petitioner underwent a right total knee arthroplasty at SSM Health St. Clare Hospital. (PX6, p. 6-7; PX3, p. 45-60; PX7; PX8, p. 1-33) Dr. Bradley noted that Petitioner's pain had become such that it was inhibiting her ability to stand from a seated position and ambulate greater than 100 feet without severe pain. (PX6, p. 6-7) Petitioner was placed off work.

Petitioner received home health treatment and physical therapy from 9/1/22 through 9/16/22 through SSM Health at Home. (PX9) She returned to Dr. Bradley on 9/15/22 and reported she was doing exceptionally well and was participating in home health physical therapy. (PX6, p. 10) Dr. Bradley ordered outpatient physical therapy, instructed Petitioner to continue her home exercise program, and to utilize anti-inflammatory medications. He placed Petitioner on light duty restrictions of desk work only and no walking more than 100 feet at a time. Petitioner underwent physical therapy at Apex Physical Therapy. (PX10)

On 10/11/22, Petitioner was examined by Dr. Timothy Farley at Motion Orthopaedics pursuant to Section 12 of the Act. (RX3) Dr. Farley noted Petitioner fell directly on her right knee and had bruising and swelling following the event. He noted she had returned to full duty

work within six weeks of her arthroscopic knee surgery in March 2021. Petitioner was working 16-hour shifts and did not have any further treatment to her knee from the time she was released by Dr. McIntosh until her work injury on 3/25/22.

Dr. Farley reviewed medical records from the emergency room, PA-C Northcutt, Dr. Bradley from 4/21/22 through 6/2/22, and the MRI. Dr. Farley noted Petitioner was six weeks postoperative from her arthroplasty. He opined there was no causal relationship between the 3/25/22 work accident and the pre-existing bone-on-bone osteoarthritic condition in Petitioner's knee. Despite causation, Dr. Farley opined that Petitioner's medical treatment, including the knee replacement, was reasonable and necessary and Petitioner could work with restrictions of no standing longer than 30 minutes at a time, and no squatting, stooping, bending, crawling, etc. He opined that Petitioner had a good chance of returning to gainful employment within three months following surgery; however, he stated that in his experience with thousands of knee replacements he has performed, it takes a full year to recover from a replacement.

On 10/31/22, Petitioner reported she was doing well and walking independently without the use of assistive devices. (PX6, p. 13) Dr. Bradley noted she had excellent range of motion and strength, and no significant swelling or edema. Petitioner felt she could return to full duty work, working 8-hour shifts five days per week. Dr. Bradley allowed Petitioner to return to work in this capacity and instructed her to complete physical therapy and take Tylenol and Ibuprofen as needed.

Dr. Timothy Farley testified by way of deposition on 11/29/22. (RX6) Dr. Farley is a board-certified orthopedic surgeon who performs hundreds of knee surgeries per year, including arthroscopic and arthroplasty procedures. He noted that on 3/25/22 Petitioner fell onto her right knee, directly impacting the front of her knee. He testified that when he examined Petitioner, she was only six weeks post-arthroplasty. He reviewed MRI films dated 4/9/22 that showed full thickness cartilage loss in the lateral aspect of Petitioner's knee which is advanced severe arthritis. The MRI also showed edema in the tibial plateau evidencing arthritis; a lack of a majority of the lateral meniscus; poor visualization of the ACL suggesting a possible prior ACL injury; degenerative arthritis; and no obvious meniscal tearing or other deformity. He testified that his examination was consistent with a degenerative knee condition over several years.

Dr. Farley testified that a 61-year old person with a BMI of 42 and known advanced osteoarthritis within the knee would be at a very high risk of future treatment, including a knee replacement. He testified that the x-rays taken in the emergency room on the date of Petitioner's accident were compared to her pre-accident x-rays taken on 12/30/20 and showed progressive advanced osteoarthritis. He opined that Petitioner's knee exhibited the natural progression of degenerative arthritis following a meniscus surgery. Dr. Farley opined that the knee replacement surgery was not causally related to Petitioner's work accident on 3/25/22 as the advanced osteoarthritis pre-existed her injury. He testified that Petitioner's degenerative arthritic symptoms would likely wax and wane, with temporary aggravations and a return to baseline. He testified it was certainly possible Petitioner's suffered a temporary aggravation as a result of her work injury.

On cross-examination, Dr. Farley agreed that a knee replacement is appropriate treatment for advance osteoarthritis. He agreed that following Petitioner's meniscus surgery in 2021 she returned to full duty work without restrictions, and he had no knowledge of any medical treatment from the time she was released by Dr. McIntosh until her work accident on 3/25/22. He testified that Petitioner denied she had symptoms during that time period, and he found her to be a credible historian. He agreed that following her work injury, Petitioner's symptoms never abated or returned to baseline.

Dr. Matthew Bradley testified by way of deposition on 11/2/22. (PX12) Dr. Bradley is a board-certified orthopedic surgeon. He testified that Petitioner's right knee surgery in March 2021 was an arthroscopic meniscectomy as a result of a meniscus tear. He testified that following the 2021 surgery Petitioner made a full recovery and returned to 16-hour work shifts. Dr. Bradley testified that typically patients are able to return to full duty work following a meniscectomy. He testified that after Petitioner returned to work following her 2021 surgery, she did not seek additional treatment, miss any time from work, or have any issues with regard to her right knee until her March 2023 accident.

Dr. Bradley agreed with Dr. Farley that Petitioner's arthritis was pre-existing; however, he treated Petitioner's pain and dysfunction and not her arthritis. He testified that Dr. Farley never addressed the fact that Petitioner's fall increased her pain, dysfunction, and caused her to be unable to perform her job duties. Dr. Bradley testified that at the time of his exam, Petitioner had tears to her medial and lateral menisci and underlying degenerative disease, which was exacerbated by the work accident. He testified that Petitioner's meniscus tears seen on MRI were pretty displaced and it would be awful hard to think that Petitioner was able to walk if these conditions existed prior to her work accident.

Dr. Bradley testified that he wanted to get Petitioner back to baseline and initially recommended conservative treatment in the form of home therapy, injections, and medication. He opted to treat Petitioner with a total knee replacement as opposed to repairing the meniscus because each time a part of the meniscus is taken out, part of the "shock absorber" of the knee is taken away, and since Petitioner already had some arthritis in her knee, if he would have cut out her two menisci, she would have had a rapid increase in pain and develop the need for a knee replacement.

Dr. Bradley testified that intraoperatively, Petitioner's knee had meniscal tears and degenerative disease which is what he expected to observe. He testified that Petitioner was doing great following surgery and when he last examined her a couple of days ago she requested to return to full duty work, which he found to be remarkable two months after a knee replacement. Dr. Bradley opined that Petitioner's meniscal tears were acute and she had some underlying arthritis which was made worse by the accident. He testified he had an independent recollection of treating Petitioner and she initially presented to him in severe pain, could hardly walk and required a walker, and was unable to work. He testified that she was working 16-hour shifts, and nothing had changed except the work accident. Dr. Bradley opined that Petitioner's accident certainly contributed to her pain and the need for the knee replacement surgery.

On 11/28/22, Petitioner reported to Dr. Bradley she was doing great and had returned to work full duty. She reported she worked a 16-hour shift over Thanksgiving with no difficulty. Petitioner continued to perform her home exercise program to maintain strength and motion. Dr. Bradley placed Petitioner at maximum medical improvement.

On 1/10/23, Petitioner was transported by Lifestar Ambulance Service to SSM St. Mary's Hospital. (PX11) Paramedics noted Petitioner was lying on the floor upon arrival. Petitioner reported she was quickly charged by a resident who pushed her down onto her right side. Ice was applied to her knee by Respondent. Petitioner was transported to the hospital for pain in her right rib, right knee, and leg.

At SSM St. Mary's Hospital, Petitioner reported her history of a right total knee arthroplasty and complained of pain over the right lateral ribs and right knee. Physical exam revealed chest wall and right knee tenderness. X-rays of Petitioner's ribs were negative for fracture, and x-rays of her right knee were negative for fracture, dislocation, or destructive process; however, some soft tissue swelling was noted. The impression was a fall, acute pain of the right knee, and rib pain on the right side. Petitioner was instructed to follow up with a nurse practitioner and was discharged.

On 1/11/23, a Notification of Injury was completed by Tristar. (RX2) It was reported that Petitioner was charged by a patient causing her to fall to the ground. She landed on her right side and her glasses flew. The patient fell on top of Petitioner hitting her on her left side. Noted injuries included contusions to the left side of Petitioner's body, a knot on the left side collarbone with soreness, the wind was knocked out of Petitioner and she had difficulty breathing without pain, right breast down to her waist was sore, and she had pain in her right knee, neck, back, and left shoulder. Petitioner was taken by ambulance to the emergency room. It was noted that Petitioner was working full duty at the time of the accident.

On 3/20/23, Petitioner returned to Dr. Bradley and reported her recent injury. (PX6, p. 21) He noted Petitioner injured her right breast, chest, and knee, and although her symptoms improved, she wanted her knee examined. X-rays showed a well-positioned total knee prosthesis with no evidence of loosening and no significant changes from her previous imaging. Dr. Bradley stated it did not appear that Petitioner's January 2023 injury affected her knee to any significant degree other than a small strain or contusion. He opined that it was safe for Petitioner to continue to work full duty without restrictions and he placed her at MMI.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Comp. Comm'n*, 864 N.E.2d 266, 272-273 (5th Dist. 2007). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n,* 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm'n*, 433

N.E.2d 671, 672 (1982). The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967); see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 362 N.E.2d 339 (Ill. 1977).

Further, a compensable aggravation occurs when a claimant's need for surgery is accelerated. *Judith Wheaton v. State of Illinois/Choate Mental Health Center*, 13 I.W.C.C. 0467; *Bowman v. Gateway Reg'l Med. Ctr*., 14 I.W.C.C. 1022; *Clutterbuck v. UPS*, 15 I.W.C.C. 0046; *Howard v. St. Clair Hwy. Dept*., 16 I.W.C.C. 0187, modified 16 MR 106.

The law holds that accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665, 672 (2003). [Emphasis added]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Industrial Commission*, 723 N.E.2d 846 (3d Dist. 2000).

Even when a preexisting condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665 (Ill. 2003). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005).

Additionally, circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 96–97, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982).

There is no dispute that Petitioner had preexisting degeneration in her right knee and had a prior arthroscopic surgery to repair the meniscus in March 2021 by Dr. McIntosh. Petitioner was released at MMI on 6/17/21 and she did not seek further treatment for her right knee until her work accident on 3/25/22. Petitioner admitted she still had problems with her right knee after the 2021 surgery, but she was able to work full duty, 8 to 16-hour workdays, and did not miss any time from work for her knee. There was no indication in Petitioner's prior treatment records that she was recommended for additional treatment, including an arthroplasty on her right knee.

PA-C Northcutt indicated in his 4/5/22 office note that Petitioner had been doing fairly well until her fall on 3/25/22. The accident reports and medical records confirm that Petitioner fell directly on her right knee at the time of the accident. Witness Edward Jones reported that Petitioner fell to the ground very hard on her back side and knee. Petitioner remained on the floor until examined and was placed in a wheelchair to be transported to the emergency room. Petitioner testified she could not walk and experienced a lot of pain in her knee following the incident.

The medical evidence and Petitioner's credible testimony demonstrate that her symptoms never abated or returned to baseline following the accident, but rather, they were consistent, severe, and impaired her ability to work and ambulate. Dr. Farley opined that Petitioner was a credible historian, that she had experienced a direct fall on her right knee, that she had immediate pain, bruising, and swelling, that she had been working full duty prior to her injury, and that she had not treated for her knee since being released from the arthroscopic surgery in 2021 until her recent work accident. The Arbitrator is not persuaded by Dr. Farley's causation opinion that Petitioner's condition relates solely to her underlying arthritis and ignores the fact that the work incident increased her pain and dysfunction to the point she could not work and required surgical intervention.

Dr. Bradley opined that Petitioner's meniscal tears seen on MRI and intraoperatively were acute. He testified that the severity and size of the tears made it difficult for him to believe they existed prior to her accident as she was capable of walking for significant amounts of time, and if the tears were present prior to her work accident they would have been addressed at that time of her 2021 surgery. Dr. Bradley agreed that Petitioner had underlying degeneration; however, he explained that her fall not only caused the meniscal tears but caused an exacerbation of her underlying degenerative condition. Dr. Bradley's opinions are supported by the fact that when Petitioner came to him, she was in severe pain, could barely walk, and had to use a wheelchair to get around his office. Therefore, Dr. Bradley logically concluded that Petitioner could not have been working 16-hour shifts that required a significant amount of walking prior to her injury if nothing had changed.

Based on the evidence as a whole, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to her work injury of 3/25/22.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Dr. Bradley testified that he chose to perform a right total knee arthroplasty as opposed to a meniscus repair because he believed that cutting out two menisci would have taken out part of the shock absorber in Petitioner's knee, which would have caused a rapid increase in Petitioner's pain and develop the need for a knee replacement. Dr. Farley examined Petitioner approximately six weeks post-arthroplasty, and despite causation, he testified that Petitioner's treatment had been reasonable and necessary. Petitioner testified that her right total knee arthroplasty tremendously improved her condition, and she was able to return to full duty work without restrictions.

Based on the findings as to causal connection and the medical evidence, the Arbitrator finds that the medical care and treatment Petitioner received as a result of her 3/25/22 accident was reasonable and necessary. Respondent shall therefore pay the medical expenses contained in Petitioner's Group Exhibit 1 as they related to date of accident 3/25/22, directly to the medical providers and pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall be given a credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

Issue (K): What temporary benefits are in dispute? (TTD)

Petitioner claims entitlement to unpaid temporary total disability benefits from 10/21/22 through 11/2/22. Respondent disputes liability for TTD benefits after 10/20/22.

On 9/15/22, Dr. Bradley noted Petitioner was doing exceptionally well following arthroplasty. He ordered outpatient physical therapy and placed Petitioner on light duty restrictions of desk work only and no walking more than 100 feet at a time. There is no evidence that Petitioner returned to work within these restrictions.

Petitioner was examined by Dr. Farley on 10/11/22 at which time he opined there was no causal relationship between the 3/25/22 work accident and the pre-existing bone-on-bone osteoarthritic condition in Petitioner's knee. Despite causation, he opined that Petitioner could work with restrictions of no standing longer than 30 minutes at a time, and no squatting, stooping, bending, crawling, etc. He opined that Petitioner had a good chance of returning to gainful employment within three months following her surgery; however, he stated that in his experience with thousands of knee replacements he has performed, it takes a full year to recover from a replacement. There is no evidence that Petitioner returned to work within the restrictions recommended by Dr. Farley.

On 10/31/22, Petitioner reported she was doing well, and Dr. Bradley released her to return to full duty work, working 8-hour shifts five days per week. Petitioner claims entitlement to TTD benefits through 11/2/22. On 11/28/22, Dr. Bradley released Petitioner at MMI and noted she was recently able to work a 16-hour shift without difficulty.

Therefore, the Arbitrator finds Petitioner is entitled to temporary total disability benefits for the additional period 10/21/22 through 11/2/22, pursuant to Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for TTD benefits paid prior to 10/21/22 in the amount of $6,398.30, plus five service-connected days and two regular days.

Issue (L): What is the nature and extent of the injury?

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of the Act; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

(i) **Level of Impairment**: Neither party submitted an AMA impairment rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner was released to full duty work without restrictions and returned to her pre-accident position as a Mental Health Tech II for Respondent. She testified

that she was recently promoted to Rehabilitation Program Coordinator. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 60 years of age at the time of accident. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity**: There is no evidence of reduced earning capacity contained in the record. Petitioner was released to full duty work without restrictions and returned to her pre-accident position with Respondent. She testified that she was recently promoted to Rehabilitation Program Coordinator. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of the accident, Petitioner sustained tears in her right knee menisci and an aggravation of her underlying condition, which resulted in a right total knee arthroscopy. Petitioner testified that surgery tremendously improved her condition, and she was able to return to full unrestricted work as a Mental Health Tech II for Respondent. She testified that she still experiences stiffness in her knee. She has difficulty running which she occasionally has to do in emergency situations at work. Her symptoms increase with working 16-hour shifts as her job duties require a lot of walking and bending to give patients showers. She occasionally takes Naproxen for her symptoms that was prescribed by her prior surgeon Dr. McIntosh. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 27.5% loss of use of her right leg, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 11/28/22 through 5/17/23, and shall pay the remainder of the award, if any, in weekly payments.

Arbitrator Linda J. Cantrell DATED: