ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC026599
Case Name	John Creaser v. Nu Way Transportation
Consolidated Cases	
Proceeding Type	Petition for Review Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0472
Number of Pages of Decision	3
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Thomas Lichten
Respondent Attorney	Veronica Palmer

DATE FILED: 10/1/2024

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Creaser,

Petitioner,

vs. No. 14 WC 26599

Nu-Way Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

A Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of jurisdiction and reinstatement, and being advised of the facts and law, dismisses the Petition for Review for lack of jurisdiction and remands this case to the Arbitrator for further proceedings consistent with this Decision.

On April 5, 2023, the Arbitrator held a hearing on Petitioner's motion to reinstate. At the conclusion of the hearing, the Arbitrator granted the motion to reinstate. A record was made. Regarding the possibility of review, the Arbitrator stated: "You've made your record. If you wish, you can have this taken up on review at the time that the case is concluded."

On April 26 and May 3, 2023, Respondent filed identical Petitions for Review, raising the following issue: "Whether Arbitrator properly granted Petitioner's Motion to Reinstate, over Respondent's objection, where Arbitrator previously dismissed for want of prosecution on 12/02/21 and Petitioner did not move for reinstatement until 10/19/22."

The Commission finds that the Arbitrator correctly advised the parties that his ruling was not immediately appealable (interlocutory), but appealable after the case has concluded. The Commission emphasizes that the issue of reinstatement should be timely raised after a final decision on the merits has issued. See *American Structures, Inc. v. Industrial Comm'n*, 99 Ill. 2d 40

(1983); *Piechowicz v. United Airlines*, 11 IWCC 0115; *Galati v. University of Illinois*, 99 WC 68758, 00 WC 02585 (2007); *Pyron v. Consolidation Coal Co.*, 06 IWCC 0020. Accordingly, Respondent's Petition for Review is dismissed for lack of jurisdiction. There are no motions pending after the dismissal.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent's Petition for Review is dismissed.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is remanded to the Arbitrator for further proceedings consistent with this Decision.

October 1, 2024
SJM/sk
o-9/4/2024
44

/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	22WC019555
Case Name	Jerome Vonner v. Ruprecht Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0473
Number of Pages of Decision	13
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Michael Rom
Respondent Attorney	Beth Young

DATE FILED: 10/1/2024

/s/Marc Parker, Commissioner

Signature

DISSENT: /s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jerome Vonner,

Petitioner,

vs. NO: 22 WC 019555

Ruprecht Company Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

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

Based upon the evidence in the record, the Commission affirms the Arbitrator's award of 30% loss of use of the right foot for Petitioner's right ankle injury but finds the award of 30% loss of use of the right leg excessive. The Commission therefore modifies down the award for the right leg to 22.5% loss of use of the right leg which more appropriately compensates Petitioner's right leg injury pursuant to Sections 8(e) and 8.1b(b)(v) of the Act.

It is clear from the medical records that Petitioner sustained injury to both his right ankle and his right leg. X-rays of Petitioner's right knee in the emergency room showed an oblique and mildly displaced fracture of the proximal fibula and suspected oblique and nondisplaced fracture through the proximal tibia. (PX1 at 45). Petitioner was diagnosed with an open fracture dislocation of the right ankle, a closed fracture of the proximal end of the right fibula, and a closed fracture of the proximal end of the right tibia. During surgery, several procedures were performed including irrigation debridement of skin, subcutaneous tissue and bone open right ankle fracture dislocation; repair of deltoid ligament right ankle; ORIF right fibula shaft fracture; ORIF right ankle

syndesmosis; repair complex 10 CM medial wound with exposed medial malleolus protruding from the wound right lower leg. (PX 1 at 55). Thereafter, Petitioner underwent removal of the right ankle syndesmosis screws in a separate procedure. However, the fibula hardware remained. (PX 2 at 102). Petitioner began physical therapy/work conditioning as instructed. Petitioner was discharged from physical therapy with the subjective report noting "Jerome reports that his ankle pain is occasional and primarily upon waking when he feels 'stiff and sore' but reports that subsides 'for the rest of the day'". All goals were obtained upon exhibit of full functional mobility. (PX 3 at 141-142). At trial, Petitioner testified that he continued to experience "throbbing" pain and swelling in his leg, some immobility of the right ankle and was unable to participate in athletic activities.

Based upon the Commission's review of the medical records and Petitioner's remaining subjective complaints, the Commission, in re-weighing the fifth factor of Section 8.1b(b)(v) of the Act, finds that the Arbitrator's award for the right leg merits reduction.

Based on the above, the Commission modifies the award to 22.5% loss of use of the right leg. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 5, 2024 is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay to Petitioner permanent partial disability benefits of $468.03 per week for 48.375 weeks as Petitioner sustained a 22.5% loss of use of his right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay to Petitioner permanent partial disability benefits of $468.03 per week for 50.1 weeks as Petitioner sustained a 30% loss of use of his right foot.

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 $46,200.00. 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.

DATED: /s/ *Carolyn M. Doherty*
MP:ns Carolyn M. Doherty
o 8/29/24
68 /s/ *Christopher A. Harris*
Christopher A. Harris

DISSENT

I respectfully dissent from the Majority's Decision. I would have affirmed and adopted the Arbitrator's thorough and well-reasoned decision.

/s/ *Marc Parker*
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019555
Case Name	Jerome Vonner v. Ruprecht Company
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Michael Rom
Respondent Attorney	Beth Young

DATE FILED: 3/5/2024

/s/Gerald Napleton, Arbitrator

Signature

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

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

Jerome Vonner
Employee/Petitioner

v.

Ruprecht Company, Inc.
Employer/Respondent

Case # **22** WC **19555**

Waukegan – Arb. Napleton

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 **1/16/24**. 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 **7/18/22**, 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 $**40,562.60**; the average weekly wage was $**780.05**.

On the date of accident, Petitioner was **52** years of age, ***single*** with **0** dependent children.

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

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

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

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

ORDER

Respondent shall pay Petitioner Permanent Partial Disability Benefits of $468.03 per week for 114.6 weeks as Petitioner has sustained a 30% loss of use of the right foot and a 30% loss of use of the right leg 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.

/s/ Gerald W. Napleton
Signature of Arbitrator
March 5, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jerome Vonner,
Petitioner

v. **Case No. 22WC019555**

Ruprecht Company,
Respondent

FINDINGS OF FACT

On July 18, 2022, Petitioner was a 52-year-old material handler for the Respondent, Ruprecht Company. Petitioner's job duties as a material handler were to move material from one point to another using what he described as trucks, which could weigh up to 1000 pounds. On July 18, 2022, Petitioner was moving a truck from the freezer onto the main floor when it tipped over onto the Petitioner.

Petitioner testified that the truck was on top of him, and his right leg was sticking out and that he heard people screaming. Petitioner was transported to Condell Medical Center by ambulance. The medical records from Condell Medical Center indicate that Petitioner was bringing the container down a slope where it spilled directly onto his ankle. The doctor notes that Petitioner's right foot is completely rotated outward with bone exposure. (PX. 1). In addition, Petitioner was found to have tibiotalar joint dislocation with displaced fracture of the distal tibia. X-rays taken by Dr. Steven Reich revealed oblique and mildly displaced fracture of the proximal diaphysis of the fibula and a suspected oblique nondisplaced fracture of the proximal diaphysis of the tibia. (PX. 1, p. 12).

After orthopedic consultation, Petitioner was taken to surgery where he underwent a repair of the deltoid ligament of the right ankle, ORIF right fibular shaft fracture repair, ORIF right ankle syndesmosis and repair of a complex wound to the right lower leg. The surgical report reveals the surgery performed by Dr. Marcus Talerico involved the placement of a pelvic recon plate positioned in the fibula, non-locking screws proximal and distal to the fracture. Petitioner was also seen for a 3.5cm laceration of his lower inner lip which was repaired by Dr. Scott Miller. (PX. 1). Petitioner was discharged from Condell Hospital on July 21, 2022 with directions to follow up with Dr. Talerico.

On August 1, 2022, Petitioner returned to Dr. Talerico's offices for his first post-operative visit following the irrigation and debridement of the open right ankle fracture as well as repair of the deltoid ligament of the right ankle, ORIF right fibula shaft fracture and syndesmosis. Petitioner was prescribed Celebrex and Norco and was non-weight bearing and using a CAM boot. Petitioner underwent a course of physical therapy through Condell Medical Group and progressed to the point where Dr. Talerico recommended screw removal for the right ankle.

On October 3, 2022, Dr. Talerico performed a deep hardware removal of the two syndesmosis screws in the right ankle. Petitioner returned to physical therapy following that second surgery. (PX. 2).

On February 20, 2023, Petitioner was referred to Dr. Jay Huhr for pain management. Following the screw removal, Petitioner complained of back pain and

back injections were recommended by Dr. Hurh but never performed or approved. (PX. 4).

Petitioner underwent a work hardening program at Condell. On March 6, 2023, Petitioner was released to return to work with the restriction of 4-hour shifts and 10-minute sit breaks every hour.

On March 20, 2023, Petitioner was released to return to 8-hour shifts with 10 minute breaks.

On March 29, 2023, Petitioner was sent for an independent medical evaluation with Dr. Howard Konowitz. Dr. Konowitz diagnosed mechanical ankle pain status post tibiofibular dislocation, transversed distal fibular fracture, non-displaced fracture of the proximal diathesis of the tibia, scar sensitivity with no other features of neuropathic pain disorder. Dr. Konowitz disagreed with the recommendation for sympathetic nerve blocks to Petitioner's back and noted that this was mechanical in nature and not related to the orthopedic injury. Dr. Konowitz indicated that surgical services could be considered including ultrasound guided tibial tabular joint injection that would be work related. Petitioner did not undergo this procedure. Dr. Konowitz indicated that he agreed with Dr. Talerico that no work restrictions were necessary with the exception of having to wear an ankle support which Petitioner testified that he wears at work and had in his possession at the time of this evaluation.

Petitioner testified that he continues to have pain in his right ankle and leg. Petitioner testified that his right leg swells and has difficulty wearing normal shoes

and being physically active. In addition, Petitioner complained of tenderness at the site of the plate and screws in his right leg. Petitioner described the pain in his leg and ankle as throbbing pain, especially in the morning when he initially stands up.

On May 26, 2023, Dr. Talerico released Petitioner to full duty work as of May, 29, 2023 and to follow up with any appointments as needed. X-rays from May 26, 2023 revealed a healed fibula fracture with a reduced mortise and syndesmosis with hardware well positioned. X-rays reveal small avulsion type fractures in the hypothermic bone in the soft tissue in the interior capsule of the ankle. Petitioner was prescribed Ibuprofen to use as needed and tolerated.

Petitioner testified that when he returned to work he was placed as a general laborer which required him to stand for multiple hours working on a machine where he stood in place. (R. 16). Currently, Petitioner works in the sanitation department for the Respondent.

With respect to Issue (L), what is the nature and extent of the injury, the Arbitrator finds as follows:

Pursuant to §8.1b of the Act, the following criteria and factors must be weighted in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011: In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) The reported level of impairment pursuant to subsection (a);
(ii) The occupation of the injured employee;
(iii) The age of the employee at the time of the injury;
(iv) The employee's future earnings capacity

(v) Evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment by the physician must be explained in written order.

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 material handler which requires constant use of his affected right foot and leg due to the amount of standing (9 to 10 hours per day, 5 days a week). (R. 7). Petitioner has moved to different departments and different jobs for Respondent. The Arbitrator therefore gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 52 years old at the time of the accident. Because Petitioner is relatively young, he must endure more work years with his injury. The Arbitrator therefore gives great weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner is earning at a higher pay rate than he was at the time of the accident. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner underwent an initial operative procedure consisting of irrigation and debridement of the open

right ankle fracture dislocation comminuted repair of the deltoid ligament right ankle, ORIF right fibula shaft fracture and syndesmosis. Petitioner then underwent a second surgery for screw removal in the ankle. The Arbitrator notes that Petitioner testified that he experiences pain and swelling in both his ankle, right foot and leg. In addition, Petitioner suffers from sensitivity in his right leg at the location of the plate and screws. Petitioner's complaints are consistent with the medical treatment, medical records and severity of his injuries. As such, the Arbitrator gives greater weight to this factor.

The Arbitrator finds that Petitioner sustained injuries to both his leg and foot based on the location of the injuries as described in the medical records. The proximal aspect of the injuries is located closer to the knee and the ankle injuries pertain to the foot. Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 30% loss of use of right foot and 30% loss of use of the right leg pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC018063
Case Name	Jacqueline Kennedy v. You Can Make It, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0474
Number of Pages of Decision	21
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	David Martay
Respondent Attorney	Stephen McClary

DATE FILED: 10/2/2024

/s/ Raychel Wesley, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JACQUELINE KENNEDY,

Petitioner,

vs. NO: 17 WC 18063

YOU CAN MAKE IT, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner sustained repetitive trauma injuries manifesting on December 29, 2016, whether Petitioner's current conditions are causally related to her work activities, entitlement to Temporary Total Disability benefits, entitlement to medical expenses, and the nature and extent of any permanent disability, and being advised of the facts and law, reverses the Decision of the Arbitrator.

PROLOGUE

The Commission observes Petitioner's personal identity information was unredacted from Petitioner's Exhibit 2. The Commission cautions Counsel to adhere to Supreme Court Rule 138. *Ill. S. Ct. R. 138* (eff. Jan. 1, 2018).

FINDINGS OF FACT

The Commission adopts the Statement of Facts as set forth in the Decision of the Arbitrator and incorporates such facts herein.

CONCLUSIONS OF LAW

I. Accident and Causal Connection

In concluding Petitioner's upper extremity conditions are not causally related to her work activities, the Arbitrator found Petitioner performed a variety of tasks, none of which were

performed repetitively or to a degree greater than the general public. The Commission views the evidence differently.

Our analysis begins with a review of the relevant legal standard. An employee who alleges injury based on repetitive trauma must 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 Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 530 (1987). "There is no requirement that a certain percentage of time be spent on a task in order for the [claimant's work] duties to meet a legal definition of 'repetitive.'" *Edward Hines Precision Components v. Industrial Commission*, 356 Ill. App. 3d 186, 194 (2nd Dist. 1987). The question whether a claimant's work activities are sufficiently repetitive to establish a compensable accident under a repetitive trauma theory must be decided on a case by case basis upon the particular facts presented in each case; in making that determination, the Commission considers evidence of the repetitive "manner and method" of a claimant's job duties. *Williams v. Industrial Commission*, 244 Ill. App. 3d 204, 210-211 (1st Dist. 1993).

The evidence establishes that although Petitioner performed a multitude of tasks, her tasks uniformly involved computer work with keyboarding and mouse usage, as well as phone usage. As to Petitioner's phone usage, Petitioner testified she was the point person for communications at the facility, "talking on the telephone to whoever called," such that she was "just talking on the phone all day." T. 10-11. Petitioner is right-handed and did not have a headset, so the phone calls required her to keep her elbow in a flexed position to hold the phone to her ear. Turning to Petitioner's computer usage, Petitioner testified she was responsible for completing extensive paperwork, including audits, payment vouchers, applications, and statistical reports "that were very, very lengthy"; to complete the various reports, forms, and spreadsheets, Petitioner was on her computer between six and eight hours a day doing keyboarding and data entry. T. 12-17. Petitioner further explained that the year prior to her manifestation date, Respondent's funding source changed, which meant she no longer had help from a program director or accountant and she alone was responsible for completing paperwork. T. 15. The Commission observes the medical records reflect Petitioner consistently reported work-related symptoms:

> *February 10, 2017, Dr. James Mastrianni*: she "endorses shooting, tingling, and pain in the palms of both hands and shooting up her forearms made worse by typing for long periods of time or talking on the phone for extended periods of time" (RX4);
>
> *May 5, 2017, Dr. James Mastrianni*: recently had EMG/NCV consistent with right carpal tunnel syndrome; "states that between the pain in her hands and her tremor, she is unable to type reliably for extended periods of time, severely limiting her performance in her current job" (RX4);
>
> *September 26, 2017, Dr. Dore DeBartolo*: complains of bilateral hand/wrist pain, numbness, and weakness; "has had pain and weakness in both hands especially with holding a phone to her ear with her left [*sic*] hand. She also has had to do a lot of typing for her job" (PX2); and
>
> *August 24, 2018, Dr. Gregory Primus*: "We discussed her job duties as it pertains to going back to work. She works as Ex director and founder of a shelter with 120 beds. This required her to do heavy typing and phone management at all

> times, amagerial [*sic*] duties, as well as heavy lifting at times" (PX2) (Emphases added).

The Commission finds Petitioner's job duties were sufficiently repetitive to constitute a compensable accident under the repetitive trauma theory. The Commission further emphasizes the risk at issue herein is an employment risk and therefore the no greater risk analysis is inapplicable. Risks are distinctly associated with employment when, at the time of injury, "the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties." *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 58 (1989). Here, Petitioner's computing and phone usage were required in order to perform her assigned duties and therefore represent risks distinctly associated with her employment. As the Court explained in *Young v. Illinois Workers' Compensation Commission*, 2014 IL App (4th) 130392WC, ¶ 23, "when a claimant is injured due to an employment-related risk *** it is unnecessary to perform a neutral-risk analysis to determine whether the claimant was exposed to a risk of injury to a greater degree than the general public." (Emphasis added).

The next step in our analysis is to determine what effect, if any, the repetitive work activities had on Petitioner's upper extremities. Petitioner alleges causal connection between her repetitive work activities and her bilateral wrist and bilateral elbow conditions.

The Commission first notes there is no dispute as to the diagnoses for Petitioner's bilateral wrist and right elbow conditions, as all physicians involved concur Petitioner has bilateral carpal tunnel syndrome and right cubital tunnel syndrome. As such, we consider the competing causation opinions of Dr. Gregory Primus and Dr. Prasant Atluri. In opining Petitioner's bilateral carpal and right cubital tunnel syndromes are work-related, Dr. Primus emphasized Petitioner's specific job requirements of "heavy typing, phone management that she described at all times. She had heavy clerical duties and managerial duties as well as heavy lifting." PX9, p. 26-27. In providing the basis of his opinion, Dr. Primus explained Petitioner's history is significant for, and consistent with, the known cumulative trauma conditions of carpal and cubital tunnel syndromes:

> So to answer your question, she has been consistent in describing a repetitive-overuse-type injury. That's well documented in terms of the type of causation, repetitive activities that cause cubital tunnel syndrome and carpal tunnel syndrome. And if she has been working this particular job for 16 years, it's very reasonable to understand that her symptoms progressively worsened to the point where she sought care and worsened to a point that she described in December of 2016 of requiring treatment. As a surgeon, the patient's history is the most telling and really what I have to hang our hat on. If a patient believes that their symptoms manifested or progressed to a point that required treatment based on certain repetitive activities they were doing, then I have to rely on that versus some other cause that is really a hypothetical and not quite in line with what we do know to be true, which is the type of repetitive injuries that she did note in her history. PX9, p. 54-55 (Emphasis added).

Dr. Atluri, in turn, denied causal connection, opining that regardless of how many hours per day are spent performing typing, computer work, and/or phone usage, those activities never implicate the carpal tunnel or cubital tunnel. RX3, p. 7-8. Dr. Atluri testified that causation for repetitive trauma carpal tunnel syndrome and cubital tunnel syndrome requires three factors: repetition,

force, and awkward positioning of the hands. RX3, p. 16. Dr. Atluri acknowledged there are studies indicating there is a causal relationship between high intensity typing and repetitive trauma carpal tunnel syndrome, but he dismissed those studies as "not high quality." RX3, p. 16. The Commission finds Dr. Primus' opinions are persuasive and we adopt same. In so doing, the Commission observes Dr. Primus' opinions are consistent with, and supported by, the medical records as well as Petitioner's credible testimony. The Commission rejects Dr. Atluri's contrary opinion, as we find Dr. Atluri's admission that he automatically dismisses typing and computer work as a causative or aggravating factor for carpal tunnel syndrome or cubital tunnel syndrome (RX3, p. 7) is neither credible nor persuasive. *See R & D Thiel v. Illinois Workers' Compensation Commission*, 398 Ill. App. 3d 858, 866 (1st Dist. 2010) (When evaluating whether the Commission's credibility findings which are contrary to those of the arbitrator are against the manifest weight of the evidence, "resolution of the question can only rest upon the reasons given by the Commission for the variance.")

The Commission finds the preponderance of the credible evidence establishes Petitioner's current bilateral wrist and right elbow conditions are causally connected to her work activities. The Commission further concludes, however, the evidence does not support a causal relationship between the work activities and Petitioner's undiagnosed left elbow condition. In denying left elbow causal connection, the Commission finds it significant that while the medical records repeatedly document complaints at the bilateral wrists and right elbow, the records are devoid of any left elbow complaints. We further note Dr. Primus declined to discuss permanent restrictions for Petitioner's left upper extremity, stating he did not treat her left side: "I do not believe that was part of my treatment and evaluation." PX9, p. 37. Moreover, the June 22, 2020 EMG showed no left ulnar neuropathy. The Commission emphasizes the entirety of the evidence of left elbow complaints is Petitioner's testimony that "this arm hurts, too…I do have problems with my left arm. It's weak, too." T. 28, 30. However, given the left elbow symptoms developed nearly six years after Petitioner stopped working and two years after her last treatment, the Commission finds there is no causal connection between Petitioner's left elbow condition and her work activities.

The final threshold issue for the Commission to consider is the propriety of the December 29, 2016 manifestation date. The manifestation date "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*, 115 Ill. 2d at 531. It is well-settled the date of manifestation of a repetitive trauma injury is subject to a "flexible standard" that "ensures a fair result for both the faithful employee and the employer's insurance carrier." *Three 'D' Discount Store v. Industrial Commission*, 198 Ill. App. 3d 43, 49 (4th Dist. 1989). The test of when an injury manifests itself is an objective one, determined from the facts and circumstances of each case. *Id* at 47. In deciding the manifestation date of a repetitive-trauma injury, courts consider various factors, including the dates on which (1) the claimant first sought medical attention for the condition, (2) the claimant was first informed by a physician that the condition is work-related, (3) the claimant was first unable to work as a result of the condition, (4) the symptoms became more acute at work, and (5) the claimant first noticed the symptoms of the condition. *See Durand v. Industrial Commission*, 224 Ill. 2d 53, 68-70 (2006). Petitioner credibly testified that due to funding changes, her clerical workload increased dramatically in 2016; specifically, because Respondent could no longer employ a program director or accountant, Petitioner became solely responsible for completing paperwork. T. 15. Petitioner explained December 29, 2016 was the day she woke up with profound weakness in her hands; she further testified she "called the workman's comp people to let them know what was going on because I didn't know what was going on with my hands." T. 19-20. Petitioner explained she continued

working but she self-modified her work tasks and stopped typing as of December 29, 2016. T. 20-21. The Commission finds Petitioner's condition manifested on December 29, 2016, which is the date Petitioner first noticed symptoms of the condition as well as the date Petitioner's work activities were affected by the condition. *Durand*.

The Commission finds Petitioner sustained repetitive trauma injuries to her bilateral wrists and right elbow manifesting on December 29, 2016. The Commission denies a causal relationship between Petitioner's work activities and her left elbow condition.

II. Temporary Disability

On the Request for Hearing, Petitioner alleged she was temporarily and totally disabled from September 26, 2017 through July 10, 2020. The Commission views the evidence differently.

On September 26, 2017, Dr. Dore DeBartolo imposed restrictions of maximum 20 pound lift and carry, no repetitive grasping, no vibratory tools, and limited typing. The Commission observes there is no testimony that Petitioner provided the restrictions to Respondent or that Respondent refused to accommodate them. The Commission finds this significant given Petitioner's testimony that after December 29, 2016, she continued working and simply stopped doing typing tasks (T. 20-21); the Commission concludes accommodations were available, and the restrictions first imposed by Dr. DeBartolo could be accommodated with a headset connected to the phone and computer. However, on January 16, 2018, Dr. DeBartolo referred Petitioner to Dr. Primus for a surgical consult and upgraded Petitioner's work restriction to no use of the right arm. PX2. In the Commission's view, no use of Petitioner's dominant arm is a significant restriction that precluded Petitioner from working. Therefore, the Commission finds Petitioner established entitlement to Temporary Total Disability ("TTD") benefits beginning January 16, 2018. Upon assuming Petitioner's care, Dr. Primus imposed and maintained the identical restriction of no use of the right arm. PX2. Over the next several months, Petitioner underwent surgery as well as extensive post-operative rehabilitation. On December 17, 2018, Dr. Primus placed Petitioner at maximum medical improvement. PX2. While Petitioner thereafter returned to Dr. Primus (once in 2019, and three times in 2020), the Commission concludes four sporadic visits are insufficient to justify continuing TTD benefits for an additional 19 months as claimed by Petitioner. The Commission finds Petitioner established entitlement to TTD benefits through December 17, 2018.

Petitioner's stipulated average weekly wage of $1,827.00 yields a TTD rate of $1,218.00. Therefore, the Commission finds Petitioner entitled to TTD benefits of $1,218.00 per week for 48 weeks, representing January 16, 2018 through December 17, 2018.

III. Medical Expenses

Petitioner offered into evidence the expenses associated with her treatment at Chicago Center for Sports Medicine (PX1), Athletico (PX3), and Advocate Trinity Hospital (PX4). The Commission finds the charges are reasonable and necessary and were incurred for treatment of Petitioner's bilateral wrist and right elbow conditions. The Commission finds Respondent is liable for the expenses documented in PX1, PX3, and PX4, subject to §8.2. The Commission notes the parties stipulated bills were paid through Petitioner's husband's group insurance and Respondent is not entitled to §8(j) credit. T. 5.

IV. Permanent Disability

Petitioner's work accident occurred after September 1, 2011; therefore, §8.1b is applicable. Pursuant to §8.1b(b), the Commission is to determine permanent partial disability based upon five factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. *820 ILCS 305/8.1b(b)*.

§8.1b(b)(i) – impairment rating – Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor and will assess Petitioner's permanent disability based upon the remaining enumerated factors.

§8.1b(b)(ii) – occupation of the injured employee – Petitioner was Executive Director of a non-profit organization. Upon completion of her course of care, Petitioner was unable to return to her pre-accident position. The Commission finds this factor weighs in favor of increased permanent disability.

§8.1b(b)(iii) – age at the time of the injury – Petitioner was 56 on her date of accident. The Commission notes Petitioner was beyond middle age and nearing the end of her anticipated work life expectancy. The Commission finds this factor weighs in favor of decreased permanent disability.

§8.1b(b)(iv) – future earning capacity – Petitioner was unable to resume her pre-accident employment and was granted Social Security Disability benefits. T. 31. The Commission finds this factor weighs in favor of increased permanent disability.

§8.1b(b)(v) – evidence of disability corroborated by treating medical records – As a result of her work activities, Petitioner was diagnosed with bilateral carpal tunnel syndrome and right cubital tunnel syndrome. On March 29, 2018, Dr. Primus performed right carpal tunnel release and right ulnar nerve transposition with submuscular transposition. PX4. Petitioner did not undergo surgery on her left wrist. Following post-operative rehabilitation, Dr. Primus released Petitioner at maximum medical improvement with permanent restrictions on heavy typing or phone usage. PX2; PX9, p. 35. Petitioner testified to residual symptoms, including weather-related pain as well as weakness in her hands and right elbow. T. 28-29. The Commission finds this factor is indicative of increased permanent disability of the right elbow and right hand but decreased permanent disability of the left hand.

Based on the above, the Commission finds Petitioner sustained 15% loss of use of the right arm, 15% loss of use of the right hand, and 3% loss of use of the left hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 18, 2023 is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,218.00 per week for a period of 48 weeks, representing January 16, 2018 through December 17, 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 the medical expenses detailed in Petitioner's Exhibits 1, 3, and 4, as provided in §8(a), subject to §8.2.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $775.18 per week for a period of 37.95 weeks, as provided in §8(e)10 of the Act, for the reason that the injuries sustained caused the 15% loss of use of the right arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $775.18 per week for a period of 28.5 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the 15% loss of use of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $775.18 per week for a period of 5.7 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the 3% loss of use of the left hand.

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 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.

October 2, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 8/7/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC018063
Case Name	Jacqueline Kennedy v. You Can Make It, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	David Martay
Respondent Attorney	Kristin Thomas

DATE FILED: 5/18/2023

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

/s/ Jeffrey Huebsch, 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

Jaqueline Kennedy Case # **17** WC **018063**
Employee/Petitioner
v.

You Can Make It, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **10/19/2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/29/2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On these dates, 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 injuries, Petitioner earned $**95,004.00**; the average weekly wage was $**1,827.00**.

On the date of accident, Petitioner was **56** years of age, ***single*** with **0** dependent child.

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**.

ORDER

Claim for Compensation Denied.

Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent on December 29, 2016 and failed to prove a causal connection between her work activities for Respondent and her condition of ill-being regarding her right and left upper extremities.

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.

MAY 18, 2023

Signature of Arbitrator

FINDINGS OF FACT

Petitioner worked for Respondent as the Executive Director. Petitioner founded Respondent, a non-profit company, in 2001. Respondent provides shelter for homeless families and provides them support services such as getting them placed in permanent housing, job placement assistance and mainstream program assistance. She oversaw 14 employees. Petitioner's job duties included day-to-day communication, talking on the telephone to whoever called, which was mostly clients (people looking for shelter), she would speak with her employees, speak with funders and groups providing donations, and handle various questions from these callers. (T. 9-12). Petitioner would also prepare reports, budgets, and paperwork including for audits for City of Chicago. This would entail entering data into QuickBooks. She also had to research potential new donors and determine who would donate to the shelter, and contact potential donors about funding. Petitioner was also in charge of applying for funding. (T. 47).

Petitioner claimed the majority of her work was done on the computer. (T. 8, 16) Petitioner testified her job duties varied every week. (T.17) Petitioner also reported she had to perform some lifting, approximately four days out of a month. This occurred when she was preparing certain reports or audits, which required her to lift bankers boxes to review client files and input data in the computer (T.18, 19) Petitioner testified that employees on her staff would help her move the boxes as well. (T. 51) She reported she worked Monday through Friday, anywhere from eight to twelve hours a day, depending on the job tasks she had that day. (T. 14) Petitioner said that she was on call 24/7. She would not perform the same task for eight hours straight and would interchangeably perform various job duties throughout the day, depending upon what she was working on. (T. 45-46) Respondent had a program director that would help Petitioner with proposals and paperwork. (T. 15)

Petitioner used a laptop at home and had a desktop computer at work. She is right-handed and used a mouse with her desktop at work. (T. 17-18). Petitioner did not do one task all day long, but was did "a lot of different stuff." (T. 47) Petitioner reported she took breaks and a lunch break every day. (T. 44) She was able to move freely about the office if she wanted or needed. (T. 49) Petitioner denied the use of vibratory tools. Petitioner denied the use of power tools. She did not engage in any forceful gripping or grasping on a repetitive basis (T. 49)

Petitioner testified that the job description presented by Respondent (RX 6), was accurate and reflected her job duties. Petitioner also indicated that she helped create the job description when she founded Respondent. (T. 44-45) Her office setting included a computer, mouse, telephone, and cell phone. (T. 17-18)

Petitioner testified she woke up on December 29, 2016, went to the bathroom to comb her hair, and could not lift her arms. Her arms felt weak, and she did not know what was going on with her hand. (T. 20) Petitioner testified she had hand complaints prior to December 29, 2016, that included hand tremors. (T. 39) She reported she had a lifelong history of hand tremors, ever since she was a little child. She said her hands shook, and then got worse in 2009 and 2012, when she underwent chemotherapy. (T. 40-41)

Petitioner came under the care of Dr. DeBartolo and Chicago Sports Medicine and ultimately underwent surgery to her right wrist and right elbow by Dr. Primus on March 29, 2018. (T. 23) Petitioner was then placed at maximum medical improvement on December 17, 2018. After that time, Petitioner returned to Dr. Primus four times and underwent five sessions of physical therapy from March 22, 2019 through July 10, 2020. She was placed at maximum medical improvement a second time on July 10, 2020. Petitioner has not been seen for her bilateral carpal and cubital tunnel conditionssince July 10, 2020. Petitioner does not have any appointments scheduled with any doctors for her bilateral carpal and cubital tunnel. (T. 54)

Petitioner reported that after her alleged work accident, she stopped taking her salary, and was not laid off by Respondent. (T.41-42) She subsequently filed for unemployment benefits, which were granted and began in January 2017. Petitioner received unemployment benefits for approximately six months. When those benefits ended, she filed an Application for Adjustment of Claim on June 19, 2017. (T. 42-43 and RX 7) After she left her employment with Respondent, she never returned to work, she never attempted to contact Respondent to return to work, and she never looked for or applied for another job. (T. 56-57) Petitioner applied for Social Security Disability at age 57 and she is receiving those benefits currently. (T. 31, 59-60) Petitioner testified that she owns rental properties and receives income from them. (T. 57)

Petitioner testified her medical bills were paid by her husband's group health insurance through his company and not through Respondent. (T. 32)

Petitioner was a cigarette smoker for over 12 years. (T. 51) She knows how to use voice to text on her cell phone, similar to using a headset and dictation software on a computer. (T. 58-59)

Petitioner testified that she still has pain in her hands and elbows. She has weakness. (T. 28-31

Medical records submitted by the Parties show that Petitioner has several co-morbid conditions, including having tremors of the hands for years. RX 4 contains Social Security Numbers which have been redacted, pursuant to SCR 138.

It is unclear when Petitioner first began treatment for any carpal tunnel/cubital tunnel condition.

On February 10, 2017, Petitioner presented to University of Chicago medicine for neurology consultation. She complained of worsening of bilateral hand tremor. She began having hand tremor in 2012 and has been seen intermittently in this clinic for her tremor. She now returns to the clinic with worsening tremor, making it increasingly difficult to perform her job. Specifically, she is having increasing difficulty typing which is a requirement for her work rating proposals, entering data and other computer work. Her tremor is worse while typing but she also notices tremors at rest and while doing other regular tasks like brushing her teeth and eating with utensils. At the last clinic visit on December 30, 2013 she was prescribed Valium with good effect. She was afraid the Valium would have a side effect of addiction. She noted shooting, tingling and pain in the palms of both hands and shooting up her forearms. She expressed concern that she may be suffering from carpal tunnel syndrome. She noted a soft, palpable quarter -sized mobile mass on her wrist, stable in size for several years. She was told it may be a ganglion cyst and would like it removed. She requested a second opinion on the management of her hand tremor. She has a lifelong history of hand tremor without vocal or neck tremor. Her hand tremor has been worse since 2009 after her chemotherapy for breast cancer. She spills water sometimes when she holds a cup. She is a positive family history of tremor. The assessment noted a tremor presenting with worsening of bilateral hand tremor despite increasing doses of medication. Carpal tunnel syndrome was noted with concern given numbness, shooting pain and tingling in the fingers bilaterally and of the forearms. An EMG/NCV for the bilateral upper extremity was recommended. (RX 4)

Petitioner presented to the University of Chicago Medical Center on March 31, 2017 with complaints numbness and tingling in all fingers bilaterally, right more than left. There was a past history of right upper extremity surgery. The limited neurologic exam showed full strength, 2+ reflexes and decreased pin sensation in fingertips. An EMG was requested to evaluate for neuropathy. The EMG conclusion noted an abnormal study.

There was evidence of a mild right median neuropathy at the wrist, carpal tunnel syndrome, moderate right ulnar neuropathy at the wrist and at the elbow. (RX 4)

On April 10, 2017, Petitioner presented to Dr. Jennifer Wolf at the University of Chicago Medical Center with bilateral hand pain. The note indicates she was asked by Dr. Weir to see this right-hand dominant female noting multiple complaints, mostly focused on the right hand. She reported non-painful ganglion on the left side of her dorsal wrist as well as swelling in her right wrist on the volar side and what she feels could be cyst pain in the wrist. She noted pain in her joints and the right hand. The recent EMG showed mild carpal tunnel syndrome. She occasionally noted numbness. The assessment was right wrist and hand pain with possible numbness and tingling. The doctor discussed with Petitioner that she has mild carpal tunnel syndrome. The doctor recommended a splint. She also suggested therapy. (RX 4)

An x-ray of the right wrist was obtained at the University of Chicago on April 10, 2017. The clinical information noted Petitioner is a 56-year-old female with pain over the dorsum of the carpal bones, evaluate for osteoarthritis. The impression noted no frank osteoarthritis or other findings to account for Petitioner's pain. (RX 4)

On May 5, 2017, Petitioner returned to University of Chicago Medicine for neurology consult. She returned for ongoing management of tremor. The visit diagnosis included ganglion cyst of wrist, ganglion cyst of both wrists, essential tremor, carpal tunnel syndrome of right wrist. (RX 4)

On May 10, 2017, Petitioner presented to Dr. Cedric Coleman with complaints of right hand problems. She reported that her hands are giving her pain when in use. Petitioner was to follow-up in 3 weeks. (RX 4)

On May 22, 2017, Petitioner presented to the University of Chicago for an outpatient consultation for occupational therapy at the referral of Dr. Wolf. (RX 4)

On June 27, 2017, Petitioner returned to University of Chicago for an MRI of the right wrist. The impression was short segment marked enlargement of the ulnar nerve at the level of the ulnar styloid, the etiology of which was uncertain on the basis of that examination. There was increased signal in the distal fibers of the flexor tendon suggesting tendinosis. There was mild scatter degenerative change of the carpal bones. (RX 4)

On August 18, 2017, Petitioner presented to University of Chicago Medicine. It was noted she is most concerned about the tremor and overall loss of function in her hands. She was seen and underwent MRI of the wrist. She also noted other unrelated issues. (RX4)

On August 21, 2017, Petitioner returned to University of Chicago Medicine with continued pain with worsening of numbness on the dorsal aspect of the distal arm, forearm and hand. She is not currently working. She has worn the splint without much improvement. The assessment noted Petitioner had continued right hand pain. Petitioner believes that it is work-related due to 17 years of typing. The doctor indicated it is unclear as to when Petitioner stopped working. The doctor noted that she did not recommend Petitioner stop working. The doctor saw her in April and the relationship to work was not noted by Petitioner at that time. The doctor recommended therapy. (RX 4)

On August 23, 2017, Petitioner presented to Dr. Cedric Coleman for carpal tunnel syndrome. She requested a letter stating she has carpal tunnel, regarding typing for 17 years. Petitioner was to follow-up in 3 months. (RX4)

Petitioner completed a new patient face sheet for the Chicago Center for Sports Medicine and Orthopedic Surgery on September 26, 2017. She noted this is a worker's compensation injury. She indicated both right and left hand weakness and numbness due to typing on computer over 17 years. She denied smoking and drinking. (PX 2)

On September 26, 2017, Petitioner presented to Dr. Dore DeBartolo at the Chicago Center for Sports Medicine and Orthopedic Surgery. Petitioner presented with bilateral hand/wrist pain due to WMC injury on December 6, 2016. Petitioner believed that her right wrist pain and numbness was due to repetitive typing at work. The pain began December 2, 2016, in both hands and all fingers. Petitioner noted pain and weakness in both hands especially with holding a phone to her ear with her left hand. She reported she had to do a lot of typing for her job. The assessment was carpal tunnel syndrome, bilateral upper limbs. An EMG of the left upper extremity was ordered to evaluate for carpal tunnel syndrome. Petitioner was to start physical therapy and wear a wrist brace. Petitioner was given light duty restrictions to include no repetitive grasp and no vibratory tools with maximum lift of 20 pounds. (PX 2)

Petitioner underwent physical therapy at Athletico Physical Therapy beginning September 29, 2017 for her left hand and bilateral upper extremities. Petitioner continued with physical therapy on October 9, 16, 18, 26, 2017 for her left hand and bilateral upper extremities. She reported she was not going to be able to do much because she was recovering from surgery. (PX 3)

On November 7, 2017, Petitioner followed up with Dr. DeBartolo. Petitioner presented for follow-up of her bilateral hand/wrist pain. The assessment was bilateral carpal tunnel syndrome. The doctor provided a work status note with a diagnosis of right carpal tunnel syndrome, cubital tunnel syndrome. The work duties included no use of the right upper extremity including no typing. Petitioner was to follow-up in 4 weeks and finish physical therapy. (PX 2)

Petitioner underwent physical therapy at Athletico Physical Therapy on November 2, 7, 9, 16, and 28, 2017 for her left hand and bilateral upper extremities. Petitioner reported bilateral arms were weak and was unable to do theraband exercise due to recent surgery. (PX 3)

On December 19, 2017, Petitioner saw Dr. DeBartolo. The assessment was bilateral upper limb carpal tunnel syndrome. Petitioner was to continue with physical therapy. An injection to the right carpal tunnel was performed. The doctor provided a work status note with a diagnosis of carpal tunnel syndrome and cubital tunnel syndrome. The procedure description was an injection to the cubital tunnel with Dr. Primus. The work restrictions included no typing, no repetitive grasping, no vibratory tools. Petitioner was to follow-up in 4 weeks. (PX 2)

On January 16, 2018, Petitioner was examined by Dr. DeBartolo. An EMG of the right upper extremity showed right median neuropathy at the wrist, right ulnar neuropathy at wrist and elbow. The EMG of the left upper extremity showed left C8-T1 findings, possibly due to breast cancer and/or radiation sequelae. The assessments included carpal tunnel syndrome, bilateral upper limbs. The doctor noted Petitioner received some improvement in pain and numbness after the carpal tunnel injection, but her weakness persists. She also complained of worsening forearm and ulnar pain in the right arm due to cubital tunnel syndrome. Petitioner was referred to Dr. Primus for surgical consultation. She was given work restrictions of no use of the right upper extremity. (PX 2)

On February 26, 2018, Petitioner presented to Dr. Primus at the Chicago Center for Sports Medicine and Orthopedic Surgery regarding a surgical consult for her right hand bilateral hand/wrist pain due to WMC injury on December 6, 2016. There was a history of the onset of pain beginning 12/2/2016. The assessment was carpal tunnel syndrome, bilateral upper limits, injury of ulnar nerve at forearm level of right arm, initial encounter. Dr. Primus recommended right carpal tunnel release surgery and right elbow cubital tunnel release surgery with anterior transposition. (PX 2)

Petitioner underwent physical therapy at Athletico Physical Therapy on March 19, 2018 for her right hand. (PX3)

On March 20, 2018, Petitioner presented to Dr. Cedric Coleman for pre-op clearance. Petitioner also complained of shortness of breath and wanted a rescue inhaler. The assessment included elevated blood pressure, GERD, right wrist carpal tunnel syndrome, HIV, hepatitis C, malignant neoplasm of breasts, tremors of nervous system, bronchitis. (RX 4)

On March 26, 2018, Petitioner saw Dr. Primus. She indicated her symptoms had remained the same since her last visit, she felt very weak and the injection at the last visit helped. It was noted that Petitioner was diagnosed with numbness in both hands but had not had any treatment for the left hand beyond x-ray, MRI and EMG. The doctor recommended right elbow cubital tunnel release with anterior transposition and right carpal tunnel release. Petitioner was given work restrictions of no use of the right upper extremity. (PX 2)

On March 29, 2018, Petitioner underwent right carpal tunnel release and right ulnar nerve anterior transposition with sub- muscular transposition with Dr. Primus. The postoperative diagnosis was carpal tunnel syndrome of the bilateral upper limbs, injury of ulnar nerve at forearm level of the right arm. (PX 2)

Thereafter, Petitioner followed up with Dr. Primus for post-surgery care. She had physical therapy and at some point her CTS surgical wound dehisced. Petitioner underwent a slow recovery and complained that her tremors had worsened, post-surgery. (PX 2)

Dr. Primus examined Petitioner on August 24, 2018, and it was noted she was 5 months post surgery. She reported her symptoms had minimally improved and she continued to have moderate stiffness in her fingers in the morning, with numbness in the index finger. She also had moderate sensitivity along the palmar incision. Petitioner was instructed to undergo physical therapy. It was noted she had work restrictions, but we do not have the work status note. It was further noted that the doctor was concerned about the degree of keloid formation, and they may consider of revision scar excision in the future if the condition continued to worsen. This is the first time Dr. Primus provided a causation opinion that Petitioner's alleged injuries were causally and directly related to her work activities and job. (PX 2)

On October 22, 2018, Petitioner treated with Dr. Primus. It was noted she had a fall that day, about 3 hours prior. She was getting ready to go into the clinic, when she tripped and fell putting both of her hands forward first impacting both on the ground was noted the right hand wound opened up a little due to the impact. Petitioner scraped her left knee as well. She complained of pain in the right elbow and hand. Her dressings were changed, and she underwent wound debridement that day. The doctor recommended she continue with physical therapy. Activity modification is included avoid elbow forced elbow extension to protect the repair and place the elbow and hinged brace which would slowly bring elbow into full extension and flexion. (PX 2)

On November 5, 2018, Petitioner followed up with Dr. Primus. It was noted she was 8 months post surgery, and reported that her symptoms had moderately improved since her last visit. She continued to have moderate tenderness in the fingers in the morning with numbness in the index finger. She had moderate sensitivity along the palmar incision. It was noted after her last visit the incision closed and was healing well. Petitioner agreed to undergo wound debridement that day. It was noted she had work restrictions, but these were not listed in the note. (PX2)

Petitioner was discharged from physical therapy on December 18, 2018. (PX 3)

Dr. Primus examined Petitioner on December 17, 2018, and noted she was 9 months post surgery. Her symptoms had improved since her last visit. She continued to have numbness in her index finger. She reported completing physical therapy, but continued to have right arm weakness. She had pain in the right elbow and right hand. She was given activity modifications, but was instructed to advance activity as tolerated and avoid any direct pressure on her elbow and prolonged pressure on the proximal volar hand. Petitioner was diagnosed with right elbow ulnar nerve anterior transposition and sub- muscular placement, carpal tunnel syndrome status post carpal tunnel release with keloid. The doctor may consider a revision of scar in the future, if the keloid formation continued to worsen. Petitioner was instructed to undergo a home exercise program and Dr. Primus was considering Petitioner at MMI on that day. (PX 2)

Petitioner treated with Dr. Primus on March 22, 2019. Petitioner reported she continued to have numbness in her index finger and pain in her right arm. She reported the pain was located in the right elbow and right hand. It was noted that Petitioner weighed 170 pounds, had a BMI of 26.46 and height of 67.2 inches. The doctor recommended Petitioner continue to advance activity as tolerated, but avoid any direct pressure on elbow and prolonged pressure on the proximal full are hand. (PX 2)

On January 3, 2020, Petitioner treated with Dr. Primus. Since the last visit the symptoms had stayed the same. Pain control had required Motrin. Petitioner denied any new injury. No major changes were noted but she still has numbness and painful scars. Recommendations included conservative care, she was to start physical therapy. The doctor also ordered a basic metabolic panel due to cramping. If symptoms did not improve after therapy, they would obtain bilateral nerve study. (PX 2)

Petitioner underwent physical therapy at Athletico Physical Therapy on January 23, 2020 and February 3, 4, 12, and 13, 2020 for her bilateral hands. Petitioner reported that she had a history of bilateral breast cancer and underwent chemo and radiation, which may have contributed to her symptoms. Petitioner advised symptoms were improving but not completely resolved. Petitioner was discharged from physical therapy on April 1, 2020. (PX 3)

On February 24, 2020, Dr. Primus examined Petitioner and ordered a bilateral nerve study. (PX 2)

On June 22, 2020, Petitioner underwent an NCV/EMG of the upper limbs, due to bilateral upper extremity numbness. She reported her symptoms began in December 2016. She advised currently her symptoms were

worse on the left than right. The results of the study revealed an abnormal study that demonstrated a moderate right ulnar neuropathy, site unspecified. There was no evidence for bilateral median or left ulnar neuropathy. Petitioner was diagnosed with ulnar neuropathy of right upper extremity. (RX 4)

On July 10, 2020, Petitioner treated with Dr. Primus for her bilateral hands. The doctor reviewed the NCV/EMG and opined there was evidence of residual moderate ulnar nerve compression on the right, but no evidence of left ulnar nerve issues or bilateral medial nerve issues. Petitioner was diagnosed with injury of ulnar nerve at forearm level of right arm, and carpal tunnel syndrome, bilateral upper limbs. The doctor opined Petitioner could not engage in repetitive actions of the hand and wrist such as typing, stacking, or any heavy lifting. She is also advised to stay away from vibratory use or machines. She was considered at maximum medical improvement. (PX 2) This was the last treatment that Petitioner had for her carpal tunnel/cubital tunnel conditions.

Petitioner was seen by Dr. Prasant Atluri for a §12 examination on May 4, 2018. After the history and physical, Dr. Atluri's diagnosis was: right carpal tunnel syndrome, status post carpal tunnel release; right hand wound dehiscence; right cubital tunnel syndrome status post right elbow surgery; left dorsal wrist mass; possible ganglion cyst; bilateral wrist arthritis; and numbness and tingling of the left hand. According to Dr. Atluri, none of these conditions were related to Petitioner's work activities. (RX 1)

Petitioner presented the evidence deposition testimony of Dr. Gregory Primus, M.D. on June 18, 2019. (PX 9) Dr. Primus is a board certified orthopedic surgeon who provided care to Petitioner regarding her upper extremity complaints (bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome), including the right carpal tunnel and right ulnar nerve surgery procedures performed in March of 2018. Dr. Primus endorsed causation regarding the carpal tunnel syndrome and cubital tunnel syndrome conditions (causally and directly related to Petitioner's work duties of typing and phone use) due to Petitioner's described heavy typing, heavy clerical duties and heavy lifting. The last office visit before the deposition was March 22, 2019. On cross-examination, Dr. Primus opined that the most common cause of carpal tunnel syndrome is "idiopathic". (PX 9)

Respondent presented the evidence deposition testimony of Dr. Prasant Atluri on July 26, 2019 and March 13, 2020. (RX 2, RX 3) Dr. Atluri is a board certified orthopedic surgeon with an additional qualification in hand surgery. His practice is 100% involving the upper extremities. He testified in accordance with his §12 report. Causation regarding Petitioner's upper extremities was not related to typing or using the telephone. He could not endorse causation based upon Petitioner's description of her work activities. Dr. Atluri opined that the most common cause of carpal tunnel syndrome is idiopathic. On cross-examination, Dr. Atluri agreed that he has never found causation regarding carpal tunnel or cubital tunnel syndrome and keyboarding, phone use or mouse use. These activities do not put stress on the structures that are associated with the conditions. That activities may elicit symptoms, but they do not cause the conditions. Intensity, force and positioning are factors that could cause the conditions. Medical literature supporting causation is variable. (RX 2; RX 3)

CONCLUSIONS OF LAW

The Arbitrator adopts the Findings of Fact in support of the Conclusions of Law that follow.

Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d).

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between her employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

ISSUES C & F: DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, AND IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent on December 29, 2016.

Petitioner failed to prove that her current condition of ill-being regarding her upper extremities (bilateral carpal tunnel syndrome and bilateral carpal tunnel syndrome) is causally related to her work activities for Respondent.

The basis for the Arbitrator's findings on Issues C and F is as follows.

The proofs do not establish that Petitioner performed a single task on a constant and continuous basis, nor did she establish that she engaged in a repetitive work activity that posed a risk greater than that of the general public. There was no proof regarding the intensity, force and positioning of Petitioner's upper extremities in performing her job as Executive Director for Respondent. Yes, she used the telephone. Yes, she did keyboarding and used a mouse. Yes, she lifted heavy boxes at the end of the month. However, it is entirely speculative as to how frequently (per day and day to day) she did these activities as Executive Director.

Petitioner testified that she performed a substantially wide variety of work tasks, including the job duties listed in the Executive Director Job Description. (RX 6) The work of an Executive Director involved establishing working relationships with and coalitional arrangements with community groups and organizations. She was responsible for the recruitment, employment, and release of all personnel including paid staff and volunteers. She was the principal fundraiser for the organization, and was responsible for submission of timely financial and narrative reports. She prepared budgets and operated the organization within those budgets. (RX 6) Petitioner testified that her job as Executive Director included a lengthy list of other tasks including overseeing fourteen employees who reported directly to her, answering her employees' questions, written correspondence, accounting, reporting, letter writing, record keeping, answering the telephone, making telephone calls, maintaining client records, greeting visitors, using a computer, using a mouse, using a stapler, using a calculator, keeping monetary records and audits. Petitioner denied use of power tools and vibratory tools. Petitioner took a lunch break every day. Petitioner was able to freely move about her office and was not required to be in a fixed position for 8 to 12 hours a day. (RX 6 and T15-19)

The Arbitrator relies upon the persuasive opinions of Dr. Atluri in denying accident and causation. Petitioner's job tasks are variable and really do not include forceful activities or activities that include awkward positioning on any kind of frequent basis. Dr. Primus's causation opinions are not persuasive. Basically, Dr. Primus endorses causation because Petitioner uses a telephone and does typing at work. Given the varied activities that Petitioner performed as Executive Director, Dr. Primus's opinion does not comport with the evidence adduced.

Finally, the proofs do not provide support for an accident date of December 29, 2016. Petitioner testified that administrative work for her increased near the end of December, 2016. On December 29, 2016, she woke up

and could not comb her hair. Her upper extremities were weak. She did not seek immediate medical attention for her UE complaints and was seen several times at U of C medical thereafter, with no mention of UE complaints until she was seen in February of 2017, with worsening hand tremors and concerns about carpal tunnel syndrome. When she presented to Drs. DeBartolo and Primus in September of 2017, she said that her UE pain began 12/2/2016 and she related it to a "WMC" injury on 12/6/2016. December 29, 2016 cannot be said to be an accident date, even if Petitioner had proved a work related accident and causation.

Accordingly, Petitioner's claim for compensation is denied.

Petitioner testified that she had responsibility for preparing reports, audits, and budgets to meet the demands of the organizations that were funding You Can Make It, Inc. This involved reviewing client files and entering data into various computer programs. She had responsibility to help clients open their files and begin their stay at her shelter, as well as enter various information for when the clients left the shelter. She spoke with the clients and made sure no one was getting "kicked out," of her shelter without somewhere else to go. She assisted clients in finding permanent placements, as her shelter was only supposed to house clients for 120 days. In addition, she advised she would help clients determine what government benefits they qualified for, and subsequently Petitioner would help the clients apply for these benefits. Petitioner testified she assisted clients job search and apply for jobs, and generally helped clients get back to a position where they no longer needed to be in a homeless shelter. Petitioner advised that she would screen calls, handle routine and complex questions or complaints. She also handle matters regarding payroll, employee benefits, maintenance records, prepare workers compensation reports, completed forms required when hiring or terminating employees, type correspondence, answer the telephone, maintain personnel records, and greet visitors. As Executive Director, Petitioner was the head of Respondent company and in charge of handling daily operations of running two shelters with 120 beds. (RX 6 and T12)

Petitioner described at least 20 different work tasks that she would have to perform while working for Respondent. Petitioner did not report any repetitive motions she performed. Petitioner did not perform any forceful gripping or grasping, she did not use vibratory tools, heavy machinery, nor did she use any power tools. Petitioner's hands were not subjected to awkward positioning that would put pressure on her bilateral carpal tunnels. Petitioner did not testify that she typed all day, but performed a variety of tasks for Respondent. Given the wide diversity of different work tasks that Petitioner engaged in, Petitioner by definition did not perform a single task constantly and consistently on a repetitive basis.

In addition, Petitioner's work tasks did not expose her to a risk greater than that of the general public. None of the activities of the petitioner's job involve forceful gripping or strenuous physical activity. While the Arbitrator notes that Petitioner testified that she spent her time on the computer, Petitioner did not specify the amount she spent typing on the keyboard, using the mouse, reading text on the monitor, printing paperwork from the computer, reading client files, retrieving client files, moving about her office, etc. Petitioner did not provide any testimony or evidence that she had to type at a certain number of words per minute. Furthermore, neither Petitioner's testimony nor any other evidence indicates that Petitioner would have to perform any tasks repetitively. The other evidence indicates that Petitioner's job did not require her to type continuously or repetitively, given all of the other tasks she had to perform on a daily basis.

Furthermore, the accident date itself is at issue. The Arbitrator notes that in several of the medical records from Dr. Primus and Dr. DeBartolo, Petitioner states the accident date as December 6, 2016. In other records she simply states December 2016. In addition, Dr. DeBartolo recorded in his September 26, 2017 note, that Petitioner said the bilateral wrist pain began December 2, 2016. Further, Petitioner testified at trial, it is noted in

the medical records and she reported to the IME physician, that she first noticed these alleged symptoms, not while she was working or performing her job duties; rather she stated multiple times her symptoms first became noticeable when she would wake up at night with symptoms involving both of her hands. Petitioner did not prove a precise, identifiable date when the accidental injury manifested itself due to her work duties.

Based on the above, Petitioner did not prove that she sustained an accident that arose out of and in the course of her employment.

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?

As the Arbitrator has found that Petitioner, Petitioner's claim for medical expenses is denied.

ISSUE K: WHAT TEMPORARY TOTAL DISABILITY BENEFITS ARE IN DISPUTE?

Petitioner's claim for TTD benefits is denied, as she has failed to prove that she sustained accidental injuries arising out of and in the course of her employment by Respondent on December 29, 2016 and failed to prove a causal connection between her condition of ill-being regarding her bilateral upper extremities and her work activities for Respondent.

ISSUE L: WHAT IS THE NATURE AND EXTENT OF THE INJURY?

As the Arbitrator found that Petitioner failed to prove that she sustained accidental injuries arising out of and in the course of her employment by Respondent on December 29, 2016 and failed to prove a causal connection between her condition of ill-being regarding her bilateral upper extremities and her work activities for Respondent, the Arbitrator needs not decide the issue of nature and extent.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC005379
Case Name	Blaine Hyde v. City of Centralia Fire Department
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0475
Number of Pages of Decision	15
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Frank Johnston

DATE FILED: 10/2/2024

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BLAINE HYDE,

Petitioner,

vs. NO: 21 WC 005379

CITY OF CENTRALIA 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 causation, medical benefits, prospective medical benefits, 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 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).

The Commission corrects a scrivener's error in the Arbitrator's decision, in the Findings of Fact, page 2, fourth paragraph, second line, and strikes "Poulos" and replaces it with "Peloza."

The Commission corrects a scrivener's error in the Arbitrator's decision, in the Findings of Fact, page 3, first paragraph, first line, regarding date of accident and strikes "6/22/16" and replaces it with "6/22/19."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit #7, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit for any and all medical expenses paid through its group medical plan under Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for prospective medical treatment, including but not limited to, a fusion at L5-S1 with interbody cage anteriorly, disc replacement at L4-L5, and percutaneous instrumentation fusion at L5-S1, and post-operative care until Petitioner reaches maximum medical improvement.

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.

Based upon the named Respondent herein, no bond is set by the Commission. *820 ILCS 305/19(f)(2)*. 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.

October 2, 2024

KAD/swj
O 9/10/24
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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	21WC005379
Case Name	Blaine Hyde v. City of Centralia Fire Department
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Nathan Lanter
Respondent Attorney	Frank Johnston

DATE FILED: 5/19/2023

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

/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)

Blaine Hyde
Employee/Petitioner

v.

City of Centralia Fire Department
Employer/Respondent

Case # **21** WC **005379**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Collinsville**, on **4/25/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **6/22/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On that date, Petitioner ***did*** sustain an accident that arose out of and in the course of 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 $**61,250.28**; the average weekly wage was $**1,177.89**.

On the dates of accident, Petitioner was **35** 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 $**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 $**TBD and any and all paid** in medical expenses paid through its group medical plan under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 7, 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 authorize and pay for prospective medical treatment, including, but not limited to, a fusion at L5-S1 with interbody cage anteriorly, a disc replacement at L4-5, and a percutaneous instrumentation fusion at L5-S1, and post-operative care until Petitioner reaches maximum medical improvement.

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.

MAY 19, 2023

Arbitrator Linda J. Cantrell
ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

BLAINE HYDE,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 21-WC-005379
	)	
CITY OF CENTRALIA FIRE DEPARTMENT,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Collinsville on April 25, 2023 pursuant to Section 19(b) of the Act. The parties stipulated that on June 22, 2019, Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent. The issues in dispute are causal connection, medical expenses after 7/3/19, and prospective medical care. The parties agree that if the Arbitrator finds Petitioner has reached maximum medical improvement, then the nature and extent of Petitioner's injuries are in dispute.

Respondent alleges that all reasonable, necessary, and causally related medical expenses have been paid through the date Petitioner reached maximum medical improvement on 7/3/19. The parties stipulated that Respondent shall receive a credit for any and all medical expenses previously paid and a credit for any and all medical expenses paid through its group medical plan, under Section 8(j) of the Act.

TESTIMONY

Petitioner was 35 years old, married, with two dependent children at the time of accident. Petitioner was hired by Respondent in 2007 and worked full time as a firefighter and EMT. Petitioner took and passed a pre-employment physical.

Petitioner testified that he responded to a residential fire on 6/22/19. He and his lieutenant, Scott Wiesen, entered the house and used narrow steps to access the second floor. They extinguished the fire and as he was standing on the top of the staircase, he fell approximately 7 to 8 feet to the bottom. He testified he landed on his lower back and buttock area and the Air Pack that he wore on his back went into his lower spine. Petitioner felt immediate pain in his low back. Lieutenant Wiesen helped him stand up and he had extreme

shooting pain down his legs. Lieutenant Wiesen assisted Petitioner out of the house to the fire truck where he was greeted by Chief John Lynch to whom he reported his accident. Petitioner completed a written incident report.

Petitioner testified that he sustained injuries to his back prior to his work accident on 6/22/19. In 2007 or 2008, he injured his back while lifting a person in a stretcher who had been involved in a car accident. He heard a loud pop in his hip area and experienced tightness and extreme pain in his low back, right hip, and right leg. Petitioner received treatment at an emergency room, which included x-rays and muscle relaxers. He was diagnosed with a possible pinched sciatica. Petitioner testified he returned to the emergency room because the medication was not controlling his symptoms and he was admitted for one night. Petitioner followed-up with chiropractor Dr. Berger three or four times. Petitioner testified that his symptoms completely resolved within one to two weeks, and he returned to full duty work. Petitioner returned to Dr. Burger approximately 7 to 10 times over the next twelve years. He treated for a spot that would catch between his shoulder blades and his left shoulder.

Petitioner testified that during the six months prior to his work accident on 6/22/19 he did not suffer any injuries to his mid or low back, he did not experience any significant low back pain, tension, or stiffness, he had no numbness or tingling in his legs, he did not seek any medical treatment for his low back, including diagnostic studies, and he was working his full job duties without difficulty or restriction.

Petitioner testified he went to St. Mary's Hospital emergency room the day of the accident for extreme low back pain. He followed-up with Dr. Berger and chiropractor Dr. Cox. He stated he missed a few shifts from work following the accident. Petitioner testified that after a couple of chiropractor visits, his pain improved and he returned to full duty work. He stated he was not 100% better but it was "doable". His low back pain was aggravated by lifting, squatting, and turning in certain directions. As an EMT, Petitioner was required to perform heavy lifting of patients in awkward positions.

Petitioner underwent injections and ablations by Dr. Hurford that did not provide lasting relief. He treated with Dr. Poulos who recommended surgery which Petitioner desires to undergo. Petitioner testified he is still employed by Respondent and was promoted to lieutenant in March 2022.

Petitioner's current symptoms include low back pain. When he goes from a seated, squatting, or kneeling position, it feels like his bones are grinding on each other. He testified that lifting heavy objects, turning certain ways, and a lot of activity at the fire station causes him to stay home, ice his back, take Tylenol or Ibuprofen, and rest in bed or on the couch. Petitioner testified he is quite limited in his activities and he cannot play catch or basketball with his sons. He does not camp or fish very long due to back pain. He stated his back condition has worsened since the accident. Petitioner testified he has continued to work despite his back pain because no doctor has placed him on restrictions, and he must work to provide for his family. Petitioner testified he loves being a firefighter and his father is the fire chief.

On cross-examination, Petitioner testified he did not work a handful of shifts due to back pain following his work accident for which he used sick days. Otherwise, Petitioner has worked his full job duties since the accident. He testified that his main symptom is low back pain, but he does have some numbness and tingling at times. He testified that that his current pain sitting through arbitration was a 3-4/10, and when he stands up after sitting too long it increases to 6-7/10 because it "grinds". Petitioner testified he treated with Dr. Berger up until 7/3/19 and then began treating with Dr. Cox.

MEDICAL HISTORY

On 6/22/16, Petitioner presented to the emergency room at SSM Health St. Mary's Hospital. (PX1) It was noted that Petitioner was a firefighter who was at a house fire and was going up a ladder (or attic steps) and slipped while coming back down. He thought he fell 5 to 6 feet and landed directly on his buttocks in a seated position. Petitioner's chief complaint was back pain that he rated 8/10 with movement. Physical exam was positive for back pain and tenderness. He could only lift and straighten his legs to 30 degrees with pain. Clinical impression was midline low back pain with sciatica. A CT scan of Petitioner's pelvis showed slight acute angulation of the sacrococcygeal junction potentially related to the injury, but no gross soft tissue injury or fracture. A lumbar spine CT scan showed degenerative changes at L5-S1 with possible spinal cord stenosis and disc protrusion. Petitioner underwent Toradol and Norflex injections and was ordered to follow-up with his primary care provider in two days.

On 6/24/19, Petitioner presented to chiropractor Dr. Joshua Berger. (PX2) Petitioner underwent six chiropractic sessions through 7/3/19. (PX2, p. 143-148) Petitioner also returned to Dr. Berger on 8/12/19, 9/30/19, and 10/2/19. (PX2, p. 149-151)

On 10/21/19, Petitioner sought treatment with chiropractor Dr. Jedidiah Cox. (PX3) On the intake form Petitioner indicated his chief complaint was low back pain that started on 6/22/19 when he fell from steps in a fire. (PX3, p. 155, 163) Petitioner reported his back was better, something reaggravated it, and it was not getting better. (PX3, p. 160) Dr. Cox noted Petitioner's chief complaint was upper thoracic and upper and lower lumbar pain. (PX3, p. 166) He described aching and dull pain, stiffness, and rated his pain 2/10. He reported his symptoms worsened with working and improved with chiropractic care and stretching. Dr. Cox diagnosed thoracic spine sprain, subluxation complex of the thoracic, lumbar, and cervical regions, and left hip pain. Petitioner reported he could not pick up anything off the floor without pain. Petitioner received chiropractic care from 10/21/19 through 3/19/21. Dr. Cox referred Petitioner to Dr. Hurford. (PX4, p. 313)

On 3/25/21, Dr. Patricia Hurford examined Petitioner who noted a consistent history of injury. (PX4, p. 308, 328) On the intake form, Petitioner reported that chiropractic care provided temporary relief. (PX4, p. 309) Dr. Hurford noted Petitioner's past medical history of low back pain in 2007 which was treated conservatively. She noted that at the time of Petitioner's work accident in 2019 he was not having any active back pain. (PX4, p. 328) Lumbar spine x-rays showed mild degenerative changes predominantly in the facet at L4-5 and L5-S1. (PX4, p. 329) A lumbar MRI was ordered.

On 4/13/21, Petitioner underwent a lumbar MRI that showed moderate disc space narrowing at L5-S1; retrolisthesis of L4 in relation to S1; L5-S1 moderate disc degeneration, broad-based central disc protrusion, mild canal stenosis, and moderate bilateral foraminal stenosis; and an L4-5 disc protrusion lateralizing to the right and mild right-sided foraminal stenosis. (PX1, p. 128; PX4, p. 334)

Petitioner returned to Dr. Hurford's office on 4/19/21. (PX4, p. 338) PA Jeff Todd noted the MRI showed disc bulging at L4-5 and L5-S1, with mild stenosis on the left at L5-S1. PA Todd assessed lumbar facet mediated pain with possible radiculopathy. He recommended facet mediated injections bilaterally at L4-5 and L5-S1 and medial branch blocks for possible relief and diagnostic purposes.

On 5/12/21, Petitioner underwent bilateral facet injections at L4-5 and L5-S1. (PX4, p. 342-346). He returned to Dr. Hurford's office on 6/1/21 and PA Todd noted Petitioner had significant improvement following injections. Petitioner reported occasional stiffness and soreness in his back and rated his pain 1-2/10. (PX4, p. 349) PA Todd assessed lumbar facet mediated pain, low back pain, lumbar radiculopathy, and lumbar spondylosis without myelopathy or radiculopathy. Petitioner was ordered to continue activity as tolerated and to focus on range of motion and strengthening.

On 8/17/21, Dr. Hurford administered bilateral L4-5 and L5-S1 zygapophyseal joint injections. (PX4, p. 353) On 9/30/21, Petitioner had a telemedicine visit with PA Todd and reported persistent low back pain that increased with activity and short-term relief from the injections. PA Todd recommended lumbar medial branch blocks and if they provided 70 to 80% pain relief, then radiofrequency ablations would be ordered. (PX4, p. 356)

On 11/9/21, Dr. Hurford administered medial branch blocks of the left L3 and L4 nerves and a left dorsal ramus block at L5. (PX4, p. 360) On 11/16/21, Dr. Hurford administered right L3, L4, and L5 medial branch/dorsal ramus diagnostic injections. (PX4, p. 363)

On 11/22/21, PA Todd noted Petitioner received 90 to 100% relief for four to six hours following the medial branch blocks. (PX4, p. 366) Petitioner reported 3/10 pain that increased to 6/10 with specific positions and liftings. Physical exam showed diffuse tenderness to palpation through the lumbar paraspinal musculature and increased pain with extension of the lumbar spine. Radiofrequency ablations were recommended.

On 12/21/21, Dr. Hurford performed medial branch/dorsal ramus radiofrequency ablations on the left at L3, L4, and L5. (PX4, p. 371) On 1/4/22, Dr. Hurford performed a right-sided paravertebral radiofrequency ablations at the same levels. (PX4, p. 375)

On 1/13/22, PA Todd noted Petitioner received nearly 100% relief from the radiofrequency ablations. (PX4, p. 380) Petitioner reported occasional low back soreness but was slowly returning to his normal activities. Physical exam showed full range of motion with flexion and extension and mild soreness with extreme extension of the lumbar spine. PA Todd assessed facet mediated thoracolumbar pain, low back pain, lumbar radiculopathy, and lumbar

spondylosis. PA Todd recommended Petitioner continue activities as tolerated and physical therapy to help with core strengthening.

On 1/20/22, Petitioner underwent an initial assessment at Apex Physical Therapy. (PX5, p. 391-393) Petitioner reported that the epidural shots gave him temporary relief, and he had a couple of nerve ablations. Petitioner reported he was feeling better but still had pain in his back, and prior to injections and ablations his back pain radiated down his left leg. (PX5, p. 391) Petitioner attended eighteen physical therapy sessions from 1/20/22 through 3/14/22.

On 10/5/22, Petitioner was examined by Dr. John Peloza. Petitioner reported aching, numbness, and burning pain in his low back that he rated 4/10. (PX6, p. 416) Physical examination revealed full flexion of the lumbar spine, with pain at approximately 30 degrees of flexion that increased through the entire arc. Petitioner had pain with side bending to the right, and positive tenderness in his mid lumbar spine to the lumbosacral junction. Dr. Peloza ordered lumbar spine x-rays that showed significant collapse, decreased disc height at L5-S1 with slight retrolisthesis. Dr. Peloza reviewed the 4/12/21 lumbar MRI and believed Petitioner had disc injuries at L5-S1 and L4-5 on the right. He opined that the injury was secondary to Petitioner's fall on 6/22/19. He noted Petitioner had back pain with radicular leg pain 11 or 12 years prior that was treated with minimal conservative care. He noted that Petitioner had complete resolution of his symptoms and did not have significant problems until the 6/22/19 injury. Dr. Peloza recommended a new lumbar MRI and kept Petitioner on full duty work without restrictions.

On 11/9/22, Dr. Peloza noted the new lumbar MRI performed on 11/2/22 showed severe disc space collapse with loss of signal and MODIC changes, a posterior annular tear at L5-S1, and decreased disc signal with posterior annular tears going out to the foramen bilaterally at L4-5. (PX6, p. 422) Dr. Peloza recommended an anterior disc replacement at L4-5 and L5-S1, and if the disc collapse did not allow the implant, a fusion would be performed.

On 12/7/22, Petitioner returned to Dr. Peloza and reported his pain was unchanged, with severe low back pain without much radicular pain or claudication. (PX6, p. 424) Dr. Peloza opined that the source of Petitioner's pain was disc injuries at L4-5 and L5-S1 that were caused by his work accident. He again noted Petitioner had pain in 2007 or 2008 which was treated effectively with nonoperative care, and Petitioner was asymptomatic until the 2019 fall.

Dr. Peloza addressed Dr. Stiehl's opinions contained in his Section 12 examination report dated 1/25/21. (PX6, p. 424) Dr. Peloza believed Dr. Stiehl's understanding of Petitioner's condition prior to the 2019 fall was a gross misrepresentation of Petitioner's actual history. Dr. Peloza disagreed with Dr. Stiehl's reliance on the emergency room lumbar scan because a CT scan is not sufficient by itself to diagnose a disc injury or chronic low back pain. Dr. Peloza disagreed with Dr. Stiehl's opinion that Petitioner's current problems were not related to the work accident because Petitioner was asymptomatic for twelve years prior to the fall, the fall caused an axial load to Petitioner's lumbar spine, and the MRIs showed evidence of disc injuries at L4-5 and L5-S1. Dr. Peloza stated the work accident clearly caused Petitioner's back pain that was supported by an objective MRI. Dr. Peloza opined that the objective findings supported Petitioner's subjective complaints and were consistent with Petitioner's back pain. Dr. Peloza opined that Petitioner's treatment to date was reasonable, necessary, and related to the 6/22/19

work injury. He did not believe Petitioner had reached MMI because he had a significant disc injury he was still suffering from, and his activities were decreased to get through the day. Dr. Peloza recommended a fusion at L5-S1 with interbody cage anteriorly, a disc replacement at L4-5, and a percutaneous instrumentation fusion at L5-S1. He believed Petitioner was capable of working but remarked Petitioner was getting more and more back pain and restrictions would eventually be needed.

On 1/4/23, Petitioner returned to Dr. Peloza who noted Petitioner's pain was severe and unchanged. He noted that Petitioner was having more difficulty with work and daily activities. Petitioner told Dr. Peloza he wanted to proceed with surgery. Dr. Peloza believed that the continued delay in treatment would have a negative impact on Petitioner's ultimate outcome.

Petitioner was examined by Dr. James Stiehl pursuant to Section 12 of the Act on 1/25/21 and 2/16/23. (RX1 & 2) On 2/2/21, Dr. Stiehl authored a report that contains a consistent history of injury. He noted "there has been a prior history of back problems going back a number of years". He noted the 6/22/19 lumbar CT scan was normal. Dr. Stiehl noted that Petitioner treated for a couple of months and returned to light duty work on 6/24/19, followed by normal work duties at some point. Dr. Stiehl reviewed Petitioner's post-accident medical records, including those from the emergency room, Dr. Burger, and Dr. Cox. He did not review any records prior to 6/22/19. On physical exam, Dr. Stiehl noted Petitioner's extension and side bending were slightly diminished and there was discomfort in the left lower lumbar area above the pelvis. He opined Petitioner continued to complain of nonspecific low-grade mechanical lower back pain with no evidence of radiculopathy or spinal instability. He did not believe Petitioner's current problems related to the 6/22/19 work incident based on his evaluation and his review of the medical records. He opined Petitioner had reached MMI when he went back to normal work duties on 7/03/19. He believed Petitioner had "a very modest injury" and 7/3/19 should have been the end of his treatment. He believed that if Petitioner continued to have lumbar spine symptoms after 7/3/19, they would be related to pre-existing lumbar degenerative disc disease. He opined that Petitioner reached MMI on 7/3/19 and was capable of working full duty.

Dr. Stiehl authored a report on 3/8/23 following a second examination on 2/16/23. (RX2) Dr. Stiehl noted that Petitioner had a number of years of chronic low back problems, but it had never caused him to have any restrictions. He noted that Petitioner continued to work as a firefighter and performs all of his job duties. He did not see any evidence of secondary gain and believed Petitioner could lift whatever but continued to have chronic constant pain that comes and goes. Petitioner denied numbness, tingling, or weakness. Dr. Stiehl reviewed the lumbar MRI and medical records from Dr. Hurford and Peloza through 11/9/22. Dr. Stiehl performed a physical examination and found no evidence of chronic radicular symptoms in Petitioner's lower extremities. He noted Petitioner had some mechanical back pain and normal range of motion of the lumbar spine.

Dr. Stiehl opined that Petitioner has longstanding advancing degenerative joint disease in the lumbar spine. He opined that Petitioner's work accident caused a modest temporary flare up, but nothing more. He stated that Petitioner has shown some progression over time, with modest relief from radiofrequency ablations, injections, and physical therapy. He again opined that

Petitioner reached MMI on 7/3/19 and did not require restrictions or further treatment. He did not find evidence of symptom magnification or malingering.

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).

The law holds that an accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). [Emphasis added]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Industrial Commission*, 309 Ill. App. 3d 1037, 723 N.E.2d 846 (2000). 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). 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).

The Arbitrator finds that Petitioner sustained his burden in establishing that his current condition of ill-being with respect to his lumbar spine is causally connected to his undisputed work accident on 6/22/19. Petitioner was hired by Respondent in 2007, after passing a pre-employment physical, and has worked full time as a firefighter and EMT since. In addition to his firefighter duties, Petitioner testified he performs heavy lifting of patients in awkward positions. There is no evidence Petitioner had difficulty performing his full job duties prior to the work accident.

Petitioner testified that in 2007 or 2008 he injured his back while lifting a person in a stretcher. He heard a loud pop in his hip area and experienced tightness and extreme pain in his low back, right hip, and right leg. He underwent x-rays, three or four chiropractic treatments, and took medication. Petitioner testified that his symptoms completely resolved within one to two weeks, and he returned to full duty work. Over the next twelve years, Petitioner underwent chiropractic treatment approximately 7 to 10 times for a spot that would catch between his shoulder blades and his left shoulder. No medical records were admitted into evidence that pre-date Petitioner's work accident. Dr. Stiehl performed two Section 12 examinations and did not review any medical records that pre-dated Petitioner's work accident.

Petitioner testified he fell approximately 7 to 8 feet to the bottom of the staircase after extinguishing the fire. He testified he landed on his lower back and buttock area and the Air Pack that he wore on his back went into his lower spine. He felt immediate pain in his low back and his lieutenant helped him to his feet. Once Petitioner stood up, he had extreme shooting pain down his legs and he went to the emergency room. Emergency room personnel recorded a consistent history of injury, although it was noted Petitioner thought he fell 5 to 6 feet, and landed directly on his buttocks in a seated position.

Petitioner consistently treated for low back pain following the accident. He underwent nine chiropractic treatments through 10/2/19. On 10/21/19, Petitioner presented to chiropractor Dr. Jedidiah Cox with persistent upper thoracic and upper and lower lumbar pain. He reported his symptoms worsened with activity and he could not pick up anything off the floor without pain. Petitioner received chiropractic care through 3/19/21. On 4/13/21, Petitioner underwent a lumbar MRI and was diagnosed with disc bulging at L4-5 and L5-S1, with mild stenosis on the left at L5-S1. He subsequently underwent bilateral facet injections at L4-5 and L5-S1, bilateral L4-5 and L5-S1 zygapophyseal joint injections, medial branch blocks of the left L3 and L4 nerves and a left dorsal ramus block at L5, and right L3, L4, and L5 medial branch/dorsal ramus diagnostic injections. The treatment did not provide sustained relief and he underwent bilateral medial branch/dorsal ramus radiofrequency ablations at L3, L4, and L5. Petitioner underwent eighteen physical therapy sessions from 1/20/22 through 3/14/22.

Dr. Peloza reviewed the lumbar MRI performed on 4/12/21 and noted it showed disc injuries at L5-S1 and L4-5 on the right. He ordered a new MRI that showed severe disc space collapse with loss of signal and MODIC changes, a posterior annular tear at L5-S1, and decreased disc signal with posterior annular tears going out to the foramen bilaterally at L4-5. Dr. Peloza recommends a fusion at L5-S1 with interbody cage anteriorly, a disc replacement at L4-5, and a percutaneous instrumentation fusion at L5-S1.

The Arbitrator is more persuaded by the opinions of Dr. Peloza than those of Dr. Stiehl. Dr. Peloza noted that Petitioner had low back problems in 2007 or 2008 which was treated effectively with nonoperative care, and Petitioner was asymptomatic for twelve years prior to his work accident. Dr. Peloza opined that Petitioner's fall caused an axial load to his lumbar spine and his subjective complaints were consistent with objective findings at L4-5 and L5-S1. He noted that Petitioner was having more difficulty with work and daily activities and the continued delay in treatment would have a negative impact on Petitioner's ultimate outcome.

Dr. Stiehl's opinion that Petitioner had long standing advancing lumbar degenerative joint disease and that the work accident caused a modest temporary flare up is not supported by the subjective and objective evidence. Dr. Stiehl did not review any medical records that pre-dated Petitioner's work accident or find any evidence that Petitioner suffered a low back condition that limited his activities or caused him to seek medical treatment in over ten years prior to Petitioner's injuries in 2019. The evidence does not support Dr. Stiehl's opinion that Petitioner reached MMI on 7/3/19, eleven days after the accident, or that his persistent lumbar spine symptoms were related to degenerative disc disease.

Based on the totality of the evidence, the Arbitrator finds that Petitioner's current condition of ill-being in his lumbar spine is causally connected to his injury on 6/22/19.

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

Issue (K): **Is Petitioner entitled to any prospective medical care?**

The right to be compensated for medical costs associated with work-related injuries is at the very heart of the Workers' Compensation Act. *Hagene v. Derek Polling Const*., 388 Ill. App. 3d 380, 383, 902 N.E.2d 1269, 1273 (2009). Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Dr. Peloza opined that Petitioner's treatment to date was reasonable, necessary, and related to the 6/22/19 work injury. Based on the Arbitrator's finding as to causal connection and that Petitioner has not reached maximum medical improvement, Respondent shall pay the reasonable and necessary medical expenses outlined in Petitioner's Group Exhibit 7, 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 further finds that Petitioner is entitled to receive the additional care recommended by Dr. Peloza. Therefore, Respondent shall authorize and pay for prospective medical treatment, including, but not limited to, a fusion at L5-S1 with interbody cage anteriorly, a disc replacement at L4-5, and a percutaneous instrumentation fusion at L5-S1, and post-operative care until Petitioner reaches maximum medical improvement.

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

Linda J. Cantrell

Arbitrator Linda J. Cantrell DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC036746
Case Name	Gregory Thomas Jr. v. PSAV
Consolidated Cases	
Proceeding Type	***Remand from the Circuit Court of Cook County***
Decision Type	Commission Decision
Commission Decision Number	24IWCC0476
Number of Pages of Decision	15
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Patrick Shifley
Respondent Attorney	Miles Cahill, Marcy Singer Ruiz

DATE FILED: 10/2/2024

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GREGORY THOMAS, JR.,

Petitioner,

vs. NO: 15 WC 36746

PSAV,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County, Illinois County Department, Law Division. The Respondent's Petition for Review was previously dismissed by the Commission for failing to correctly file its Petition for Review for claim 15 WC 36746. The Circuit Court set aside the Commission's Order and remanded the matter back to the Commission to conduct a review on its merit of claim 15 WC 36746. After considering the issues of causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability, permanent partial disability, and whether the Arbitrator erred in reinstating this claim, and being advised of the facts and law, the Commission 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 19, 2022 is hereby affirmed and adopted.

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

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

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.

October 2, 2024
CAH/tdm
O: 9/26/24
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	15WC036746
Case Name	THOMAS JR, GREGORY v. PSAV
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Martha Niles
Respondent Attorney	Miles Cahill, Marcy Singer-Ruiz

DATE FILED: 4/19/2022

/s/Stephen Friedman, Arbitrator
Signature

INTEREST RATE WEEK OF APRIL 19, 2022 1.25%

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

☐ 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

Gregory Thomas Jr.
Employee/Petitioner

v.

PSAV
Employer/Respondent

Case # **15** WC **036746**

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 **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Wheaton**, on **March 9, 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 22, 2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**34,762.00**; the average weekly wage was $**668.50**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **1** dependent child.

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

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

Respondent shall be given a credit of $**4,838.70** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**4,838.70**.

Respondent is entitled to a credit of $**11,382.13** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as detailed in the Arbitrator's finding with respect to Medical herein, as provided in Section 8(a) of the Act. Respondent shall be given a credit for medical benefits that have been paid or adjustments taken, 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 $445.67/week for 44 weeks, commencing October 23, 2015 through March 6, 2016, and April 22, 2016 through October 10, 2016 as provided in Section 8(b) of the Act. Respondent shall be given a credit of $4,838.70 for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of $401.10/week for 32.25 weeks, because the injuries sustained caused the 15% loss of the Left Leg, as provided in Section 8(e) of the Act.

CLAIMS FOR COMPENSATION FOR DATES OF ACCIDENT ON 4/04/14 AND 4/08/16 ARE ADDRESSED IN THE DECISIONS IN THE CONSOLIDATED CASES 15WC036747 AND 16WC011163 DECIDED IN CONJUNCTION WITH THIS MATTER.

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
Signature of Arbitrator

APRIL 19, 2022

ICArbDec p. 2

Statement of Facts

This matter was tried in conjunction with consolidated case 15WC036747 (DOA: 4/04/14) and 16WC011163 (DOA:4/8/16). A single transcript was prepared. The Arbitrator has issues separate decisions for each case. The Arbitrator has designated exhibits from Respondent in this matter as R2X, and Respondent in 15WC036747 as R1X.

Petitioner Gregory Thomas Jr. testified he was employed by Respondent PSAV since 1998 or 1999. He was a technician. His job duties were to provide clients audiovisual equipment for their meetings. His main duties were for hotels, providing services for their guests.

He testified that prior to 2013, he had a history of prediabetes that he treated with diet and exercise. He testified he would go to the gym 3 times per week to use weights and the treadmill and played basketball 2 to 3 times per month. He had no problems with his neck, back, limbs that interfered with his ability to play basketball in 2013. Petitioner testified he had right knee pain in 2013. He testified he played basketball, so his knees were going to hurt. It was not regular pain, but he would note it if he used his legs in a stressful practice. He played basketball in high school and college. He did not have problems until he stopped playing on a regular basis.

He testified he was in a motor vehicle accident in April 2013 injuring his right knee. Petitioner was seen at Advocate Medical Group on April 24, 2013 complaining of neck and left arm pain and low back pain from a motor vehicle accident (R2X 1, p 86-90). He was seen on May 8, 2013 and June 24, 2013, at which time he was released to return to work with a 20 pound lifting restriction. The assessment notes osteoarthritis and DJD in both knees, moderate left, and severe right (R2X 1, p 79-81). X-rays of both knees taken June 25, 2013 notes osteoarthritis (PX 1, p 42). Petitioner was seen on December 16, 2013 for his lower back. The notes list DJD both knees as an active problem (R2X 1, p 74).

Petitioner testified he suffered an accident when he was on an elevator in the hotel that did not stop level with the floor. When he walked off, he tripped and fell. He caught his foot on the rug and fell and tripped, twisting his right knee. He testified his supervisor Patrick was with him at the time. This is the subject of the consolidated case 15WC036747, decided in conjunction with this matter. Petitioner did not recall the date of the accident. He testified the treatment at Advocate Medical Group on a single date with a history of “Fell at work, injured right knee and lower back one week ago” was the treatment for this described injury. He did not recall any other injury in which he injured his right knee and sought medical treatment. Petitioner was seen at Advocate on April 11, 2014 reporting an injury to his back and right knee. He reported he fell at work a week ago. The assessment was acute knee pain and back ache (R2X 1, p 69-71). X-ray of the left knee taken April 11, 2014 noted mild degenerative changes which were compared to views from June 25, 2013 and noted to remain stable (R2X 1, p 5). Petitioner was seen on July 22, 2014 and December 31, 2014 reporting low back pain from the motor vehicle accident (PX 1, p 79, 86). Petitioner underwent a stress test in March 2015. On June 23, 2015, he was seen for headaches, low back pain with radiation to the left leg from the motor vehicle accident. The record notes active problems include acute knee pain (PX 1, p 104).

Petitioner was seen at the University of Illinois on July 8, 2015 to establish care (R2X 2). He complained of low back pain and left leg numbness from the motor vehicle accident. He also had bilateral knee pain, left greater that right without specific injury. Examination noted full range of motion with crepitus in the knees with no joint line tenderness and small effusions. Petitioner was diagnosed with DJD of the knee (R2X, p 20-24).

Petitioner testified he missed a day from work and continued to work. He had no ongoing treatment or complaints for his knee. He did go to the doctor for his prediabetes and his heart. He had a stress test, running on a treadmill. His knee hurt a little bit. He also had some treatment for back pain and age-related concerns with his knees. He testified no one ordered an MRI. No one ever told him he needed surgery.

Petitioner initially filed his Application for Adjustment of Claim for 15WC036746 on November 12, 2015 (Arb. Ex 4). The Application alleges an injury of March 1, 2013. The description is “at work.” The part of the body injured is “Left Knee.” The nature of the injury is “permanent.” Petitioner amended this application at trial to allege a date of accident of April 4, 2014. Petitioner testified on cross examination that he had an accident on March 1, 2013. He then said it might not have been March 2013. The Advocate records note visit on March 8, 2013 for chest discomfort and productive cough (PX 1, p 6). He was returned to work on March 11, 2013 (PX 1, p 4). Petitioner testified he was off work because of an accident with a truss.

In a civil action related to the October 2015 injury (17 L 8911), Petitioner signed interrogatories stating that around 2012 or 2013, when he was exiting an elevator that was not level with the floor, he tripped. He stated he was treated by Dr. Nate at Mercy Hospital (R2X 4). Respondent offered R1X 1 which is a subpoena response from Mercy Hospital and Medical Center documenting that they have no records of treatment for Petitioner. In Petitioner’s discovery deposition in that matter taken May 11, 2018, he testified that in 2012, he tripped exiting an elevator and hit his knees. He testified he saw Dr. Coleman. He also testified to a motor vehicle accident in 2014 where he jammed both knees into the steering wheel (R2X 9).

Petitioner testified he continued to work for Respondent. He had this injury on October 22, 2015. He was a senior technician at that time. On that date, he was putting a phone patch to a room. The client put a file cabinet in the middle of the floor, but not where it was usually placed. He walked into the room and turned and struck the file cabinet with his left knee. He fell on top of the filing cabinet.

Petitioner was seen at the University of Illinois on October 23, 2015 (PX 2). He complained of pain and swelling in his left knee. He is noted to have a past medical history significant for osteoarthritis of bilateral knees who presents after a work injury resulting in left knee pain and swelling. Patient walked into a file cabinet which was left in the middle of a dark room. Petitioner reported pain and is unable to walk with a normal gait or bear weight on his knee without pain. Petitioner can bend his knee. Examination noted edema of the left knee and tenderness with external rotation. An x-ray impression was mild to moderate degenerative changes of the left knee, worst in the medial compartment and small suprapatellar effusion (PX 4, p 192). The diagnosis was significant history of osteoarthritis with work injury resulting in left knee bursitis and contusion. Petitioner was referred for left knee aspiration and x-ray, and prescribed 800 mg Ibuprofen (PX 2).

On October 26, 2015, Petitioner went to Concentra (PX 3). He gave a history of left knee pain after running into a 2-drawer file cabinet at 7:40am. He reported immediate swelling and that the knee gave out twice. He had complaints of knee pain located in the left distal knee, medial and lateral knee. Physical exam showed grade 2 effusion without erythema. He had tenderness on the medial joint line and MCL. He was assessed with a sprain of the MCL of the left knee. He was ordered elastic knee sleeve and Ibuprofen and referred to physical therapy. He was returned to work with restrictions (PX 3, p 157-161). On October 29, 2015, Petitioner had been referred to therapy and was improving. He was assessed with a left knee sprain and continued on restricted duties (PX 3, p 166).

On November 3, 2015 Petitioner had an initial visit with AMCI – Beverly Park Medical Center. He testified they were recommended by his attorney. He was seen by Ashley Dalliege, D.C., complaining of left knee pain following a work-related accident on October 22, 2015. He was diagnosed with left knee sprain. Dr. Dalliege stated it was causally related to the accident. She placed him off work pending exam by Dr. Foreman (PX 4, p 185, 278). She began therapy on November 4, 2015 (PX 4, p 187). Petitioner saw Dr. Foreman on November 9, 2015. He noted an antalgic gait, edema, medial tenderness, pain with flexion, crepitus, positive McMurray and Apley's tests. He diagnosed a sprain causally related to the incident describe. He prescribed therapy 3 times per week, pain medications, and a hinged knee brace. He took Petitioner off work (PX 4, p 188). Petitioner received therapy, including ultrasound, therapeutic exercises, Vaso pneumatic compression beginning November 4, 2015 (PX 4).

On November 23, 2015, Petitioner noted ongoing knee pain. His regular duties required standing, kneeling, and bending. Dr. Foreman ordered an MRI and continued therapy and medications as needed. Petitioner was kept off work (PX 4, p 199). The November 24, 2015 MRI revealing degenerative disease in the left knee joint, a partial tear of the ACL, a tear of the body and posterior horn of the medial meniscus, medial collateral ligament strain, and small joint effusion (PX 4, p 210-211). On December 14, 2015, Dr. Foreman reviewed the MRI revealing degenerative disease, effusion, ACL and medial meniscus tears. He stated that the MRI findings are causally related to and/or exacerbated by the work incident. Petitioner may be a surgical candidate. Petitioner was referred to Dr. Bilko and placed off work (PX 4, p 209). On December 17, 2015, Dr. Bilko examined the Petitioner, noting mild effusion, medial joint line tenderness. After review of the MRI, Dr. Bilko recommended arthroscopy with partial meniscectomy. He stated the MRI findings were causally related to and/or exacerbated by the work incident. PT put on hold. Petitioner was kept off work (PX 4, p 212).

On December 21, 2015, Petitioner was seen for a §12 examination by Dr. Gregory Tu (RX 8). On January 14, 2016, Dr. Bilko states Petitioner advised him surgery has been denied. Petitioner requested a return to regular work for financial reasons. Petitioner received a corticosteroid injection. He was returned to regular work as of January 18 and discharged pending surgery (PX 4, p 213). Dr. Bilko provided return to work slips for light duty and regular duty (PX 4, p 282, 283). On February 4, 2016, Dr Bilko was notes Petitioner was not allowed to return to work. Petitioner reported ongoing pain, popping, and clicking, but improving pain and tolerance with weight bearing and bending following the injection. Dr. Bilko reviewed the report of Dr. Tu. He disagreed with Dr. Tu about causation, noting that there was a clear symptomatic exacerbation as a result of the work incident. He agreed that while there was pre-existing degenerative change, he stated there is no way to ascertain that the torn meniscus was pre-existing without a prior MRI. Dr. Bilko agreed with Dr. Tu about the necessary restrictions. Petitioner was given a return to work on restricted duties (PX 4, p 215, 284). On March 3, 2016, the Petitioner returned to Dr. Bilko and reported he still had not returned to work due to the restrictions. He requested an unrestricted return to work for financial reasons as of 3/7/2016 (PX 4, p 216, 285).

On March 31, 2016, Petitioner reported he had returned to regular duties but continued to experience pain. The corticosteroid injection had provided only temporary relief. Dr Bilko stated viscosupplementation injection as recommended by Dr. Tu was reasonable and referred Petitioner to a pain specialist (PX 4, p 217).

Petitioner testified that he returned to work in April 2016. He testified that the company would not accommodate light duty status. He had run out of short-term disability, requiring him to return to work.

On April 8, 2016, Petitioner was unloading a truck with the assistance of the truck's driver when a screen case fell on the back of his left leg. This accident is the subject of consolidated case 16WC011163, decided in conjunction with this matter. After other coworkers arrived at work, Petitioner went home for the day. Petitioner testified that the screen case struck the back of his calf. He testified that this incident did not cause him to seek new treatment.

Petitioner underwent three viscosupplementation injections on April 6, April 14, and April 21, 2015 (PX 4, p 220-222). On April 28, 2016, Petitioner reported minimal improvement. He reported he was no longer able to tolerate work duties as of 4/21/16 due to increasing pain in his knee. Dr. Bilko stated that in light of the failure of conservative measures including viscosupplementation to resolve his pain, it was recommended Petitioner undergo a left knee arthroscopic surgical procedure (PX 4, p 224).

On June 15, 2016, Dr. Bilko performed a left knee arthroscopy with partial medial and lateral meniscectomy. The operative report notes a large complex tear of the medial meniscus. Ligaments were intact. (PX 4, p 228). From June 23, 2016, through October 4, 2016, Petitioner received follow up care and physical therapy. Petitioner testified he did not take the medication given him by Dr. Bilko more than once or twice. He received them and still has them. He did not take the Flexeril or Tramadol. On June 23, 2016, Dr. Bilko notes Petitioner still needs Norco. He provided EMS/TENS combination unit for Petitioner for a 30 day trial per ODG guidelines (PX 4, p 231). Petitioner testified he received post-surgical equipment and that the equipment helped tremendously. On September 29, 2016, Dr. Bilko noted improvement. Petitioner was no longer needing any medication. Petitioner reported going to the gym and continuing physical therapy. Dr. Bilko reduced therapy to 1-2 times per week. Petitioner remained off work (PX 4, p 272). On November 3, 2016, Dr. Bilko notes Petitioner is improving but has swelling after activity. Petitioner reported that he started a new job a few weeks ago and had discontinued therapy due to his work schedule. Dr. Bilko's exam noted no effusion and no tenderness. He released Petitioner to regular work and discharged him from care (PX 4, p 277, 292).

Dr. Tu testified by evidence deposition taken August 25, 2021 (R2X 8). Petitioner's counsel raised multiple global objections at the beginning of the deposition. The Arbitrator has reviewed the transcript and the totality of the evidence submitted in this case and addressed these objections herein before addressing the testimony of Dr. Tu.

1. Petitioner raised a *Ghere* objection to any testimony not contained in the report submitted by Dr. Tu. The Arbitrator notes that the report was not attached to the transcript or offered independently so he has no way to determine any opinions that were not included in the report. The objection is therefore overruled.
2. Petitioner objected that Dr. Tu's opinions were based upon documents not offered into evidence at trial including the first report of injury. Rule of Evidence 703 allows expert opinion even if the facts or data are not admissible. Further, it was not established in the testimony that any inadmissible data formed the basis of his opinions. This objection is therefore overruled.
3. Petitioner's third objection is the same as the second except it involved other documents provided to Dr. Tu. None of those documents are provided to the Arbitrator and the analysis above is identical with respect to this objection, which is similarly overruled.

Dr. Tu testified to his credentials and his examination of Petitioner on December 2, 2015. He interviewed Petitioner concerning his accident description and medical history. Petitioner advised him of a 3 year history of osteoarthritis in the knee, but no prior traumatic incidents. Since he was seen before any April 2016 injury, this was obviously not mentioned. Dr. Tu had no information about a 2013 injury. He reviewed no records of

treatment prior to the October 2015 accident. Dr. Tu reviewed a job description and medical records through November 2015. He performed a physical examination which notes some mild loss of range of motion, tenderness on both sides of the knee and with circumduction maneuvers, swelling and quadricep weakness. He noted no ligamentous laxity, no irritation of the kneecap, normal sensation. Dr. Tu did not believe Petitioner's complaints of giving out were related to ligamentous issues. Dr. Tu diagnosed a left knee contusion with pre-existing arthritis and a pre-existing medial meniscus tear. He opined that the mechanism of injury of striking his knee is not consistent with the development of a meniscus tear. The mechanism is not consistent with aggravation of pre-existing arthritis. Dr. Tu did not think there was any permanency with respect to the contusion. He opined that Petitioner did not need any further treatment, including arthroscopic surgery, or work restrictions related to the accident. Petitioner had reached MMI as of the date of his examination (R2X 8).

Dr. Tu testified he found no evidence of symptom magnification. For the arthritis, treatment options would be cortisone injection, viscous supplementation, total knee arthroplasty, arthroscopy. Arthroscopy is unpredictable. Irrespective of causation, Petitioner required work restrictions. Dr. Tu is not aware of any evidence, treatment or MRI showing a meniscus tear before the October 2015 accident. It is possible for an asymptomatic meniscus tear to become symptomatic by acute trauma. A meniscus tear is caused by a twisting mechanism (R2X 8).

Petitioner testified that he did not return to work for Respondent after his surgery. He testified his medical leave expired and the company terminated him. Petitioner testified that he joined the union in November 2016. Petitioner testified the union operates on an out-of-the-shop, on-call basis. Petitioner first did light jobs because of the problems with his knee. After time passed, he has been able to work with the union in the general industry. Respondent offered R2X 3, 5 and 6 containing subpoenaed records of Local 110. These records document Petitioner began regular work assignments beginning October 11, 2016.

Petitioner testified that he continues to experience symptoms in his left knee. He cannot extend his left knee. It will give out when he gets up too quickly. He denied having these problems before the work accident. He testified to no longer being able to play basketball. He continues to go to the gym to control his pre-diabetic status. He does not take any medication. Petitioner denied having suffered any intervening accidents or events which have injured his left leg.

Conclusions of Law

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill. Dec. 83, 444 N.E.2d 122). The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994). Prior good health followed by a change immediately following an accident allows

an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000).

Petitioner had a pre-existing condition in both of his knees before October 22, 2015. He testified he was in a motor vehicle accident in April 2013 injuring his right knee. Petitioner was seen at Advocate Medical Group on April 24, 2013, May 8, 2013, and June 24, 2013, at which time he was released to return to work with a 20 pound lifting restriction. The assessment notes osteoarthritis and DJD in both knees, moderate left, and severe right. X-rays of both knees taken June 25, 2013 notes osteoarthritis. On December 16, 2013, the notes list DJD both knees as an active problem. Petitioner was seen on April 11, 2014 reporting an injury to his back and right knee. X-ray taken of the left knee noted mild degenerative changes which were compared to views from June 25, 2013 and noted to remain stable. The assessment was acute knee pain and back ache. Petitioner was seen at the University of Illinois on July 8, 2015 noting bilateral knee pain, left greater that right without specific injury. Examination noted full range of motion with crepitus in the knees with no joint line tenderness and small effusions. Petitioner was diagnosed with DJD of the knee.

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). Furthermore, an employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982). Where an accident accelerates the need for surgery, a claimant may recover under the Act. *Caterpillar Tractor Co.*, 92 Ill. 2d at 36. Cases involving aggravation of a preexisting condition concern primarily medical questions and not legal ones. 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. *Nanette Schroeder v. The Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC (4th Dist., 2017).

Petitioner had an undisputed injury to his left knee on October 22, 2015 when he struck his knee on the file cabinet. Thereafter, he immediately began a continuous course of medical treatment with University of Illinois, Concentra and AMLI, Dr. Foreman and Dr. Bilko. He was noted to have swelling in his knee with complaints of pain and giving out. The initial diagnoses were contusion and strain. The November 2015 MRI revealed degenerative disease in the left knee joint, a partial tear of the ACL, a tear of the body and posterior horn of the medial meniscus, medical collateral ligament strain, and small joint effusion. Dr. Foreman and Dr. Bilko opined that the MRI findings and Petitioner's symptoms were causally related to the accident. Petitioner thereafter underwent injections and viscosupplementation without improvement. He therefore proceeded with the recommended arthroscopic surgery. Respondent has disputed causal connection in this matter based upon Dr. Tu's opinions that the only condition related to the accident is a contusion and that the remaining treatment is related to the unrelated, pre-existing condition of osteoarthritis. He also opined that the medial meniscus tear found was pre-existing because the mechanism of injury was not consistent with a tear.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721

N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall 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 Commission*, 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, 960 N.E.2d 587, 355 Ill. Dec. 705. 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, 274 Ill. Dec. 284 (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. 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); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 168 Ill. Dec. 756, 590 N.E. 2d 78 (1992).

Having heard the testimony and reviewed the evidence, the Arbitrator finds the opinions of Dr. Foreman and Dr. Bilko more persuasive that those of Dr. Tu. Petitioner was able to work full duty up to the date of his accident. His symptoms were undeniable more severe after the accident and included joint line tenderness and giving way of his knee. The MRI findings establish the damage to the structure of the knee after the injury. Dr. Tu's opinions are not based upon the extent of information available and considered by his treating doctors. While the Arbitrator concedes that Petitioner was far from forthright in explaining the details of his prior knee issues, including his prior accidents, the details do not change the prior diagnosis of osteoarthritis which he did explain. This lapse does not impact the validity of the opinions of his treating doctors.

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 knee is causally connected to the accidental injury sustained on October 22, 2015.

In support of the Arbitrator's decision with respect to (J) Medical, the Arbitrator finds as follows:

Under §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 Commission,* 409 Ill. App. 3d 258,267 (1st Dist., 2011). Based upon the Arbitrator's finding with respect to Causal Connection, reasonable and necessary medical for Petitioner's left knee would be compensable.

Petitioner submitted PX 5 with detail of medical bills claimed. These bills have not been reduced to fee schedule or negotiated rate. The Arbitrator has reviewed the bills and compared them to the medical records submitted and finds that the treatment is causally related to the care for Petitioner's left knee and that the treatment is reasonable and necessary. The Arbitrator notes Respondent's claim that some of the treatment modalities listed may not have been rendered and finds this claim is not substantiated by the evidence. The Arbitrator also notes the issue of whether the prescription medication was actually used. The Arbitrator notes

that the there are no bills for Tramadol or Flexeril listed. The medical records, despite the bravado of Petitioner's testimony, document he was using Ibuprofen and Norco.

Respondent submitted R2X 7 with certain medical payments made. The parties also stipulated that $11,382.23 was paid by a group carrier for which an 8(j) credit would be allowed.

Based upon the record as a whole and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services of $3,373 to University of Illinois; $417.58 to Concentra; $20,325 to AMCI; $23,738 to G&U Orthopedic; $2,336 to Premium Health Care; $26,947.60 to Pinnacle Interventional; $17,400 to Pinnacle Pain; $3,468.31 to Advanced Anesthesia; $2,388.46 to EQMD, and $2,079.02 to IWP;, as provided in Section 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid or adjustments taken, 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 the Arbitrator's decision with respect to (K) Temporary Compensation, the Arbitrator finds as follows:

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which 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. The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003).

Based upon the Arbitrator's finding with respect to Causal Connection, disabling lost time related to Petitioner's treatment for the left knee would be compensable. Petitioner was taken off work following the date of accident on October 22, 2015. He was medically disabled or restricted without accommodation until he attempted to return to work and did return from March 7 through April 21, 2016. The records note he was disabled and off from April 21, 2016 through his last date of therapy. Although his release from Dr. Bilko was dated November 3, 2016, the Local 110 records submitted by Respondent document Petitioner returned to work on October 11, 2016. The parties stipulated that Respondent paid $4,838.70 in temporary total benefits as documented in R2X 7.

Based upon the record as a whole and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he is entitled to temporary total disability commencing October 23, 2015 through March 6, 2016 and from April 22, 2016 through October 10, 2016, a period of 44 weeks.

In support of the Arbitrator's decision with respect to (L) Nature & Extent, the Arbitrator finds as follows:

Petitioner's date of accident is after September 1, 2011 and therefore the provisions of Section 8.1b of the Act are applicable to the assessment of partial permanent disability in this matter.

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 an AV technician at the time of the accident and that he is not able to return to work in his prior capacity as a result of said injury. The Arbitrator notes that he has now joined the union and has been consistently employed in his chosen profession. Because of this, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 43 years old at the time of the accident. Petitioner would be expected to remain in the workforce for an extended period of years. The Arbitrator notes that Petitioner was able to function in his job for years with the arthritic symptoms in his knees before the accident. Because of these facts, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner has been released to return to full and regular duty and has been consistently employed in his chosen profession through Local 110. Because of this, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner had significant pre-existing osteoarthritis in the right knee. Per the opinions of Dr. Foreman and Dr. Bilko, he suffered an aggravation of this pre-existing condition and either an acute meniscus tear or an aggravation of a pre-existing tear resulting in arthroscopic surgery. On November 3, 2016, Dr. Bilko notes Petitioner is improving but has swelling after activity. Petitioner reported that he started a new job a few weeks ago and had discontinued therapy due to his work schedule. Dr. Bilko's exam noted no effusion and no tenderness. He released Petitioner to regular work and discharged him from care. Petitioner has not been treated since. He testified he takes no medication. Because of these facts, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 15% loss of use of Left Leg pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC024000
Case Name	Teressa Allen v. State of Illinois - Illinois State Police
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0477
Number of Pages of Decision	13
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Steven Saks
Respondent Attorney	Rufus Barner

DATE FILED: 10/2/2024

/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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Teressa Allen,

Petitioner,

vs. No. 21 WC 24000

State of Illinois – Illinois State Police,

Respondent.

DECISION AND OPINION ON REVIEW

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

At arbitration, both parties stipulated that Petitioner was entitled to 29-6/7 weeks of temporary total disability, for the period April 2, 2021 through October 27, 2021. They also stipulated that Respondent was entitled to a Section 8(j) credit of $66,003.89 for benefits it paid Petitioner. However, while the Arbitrator gave Respondent credit for $66,003.89 in his decision, he failed to award Petitioner the TTD to which the parties stipulated. Accordingly, we modify the Arbitrator's decision to include that Respondent shall pay Petitioner TTD of $1,473.77 per week for a period of 29-6/7 weeks, commencing April 2, 2021 through October 27, 2021, to which the stipulated credit can be applied. All else in the Arbitrator's decision is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 2, 2024, is modified as stated herein, 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.

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.

October 2, 2024

MP/mcp
o-09/26/24
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	21WC024000
Case Name	Teressa Allen v. State of Illinois - Illinois State Police
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Steven Saks
Respondent Attorney	Rufus Barner

DATE FILED: 4/2/2024

/s/ Joseph Amarilio, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 2, 2024 5.125%

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

April 2, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Teressa Allen
Employee/Petitioner

v.

State of Illinois / Illinois State Police
Employer/Respondent

Case # **21** WC **24000**

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 **Joseph Amarilio**, 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. ☐ 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 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 $**114,954.00**; the average weekly wage was $**2210.65**.

On the date of accident, Petitioner was **36** 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 $**66,003.89** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**. Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $2, 779.00 to Chicago Fire Department, $682.38 to Illinois Bone and Joint, and $2,345.00 to Chicago Smiles, as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit in the amount $13,701.81 in medical bills previously paid. 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 $871.73 per week [MAX RATE] for 50 weeks, because the injuries sustained caused the 10 % loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $871.73 per week for 10.75 weeks, because the injuries sustained caused the 5% loss of the left leg, 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.

/s/ *Joseph D. Amarilio*

Signature of Arbitrator

April 2, 2024

ATTACHMENT TO ARBITRATION DECISION

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TERESSA ALLEN v. STATE OF ILLINOIS/ ILLINOIS STATE POLICE 21 WC 24000

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Master Sergeant Teressa Allen Maria Castro ("Petitioner"), by and through her attorney, filed an Applications for Adjustment of Claim for benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.*). Petitioner alleged that she sustained accidental injuries that arose out of and in the course of her employment with the State of Illinois ("Respondent').

On December 27, 2024, this matter proceeded to hearing. The parties jointly submitted a Request for Hearing Form representing that the following three issues were in dispute: (1) Whether Petitioner's current condition of ill-being is causally connected to this injury; (2) Whether Respondent is liable for unpaid medical bills; and, (3) The nature and extent of the injuries sustained. The parties requested a written decision that includes findings of fact and conclusions of law. (Arb. X 1)

II. STATEMENT OF FACTS

Petitioner was a police officer with the Illinois State Police on April 1, 2021. Her assignment that day was to provide a visible presence on the Chicago area expressways to deter the rash of shootings that had been taking place in the area. Petitioner was parked in her squad car in the accident investigation area adjacent to the 75th street exit ramp of the Dan Ryan Expressway in Chicago with her mars lights activated. An out-of-control minivan struck the left rear side of Petitioner's cruiser at road speed, spinning it around.

The Arbitrator viewed a dashcam video showing a minivan driving on the grassy embankment to the right of the 75th Street exit ramp. Respondent objected to the admission of the video. The Arbitrator, exercising his judicial discretion, allowed the video into evidence. The video is consistent still photographs and, there is no doubt as to its authenticity. The Arbitrator would have reached the same conclusions had the video not been admitted. The video shows the minivan plowing into the Illinois State Police cruiser and spinning it around. The Petitioner testified as to her recollection of the events, although some details were missing due to and consistent with her head injury. She testified that the impact was significant and that her vehicle sustained significant damage. She testified that she believes that blacked out for a few seconds, but upon regaining consciousness, she was assisted our of her squad car and went to render aid to the people in the vehicle that hit her.

Chicago Fire Department paramedics arrived at the scene. The paramedics noted in their report that the ISP vehicle had substantial damage and that all airbags had deployed. (PX1). Petitioner reported that she possibly lost consciousness for several seconds. She reported pain to her forehead, where paramedics noted redness and swelling. She also complained of tightness in her neck and back and left knee. She was taken to University of Chicago Hospital for further evaluation.

In the emergency room of University of Chicago, it was noted that she had pain and swelling of the left forearm. (PX2, p. 8). It was also noted that she had abrasions to her left cheek. (PX2, p. 11). She received CT of the head, CT of the cervical spine, x-rays of the left knee and the left forearm, and a chest x-ray. The diagnostic studies were reported to be negative for acute pathology. (PX2, p. 8). The April 2, 2021, cervical MRI was reported to reveal no evidence of traumatic injury such as ligamentous. Injury, marrow edema or displaced fracture. (PX 2, p. 67).

A CT scan of the cervical spine showed a possible tiny avulsion fracture at C6-C7. (PX2, p. 33-34). She was assessed by neurosurgery, and it was decided that no acute intervention was needed. (PX2, p. 35). Her cervical injury was treated conservatively as cervical sprain/strain.

She followed up with her primary care physician, Dr. John Tenhundfeld, on April 6, 2021. At that time, she reported having lost consciousness for about 1 minute after the crash. (PX5, p, 17). She told the doctor that she felt mentally foggy, tired, and in 9/10 pain. *Id.* On examination, it was noted that she was tender to palpation at C6 (consistent with a fracture per the CT interpreting radiologist.) She walked with an antalgic gait with significantly reduced left knee flexion and weightbearing, and that the knee had swelling, bruising and tenderness. (PX5, p. 18-19). When assessing her concussion, they could not do balance testing due to the compromised nature of Petitioner's left knee. (PX5, p. 19). She was given a Ketorolac injection for acute pain. Her physician stated, "At this time, she is clearly unable to carry out her duties as a police officer, both mentally and physically." (PX5, p. 20).

Meanwhile, Petitioner noted problems with a tooth in her mouth, and went to Chicago Smiles for treatment. On April 15, 2021 it was found that the crown on tooth #2 had been fractured due to trauma. (PX6, p. 6). The crown was replaced that same day. (PX6, p. 7). Other than a follow up visit a month later, Petitioner required no additional care for this tooth.

Petitioner saw Dr. Bradley Merk at Northwestern to address her knee issues on April 20, 2021. At that time, she presented with "persistent effusion with knee tenderness and difficulties with ambulation." (PX3, p. 222). The X-Ray showed "significant residual swelling." (PX3, p. 220). Dr. Merk ordered an MRI and referred Petitioner to Dr. Alpesh Patel to treat her spine. *Id.* The MRI scans were negative for acute pathology.

She followed up with Dr. Tenhundfeld on April 21, 2021, at which time, she reported getting migraines dizziness, and lightheadedness. (PX5, p, 13). She complained of ongoing photophobia, phonophobia, dizziness, brain fog, neck pain, low back pain, and left knee pain. *Id.* She continued to walk with an antalgic gait, and demonstrated decreased knee flexion and weightbearing, continued tenderness to palpation at C6, and had a depressed mood and flat affect. (PX5, p. 14).

Petitioner saw Dr. Patel on May 25, 2021. In the initial questionnaire, Petitioner endorsed back and neck pain that was aggravated by walking, sitting, lying, driving, and stairs. (PX3, p. 186). On examination, Petitioner had tenderness in her paraspinal muscles as well as tenderness over the cervical spine. (PX3, p. 180). Dr. Patel recommended a course of physical therapy and withheld her from full duty work. (PX3, p. 180-181).

An MRI of the knee took place on June 10, 2021. This demonstrated continued swelling of the left knee but no derangement of any ligamentous bodies. (PX3, p. 157). Petitioner followed up with Dr. Merk on June 15, 2021. She reported that her knee felt somewhat better, but that she continued to experience soreness and swelling whenever she tried to increase her activity. (PX3, p. 147). She could not ride a bicycle or walk long distances. *Id.*

Dr. Anthony Savino, a Neurologist at Illinois Bone and Joint, first saw Petitioner on July 7, 2021. At that time, she reported headaches 3-4x per day. (PX4, p. 22). She noted that the headaches could last for several hours and were located in the forehead or behind the left eye. *Id.* She reported her sleep was poor and interrupted by headaches. *Id.* On examination, she continued to have pain with palpation of the neck. (PX4, p. 23). Dr. Savino prescribed a prednisone burst, sumatriptan, nortriptyline, and physical therapy. (PX4, p, 24). Petitioner returned to Dr. Savino on July 21, 2021, at which time she reported that the sumatriptan helped her headaches somewhat and that she had no ill effects from the nortriptyline. (PX4, p. 18). However, she still reported headaches 3-4x per week, up to 8/10 intensity, with associated lightheadedness, nausea, and photosensitivity. *Id.* She still reported neck pain, and had not yet been approved for physical therapy by workers comp. *Id.* On examination, she had limited neck extension and pain with palpation. (PX4, p. 20). Dr. Savino continued to keep her off work. (PX4, p. 21).

When she returned to Dr. Savino on August 11, 2021, she noted some improvement of her symptoms. Her headaches were now occurring 2-3x per week. (PX4, p. 13). She was still having light sensitivity and was using the sumatriptan to combat the headaches when they occurred. *Id.*

Petitioner was finally approved for physical therapy and attended her first session on September 2, 2021. At that initial visit, she reported 8/10 knee pain, tightness across the base of neck and in shoulders, and lower back spasms. (PX3, p. 138). She continued to attend physical therapy until November 3, 2021. Petitioner cancelled the remaining two sessions having returned to work.

Petitioner continued to see Dr. Savino. She demonstrated improvement with the frequency of her headaches but continued to have some nausea and blurry vision. (PX4, p. 2). She reported that she had been attending physical therapy. On October 13, 2021, Dr. Savino released Petitioner to return to work effective November 1, 2021. (PX4, p. 5). Dr. Savino also wrote Petitioner a prescription for tinted windows on her work vehicle. (PX4, p. 6).

The Petitioner was released to return to work to full duty work and has been working full duty since she reached MMI on November 3, 2021. Petitioner did return to work on October 28, 2021 (3 days early) and was authorized off work for a total of 29-6/7 weeks. She has continued working as an Illinois State Trooper and has been promoted from Sergeant to Master Sergeant.

She complains of continued phonophobia, photophobia, and continued headaches, left knee stiffness and soreness, and neck and back pain She takes ibuprofen and does the home exercises that she learned in physical therapy.

Petitioner continues to have some symptomology related to her head injury. She still has some light and sound sensitivity. She occasionally gets headaches, which can affect her sleep. The headaches are sometimes associated with nausea. Petitioner testified that the State Police applied the window tint to her vehicle, and presented a current photograph of her work vehicle which demonstrates the dark windows. (PX9). She testified that the tinted windows continue to help alleviate light sensitivity and allow her to perform the duties of her job more easily.

Petitioner's tooth has not caused her any problems since the crown was replaced.

Petitioner's knee continues to demonstrate some stiffness and soreness.

Petitioner's left arm pain resolved within 5-6 months after the accident. She had swelling and soreness in the elbow which fully resolved. And, it appears that the phonophobia has also resolved but not the photophobia.

Petitioner played basketball in college and continued to play recreationally before this accident. She would play 3-4x per week but doesn't play anymore now due to mobility limitations resulting from this accident.

Petitioner would go to the gym and lift significant weights prior to this incident. She used to bench press 135 pounds and squat 225 pounds. Petitioner testified that the weight she uses has been significantly reduced due to pain. She avoids doing lunges because it hurts her knee.

Petitioner's work history demonstrates that she worked significant overtime in the year prior to the injury. Respondent's Exhibit C shows that she earned $114,954 in regular salary and $96,401.89 in overtime in the year prior to her injury. Her medical records consistently demonstrate a history of good health prior to the injury. As the April 20, 2021 note reads, "She is overall very healthy with no past medical or surgical history. She takes no medications." (PX3, p. 220). The Arbitrator recognizes the diminution in Petitioner's health as a result of this on-the-job accident. The Arbitrator also takes into consideration that Petitioner's substantial overtime reflects that she is a hard worker dedicated to serving the citizens of Illinois but also her substantial overtime would limit her gym and basketball time.

III. CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of 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) 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 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).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47.

Credibility Findings: After careful examination and consideration of Petitioner's testimony, the Arbitrator finds that Petitioner's testimony to be credible based on corroborating evidence, consistency in accounts, and demeanor during direct and cross examination questioning. The Arbitrator further is mindful that after the accident, Petitioner was promoted from Sergeant to Master Sergeant in her capacity as a Illinois State Police Officer, a position of trust.

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 Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Rosenbaum v. Industrial Com.,* 93 Ill.2d 381 (1982). Expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000).

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that her current condition of ill-being is causally connected to the accidental injury sustained on April 1, 2021 while working for Respondent based on the chain of events. Based on Petitioner's unrebutted, credible and corroborated testimony, Petitioner's current condition of ill-being relating to her head, neck, back, left arm, left leg are causally connected to the accidental injuries of June 3, 2013. The Petitioner has proved this based upon a chain of events, the mechanism of the injury, her symptoms and her medical treatment.

Prior to April 1, 2021, Petitioner was in a previous condition of good health. Petitioner was working full-time and full duty with a substantial amount of overtime work in her position as State Police Officer for Respondent performing the activities required in that job. There is no evidence of any medical treatment Petitioner was having for any of her injuries prior to that date. Petitioner did have a preexisting crown that was damaged in the accident and successfully replaced without complications.

No evidence was introduced that Petitioner failed to meet the requirements of her job due to preexisting conditions of ill-being. No evidence was introduced that Petitioner complained head, neck, back, left leg pain pathology nor of photophobia or phonophobia before her work accident. No evidence was introduced that she lost time from work because of any pathology or had needed or requested any work accommodation.

Additionally, the Arbitrator notes that no evidence was introduced that Petitioner sustained an intervening event after Petitioner's work accident that broke the chain of causation. Petitioner has consistently complained of pain regarding the injuries sustained. throughout the course of her medical treatment. The medical treatment for her injuries has been consistent and continuous. However, her left arm injury resolved with treatment and her crown was successfully replaced. The Arbitrator further notes that no accommodation was prescribed nor requested after the accident for the phonophobia nor that it still is a significant issue.

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:

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 *necessary* to diagnose, relieve, or cure the effects of his injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165, 351 Ill. Dec. 63 (2011)*.

The Arbitrator finds that the medical records from the Chicago Fire Department, University of Chicago, Northwestern, Illinois Bone and Joint, Lincoln Park Family Physicians, and Chicago Smiles were all reasonable and necessary medical treatment related to the April 1, 2021 work accident. Notably, no Section 12 testimony was introduced by Respondent, and the history and exam findings of the treating physicians are unrebutted.

Based upon the record as a whole, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of the unpaid Chicago Fire Department bill with the face value amount of $2779.00 (PX1); the unpaid Illinois Bone and Joint balance of $682.38 (PX4, p. 3-4); and the unpaid Chicago Smiles Bill with the face value of $2345.00 (PX6, p. 5), pursuant to Sections 8(a) and 8.2 of the Act.

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

The Arbitrator notes the reduction in Petitioner's activity level as a result of the accident. The arbitrator recognizes the continuing effects of Petitioner's head injury. The arbitrator recognizes the physical and stressful nature of Petitioner's job and infers that these lingering symptoms will have to be overcome by Petitioner on a regular basis. The arbitrator notes that Petitioner stopped seeing regular medical treatment after returning to work, but the arbitrator also recognizes that Petitioner had a pre-injury history of working an incredible number of hours and deduces that this Petitioner is very dedicated to her work, at the expense of her own personal comfort. Respondent's Exhibit C demonstrates six two-week pay periods in which Petitioner worked over 70 hours of overtime, including two periods where she worked over 90 hours of overtime – in addition to her usual 80 hours of regular pay. The regular headaches and pain that Petitioner testifies that she still suffers from can reasonably be expected to impact Petitioner while she performs the duties of her job – which is the majority of her day. Petitioner testified that on the day of trial, she worked an overnight shift that ended at 7:00am, drove to the arbitration hearing at 9:00am, and then had a new shift beginning at 1:00pm.

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 (i) of §8.1b(b), the Arbitrator has considered this factor and notes that no opinion comporting with the specific requirements of §8.1b(a) was submitted into evidence. However, the Arbitrator has considered the doctor's comments as a factor in the evaluation of Petitioner's permanent partial disability as required by §8.1b(b)(i). Dr. Savino returned Petitioner to work with restrictions of having a work vehicle with tinted windows. These restrictions have never been lifted. Because of the foregoing, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator has considered this factor and notes that the record reveals that Petitioner was employed as a state police officer at the time of the accident and that she *is* able to return to work in her prior capacity but with the tinted windows to her work vehicle as referenced herein. Because of this modification in work duties, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator has considered this factor and notes that Petitioner was 36 years old at the time of the accident. Because she will have to endure these symptoms and diminution in physical ability for a significant portion of her future working life, 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 has considered this factor notes no evidence of change other than noting that after returning to work, Petitioner was promoted to sergeant. Because of this, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator has considered this factor and notes Petitioner suffered multiple soft tissue injuries to her face, arm, neck, back and left knee for which she received conservative treatment consistent with a cervical and lumbar strain, a left knee sprain/strain as well as headaches consistent with a diagnosis by a neurologist of a concussion associated with photophobia that requires workplace modification and a diagnosis of phonophobia. The Arbitrator therefore gives *greater* weight to this factor.

The Arbitrator finds that Petitioner's left arm injury resolved without evidence of permanent partial disability and that Petitioner's pre-existing crown was damaged but successfully replaced. Thus, as to the injury to the crown, Petitioner returned to baseline without evidence of permanent partial disability. Finally, the evidence does not support any permanency as to the phonophobia. The phonophobia appears to have resolved sufficiently that Petitioner may continue to use firearms and sirens.

Based on the above factors the record taken as a whole and Commission precedent, the Arbitrator finds that Petitioner sustained permanent partial disability to her neck, back, and head injury resulting in occasional headaches associated with continuing photophobia, the combination of these injuries resulted in a 10 % loss of use of her whole person pursuant to Section 8(d)(2) of the Act and 5% loss of use of the left leg pursuant to Section 8(e) of the Act. The Arbitrator is mindful that Petitioner has been cleared to be an active police officer.

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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC008076
Case Name	Pamela Frasco v. Clerk of the Circuit Court of Cook County
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0478
Number of Pages of Decision	10
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Scott Shapiro
Respondent Attorney	Terrence Donohue

DATE FILED: 10/2/2024

/s/Carolyn Doherty, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PAMELA FRASCO,

Petitioner,

vs. NO: 15 WC 8076

CLERK OF THE CIRCUIT COURT
OF COOK COUNTY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner, Pamela Frasco herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical treatment, and payment of out of pocket prescriptions and being advised of the facts of law, modifies and corrects 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.

As a threshold issue, the Commission observes that the Decision of the Arbitrator states that this matter was previously tried as a 19(b) on August 18, 2018. The Commission's review of the evidence, specifically AX 2, shows that this case was tried as a 19(b) hearing on August 21, 2018. Accordingly, the Commission writes to correct the Decision of the Arbitrator to reflect a previous 19(b) hearing date of August 21, 2018. This matter proceeded to a second hearing on January 24, 2024 and it is the second hearing that is the subject of this Commission review.

Following the January 24, 2024 hearing, the Arbitrator correctly noted that because this matter was previously tried as a 19(b), the Arbitrator could only award medical expenses for treatment incurred after the original 19(b) hearing date of August 21, 2018. As a result, the Arbitrator correctly awarded only those reasonable and necessary medical expenses incurred after August 21, 2018 in his decision. Further, the Commission concludes that any disputes raised by Petitioner in the instant review regarding the medical expenses incurred prior to August 21, 2018

and awarded as a result of the prior 19(b) hearing are not addressed as part of this Commission Decision.

Regarding medical expenses incurred after August 21, 2018, which are properly the subject of this review, the Commission affirms and adopts the Decision of the Arbitrator regarding the awards of medical expenses in PX 5, PX 9 and PX 10. However, after a review of the evidence, the Commission modifies Decision of the Arbitrator regarding the payment of out-of-pocket costs for prescriptions. After comparing the receipts for out-of-pocket payments in PX 8 to the prescription expenses in the pharmacy ledgers in PX 9 and PX 10, the Commission was able to verify out-of-pocket costs totaling $236.07. Therefore, the Commission modifies the Decision of the Arbitrator and awards $236.07 in out-of-pocket payments to Petitioner.

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 February 28, 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 Respondent shall pay Petitioner for out-of-pocket payments totaling $236.07.

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.

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.

October 2, 2024

o: 09/26/24
CMD/jjm
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	15WC008076
Case Name	Pamela Frasco v. Clerk of the Circuit Court of Cook County
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Scott Shapiro
Respondent Attorney	Jason Stetz

DATE FILED: 2/28/2024

/s/ Jeffrey Huebsch, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 27, 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

Pamela Frasco
Employee/Petitioner
v.
Cook County Clerk of the Circuit Court
Employer/Respondent

Case # **15** WC **008076**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey B. Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **January 24, 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 **Medical PTD; Prospective medical; unapproved current medical prescriptions; unapproved medical treatment; PTD wage rate.**

FINDINGS

On **2/10/2015**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**54,537.60**; the average weekly wage was $**1,048.80**.

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

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

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

Respondent shall be given a credit of $**313,940.80** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**313,940.80**. The Parties agreed that all TTD benefits to date had been paid.

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

ORDER

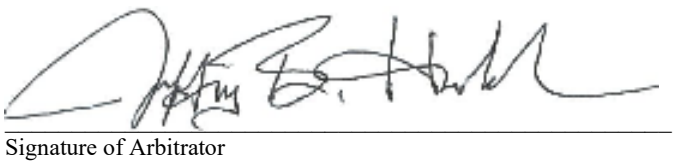
Respondent shall pay reasonable and necessary medical services of $4,114.34, as provided in Section 8(a) of the Act, and as is set forth below.

Respondent shall pay Petitioner permanent and total disability benefits of $699.20/week for life, commencing January 24, 2024, as provided in Section 8(f) of the Act.

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

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

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



Signature of Arbitrator

February 28, 2024

FINDINGS OF FACT

This matter was previously tried on Petitioner's §19(b)/8(a) Petition on August 18, 2018. The Commission's Decision of November 6, 2019, finding in favor of Petitioner on the issues of accident and causal connection and awarding TTD, medical expenses, prospective medical care, §§19(k) and 19(l) Penalties and §16 Attorney's Fees, was admitted as ArbX 2.

Petitioner was the only witness who testified at the trial on January 24, 2024. Petitioner testified that she remained employed by Respondent, although she has not been able to work since the accident date of February 10, 2015. She had 2 years of college at Triton. She worked for the Tollway Authority for 5 years and had been employed by Respondent since 1994. When Petitioner started with Respondent, she was a Grade 9 clerk, filing papers. At the time of the accident, she was a Grade 14 (highest non-management level), working as a criminal clerk. In her last job, she worked 6 days a week, 55 hours. Her current hourly rate would be $35.16, per PX 11.

Petitioner testified that since the date of the last hearing, she continued to require medical care. (T. 13). Her initial surgery was July 18, 2017, at which time she underwent a right knee replacement by Dr. Brian Moss. (PX 1). Thereafter she developed several severe complications. On May 2, 2018, Dr. Moss recommended a right knee arthroscopy and manipulation under anesthesia. (T. 13-19; PX 1). Respondent declined to authorize said procedure and sent her to Dr. Brian Cole, who performed several §12 examinations of Petitioner subsequent to her work related accident. (PX 3& 4; PX 1; PX 12; T. 13-19). Dr. Cole confirmed Petitioner developed right knee arthrofibrosis as diagnosed by Dr. Moss and confirmed she required a right knee arthroscopy with manipulation under anesthesia. Dr. Cole also recommended she undergo a posterior capsular release, and suprapatellar pouch release. (PX 12; T. 13-19). Dr. Moss reviewed these recommendations, and recommended she return to Rush Hospital to undergo the procedure. (PX 1; T. 13-19).

Thereafter, Respondent authorized Petitioner to receive treatment from Dr. Charles-Bush Joseph, who was one of the only physicians performing the recommended procedure and also partners with the IME Dr. Brian Cole. Petitioner first saw Dr. Bush-Joseph on February 19, 2019. (PX 2; T. 14-19). He confirmed her diagnosis, and on June 10, 2019, Dr. Bush Joseph performed a right knee arthroscopy, with extensive lysis of adhesions, a lateral retinacular release with posterior capsular release and pouch release. (PX 2; T. 14-19).

After this surgery, Petitioner developed cellulitis, for which she received treatment from her Primary Care Physician, Dr. John Walsh at Health Stop. (PX 3 & 4). Petitioner also treated with Dr. Avi Bernstein due to developing back pain from her inability to walk properly. (PX 6; T. 18). She also treated with Dr. Howard Konowitz for pain management. (T. 18). Dr. Konowitz, was initially a §12 examiner for Respondent in this case, subsequently became Petitioner's treating pain management physician. (PX 7). Petitioner eventually transferred her pain management oversight to Dr. Walsh and Dr. Jethani at Health Stop (PX 3 & 4). Petitioner continues to receive pain medication from Dr. Jethani as of the date of trial. (T. 21).

Petitioner's final treatment date with Dr. Bush-Joseph was October 18, 2022. (PX 2, pp 2-5). Dr. Bush-Joseph noted that Petitioner had only marginal benefit from the June, 2019 surgery. His diagnosis was: Status post right knee replacement and Arthrofibrosis of right knee. At that time he opined that due to the severity of Petitioner's right leg injury, she is medically permanently and totally disabled. He placed her at Maximum Medical Improvement and opined she could no longer work. He saw "no indication for further care, nor medication, nor injection" regarding her right knee. (PX 2, p 5).

Thereafter, she had continued care with Dr. Jethani and had therapy at Aim PT. (T. 22). PCP doctors Dr. Jethani and Dr. Walsh, advised Petitioner that she was unable to work. (T. 23). Petitioner underwent physical therapy at AIM PT until about May 10, 2023, at which Respondent declined to authorize any further

Physical Therapy. (T. 23). Respondent denied further physical therapy based upon the §12 examination of Dr. Sherwin Ho. (PX 12).

Dr. Ho performed an independent medical examination on May 10, 2023. (PX 12). The diagnosis was Right knee contracture/arthrofibrosis, 6 years status post right TKA (total knee arthroplasty). Petitioner was at MMI. Dr. Ho opined Petitioner would likely never return to unrestricted work. Objective findings correlate with subjective complaints. No further related treatment was necessary. Additional PT would not benefit as of the time of the examination. There has been no long term benefit from 60+ PT sessions. She should transition to a home exercise and stretching program and future therapy for palliative reasons could be considered, "but she should use her personal health insurance." Dr. Ho provided a list of activity restrictions which are as follows:

"1) inability to drive (would require a driver/transportation to and from work);

2) Inability to sit normally due to a permanent lack of knee flexion (would require a custom foot rest at work);

3) inability to walk without a cane for more than 50 feet (would require a motorized wheelchair for longer distances);

4) difficulty with stairs and steps (can only use her left leg, and would require accommodations or assistance to climb steps to her elevated clerk's chair in court);

5) inability to sit for more than 1 hour at a time due to her low back pain (would require ability to stand and relieve her back pain, likely disrupting court proceedings);

6) difficulty standing up from a seated position repeatedly, e.g., in the court room whenever the judge or jury enters or exits."

Dr. Ho also opined Petitioner's use of pain medication as administered by Dr. Jethani is appropriate, as attempts at other treatment were unsuccessful, and it has worked to bring her opioid use down to her current reduced level. (PX 12).

Petitioner testified she required formal physical therapy, as it greatly reduced her pain levels and helped with the flexion and extension of her injured leg. (T. 19-23) She testified she also required pain medication daily, taking hydrocodone four times per day, Tamoxifen, and ibuprofen, all of which Dr. Jethani prescribes. (T. 21) Petitioner also testified her primary physicians opined she is permanently and totally disabled as well as of March 2021 (T. 23; PX 3 & 4).

Petitioner testified that she is unable work due to her injuries. She has a flexion contracture in her right knee. Her injuries caused her entire life to change. She can no longer do many activities, and, basically, was confined to her home. She testified, she cannot walk long distances, she is addicted to narcotics, and can only do limited driving. She testified Respondent recently provided a motorized scooter for her after waiting two years for authorization. She stated although she has the scooter, she awaits a lift for the scooter to go in her car. As for her physical therapy, she testified the reason she requires this is to help her to have some functionality of her leg, because without this the next step is amputation. (T. 28-31).

PX 5 was the records of AIM PT and bills in the amount of $3,245.00. It was tendered with the agreement that Respondent would be entitled to a credit for awarded bills that were paid and payment would be

directly to the provider. (T. 37). PX 8 was Jewel Osco payment receipts for out of pocket payments by Petitioner. PX 9 was a prescription print-out from Osco for out of pocket payments from 1/17/2018 to 2/5/20. PX 10 is a printout of OOP payments to Osco from 1/1/2020 to 3/30/2023.

CONCLUSIONS OF LAW

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

Section 1(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between her employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

Petitioner presented as an honest and cooperative witness and her testimony is found to be credible.

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

Petitioner's current condition of ill-being regarding her right knee and leg (to wit: Status post right knee replacement and Arthrofibrosis of right knee, as documented by Dr. Bush-Joseph and flexion contractur, right knee as noted by Dr. Ho) is causally related to the injury.

This finding is based on the prior Decision of the Commission (ArbX 2), Petitioner's testimony, the medical records and the opinion of Dr. Ho.

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:

The medical services that have been provided to Petitioner were reasonable and necessary to cure or relieve the effects of the work injury.

This finding is based on the Arbitrator's finding above on the issue of causation, the medical records and Petitioner's testimony.

As the case was first tried on August 18, 2018, Petitioner can only be awarded bills incurred subsequent to that date.

As to PX 8, it does not contain information regarding the prescriber and what medication is prescribed. Nothing is awarded as to PX 8.

As to PX 9, nothing is awarded for expenses incurred prior to 8/19/2018. The related expenses, per Petitioner's testimony, are Hydrocodone, Temazepam and Ibuprofen. It does appear that Lidocaine (pain), Eliquis (blood thinner), Clindamycin (Prophylactic anti-biotic for TKA patients), Celecoxib (Arthritis pain), and Vancomycin (Anti-biotic) are also related to Petitioner's post TKA infection, infection prevention, pain and DVT conditions. The Arbitrator will award those expenses. **The total is: $389.63.**

As to PX 10, nothing incurred prior to 2/15/2020 is awarded, as theses expenses are included in PX 9. **The award for PX 10 is: $479.71.**

As to the AIM bill, $3,245.00 is awarded, pursuant to §§8(a) and 8.2 of the Act, with Respondent to be given a credit for payments made on this award and Respondent to direct pay the provider.

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

As a result of the injuries sustained, Petitioner is found to be wholly and permanently incapable of work, in accordance with §8(f) of the Act.

This finding is based upon the Arbitrator's finding above on the issue of causation, the testimony of Petitioner and the opinions of Drs. Bush-Joseph, Ho, Walsh and Jethani.

Accordingly, Respondent shall pay Petitioner permanent and total disability benefits of $699.20/week for life, commencing January 24, 2024, as provided in Section 8(f) of the Act.

WITH RESPECT TO ISSUE (O), OTHER, MEDICAL PTD; PROSPECTIVE MEDICAL; UNAPPROVED CURRENT MEDICAL PRESCRIPTIONS; UNAPPROVED MEDICAL TREATMENT; PTD WAGE RATE. THE ARBITRATOR FINDS:

This case proceeded to trial with the main issue being Nature and Extent/PTD. Prospective medical, unapproved current medical prescriptions, unapproved medical treatment are not issues to be considered in such a hearing. Any such claims are DENIED, as they should be the subject of a §8(a) Petition before the Commission.

As to the PTD rate, it is determined by §8(b)2 of the Act and is $699.20/week. The current wage for a Grade 14 clerk is irrelevant to the PTD rate determination.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC002291
Case Name	Quentin Smith v. City of Peoria
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0479
Number of Pages of Decision	8
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Stephen P Kelly
Respondent Attorney	Kevin Day

DATE FILED: 10/2/2024

/s/ Deborah Simpson, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Quentin Smith,
Petitioner,

vs. NO: 22 WC 2291

City of Peoria,
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 accident, occupational disease, 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 April 18, 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.

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

October 2, 2024
o: 9/4/24
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	22WC002291
Case Name	Quentin Smith v. City of Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Stephen P Kelly
Respondent Attorney	Kenneth M Snodgrass Jr

DATE FILED: 4/18/2023

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

/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

Quentin Smith
Employee/Petitioner

v.

City of Peoria
Employer/Respondent

Case # **22** WC **02291**

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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Peoria**, on **March 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?
Whether Petitioner was last exposed to an occupational disease that arose out of an in the course of employment
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 _____

On **12/30/21**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**70,000**; the average weekly wage was $**1,346.15**.

On the date of accident, Petitioner was **31** 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** 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

- The Petitioner sustained an accident that arose out of and in the course of the employment of the Respondent on December 30, 2021.
- The Petitioner's condition of ill-being was causally related to the work injury of December 30, 2021.
- The Respondent shall pay TTD benefits to the Petitioner from December 31, 2021 to January 18, 2022, 2 4/7 weeks.
- Respondent shall pay Petitioner the sum of $**807.69**/week for a further period of **2.5** weeks, because the injuries sustained caused **.5% loss of use of the Man As A Whole, provided under Section 8(d) (2) of the Act.**

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

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

Kurt A. Carlson
Signature of Arbitrator

APRIL 18, 2023

FINDINGS OF FACT

Petitioner's Testimony

The Petitioner's employment began with the City of Peoria in 2018 as a firefighter paramedic (AT 8). The Petitioner testified that his job duties include operating as a firefighter on fire emergency scenes and on medical scenes (AT 9). The Petitioner testified that a typical day for him includes machine checks, making sure air pack and equipment works, house chores, cleaning (AT 10-11). The Petitioner testified that he currently works at Station 8 in Peoria, Illinois (AT 10).

The Petitioner testified that when he arrives at work there is a shift change of firefighters who were there the day before. The Petitioner testified that he is around all of the other firefighters all day on his 24 hour shifts even on a call (AT 11).

The Petitioner testified that on December 30, 2021, he was working at Station 4. The Petitioner testified that the firefighters, including himself, were receiving weekly COVID-19 testing (AT 12). The Petitioner testified that when he received his COVID-19 test on December 30, 2021, he tested negative (AT 12).

On December 31, 2021, the Petitioner received a phone call from his supervisor, Battalion Chief Steve Rada. The Chief advised the Petitioner of a fellow firefighter that he had worked with all day the previous day tested positive for COVID-19 (AT 13). The firefighter that tested positive for COVID-19's name is Cam Bridges (AT 13)

The Petitioner testified that he interacted with Cam on December 30, 2021. The Petitioner and Cam were on the same firehouse and machine, ate together, sat next to each other, worked out in the same room, and their beds were right next to each other (AT 15). The Petitioner testified that he spent 20 of the 24 hours within a few feet of each other that day (AT 15). The Petitioner testified that he interacted with Cam not wearing a mask (AT 16).

The Petitioner testified that at the time he did not experience any COVID-19 symptoms (AT 15). The Petitioner testified that when his supervisor called him to tell him about being exposed to a COVID-19 positive firefighter, he was instructed to stay home and quarantine for ten days (AT 15).

The Petitioner testified that from the time he was quarantine on December 31, 2021 to January 6, 2022, he did not go out in public (AT 17). The Petitioner further testified that nobody else in his household tested positive for COVID-19 during that time (AT 17).

The Petitioner reported back to work on January 6, 2022. The Petitioner testified that he tested positive for COVID-19 on January 6, 2022 (AT 17). The Petitioner testified that his symptoms included body aches, chills, and nausea (AT 17).

The Petitioner testified that prior to December 30, 2021, neither he nor his family members had tested positive for COVID-19. The Petitioner further testified that prior to December 30, 2021, neither he nor his family members experienced COVID-19 symptoms (AT 18-19). The Petitioner testified that to the best of his knowledge he was not exposed to anyone that had symptoms of COVID-19 (AT 19).

The Petitioner testified that after his positive COVID-19 test on January 6, 2022, he stayed home, trying to stay away from his wife as much as he could as she had a negative COVID-19 test (AT 19). The Petitioner

testified that his wife worked at OSF and she had to test for COVID-19 to return to work and she never tested positive for COVID-19 during this time (AT 19-20).

The Petitioner testified that he returned to work on January 18, 2022 after receiving a negative COVID-19 test (AT 20). The Petitioner testified that he has been back to work full duty as a firefighter for the City of Peoria since January 18, 2022 (AT 20).

The Petitioner testified that while he was off work, he did not receive any workers' compensation, PEDA, nor IOD payments from the City of Peoria (AT 21). The Petitioner testified that the City of Peoria advised him he needed to stay home and burn up his personal sick time (AT 21).

The Petitioner testified that at the time of trial that since having COVID-19, his physical attributes are weakened. The Petitioner testified that he gets winded more easily and his cardio is not the same anymore (AT 22). The Petitioner testified that at his 2022 fitness for duty examination, he related issues he was having with feeling winded (AT 30).

The Petitioner testified that he filled out an OSHA questionnaire for the City of Peoria in February 2023 (AT 32). The OSHA questionnaire was marked as Respondent's Exhibit 1. The Petitioner testified that the questionnaire did not ask any questions about previously being diagnosed with COVID-19 (AT 37). The Petitioner testified that the questionnaire did not ask any questions about fatigue (AT 37).

CONCLUSIONS OF LAW

Issue (C): Whether Petitioner was last exposed to an occupational disease on December 30, 2021 that arose out of an in the course of his employment by Respondent?

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

It is undisputed that the Petitioner developed COVID-19 symptoms on or about January 6, 2022 after being exposed to a fellow firefighter that tested positive for COVID-19 the week prior. The evidence further is undisputed that the Petitioner tested positive for COVID-19 on January 6, 2022. The Petitioner testified that Cam Bridges in his firehouse had tested positive for COVID-19 on or about December 30, 2021. The Petitioner testified that this is the only exposure he had to COVID-19.

There is no evidence of any other source for the Petitioner obtaining COVID-19. The Respondent provided no evidence that the Petitioner had any outside exposure, other than work.

Wherefore, the Arbitrator finds that by the preponderance of evidence, the Petitioner established that he sustained an occupational accident on December 30, 2021. The Petitioner's diagnosis of COVID-19 was related to his work activities for the Respondent.

Issue (K): What temporary benefits are in dispute?

Based on the above, the Arbitrator finds that the Respondent shall pay the Petitioner TTD benefits from 12/31/21 to 01/18/22.

WHAT IS THE NATURE AND EXTENT OF THE INJURY?

With regard to the issue of nature and extent, the Arbitrator notes that pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, ***with no single factor being the sole determinant of disability***. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (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. Applying this standard to this claim, the Arbitrator makes the following findings listed below.

With regard to Sec. 8.1(b) (i); the Arbitrator notes, there was no AMA exam conducted in this case. This factor is given no consideration.

With regard to Sec. 8.1(b) (ii); the Arbitrator notes that the Petitioner was employed by the Respondent as a firefighter, which is very heavy activity. This factor is weighed significantly in favor of the Petitioner as it relates to the 8.1(b) (ii) analysis.

With regard to Sec. 8.1(b) (iii); the Arbitrator notes that the Petitioner was 31 years old at the time of the injury. This job certainly involves heavy work, life threatening situations, as well as intensive cognitive demanding situations. This factor is given some weight by the Arbitrator in this 8.1(b) (iii) analysis.

With regard to Sec. 8.1(b) (iv); the Petitioner's future earning capacity, the Arbitrator notes that there was no evidence of loss of future earning capacity, thus this factor will be given no weight.

With regard to Sec 8.1(b) (v); the Petitioner received diagnoses of COVID-19. The Petitioner testified that at the time of trial that since having COVID-19, his physical attributes are weakened. The Petitioner testified that he gets winded more easily and his cardio is not the same anymore (AT 22). The Petitioner testified that at his 2022 fitness for duty examination, he related issues he was having with feeling winded (AT 30). The Arbitrator notes that Petitioner never sought any medical attention for his illness, nor is there any documented long-standing pathology in evidence.

Wherefore, the Respondent shall pay Petitioner the sum of $**807.69**/week for a further period of **2.5** weeks, because the injuries sustained caused **.5% loss of use of the Man As A Whole, provided under Section 8(d) (2) of the Act.**

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025524
Case Name	Reginald Howell v. Extreme Reach
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0480
Number of Pages of Decision	18
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Russell Haugen
Respondent Attorney	Guy Maras

DATE FILED: 10/2/2024

/s/ Raychel Wesley, 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

REGINALD HOWELL,

Petitioner,

vs. NO: 21 WC 25524

EXTREME REACH,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and §8(a) having been filed 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 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 remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 13, 2023, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the reasonable and necessary medical expenses as provided in Petitioner's Exhibit 1, Petitioner's Exhibit 3, and Petitioner's Exhibits 5 through 11, pursuant to the medical fee schedule and §8(a) and §8.2 of the Act. Respondent shall be given a credit for medical expenses that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the prospective medical treatment plan recommended by Dr. Chunduri, including a bilateral L4-5, L5-S1 medial branch rhizotomy, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,233.33 per week for a period of 104 & 4/7ths weeks, representing August 3, 2021 through August 4, 2023, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Per the parties stipulation, Respondent shall have a credit of $77,922.42 for temporary total disability benefits already paid.

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

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

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

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.

October 2, 2024

/s/ *Raychel A. Wesley*

RAW/wde

O: 8/7/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC025524
Case Name	Reginald Howell v. Extreme Reach
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Ana Vazquez, Arbitrator

Petitioner Attorney	Leandro A. Alhambra
Respondent Attorney	Guy Maras

DATE FILED: 10/13/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 11, 2023 5.32%

/s/ Ana Vazquez, Arbitrator

Signature

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

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

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

Reginald Howell
Employee/Petitioner

v.

Extreme Reach
Employer/Respondent

Case # **21** WC **025524**

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 **August 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, **August 2, 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 $**96,200.00**; the average weekly wage was $**1,850.00**.

On the date of accident, Petitioner was **53** 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 $**77,922.42** for TTD, $**0** for TPD, $**0** for maintenance, and $**0,** for other benefits, for a total credit of $**77,922.42**.

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

ORDER

Respondent shall pay for the reasonable and necessary medical services, as provided in Px1, Px3, and Px5 through Px11, 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 plan recommended by Dr. Krishna Chunduri, including bilateral L4-5, L5-S1 medical branch rhizotomy, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$1,233.33/week** for **104 4/7 weeks**, commencing **August 3, 2021** through **August 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 **$77,922.42** for TTD paid to Petitioner by Respondent. Ax1 at No. 9.

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

OCTOBER 13, 2023

Signature of Arbitrator

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to arbitration on August 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, and (5) temporary total disability ("TTD") benefits. Arbitrator's Exhibit ("Ax") 1. All other issues have been stipulated. Ax1.

FINDINGS OF FACT

Petitioner worked for Respondent on August 2, 2021 as a stagehand. Transcript of Proceedings on Arbitration ("Tr.") at 10. Petitioner has worked for Respondent as a stagehand since 1995. Tr. at 10, 47.

Duties

Petitioner testified that his duties as a stagehand consist of building stages for indoor and outdoor concerts and plays and breaking the stages down. Tr. at 10-11. Petitioner testified that as a stagehand, they unload semi-trucks in the morning, unpack all the gear and set it up, and run the gear during the show. Tr. at 11. Petitioner testified that at the end of the day, they pack away all the gear and load it onto the semi-trucks. Tr. at 11. Petitioner testified that he lifts between 50 pounds and 400 pounds throughout the day. Tr. at 11. Petitioner testified that other co-workers help lift the items that weigh 400 pounds. Tr. at 11. Petitioner testified that he lifts 80-percent of the day. Tr. at 11-12.

Accident

Petitioner testified that on August 2, 2021, he was working in Grant Park at Lollapalooza. Tr. at 12. Petitioner testified that he was lifting a metal beam with three other co-workers, and that as he was lifting the beam and putting it into the storage container to go on the semi-truck, he injured his lower back. Tr. at 12. Petitioner testified that the metal beam weighed 300 to 400 pounds. Tr. at 12-13. Describing how he injured his lower back, Petitioner testified "I had the beam in my right hand, and the gentleman next to me had it in his left hand. There's only enough room for two hands to fit on the inside of the beam. And as we were moving backwards with it in our hands and kind of to the side to put it in the rack is when I felt a sharp pain in my lower back." Tr. at 13. Petitioner testified that he felt the sharp pain in the left lower back. Tr. at 13. Petitioner testified that after he felt the pain, he stepped away for a few seconds and then he jumped back in and lifted two more beams into the storage rack. Tr. at 13-14. Petitioner testified that after lifting the other two beams, the pain would not go away, and he stepped away and tried to stretch out his lower back on the side of the stage. Tr. at 15. Petitioner testified that he notified his supervisor, Chuck Gueno, and that Mr. Gueno instructed Petitioner to leave the stage and relax for a little while to see if the pain would get better. Tr. at 16. Petitioner then went behind the stage and laid down on a folding table, which did not alleviate his pain. Tr. at 16. Petitioner testified that he laid on the folding table for close to an hour, or a little longer, and that Mr. Gueno suggested that he call Petitioner an ambulance. Tr. at 16-17. Petitioner testified that Mr. Gueno called Petitioner an ambulance and that he was taken to the emergency room at Northwestern Hospital via ambulance. Tr. at 17.

Petitioner testified that on August 2, 2021, he felt great when he went to work, and that at the time of the accident, he was not actively treating for any low back conditions. Tr. at 38. Petitioner testified that at the time of the accident, there were not any outstanding or current recommendations for physical therapy for his low back or recommendations for injections. Tr. at 43. Petitioner testified that prior to the accident, his range of motion was great, that he was flexible, and that he could touch his hands all the way to the ground with his palms. Tr. at 45. Petitioner testified that prior to the accident, he was able to lift without pain. Tr. at 45.

Petitioner testified that he had not been prescribed any medication for back pain prior to August 2, 2021. Tr. at 46.

Pre-accident Medical Records Summary

Respondent offered Respondent's Exhibit ("Rx") 3, records of medical services rendered to Petitioner at Midwest Orthopedics at Rush, which were admitted without objection.

Petitioner sustained a left fifth toe fracture on April 14, 2017 and conservatively treated for this condition on April 26, 2017 and May 16, 2017. Rx3.

Petitioner testified that he had an MRI in 2018 and that he did not discuss the results with the doctor because "[t]hey never got back to me with the results." Tr. at 42-43. Petitioner testified that he was not taken off work or placed on restrictions by any doctor based on the findings of the MRI. Tr. at 43.

On September 25, 2019, Petitioner saw Dr. David Cheng for chronic low back and right-sided leg pain, which had been an ongoing problem since the late 1980's. Rx3. Dr. Cheng noted that Petitioner described an episode where he was attempting to kick down a steel door, the door never opened, and he experienced severe left-sided low back and leg pain which had been a persistent issue since then. Petitioner reported that he was looking for the "most aggressive treatment" outside of surgery, that he had not had a workup, and that he had only intermittent chiropractic treatments since the 1980's. Petitioner reported no leg weakness or numbness and that he was not taking any medication. Dr. Cheng noted that x-rays of the lumbar spine were ordered and personally reviewed, and that they revealed moderately advanced hip arthritis on the right side and disc height loss at L5-S1. Dr. Cheng's assessment was L5-S1 degenerative disc disease with left-sided radicular pain. Dr. Cheng recommended a lumbar MRI. On redirect examination, Petitioner testified that Dr. Cheng did not order any physical therapy for his back and that Dr. Cheng did not recommend any epidural steroid injections or medical branch blocks for his back. Tr. at 66-67. Petitioner also testified that Dr. Cheng did not take him off work or place him on any work restrictions, and that he did not experience any radiating pain to his lower extremities in September 2019. Tr. at 67-68, 69.

Petitioner testified that he received treatment for his low back in 2020, which consisted of his doctor, Dr. Lotus, showing him exercises to do. Tr. at 39-40.

Petitioner saw Dr. Divya Patel on July 8, 2020. Rx3. Petitioner presented with complaints of low back pain. Dr. Patel noted that Petitioner believed that the low back pain began in 2013 when he tried to kick in a frozen truck door at his work. Dr. Patel also noted that Petitioner saw Dr. Cheng in 2019, that Dr. Cheng recommended an MRI, and that he was unable to take time off work to undergo the MRI and had no other follow up. Petitioner reported pain in his left low back that sometimes traveled down the outside of his left thigh to the knee with intermittent numbness and tingling in the same distribution of pain. Petitioner reported that the pain was worse with prolonged sitting or standing and a feeling of 'shifting and popping" with twisting motions. Dr. Patel noted that Petitioner typically worked as a stagehand but had not been working due to COVID-19. Dr. Patel noted that x-rays of the lumbar spine taken on September 25, 2019 were personally reviewed and that they demonstrated alignment within normal limits and moderate disc height collapse at L5-S1 with anterior osteophyte formation. Dr. Patel's assessment was lumbosacral spondylosis with radiculopathy, noting L5-S1 degenerative disc collapse and clinically, chronic left L5 radiculopathy. A lumbar spine MRI was ordered for further evaluation and Petitioner was referred to Dr. Thomas Lotus for chiropractic evaluation and treatment utilizing the McKenzie method. Dr. Patel noted that if Petitioner's symptoms persisted despite completion of treatment with Dr. Lotus, Petitioner may be a candidate for lumbar spine interventions.

Petitioner underwent a lumbar MRI without contrast on July 10, 2020, which demonstrated (1) multilevel degenerative changes and (2) no high-grade spinal canal or foraminal narrowing. Rx3.

Petitioner received chiropractic treatment from Dr. Thomas Lotus on July 10, 2020, July 16, 2020, July 21, 2020, July 28, 2020, July 30, 2020, August 4, 2020, and August 6, 2020. Rx3. Petitioner testified that he saw Dr. Lotus for five or six visits. Tr. at 40. Petitioner testified that Dr. Lotus did not place him on any restrictions or take him off work while treating. Tr. at 40-41. Petitioner testified that he continued to work full duty while treating with Dr. Lotus. Tr. at 41. On redirect examination, Petitioner testified that during July 2020, no doctor recommended injections for his lower back. Tr. at 67. Petitioner also testified that he was not placed on any work restrictions or taken off work in July 2020, and that he did not experience any radiating pain to his lower extremities in July 2020. Tr. at 68.

Post-accident Medical Records Summary

On August 2, 2021, Petitioner was seen by Dr. Danielle McCarthy at Northwestern Emergency Medicine. Petitioner's Exhibit ("Px") 4 at 271-275. Dr. McCarthy noted a consistent accident history. Px4 at 271. Petitioner reported that he continued to work for a few minutes and lifted two more pieces and had pain since. Px4 at 271. Petitioner reported a history of back pain in the past and one prior imaging study with narrowing of disc spaces, but no back surgeries or injections previously. Px4 at 271. X-rays of the lumbar spine and L5-S1 lateral cone view were obtained and demonstrated mild loss intervertebral disc space at L5-S1. Px4 at 275.

Petitioner presented at LaClinica, S.C. ("LaClinica") on August 6, 2021 and was seen by Dr. George W. Ryback, Jr. Px1 at 4-8, Px4 at 11-15. Petitioner presented with a chief complaint of lumbar pain and Petitioner reported that it began on August 2, 2021 after sustaining an injury while at work. Px1 at 4. Dr. Ryback noted a consistent accident history. Px1 at 4. Petitioner reported left-sided lumbar pain with throbbing pain into his lateral left lower extremity. Px1 at 4. Petitioner reported difficulty with sitting, standing, and walking. Px1 at 4. Petitioner reported tolerating five minutes of sitting, 15 minutes of standing, and 20 minutes of walking before his pain worsened. Px1 at 4. Petitioner reported that he was physically well and working without difficulty prior to August 2, 2021. P1 at 4. Petitioner reported a history of a lumbar injury 32 years prior while trying to get workout weights off a friend with lumbar tightness after. Px1 at 4-5. Petitioner also reported a history of a cerebral hematoma 36 years prior. Px1 at 5. On exam, Dr Ryback noted that Petitioner was in too much pain to sit or lay down, and that the exam was performed while Petitioner was standing. Px1 at 5. On exam, Dr. Ryback noted that Petitioner appeared in acute distress, that palpation produced tenderness at L3 through L5, and that palpation revealed tightness at the left trapezius muscle, left thoracic paraspinal muscles, and left lumbar paraspinal muscles. Px1 at 5. Dr. Ryback also noted that all lumbar motions tested were reduced, that all lumbar motions produced pain, and that Petitioner reported that lumbar flexion produced the most pain. Px1 at 5. Sensation was decreased in Petitioner's left leg when compared to the right leg. Px1 at 6. Dr. Ryback's diagnoses were lumbar radiculopathy, lumbar sprain, and lumbar strain. Px1 at 6. Dr. Ryback noted that in his opinion, Petitioner's conditions were directly related to the August 2, 2021 accident. Px1 at 7. Dr. Ryback recommended a pain management consultation, physical therapy, and an MRI. Px1 at 6. Petitioner was kept off work. Px1 at 7, 9.

On August 10, 2021, Petitioner presented for a phone consultation with Dr. Eugene Lipov of Illinois Orthopedic Network, LLC. Px1 at 10-11. Dr. Lipov noted a consistent accident history. Px1 at 10. Petitioner denied a history of severe low back prior to this injury. Px1 at 10. Petitioner reported that the pain began in his back and traveled upward and down his left leg. Px1 at 10. Dr. Lipov noted that Petitioner's pain was most severe when standing up from a seated position or from his bed to standing up, and at night. Px1 at 10. A physical exam was not performed. Px1 at 10. Dr. Lipov's assessments were low back pain and left leg pain. Px1 at 10. Dr. Lipov recommended physical therapy, follow up in clinic for physical examination and further treatment

recommendations, and medication management. Px1 at 11. Petitioner was kept off work. Px1 at 11. On cross examination, Petitioner explained that that the pain moved around and was not isolated. Tr. at 55.

Petitioner followed up with Dr. Lipov in-clinic on August 24, 2021. Px1 at 14-15. Dr. Lipov noted that Petitioner had completed physical therapy at LaClinica and reported moderate improvement. Px1 at 14. Dr. Lipov noted that Petitioner now had 30 degrees flexion and was able to tolerate sitting for 15 minutes. Px1 at 14. On exam, Dr. Lipov noted an antalgic gait, difficulty transitioning from sitting to standing positions, mild swelling of the lumbosacral area, mild hyperspasticity, positive left-sided Kemp test of the lumbar spine, and positive straight leg raise on the left. Px1 at 14. Dr. Lipov's diagnosis was low back pain with left L4-5 radiculitis. Px1 at 15. Dr. Lipov recommended a lumbar spine MRI to evaluate for disc herniation and facet arthropathy. Px1 at 15. Petitioner was to continue with physical therapy and medication regimen. Px1 at 15. Petitioner was kept off work. Px1 at 15. Petitioner testified that at this time, he was still in severe pain as far as bending, coughing, and sneezing, and that the pain medication he was given helped a little bit. Tr. at 21.

On August 28, 2021, Petitioner underwent a lumbar spine MRI at American Diagnostic Imaging, which demonstrated (1) prominent marrow edema within the L2 and L3 vertebral bodies with hyperintense T2 disc signal and (2) lumbar spondylosis and scoliosis with multilevel disc bulging and disc osteophyte complexes. Px1 at 23-23. It was noted that the extent of the bone marrow edema raised suspicion for possible infection/discitis at L2-3, and correlation with clinical findings and additional work up was recommended. Px1 at 24, Px7.

On September 2, 2021, Petitioner saw Dr. Kevin M. Koutsky at DuPage Spine and Orthopedics. Px1 at 25-26, Px3 at 7-8, Px11 at 1-2. Petitioner testified that he was referred to Dr. Koutsky by LaClinica. Tr. at 23. Dr. Koutsky noted that Petitioner was present for evaluation of lower back pain with some radiation to the left buttock and thigh. Px1 at 25. Dr. Koutsky noted a consistent accident history. Px1 at 25. Petitioner reported that his lower back pain was improving. Px1 at 25. On exam, a mild left straight leg raise test and lumbosacral muscle tenderness and spasm to palpation with limited range of motion were noted. Px1 at 25. Dr. Koutsky noted that the lumbar spine MRI revealed some age-related degenerative changes, grade 1 retrolisthesis at L5-S1, some bone marrow edema in the L2 and L3 vertebral bodies, bone marrow edema at L5-S1, and no evidence of large herniated disc or severe canal stenosis. Px1 at 25. Dr. Koutsky further noted that the radiologist's impression was that some of the changes on MRI were likely chronic and consistent with modic changes, however, an occult infection could not be completely ruled out. Px1 at 26. Dr. Koutsky's diagnoses were lower back pain, radiculopathy, and rule out infection. Px1 at 26. Dr. Koutsky noted that Petitioner presented with symptoms stemming from a work injury that occurred on August 2, 2021. Px1 at 26. He recommended a lumbar spine MRI with contrast, an anti-inflammatory and tramadol for severe episodes of pain, and that Petitioner continue physical therapy. Px1 at 26. Dr. Koutsky noted that pain management was discussed, and that Petitioner may benefit from pain injections. Px1 at 26. Petitioner was kept off work. Px1 at 26, 27.

Petitioner saw Dr. Krishna Chunduri at Illinois Orthopedic Network, LLC on September 9, 2021. Px1 at 31-32. Petitioner presented for an initial consultation and reported that he had been going to therapy and that he had some improvement in his back pain. Px1 at 31. Petitioner also reported that his pain had lessened and that it radiated toward his buttock, but not past the buttock. Px1 at 31. Petitioner reported that he experienced some brief leg numbness on one occasion while riding a bike. Px1 at 31. Dr. Chunduri noted that the MRI of the lumbar spine revealed diffuse spondylitic changes with multiple disc bulges and end plate spurring combined with facet arthropathy resulting in some moderate foraminal narrowing from L2 to S1 and that the radiologist noted bone marrow edema at the L2-3 vertebral bodies extending into the end plate, as well as at the L5-S1 level. Px1 at 31. Dr. Chunduri's diagnosis was lumbar spondylitis/lumbago. Px1 at 31. Dr. Chunduri noted that at that time, Petitioner had pain in his lower back and that he did not feel that it was likely a disc infection, and

that it was likely a reactionary inflammation of the end plate causing his pain. Px1 at 31. Dr. Chunduri recommended continued physical therapy and current medications and a new MRI. Px1 at 31.

Petitioner again saw Dr. Koutsky on October 4, 2022. Px4 at 203-204. Dr. Koutsky's diagnoses were unchanged, and Petitioner was kept off work. Px4 at 204.

Petitioner followed up with Dr. Chunduri via phone consultation on October 12, 2021. Px1 at 35. Petitioner reported that his pain medication was not providing significant relief at that time and was requesting alternative medication management. Px1 at 35. Dr. Chunduri's diagnoses were lumbar spondylosis and low back pain. Px1 at 35. Dr. Chunduri continued to recommend a new MRI. Px1 at 35. Petitioner's pain medication dosages were increased. Px1 at 35. Petitioner was kept off work. Px1 at 35.

On October 27, 2021, Dr. Wellington Hsu performed an Independent Medical Examination ("IME") of Petitioner. Px2; Respondent's Exhibit ("Rx") 1. Dr. Hsu noted a consistent accident history. Px2 at 3. Petitioner reported that he then also had radiating pain down his bilateral thighs. Px2 at 3. At that time, Dr. Hsu opined that Petitioner's diagnoses were lumbar strain and lumbar spondylosis. Px2 at 5. Dr. Hsu also noted that he believed that Petitioner's current condition of low back complaints was secondary to the accident that caused a lumbar strain and that Petitioner had not yet exhausted conservative care. Px2 at 6. Dr. Hsu noted that Petitioner had a preexisting condition of lumbar spondylosis, but that he did not believe that Petitioner's symptoms were secondary to lumbar spondylosis at that time. Px2 at 6. He also noted that he did not believe that the accident aggravated, accelerated, or exacerbated any preexisting condition. Px2 at 6. Dr. Hsu did not believe that there was a disc infection after reviewing the imaging provided to him. Px2 at 7. Dr. Hsu noted that he believed that the changes seen at L2-3 were degenerative in nature. Px2 at 7. Dr. Hsu noted that Petitioner had received appropriate treatment to date, including physical therapy, chiropractic care, and medications. Px2 at 7. Dr. Hsu noted that Petitioner was a good candidate for an epidural steroid injection in the lumbar region and work hardening with a frequency of five days a week with a total duration of two to four weeks. Px2 at 7. Dr. Hsu noted that he believed that after Petitioner received this treatment, Petitioner would have exhausted conservative care and will have reached maximum medical improvement ("MMI"). Dr. Hsu did not believe that Petitioner could work full duty at that time, and that he required temporary work restrictions of no lifting over 20 pounds and bending, crouching, and stooping on an occasional basis. Px2 at 8. Dr. Hsu did not believe that Petitioner had yet reached MMI. Px2 at 8. Petitioner testified that Respondent was not able to accommodate Dr. Hsu's restrictions. Tr. at 25-26.

Petitioner followed up with Dr. Koutsky on November 1, 2021. Px4 at 210-211, Px11 at 15-16. Dr. Koutsky's diagnoses were unchanged, and Petitioner was kept off work. Px4 at 211. Petitioner again saw Dr. Koutsky on November 29, 2021, at which time Dr. Koutsky noted that he reviewed Dr. Hsu's IME of October 27, 2021 and that he disagreed with Dr. Hsu's opinion that Petitioner suffered from a lumbar strain. Px4 at 227, Px11 at 17-18. Dr. Koutsky noted that Petitioner currently complained of pain radiating into his legs bilaterally, which was classic for radiculopathy. Px4 at 227. Dr. Koutsky agreed with Dr. Hsu's opinion that Petitioner's current lumbar condition was secondary to the accident and agreed that the Petitioner had not exhausted conservative care. Px4 at 227. Dr. Koutsky noted that he thought Dr. Hsu's recommendation of a pain injection was reasonable, and he ordered work conditioning, as recommended by Dr. Hsu. Px4 at 227. Dr. Koutsky noted that although Dr. Hsu had recommended restrictions, Petitioner's return to work would be difficult once work conditioning began. Px4 at 227. Dr. Koutsky also noted that he agreed with Dr. Hsu that Petitioner was not at MMI. Px4 at 227.

Petitioner underwent a lumbar spine MRI with and without contrast at Preferred Open MRI on December 6, 2021, which demonstrated (1) abnormality at the L2-3 level, which could be seen with discitis or simply related to advanced degenerative disc disease and (2) L5-S1 disc narrowing and disc bulging with foraminal narrowing

left greater than right. Px1 at 39, Px9. It was noted that the edema in the right psoas muscle adjacent L3 as well as the disc enhancement were somewhat worrisome and that there was mild bilateral foraminal narrowing at that level but no central stenosis. Px1 at 39.

Petitioner followed up with Dr. Chunduri on December 16, 2021, at which time Petitioner reported that his back pain was in his mid-lower back and radiated into his right upper thigh. Px1 at 41. Petitioner did not have any radiation below his knee and had significant pain with flexion. On exam, a positive straight leg raise test in the back was noted. Px1 at 41. Dr. Chunduri noted that the MRI of December 6, 2021 showed ongoing edematous bone marrow changes from L2 and L3, along with edema within the anterior aspect of the right psoas muscle adjacent to the L3 vertebral body, which the radiologist said was suspicious for cystitis, but Dr. Chunduri noted that he felt that it could also be some degenerative endplate inflammation. Px1 at 41. Dr. Chunduri's diagnoses were lumbar spondylosis and lumbago. Px1 at 41. Dr. Chunduri noted that at that time, in his opinion, Petitioner was not suffering from radicular symptoms, but rather was suffering from discitis or vertebrogenic inflammatory pain. Px1 at 41. Dr. Chunduri recommended that Petitioner follow up with Dr. Koutsky for further evaluation. Px1 at 41.

Petitioner again saw Dr. Koutsky on December 28, 2021, at which time he noted that the lumbar MRI showed some enhancement and that a triple phase bone scan had been discussed but not yet obtained. Px4 at 234-235, Px11 at 23-24. Dr. Koutsky's diagnoses were lower back pain, radiculopathy, and rule out diskitis/active process. Px4 at 235. Dr. Koutsky ordered a triple bone scan and discussed a blood work up. Px4 at 235. Petitioner was kept off. Px4 at 235.

Petitioner returned to Dr. Koutsky on January 25, 2022, at which time Dr. Koutsky's diagnoses were lower back pain and radiculopathy. Px1 at 44-45. Dr. Koutsky recommended that Petitioner continue with physical therapy and transition to work conditioning. Px1 at 45.

On January 28, 2022, Petitioner was seen by Heather Cottini, FNP at Integrated Pain Management. Px4 at 242. Petitioner reported a consistent accident history. Px4 at 240. Petitioner's diagnosis was radiculopathy, lumbar region. Px4 at 241. Petitioner was instructed to continue medication and work conditioning. Px4 at 242.

Petitioner next saw Dr. Koutsky on March 1, 2022, at which time Dr. Koutsky noted that Petitioner had not yet undergone his first lumbar injection, that Petitioner had completed work conditioning, and that Petitioner had not yet completed an FCE. Px1 at 47-48. On exam, a mild left straight leg raise test and lumbosacral muscle tenderness and spasm to palpation with limited range of motion were noted. Px1 at 48. Dr. Koutsky's diagnoses were lower back pain and radiculopathy. Px1 at 48. Dr. Koutsky recommended Petitioner continue use of the muscle relaxants and anti-inflammatories. Px1 at 48. Dr. Koutsky released Petitioner with sedentary/sitting restrictions. Px1 at 48, 49. Petitioner testified that Respondent did not accommodate the sedentary duty restrictions. Tr. at 28.

Petitioner completed an FCE on March 14, 2022 at Improved Functions. Px1 at 50-54, Px5 at 3-7. It was noted that the evaluation was valid, that Petitioner was unable to return to his previous job as he did not have the required strength, and that an additional four weeks of work conditioning should be considered. Px1 at 50. It was also noted that Petitioner was capable of assuming a position in the heavy strength category and that his maximum lifting capacity was 60 pounds and that his maximum carrying capacity was 50 pounds. Px1 at 50.

Petitioner followed up with Dr. Koutsky on March 29, 2022. Px1 at 55-56. Dr. Koutsky noted that Petitioner was still awaiting his first lumbar injection, and that Petitioner completed his first course of work conditioning and had an FCE. Px1 at 55. Dr Koutsky noted that the FCE recommended continued work conditioning and that

Petitioner was in his second course. Px1 at 55. Dr. Koutsky released Petitioner to work per the FCE restrictions. Px1 at 56.

Petitioner returned to Dr. Koutsky on April 26, 2022, at which time Dr. Koutsky noted that Petitioner had not yet undergone his first lumbar injection, and that Petitioner had completed work conditioning and an FCE. Px1 at 58-59. Dr. Koutsky's diagnoses were lower back pain and radiculopathy. Px1 at 59. Petitioner was released to return to work per the FCE restrictions. Px1 at 59.

Petitioner attended 96 sessions of therapy, including work conditioning, at LaClinica with Dr. Ryback from August 6, 2021 through April 15, 2022. Px4 at 16-112, 142-145. Petitioner was reexamined by Dr. Ryback on August 20, 2021, September 22, 2021, and October 20, 2021. Px4 at 130-141.

Petitioner next saw Dr. Koutsky on May 24, 2022. Px1 at 61-62. Petitioner was still awaiting his first lumbar injection. Px1 at 61. Dr. Koutsky's diagnoses and Petitioner's restrictions were unchanged. Px1 at 62.

On July 7, 2022, Petitioner followed up with Dr. Chunduri. Px1 at 64. Petitioner continued to complain of pain in his lower back that radiated into his bilateral hips. Px1 at 64. Petitioner reported that he had more pain when he bent forward. Px1 at 64. Dr. Chunduri's diagnoses were lumbar spondylosis with radiculitis and lumbago. Px1 at 64. Dr. Chunduri noted that at that time, Petitioner continued to have pain that was likely from the L3 disc and vertebral body area, and that Petitioner had some radiation into his hips which was possibly L3 radicular symptoms. Px1 at 64. Dr. Chunduri noted that diskitis had been ruled out. Px1 at 64. Dr. Chunduri recommended proceeding with L3 bilateral transforaminal epidural steroid injection. Px1 at 64. Dr. Chunduri continued Petitioner's restrictions. Px1 at 64.

Petitioner returned to Dr. Chunduri on July 28, 2022, at which time Dr. Chunduri noted that Petitioner was still awaiting authorization of the recommended L3 bilateral transforaminal epidural steroid injections. Px1 at 67. He noted that Petitioner continued to experience low back pain with radiation down the lateral bilateral thighs, aggravated with bending, sneezing, coughing, and twisting. Px1 at 67. Dr. Chunduri's diagnoses and recommendation were unchanged. Px1 at 67. Petitioner's restrictions were maintained. Px1 at 67.

On September 15, 2022, Petitioner followed up with Dr. Chunduri, at which time Petitioner reported no significant changes in symptoms since his last evaluation. Px1 at 69-70. Dr. Chunduri noted that Petitioner continued to experience band-like low back pain that radiated into his buttocks and around his hips laterally, with numbness and tingling in the buttocks and hips. Px1 at 69. Petitioner reported that the left side was worse than the right side and that it was aggravated with forward flexion. Px1 at 69. Dr. Chunduri noted that focused examination of the lumbar spine showed significant positive tenderness to palpation along the left paraspinals with hypertonicity bilaterally and a positive bilateral straight leg raise. Px1 at 69. Petitioner was still awaiting authorization for the recommended L3 bilateral transforaminal epidural steroid injections. Px1 at 69. Dr. Chunduri's diagnoses and recommendations were unchanged. Px1 at 69. Dr. Chunduri noted that at Petitioner's request, he was being referred to a chiropractor for evaluation. Px1 at 70. Petitioner's restrictions were maintained. Px1 at 70.

On October 20, 2022, Petitioner underwent L3 bilateral transforaminal epidural steroid injections under fluoroscopic guidance. Px1 at 72. Petitioner's postoperative diagnosis was lumbar spondylosis with bilateral radiculitis. Px1 at 72. Petitioner testified that the injections took away a lot of the pain the same day, but that the relief lasted maybe 24 hours. Tr. at 31.

Petitioner followed up with Dr. Chunduri on November 3, 2022, at which time Petitioner reported that the injections had given him excellent relief. Px1 at 95. Petitioner reported that he had no pain while standing and

walking, but that the bending over pain was a problem because he could not work. Px1 at 95. Dr. Chunduri's diagnosis was lumbar spondylosis with radiculitis. Px1 at 95. Dr. Chunduri noted that at that time, Petitioner continued to have ongoing pain and that he suffered from vertebrogenic inflammation at L3, which was likely the source of his pain. Px1 at 95. Dr. Chunduri recommended repeat L3 bilateral transforaminal epidural steroid injections and that Petitioner continue with therapy. Px1 at 95. Petitioner was kept off work since his restrictions had not been accommodated. Px1 at 95.

Petitioner consulted with Dr. Chunduri via telephone on December 5, 2022, at which time Dr. Chunduri noted that Petitioner continued to remain moderately symptomatic at that time. Px1 at 98-99. Petitioner reported that he sustained an interval change in his lumbar spine on November 23, 2022 when he woke up with significant increase in overall pain, noting band-like low back pain that radiated into his buttocks intermittently and into the lateral aspect of his hip down his right anterior thigh. Px1 at 98. Petitioner reported that the pain was exacerbated with forward flexion, prolonged standing, and extension of the spine and that he continued to experience significant pain in the low back with coughing and sneezing. Px1 at 98. Dr. Chunduri's diagnosis and recommendation of repeat L3 bilateral transforaminal epidural injections were unchanged. Px1 at 98. Petitioner was kept off work since his restrictions had not been accommodated. Px1 at 99. Petitioner underwent L2-L3 bilateral transforaminal epidural steroid injections under fluoroscopic guidance on December 8, 2022. Px1 at 102. Petitioner's postoperative diagnoses were lumbar spondylosis and bilateral radiculitis. Px1 at 102. Petitioner testified that he felt a little relief and explained that the relief he experienced was not as much as he experienced after the first injections, that it was short-lived, and lasted maybe 24 hours. Tr. at 32. Petitioner testified that he was still in pain when he coughed, sneezed, and bent after the second injections, while he was able to cough and sneeze without being in severe pain after the first injection. Tr. at 32-33.

Petitioner followed up with Dr. Chunduri on December 22, 2022. Px1 at 107. Petitioner reported that the injections did not give him any significant improvement and that there was maybe 25-percent reduction temporarily, but that his back pain continued. Px1 at 107. Petitioner reported minimal radiation down his legs. Px1 at 107. Dr. Chunduri's diagnosis was lumbar spondylosis. Px1 at 107. Dr. Chunduri noted that at that time, it was plausible that Petitioner's symptoms could be facet mediated and the inflammation of the disc was now over one year old. Px1 at 107. Dr. Chunduri recommended bilateral L4-5 and L5-S1 diagnostic medial branch blocks of the facet joints to evaluate for possible facet mediated pain, as well as a new lumbar MRI for reevaluation of the possible diskitis that was noted a year ago. Px1 at 107. Petitioner was kept off work. Px1 at 107.

Petitioner underwent a lumbar MRI with and without contrast on January 10, 2023 at Preferred Imaging, which demonstrated (1) L4-5 minimal canal and foraminal, L5-S1 normal canal, low to moderate grade foraminal multifactorial encroachment, (2) multilevel low-grade degenerative joint disease, and (3) multilevel low-grade degenerative disc disease. Px1 at 109.

On January 12, 2023, Petitioner underwent bilateral L4-5, L5-S1 diagnostic medial branch blocks under anesthesia. Px1 at 111. Petitioner's postoperative diagnoses were lumbar spondylosis and lumbago. Px1 at 111. Petitioner testified that the procedure felt good and that it made his legs feel a lot better. Tr. at 34. Petitioner testified that he did not realize how much pain he had in his legs until Dr. Chunduri performed the medial branch block and the procedure took away all the pain in his legs. Tr. at 34. Regarding whether the procedure relieved any of his back pain, Petitioner testified "[n]ot so much with the back pain." Tr. at 34. Petitioner testified that the relief lasted about 24 hours. Tr. at 34.

Petitioner followed up with Dr. Chunduri on January 26, 2023, at which time Petitioner reported 100-percent pain relief in the radiation down his legs and about 50-percent resolution of his back pain the day after the procedure. Px1 at 11. Petitioner reported that he still had some discomfort when he would bend forward and that

the overall combination of pain relief was 70-percent. Px1 at 116. Dr. Chunduri noted that the MRI revealed multilevel spondylitic changes, degenerative disc disease and facet arthropathy at L2-3, L4-5, and L5-S1, as well as disc osteophytes at those levels, and no signs of inflammation or discitis. Px1 at 116. Dr. Chunduri's diagnoses were lumbar spondylosis and lumbago. Px1 at 116. Dr. Chunduri recommended bilateral L4-5, L5-S1 medial branch rhizotomy. Px1 at 116.

On March 13, 2023, Dr. Wellington Hsu performed a second IME of Petitioner. Rx2. Dr. Hsu noted that Petitioner's January 10, 2023 MRI demonstrated a similar appearance to the previous lumbar MRI, that Petitioner had severe degenerative disc disease at L2-3 and L5-S1 bilateral foraminal stenosis, and that otherwise, Petitioner had age-appropriate spondylitic changes. Rx2 at 3. Dr. Hsu noted that based on his review of the medical records, he believed that Petitioner's diagnoses were lumbar strain resolved and lumbar spondylosis. Rx2 at 4. Dr. Hsu noted that his opinions regarding diagnoses had not changed in any way with the new information provided to him, and that he continued to believe that the work-related injury caused a temporary soft tissue injury to the lumbar spine that had since resolved with appropriate conservative care. Rx2 at 4. Dr. Hsu noted that he did not believe that any of Petitioner's current complaints would be in any way related to the accident of August 2, 2021, that Petitioner had exhausted conservative care for his condition and it had resolved, and that Petitioner's current condition was much more likely to be secondary to his preexisting condition of lumbar spondylosis that is age and genetic related and in no way related to trauma. Rx2 at 4. Dr. Hsu noted that he believed that Petitioner had received appropriate treatment to date including, physical therapy, medications, and injections for his lumbar strain and noted that Petitioner rated his pain a 4 out of 10 on examination. Rx2 at 4. Dr. Hsu noted that Petitioner's pain rating did not correlate with his physical examination, which demonstrated no functional disability. Rx2 at 5. Dr. Hsu did not believe that any additional treatment was indicated at that time and that Petitioner did not have any functional disability on physical exam. Rx2 at 5. Regarding whether Petitioner was able to work full duty, Dr. Hsu noted that based on his review of the FCE restrictions, he would advise that Petitioner required those restrictions while going back to work and that he believed that those restrictions were consistent with his physical examination and that they were permanent in nature secondary to Petitioner's lumbar spondylosis condition which is age and genetic related and in no way related to trauma. Rx2 at 5. Dr. Hsu believed that Petitioner reached MMI for a lumbar strain on March 14, 2022, when he completed the FCE. Rx2 at 5. Regarding an AMA Impairment Rating, Dr. Hsu noted that he did not believe that Petitioner suffered any acute structural injuries during the work-related activity and thus, he did not believe that Petitioner suffered any permanent impairment as a result of the work-related injury. Rx2 at 5.

Petitioner testified that at the time of arbitration, none of his treating physicians had released him to return to work. Tr. at 36. Petitioner was shown "Petitioner's Medical Bills," attached to Ax1, and testified that to his knowledge, Respondent had not paid the charges listed. Tr. at 37.

Current Condition

Petitioner testified that he has not returned to work at Respondent since the date of the accident. Tr. at 38. Petitioner testified that he has not returned to any type of work since the date of accident. Tr. at 38.

Petitioner testified that at the time of arbitration, his range of motion was better and that he was not in constant pain, but that he was still in pain when bending, coughing, and sneezing. Tr. at 44. Petitioner testified that after the accident, he could bend over only a few inches, and that at the time of arbitration, he could bend past his knees and had some relief with the treatment he had received for his low back. Tr. at 44-45. Petitioner testified that at the time of arbitration, he was taking a muscle relaxer and anti-inflammatories two to three times per week. Tr. at 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). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission,* 44 Ill. 2d 214 (1969).

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

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

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

Having considered all the evidence, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he sustained an accident that arose out of and in the course of his employment with Respondent on August 2, 2021. In support of her finding, the Arbitrator relies on Petitioner's credible testimony that: (1) he was employed as a stagehand with Respondent on August 2, 2021, (2) that his duties as a stagehand included building and breaking down stages, unloading semi-trucks, unpacking and setting up the gear and running the gear during a show, and packing away the gear and loading it onto semi-trucks at the end of the day, and (3) that on August 2, 2021, he felt a sharp pain while lifting and carrying a beam that weighed between 300 and 400 pounds to a storage rack with three other co-workers. The Arbitrator also relies on the treatment records in evidence, which corroborate Petitioner's testimony and document treatment beginning on August 2, 2021. The Arbitrator notes that Petitioner's testimony is unrebutted.

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. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). 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 if the claimant can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (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 to prove a causal connection between the accident and the claimant's injury. *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 (1982).

The Arbitrator finds that Petitioner's current lumbar spine condition of ill-being is causally related to the August 2, 2021 injury. The Arbitrator relies on the following in support of her findings: (1) the records of Illinois Orthopedic Network, (2) the records of LaClinica, S.C., (3) the records of DuPage Spine and Orthopedics, and (4) the fact that none of the records in evidence reflect that Petitioner was actively treating for a lumbar spine condition immediately prior to August 2, 2021. The Arbitrator acknowledges that Petitioner complained of low back pain in September 2019 and again in July 2020, however, the records in evidence do not reflect that Petitioner was taken off work or placed on restrictions in September 2019 or July 2020, that any treatment recommendations were made in September 2019, or that any other treatment recommendations were made in July 2020 besides a few chiropractic sessions. The record demonstrates that prior to August 2, 2021, Petitioner last sought treatment for his lumbar spine on August 6, 2020, which was a chiropractic session with Dr. Lotus. The Arbitrator notes that the record further demonstrates (1) that Petitioner was in condition of good health immediately prior to August 2, 2021, (2) consistent complaints and continuous symptomology of the lumbar spine following the August 2, 2021 injury, and (3) that Petitioner was able to work full duty and without restrictions immediately prior to the work accident.

The Arbitrator has considered the opinions of Dr. Wellington Hsu and finds that they do not outweigh the opinions of Petitioner's treating physicians, and finds that overall, the record supports Dr. Koutsky's opinion that Petitioner's lumbar spine symptoms stemmed from the injury that Petitioner sustained at work on August 2, 2021.

In resolving the issue of causal connection, the Arbitrator also finds that Petitioner is not at MMI for his current lumbar spine condition 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 follow:

Consistent with the Arbitrator's prior findings, the Arbitrator finds that the medical services that were provided to Petitioner were reasonable and necessary, and that Respondent has not paid all appropriate charges for all reasonable and necessary medical services. At arbitration, Petitioner presented the following unpaid medical bills: (1) Premier Healthcare Services ($11,413.66), (2) Midwest Specialty Pharmacy ($14,916.47), (3) Preferred Open MRI ($2,162.50), (4) Illinois Orthopedic Network ($43,299.98), (5) LaClinica, S.C. ($40,460.00), (6) Alikai Health ($4,190.53), (7) DuPage Spine and Orthopedics ($8,464.80), (8) American Diagnostics ($2,250.00), and (9) Improved Functions ($1,200.00). Px1, Px3, Px5-Px11. As the Arbitrator has found that Petitioner's treatment was reasonable and necessary, the Arbitrator further finds that all bills, as provided in Px1, Px3, and Px5 through Px11, 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.

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. Chunduri. As of January 26, 2023, Dr. Chunduri's treatment recommendations include bilateral L4-5, L5-S1 medial branch rhizotomy. Accordingly, the Arbitrator finds that Petitioner is entitled to bilateral L4-5, L5-S1 medial branch rhizotomy, which is 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:

Petitioner claims that he is entitled to TTD benefits from August 2, 2021 through August 4, 2023, the date of arbitration. Ax1 at No. 8. Respondent disputes Petitioner's claim for TTD benefits and claims that TTD benefits were owed only from August 2, 2021 through October 20, 2022. Ax1 at No. 8. The Arbitrator notes that the TTD benefits period in dispute is from October 21, 2022 through August 4, 2023, the date of arbitration.

Consistent with the Arbitrator's prior findings, the Arbitrator finds that Petitioner is entitled to TTD benefits. Petitioner was kept off work beginning August 6, 2021. Petitioner was then placed on sedentary work restrictions by Dr Koutsky on March 1, 2022. The Arbitrator notes that there is no evidence that Respondent accommodated Petitioner's sedentary restrictions. Petitioner was then placed on restrictions pursuant to the March 2022 FCE, and the evidence demonstrates that Respondent did not accommodate said restrictions. Petitioner was then taken off work by Dr. Chunduri on November 3, 2022. Petitioner credibly testified that he has not returned to work at Respondent since August 2, 2021 and that he has not done any type of work since August 2, 2021.

Accordingly, the Arbitrator finds that Petitioner is entitled to TTD benefits from August 3, 2021 through August 4, 2023, the date of arbitration, noting that the record demonstrates that Petitioner worked on August 2, 2021.

Further, based on the Parties' stipulation, Respondent is entitled to a credit in the amount of $77,922.42 for TTD paid by Respondent to Petitioner.

Ana Vazquez

ANA VAZQUEZ, ARBITRATOR

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC005341
Case Name	Linda S. Fry v. State of Illinois - Illinois Secretary of State
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0481
Number of Pages of Decision	13
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Joseph L. Moore

DATE FILED: 10/3/2024

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Linda S. Fry,

Petitioner,

vs. NO: 19 WC 005341

State of Illinois/Illinois Secretary of State,

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 temporary total disability, causal connection, permanent partial disability, and medical expenses, 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 31, 2023, is hereby affirmed and adopted.

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

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

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois are not subject to judicial review. Therefore, no appeal bond is set in this case.

October 3, 2024

MP:yl
o 9/12/24
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	19WC005341
Case Name	Linda S. Fry v. State of Illinois/Secretary of State
Consolidated Cases	
Proceeding Type	
Decision Type	Corrected Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Suzanne Borland

DATE FILED: 7/31/2023

THE INTEREST RATE FOR THE WEEK OF JULY 25, 2023 5.27%

/s/ William Gallagher, Arbitrator
Signature

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

July 31, 2023

/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
CORRECTED ARBITRATION DECISION

Linda S. Fry
Employee/Petitioner

v.

State of Illinois/Secretary of State
Employer/Respondent

Case # 19 WC 05341

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 June 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. ☒ 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 26, 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 $60,985.88; the average weekly wage was $1,172.81.

On the date of accident, Petitioner was 54 years of age, married with 0 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 $48,366.67 for TTD, $0.00 for TPD, $0.00 for maintenance, and $54,349.96 for other benefits, for a total credit of $102,716.63.

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 7, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

Respondent shall pay Petitioner additional temporary total disability benefits of $781.87 per week for 13 4/7 weeks commencing April 27, 2021, through July 31, 2021, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $703.69 per week for 200 weeks because the injury sustained caused the 40% loss of use 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.

William R. Gallagher

JULY 31, 2023

William R. Gallagher, Arbitrator
ICArbDec p. 2

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on December 26, 2017. According to the Application, Petitioner was "breaking up pile of salt" and sustained an injury to her "left leg" (Petitioner's Exhibit 1).

Respondent stipulated Petitioner sustained a work-related injury on December 26, 2017, but disputed liability on the basis of causal relationship. Petitioner sought an order for payment of medical bills, additional temporary total disability benefits and permanent partial disability benefits (Arbitrator's Exhibit 1).

As noted herein, as a result of the accident of December 26, 2017, Petitioner had an injury to her left knee which caused her to sustain a torn medial meniscus, which required arthroscopic surgery. Respondent did not dispute liability for Petitioner's left torn medial meniscus and paid the medical expenses and temporary total disability benefits pertaining to same.

Petitioner subsequently received additional treatment for her left knee, including total knee replacement surgery. Respondent disputed liability for Petitioner's total knee replacement surgery and did not pay the medical bills or temporary total disability benefits associated with same. The additional temporary total disability benefits for which Petitioner claimed she was entitled to amounted to 13 4/7 weeks, commencing April 27, 2021, through July 31, 2021 (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a maintenance laborer which she stated required heavy manual labor. Petitioner operated various types of construction equipment and would load/unload trucks. During periods of inclement weather, Petitioner would spread salt and plow snow. Petitioner would also move office furniture, carry drywall, operate a jackhammer, and do concrete work. Petitioner testified she would be required to lift up to 80 pounds and had to do a lot of climbing, bending, stooping and squatting. A "Job Analysis" which was prepared by Respondent was received into evidence at trial (Petitioner's Exhibit 2). The job duties described therein were consistent with those testified to by Petitioner at trial.

Petitioner testified that on December 26, 2017, she was called into work early in the morning to plow snow and spread salt. Shortly after she arrived, Petitioner had to deal with a large pile of rock salt which, because of the cold temperature, had frozen. Petitioner attempted to "ram" the pile of rocks salt with a tractor in an effort to break up the salt so it could be placed in the trucks. When the tractor struck the pile of rock salt, it did not break the pile of rock salt apart which caused Petitioner to be thrown up and over the steering wheel of the tractor she was driving. At that time, Petitioner experienced pain all over, but, in particular, to her left knee. The pain in Petitioner's left knee got worse and the swelling became severe.

Petitioner initially sought medical treatment at Springfield Clinic on December 28, 2017. At that time, Petitioner was evaluated by Connie Esslinger, a Nurse Practitioner. NP Esslinger noted Petitioner's left knee was swollen and bruised. She obtained an x-ray which revealed tricompartmental osteoarthritis. She ordered an MRI scan of Petitioner's left knee (Petitioner's Exhibit 3).

The MRI was performed on January 2, 2018. According to the radiologist, the MRI revealed tricompartmental degenerative changes with chondromalacia, a small radial tear of the medial meniscus with associated meniscal cyst, and intact cruciate ligaments (Petitioner's Exhibit 3).

Petitioner was subsequently evaluated by Dr. Marc DeJong, a sports medicine physician, associated with Springfield Clinic, on January 9, 2018. At that time, Dr. DeJong examined Petitioner and reviewed the MRI. He diagnosed Petitioner with an aggravation of the underlying compartment osteoarthritis and a small radial tear of the anterior horn of the medial meniscus. Dr. DeJong aspirated Petitioner's left knee, administered a cortisone injection, prescribed a knee brace, recommended physical therapy, and imposed work/activity restrictions (Petitioner's Exhibit 3).

At trial, Petitioner testified the knee brace did not help and the aspiration/injection only provided temporary relief. Petitioner began physical therapy on January 24, 2018 (Petitioner's Exhibit 3).

Petitioner again saw Dr. DeJong on January 29, 2018. At that time, Dr. DeJong's diagnosis remained the same and he continued to impose work/activity restrictions (Petitioner's Exhibit 3). Petitioner continued to participate in physical therapy; however, she testified it did not help her and was making her left knee symptoms worse. When Dr. DeJong saw Petitioner on February 18, 2018, he suggested Petitioner undergo Euflexxa injections into her knee. He referred Petitioner to Dr. Brent Wolters, an orthopedic surgeon, associated with Springfield Clinic (Petitioner's Exhibit 3).

Dr. Wolters evaluated Petitioner on March 7, 2018. At that time, Petitioner informed Dr. Wolters of the history of the accident and the medical care received thereafter. Dr. Wolters examined Petitioner and reviewed the MRI scan. He opined Petitioner had severe left knee patellofemoral osteoarthritis with acute exacerbation. Dr. Wolters recommended Petitioner undergo Euflexxa injections into her left knee. He continued her work/activity restrictions (Petitioner's Exhibit 3).

Petitioner subsequently sought treatment from Dr. Rodney Herrin, an orthopedic surgeon, who initially evaluated Petitioner on March 19, 2018. At that time, Petitioner informed Dr. Herrin of the accident of December 26, 2017, and the medical treatment she received thereafter. Petitioner told Dr. Herrin that the first doctor (no name given) recommended she either undergo Visco supplementation for a total knee replacement. Dr. Herrin examined Petitioner and reviewed the MRI scan. Dr. Herrin recommended Petitioner undergo arthroscopic surgery consisting of a medial meniscectomy and possible meniscal repair. He also informed Petitioner she may need Visco supplementation after the surgery (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. Michael Nogalski, an orthopedic surgeon, on June 25, 2018. Respondent's counsel did not depose Dr. Nogalski nor did she tender his medical report into evidence at trial.

Dr. Herrin performed arthroscopic surgery on Petitioner's left knee on September 21, 2018. The procedure consisted of a partial medial meniscectomy with limited retinacular release and shaving/chondroplasty of the medial femoral condyle. The surgical report noted Petitioner had grade 4 chondromalacia of the patella and grades 2 to 3 chondromalacia of the medial femoral condyle (Petitioner's Exhibit 4).

Following surgery, Petitioner continued to be treated by Dr. Herrin who ordered physical therapy. When she saw Dr. Herrin on November 26, 2018, Petitioner advised physical therapy was making her knee symptoms worse. At that time, Dr. Herrin administered a cortisone injection and recommended Petitioner continue physical therapy. He opined the accident caused an injury to Petitioner's medial meniscus and aggravated the condition in the patellofemoral joint. He noted Petitioner's symptoms worsened with increased activity (Petitioner's Exhibit 4).

When Petitioner saw Dr. Herrin on December 17, 2018, she advised the cortisone injection relieved her symptoms, but for only about one week. At that time, Dr. Herrin again suggested Visco supplementation injections. He continued to keep Petitioner off work and ordered an MRI scan. Dr. Herrin opined Petitioner could potentially have a problem with the medial femoral condyle such as a stress reaction occurring after the knee arthroscopic surgery (Petitioner's Exhibit 4).

The MRI was performed on December 21, 2018. According to the radiologist, the MRI revealed minimal arthritic changes, no definite acute meniscal tear and small joint effusion (Petitioner's Exhibit 5).

When Dr. Herrin saw Petitioner on February 13, 2019, Petitioner continued to experience left knee symptoms. Dr. Herrin noted Petitioner had sustained an injury to her left knee at work which resulted in a torn medial meniscus which had been addressed. Further, Dr. Herrin noted Petitioner had "aggravated" some degenerative changes in the patellofemoral joint and medial compartment of the knee which continued to be symptomatic. He opined Petitioner could not return to her regular work duties (Petitioner's Exhibit 4).

When Dr. Herrin subsequently saw Petitioner on March 14, 2019, and May 1, 2019, he again noted Petitioner had "aggravated" degenerative changes in the patellofemoral joint and medial compartment (Petitioner's Exhibit 4).

Again, at the direction of Respondent, Petitioner was examined by Dr. Michael Nogalski, on April 9, 2019. Respondent's counsel again did not depose Dr. Nogalski nor did she tender his medical report into evidence at trial.

Dr. Herrin saw Petitioner on June 24, 2019. At that time, Petitioner advised the Visco supplementation injections had helped, but she was still off work. Even though Petitioner still had symptoms, he released her to return to work as of June 26, 2019 (Petitioner's Exhibit 4).

The Petitioner testified that when she returned to work in June, 2019, she was still required to perform all of the job duties of a maintenance laborer. Petitioner testified she experienced significant difficulties during the course of a work day, in particular, climbing in/out of a truck and driving it as well. Petitioner testified that she continued to experience significant pain/swelling.

Petitioner saw Dr. Herrin on July 24, 2019. At that time, Petitioner advised she had returned to work, but continued to experience significant left knee pain. Dr. Herrin administered an injection into Petitioner's left knee, but Dr. Herrin discharged her from care and authorized her to return to work, but directed her to follow up with her on an as needed basis (Petitioner's Exhibit 4).

Petitioner continued to work as a maintenance laborer subsequent to Dr. Herrin's release. Petitioner testified her left knee symptoms got progressively worse and she experienced pain and swelling on a daily basis.

Because of Petitioner's worsening symptoms, she again sought treatment from Dr. Herrin on November 7, 2019. At that time, Dr. Herrin administered a Hyalgan injection. He subsequently administered additional Hyalgan injections on November 14, 2019, and November 21, 2019 (Petitioner's Exhibit 4).

The Petitioner saw Dr. Herrin on January 27, 2020, and February 24, 2020. While Petitioner was continuing to work, Dr. Herrin noted that her work was quite strenuous and was further aggravating her left knee problem and Petitioner could not modify her activities at work. Dr. Herrin opined that if Petitioner were to undergo any further surgery, she would require total knee arthroplasty. He recommended Petitioner wait as long as she could in that respect (Petitioner's Exhibit 4).

Petitioner continued to work as a maintenance laborer; however, by the end of 2020, Petitioner's left knee pain had become unbearable. Petitioner was again seen by Dr. Herrin on December 23, 2020. Because of Petitioner's ongoing left knee symptoms, Dr. Herrin recommended Petitioner proceed with a total knee arthroplasty (Petitioner's Exhibit 4).

Dr. Herrin performed a left total knee arthroplasty on April 6, 2021. At that time, Petitioner was authorized to be off work and began receiving physical therapy on April 8, 2021 (Petitioner's Exhibit 4).

Petitioner was subsequently seen by Dr. Herrin on April 26, 2021, June 7, 2021, and July 1, 2021. Petitioner continued physical therapy and was authorized to remain off work. When seen on July 1, 2021, Dr. Herrin authorized her to return to work effective August 2, 2021, and to increase activity as tolerated (Petitioner's Exhibit 4).

Petitioner saw Dr. Herrin on September 22, 2021. At that time, she again informed Dr. Herrin of the physically demanding work she was required to perform and provided him with some specific examples, including moving barrels, pouring concrete, carrying drywall, moving furniture, etc. Petitioner advised the work duties caused her to experience significant left knee pain/swelling. Petitioner stated that pain/swelling continued throughout her work shifts and she rated her pain level at 4/10 to 5/10 by the time she reached the end of a work shift. At that time, Dr. Herrin imposed permanent work restrictions of no climbing stairs while carrying an object, no concrete finishing, no squatting, and no lifting greater than 20 pounds (Petitioner's Exhibit 4).

Dr. Herrin was deposed on January 20, 2022, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Herrin's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. In regard to causality, Dr. Herrin testified Petitioner's left knee condition which required the arthroscopic surgery and total knee replacement was causally related to the accident of December, 2017. He also testified the permanent work restrictions he imposed were causally related to Petitioner's left knee condition (Petitioner's Exhibit 8; pp 46-47).

On cross-examination, Dr. Herrin agreed that the tricompartmental osteoarthritis which was noted in the x-ray of December 28, 2017, predated the accident that occurred two days prior. He also agreed that the tricompartmental osteoarthritis was one of the reasons he performed a total knee replacement (Petitioner's Exhibit 8; pp 49-50).

Dr. Herrin conceded that, given the progressive condition in Petitioner's left knee, she would have ultimately required a total knee replacement sometime in her life regardless of the accident at work. He also agreed the MRI performed on January 2, 2018, approximately one week post accident, revealed degenerative changes which predated the accident at work (Petitioner's Exhibit 8; pp 51-58).

On redirect examination, Dr. Herrin testified that someone can have degenerative changes in the knee which can be aggravated or accelerated by an accident. He also testified a traumatic injury to a joint where there are degenerative changes can make that joint symptomatic (Petitioner's Exhibit 8; pp 67-68).

Petitioner testified that she was unable to return to work to her job as a maintenance laborer because of the permanent restrictions imposed by Dr. Herrin. Petitioner stated she is unable to carry anything heavy, and that going up/down stairs as well as numerous activities of daily living cause her to experience pain/swelling in her left knee.

Petitioner's personal life has also been adversely impacted by her left knee injury. Petitioner testified she is unable to garden and is no longer able to walk around her three acres of property. Petitioner's recreational activities with her grandchildren have also been markedly limited because of her left knee condition. Prior to the accident, Petitioner said she was a very active person but is no longer because of her left knee condition. Petitioner testified that, prior to the accident of December 27, 2017, she never experienced any pain or symptoms, received no medical treatment, took no prescribed medication and was subject to no work restrictions because of any left knee issues.

Petitioner has not worked at all since she last worked for Respondent. Further, Petitioner has not sought any other work, vocational rehabilitation or contacted the State to enroll in the alternative employment program.

Conclusions of Law

In regards to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being in regard to her left knee is causally related to the accident of December 26, 2017.

In support of this conclusion the Arbitrator notes the following:

There was no dispute Petitioner sustained an injury to her left knee on December 26, 2017, which caused a tear of the left medial meniscus.

Petitioner's testimony that she had no left knee symptoms prior to the accident of December 26, 2017, was credible and unrebutted. Further, this is supported by the fact that, prior to December 26, 2017, Petitioner was able to perform all of her job duties of a maintenance laborer.

While Petitioner had pre-existing degenerative changes in her left knee, they were asymptomatic prior to the accident of December 26, 2017.

Petitioner's primary treating physician, Dr. Herrin, noted several times in his medical records that the accident of December 26, 2017, “aggravated” her left knee condition.

When he was deposed, Dr. Herrin testified Petitioner's left knee condition which required arthroscopic surgery and a total knee replacement was causally related to the accident of December 26, 2017. Dr. Herrin's testimony in regard to causality was unrebutted. The Arbitrator also notes that while Petitioner was examined at the request of Respondent on two occasions by Dr. Nogalski, neither his deposition testimony nor medical reports were tendered into evidence at trial.

On cross-examination, Dr. Herrin agreed Petitioner had tricompartmental osteoarthritis which predated the accident; however, on redirect examination, he testified that the arthritic condition could be aggravated/accelerated by a traumatic event.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical services provided to Petitioner were 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 7, 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 following:

There was no 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 project is entitled to temporary total disability benefits of 13 4/7 weeks, commencing April 27, 2021, through July 31, 2021.

In support of this conclusion the Arbitrator notes the following:

Petitioner was under active medical treatment and authorized to be off work during the aforestated period 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 40% loss of use of the person as a whole.

In support of this conclusion the Arbitrator notes following:

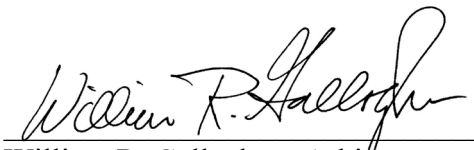
Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

At the time of the accident, Petitioner worked for Respondent as a maintenance laborer, a job which was extremely physically demanding. Based upon the permanent restrictions imposed by Petitioner's primary treating physician, Dr. Herrin, Petitioner was not able to return to work to that job. The Arbitrator gives this factor significant weight.

At the time of the accident, Petitioner was 54 years old, and was 60 years old at the time of trial. At the present time, Petitioner would have had approximately seven years before reaching normal retirement age. The Arbitrator gives this factor moderate weight.

As noted herein, Petitioner ceased working for Respondent pursuant to the permanent restrictions imposed by Dr. Herrin. While there is no issue that Petitioner could not return to work as a maintenance laborer, she did not attempt to find other employment, seek vocational rehabilitation services or enroll in the State alternative employment program. Accordingly, the Arbitrator finds it is speculative to make a determination whether or not the injury had an impact on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.

Petitioner's medical records clearly indicated Petitioner sustained a significant injury to her left knee which required both arthroscopic surgery and a total knee replacement. Petitioner's complaints in respect to her left knee have been credible and consistent with the injury she sustained. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC001381
Case Name	Guadalupe Cordero v. Sheraton
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0482
Number of Pages of Decision	14
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Donna Zadeikis
Respondent Attorney	Erica Levin

DATE FILED: 10/3/2024

/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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Guadalupe Cordero,

Petitioner,

vs. NO: 20 WC 1381

Sheraton Chicago Northbrook Hotel,

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 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 6, 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.

October 3, 2024

MP:yl
o 9/26/24
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	20WC001381
Case Name	Guadalupe Cordero v. Sheraton
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	William McLaughlin, Arbitrator

Petitioner Attorney	Donna Zadeikis
Respondent Attorney	Erica Levin

DATE FILED: 2/6/2024

/s/William McLaughlin, 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)

Guadalupe Cordero
Employee/Petitioner

v.

Sheraton Chicago Northbrook Hotel
Employer/Respondent

Case # **20** WC **001381**

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 McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **December 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 **Prospective Medical**

FINDINGS

On the date of accident, **9/15/2019**, 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 $**18,939.96**; the average weekly wage was $**364.23**.

On the date of accident, Petitioner was **51** 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 $ for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

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

ORDER

Respondent shall authorize and pay for prospective medical care for treatment to Petitioner's lumbar spine as per Dr. Koutsky's recommendations which include a lumbar decompression and fusion at L4-L5.

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 6, 2024

ICArbDec19(b)

STATEMENT OF FACTS

Background

This cause comes before the Arbitrator pursuant to Petitioner's Motion under Sections 19(b) and 8(a) of the Workers' Compensation Act. On the record, the parties agree that the primary issue before the Arbitrator is Petitioner's necessity to undergo surgery.

Findings of Fact

Petitioner testified that she was employed by the Respondent, Sheraton Hotel in Northbrook, Illinois on September 15, 2019, and that her job title was "housekeeper" and her job duties involved cleaning hotel rooms.

Petitioner testified that she had been employed by Respondent for 3-4 years before the date of the accident. (TX, p. 9)

Petitioner testified that the time of the accident was in the later afternoon and Petitioner was assigned the task of cleaning a particular hotel room, including the hotel room's bathroom. Petitioner testified that she was working very rapidly when she slipped and fell on the bathroom floor. Petitioner testified that she fell on an outstretched right arm, struck her head on the tub and landed on the right side of her body. (TX, p. 10-11)

Petitioner testified that she was eventually able to get up off the floor herself and immediately noticed pain in the lower back that traveled down her legs. Also, Petitioner testified with reference to difficulties with the right arm, however, the parties have stipulated that this 19(b) hearing only relates to prospective medical for the back. (TX, p. 11-12)

Petitioner testified that she reported the accident to her supervisor, Bradley, who happened to be right outside the hotel room that she had been cleaning.

Petitioner testified that Bradley sent her for medical care to Glenbrook Hospital and arranged for transportation to the hospital in the Sheraton shuttle bus. (TX, p. 12-13)

Petitioner stated that she was seen in the emergency room and gave a history of being a housekeeper who slipped and fell at work and tried to break her fall with an outstretched arm. (TX, p. 13) The Petitioner testified that she complained of her right shoulder and right arm and advised the emergency room staff that she landed hard on the right side of her body and complained of right hip and lower back pain. (TX, p. 14)

At the emergency room, Petitioner testified that they took a CT scan of her head and x-rays of her right arm. Petitioner testified that she was discharged with instructions to follow up with a doctor. (TX, p. 14)

Petitioner testified that she followed up with La Clinica on September 18, 2019. Petitioner advised the provider about her accident at work, and they performed a physical examination and recommended five to six types of physical therapy along with light duty.

Thereafter, La Clinica recommended an MRI of the right shoulder and an MRI of the lower back. (TX, p. 15)

Petitioner testified that the lower back MRI was performed on October 24, 2019, at American Diagnostic MRI. (TX, p. 16)

It was Petitioner's understanding that the MRI of the lower back was positive for a lower back injury and because of this finding, La Clinica referred Petitioner to Dr. Kevin Koutsky.

Arbitrator notes that Petitioner had right shoulder surgery on February 14, 2020.

In regard to Petitioner's lower back, she had a visit with Dr. Koutsky on May 20, 2021. During this visit, Dr. Koutsky noted that Petitioner was still having lower back that radiated down into her legs. Petitioner testified that with reference to the lower back, she received medication, physical therapy, and injections, however, none of those treatments cured her lower back pain. (TX, p. 16-17)

Dr. Koutsky felt that conservative medical treatments had failed to cure Petitioner's lower back and surgery was recommended. (TX, p. 18-19)

Petitioner testified that Dr. Koutsky referred Petitioner for a second opinion with Dr. Chintan Sampat at Parkview Orthopaedics. Petitioner testified that she saw Dr. Sampat on February 17, 2020, and complained that her right foot was malfunctioning due to lower back pain and pain that was travelling down the legs causing her to trip. Petitioner testified that she never had such prior problems with the right foot and tripping. (TX, p. 19-20)

Petitioner testified that she wants to have the low back surgery being recommended to her, specifically, a lumbar decompression and fusion at L4-L5. Petitioner testified that she cannot work, cannot walk and gets tired and cannot stand for a long period of time.

Review of Medical Records

Petitioner's Exhibit No. 1 (Pg. 1). contains the records of NorthShore Glenbrook Hospital for date of service of September 15, 2019.

The records indicate a history of present illness involving a 51-year-old female who works as a housekeeper and slipped and fell today. She fell backward and tried to break her fall with her outstretched hands. She complained of right shoulder and upper arm pain from the fall. She landed hard on her right side and complained of right hip and low back pain. (Pg. 2-3). The records further indicate that a CT scan of the head had a normal result and x-rays of the right upper extremity were negative for fracture. (Pg. 4). Multiple diagnoses were considered for this patient which include, but are not limited to, fracture, dislocation, contusion, occult fracture, sprain, muscle strain, lumbago/sciatica, disk herniation, radiculopathy, bony disease or fracture, and ligamentous strain or tear. The Petitioner was discharged with over-the-counter medications for pain and a recommendation to follow up with a private physician at first availability and to return to the emergency room for any worsening symptoms. (P. Ex No. 1, pg 5)

Petitioner's Exhibit No. 2 contains the records of La Clinica wherein Petitioner was first seen on September 18, 2019.

The initial diagnosis of September 18, 2019, states that it is related to the date of accident of September 15, 2019. That diagnosis includes rotator cuff injury to the right shoulder along with strain of muscle, fascia, and tendons of the low back. X-rays were taken of the lumbar spine. Imaging revealed biomechanical changes noted with anterior positioning of L4 onto L5 and diminished disc space of L5 onto S1. Physical therapy was recommended to both the right upper extremity and the lower back.

Petitioner's Exhibit No. 3 contains the records of American Diagnostic MRI.

Kevin Koutsky, M.D. referred Petitioner for this lumbar spine MRI without contrast which was performed on October 24, 2019. The MRI revealed multi-level spondylosis, disk bulge with superimposed spondylolisthesis at L4-L5 causing moderate central canal and neural foraminal stenosis along with disk bulges at L3-4 and L5-S1, causing a varying degree of neural foraminal stenosis.

Petitioner's Exhibit No. 6, the records of Parkview Orthopaedic Group, Chintan Sampat, M.D., contain a report from an EMG performed on January 4, 2020, with reference to Petitioner's complaints of low back pain and right leg pain. The conclusion of the EMG was that there is mild electrical evidence of an early right lumbar radiculopathy.

Petitioner's Exhibit No. 5 contains the records of Illinois Orthopedic Network.

This is the facility to which Dr. Koutsky sent Petitioner for pain management and injection treatment for the lower back.

On January 16, 2020, Petitioner was referred for an initial consultation with Krishna Chunduri, M.D., at Illinois Orthopedic Network. The history indicates that the patient is a 51-year-old female presenting with clinical complaints of pain in her lower back radiating down her right leg. She stated that the symptoms started after a work injury on September 15, 2019, when, as a housekeeper, she slipped and fell on a wet floor, sustaining a full thickness rotator cuff tear and injuring her lower back with pain radiating down the right leg. Initial treatment recommendations included physical therapy and medications. However, as her symptoms did not resolve and the Petitioner continued to have ongoing lower back and right leg pain along with numbness and tingling, right L4 and L5 transforaminal epidural injections were recommended. The assessment noted that the Petitioner has ongoing pain and paresthesia likely due to moderate levels of nerve compression at L4-L5 and had not had improvement with conservative management.

A right L4-L5 transforaminal epidural steroid injection under fluoroscopic guidance was performed on January 30, 2020.

Despite an, injection performed on January 30, 2020, Petitioner returned to Dr. Chunduri on September 17, 2020 and stated that her pain was a 7 out of 10 in her lower back with pain, numbness, tingling and weakness radiating down her right lower extremity, just as it was prior to the injection. Dr. Chunduri believed as the initial injection gave good pain relief for 2-3 months, he was recommending a 2nd right L4 and L5 transforaminal epidural injection. This repeat injection was performed on October 8, 2020.

Petitioner's Exhibit No. 7 contains the note of Chintan Sampat, M.D. who saw Petitioner on December 17, 2021.

In which Dr. Sampat recommended an updated MRI of the lumbar spine as Petitioner appeared to have weakness and persistent symptoms of L5 radiculopathy after work related injury. Dr. Sampat opined that at this point, Petitioner has had symptoms for over 2 years and that lumbar decompression and fusion at L4-L5 was the standard of care and was supported by the evidence. Dr. Sampat notes that Petitioner has already had physical therapy and injections and continued to be symptomatic. He notes a history of Grade 2 L4-L5 degenerative spondylolisthesis with 7 mm of dynamic motion with flexion and extension maneuvers. Dr.

Sampat opines that the need for surgery is related to her work injury as she was asymptomatic before the work injury and became symptomatic afterwards. Dr. Sampat notes that all of his opinions are to a reasonable degree of orthopedic and medical certainty.

Petitioner had a repeat MRI of the lower back, and those records are contained in Petitioner's Exhibit No. 7, the records of PMI Diagnostic Imaging for testing on January 6, 2022.

The MRI report reveals that at L4-L5 there is disk bulging with moderate hypertrophic facet arthropathy with mild to moderate bilateral foraminal narrowing.

At L5-S1, there was severe facet arthropathy with a Grade I spondylolisthesis, disk bulging and thickening of the ligamenta flava. There is severe central canal narrowing with moderately severe bilateral foraminal narrowing.

Petitioner's Exhibit No. 2, the records of La Clinica, include the records of Kevin Koutsky, M.D. from 10/17/19 to 5/20/21.

On October 15, 2020, Dr. Koutsky notes that Petitioner is doing well regarding her shoulder seven months after surgery.

However, Petitioner's ongoing complaints from her spondylolisthesis and stenosis continue, and Dr. Koutsky notes that Petitioner has failed not only physical therapy but also three lumbar injections. Dr. Koutsky recommends not only decompression but also stabilization with instrumentation due to her spondylolisthesis. Dr. Koutsky noted that Petitioner did have significant improvement with the injections. Unfortunately, the improvement was only short term. Her symptoms continued to be disabling for her with regard to pain in the back radiating to the right leg.

Petitioner returns to Dr. Koutsky on November 12, 2020, and notes that Petitioner has numbness in the right foot when compared to the left foot. He notes that Petitioner does have spondylolisthesis with stenosis, and he awaits authorization for not only decompression but also stabilization.

Dr. Koutsky's next note is from January 7, 2021, wherein his surgical recommendation continued.

Petitioner next saw Dr. Koutsky on February 18, 2021. He notes that Petitioner's lower back pain continues to be disabling and interferes with her function. He Continued his recommendation of surgery.

Petitioner saw Dr. Koutsky on April 8, 2021. He noted that he reviewed the independent medical examination offered by Dr. John Cherf on December 28, 2020. Dr. Koutsky notes that although he agrees with Dr. Cherf's opinion that Petitioner is at maximum medical improvement with reference to her shoulder, his opinion differs with reference to the lumbar spine. Specifically, Dr. Koutsky writes that regarding Petitioner's lumbar spine, he does agree with Dr. Cherf that Petitioner has degenerative pathology for lumbar spine to include spondylolisthesis. However, Dr. Koutsky opines that it is the aggravation of the spondylolisthesis which now has caused a radiculopathy. Dr. Koutsky opines that the symptoms of radiculopathy have now been refractory to conservative management, including medications, therapy, and injections. He notes that her symptoms continue to interfere with her function and states that for a patient with symptoms of radiculopathy refractory to conservative management, surgical decompression is a reasonable option and in Petitioner's case, it is medically necessary.

With her spondylolisthesis, Dr. Koutsky believes Petitioner would best benefit long term from not only decompression but also stabilization with instrumentation.

Dr. Koutsky indicates that he disagrees with Dr. Cherf's opinion that Petitioner does not require any additional active treatment for her lumbar spine. Dr. Koutsky opines that clearly, it was the work-related injury which aggravated her pre-existing spondylolisthesis and stenosis, causing a condition of lower back pain and lumbar radiculopathy. He opines that it is her symptoms of lumbar radiculopathy including pain, numbness and tingling in her leg which preclude her from working unrestricted. It is also the symptoms which continue to interfere with her function. Dr. Koutsky notes that Petitioner is currently not at maximum medical improvement and surgical consideration would be the standard of care with someone with ongoing radicular symptoms which have been refractory to conservative management including medication, therapy, and injections. He notes the Petitioner is currently unable to work unrestricted given her ongoing complaints in her back and leg.

The final documentation from Dr. Koutsky is from the visit of May 20, 2021 and Dr. Koutsky's prior opinions remain unchanged. He notes that Petitioner agrees to the surgical treatment plan.

Respondent introduces one exhibit into evidence, the IME report of John Cherf, M.D. dated December 28, 2020.

On page 6 of his report, Dr. Cherf opines that because of the accident of September 15, 2019, Petitioner sustained a lumbar sprain and strain as a direct result of the work-related injury.

However, Dr. Cherf opines that spondylosis, disk disease and L5-S1 spondylolisthesis are pre-existing conditions and are independent of the work-related injury in question. Dr. Cherf opines that the basis of his opinion is that Petitioner has degenerative pathology of her lumbar spine.

With reference to an additional course of treatment for the lumbar spine, Dr. Cherf believed Petitioner was 1 year and 3 ½ months post a work-related lumbar spine strain and sprain. He notes that she had an epidural steroid injection on January 30, 2020, and a second injection on October 8, 2020. Dr. Cherf opines that Petitioner had a prolonged treatment with multiple chiropractic visits and does not require any further treatment for the work-related injury. Dr. Cherf opines that the findings in Petitioner's lumbar MRI of October 24, 2019, are degenerative in nature.

Conclusions of Law

(F) Causal Connection

The Arbitrator finds that Petitioner testified credibly that she immediately noticed pain in the lower back that traveled down both legs after the fall and at the scene of the accident.

Respondent arranged for medical care at Glenbrook Hospital wherein Petitioner complained of pain in the right hip and lower back.

Upon discharge from the emergency room, Petitioner sought treatment at La Clinica wherein she complained of low back pain.

The EMG of January 4, 2020, corroborates electrical evidence of lumbar radiculopathy.

The MRI of the lower back performed on October 24, 2019, along with January 6, 2022, confirm lower back pathology.

Both Respondent's Section 12 examiner, John Cherf, M.D. and Petitioner's treating surgeon, Kevin Koutsky, M.D., agree that the accident of September 15, 2019, caused a lower back injury. The Arbitrator give great weight to this fact.

Dr. Cherf opines that Petitioner sustained a sprain/strain injury of the lower back and that Petitioner had pre-existing degenerative pathology of the lumbar spine.

The Arbitrator gives some weight to Dr. Cherf conclusions that although Petitioner may have had prior degenerative changes in her lower back, that condition was asymptomatic and silent until it was aggravated by the work-related fall of September 15, 2019.

However, Arbitrator gives more weight to Petitioner's treating physician, DR. Koutsky, who explained that the fall aggravated Petitioner's spondylolisthesis and has caused a radiculopathy. Dr. Koutsky noted that the symptoms of radiculopathy have been refractory to conservative management including medication, therapy, and injections. He further noted that Petitioner's symptoms continue to interfere with her function and opines that for a patient with symptoms of radiculopathy refractory to conservative management, surgical decompression is a reasonable option and in Petitioner's case, is medically necessary. Dr. Koutsky believes that Petitioner would best benefit from not only decompression but also stabilization with instrumentation.

The Arbitrator notes that it is well-settled Illinois law that a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor v. IC, 92 Ill.2d 30, 36, 65 Ill. Decision 440 NE 2d 861 (1982)*

The Arbitrator finds that the current condition of Petitioner's lower back is causally related to the accident of September 15, 2019.

(O) Prospective Medical

For the reasoning articulated above where Arbitrator found causal connection and having given greater weight to the opinion of DR. Koutsky, Arbitrator concludes that Respondent is responsible for treatment to Petitioners Lumbar spine which includes a lumbar decompression and fusion at L5-L5.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC033245
Case Name	Charles Hall v. Koch Food
Consolidated Cases	22WC033617;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0483
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Haris Huskic
Respondent Attorney	Michael Viverito

DATE FILED: 10/3/2024

/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

CHARLES HALL,
Petitioner,

vs. NO: 22 WC 33245

KOCH FOOD,
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, 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 April 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $36,500.00. 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.

October 3, 2024

O: 09/26/24
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	22WC033245
Case Name	Charles Hall v. Koch Food
Consolidated Cases	22WC033617;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Michael Viverito

DATE FILED: 4/5/2024

/s/Antara Nath Rivera, 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

Charles Hall
Employee/Petitioner
v.
Koch Food
Employer/Respondent

Case # **22** WC **33245**

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 Antara Nath Rivera Arbitrator of the Commission, in the city of **Chicago** on **February 15, 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 **12/20/22** 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 $**30,992.00** the average weekly wage was $**596.00.**

On the date of accident, Petitioner was **59** 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 is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner directly for outstanding medical services itemized in PX 5 ($19,273.00) pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $397.33 per week for 7 1/7 weeks, commencing December 21, 2022, through February 9, 2023, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner PPD benefits of $357.60 per week for 40 weeks, because the injuries sustained caused an 8% loss of use of a person, as provided in Section 8(d)2 of the Act.

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

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

Signature of Arbitrator

April 5, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Charles Hall, Petitioner,	)	
	)	Case No. 22WC33245
v.	)	*consolidated with*
	)	Case No. 22WC33617
Koch Food, Respondent.	)	

This matter proceeded to hearing on February 15, 2024, in Chicago, Illinois before Arbitrator Antara Nath Rivera on Petitioner's Request for Hearing under the Illinois Workers' Compensation Act "Act " The issues in dispute were accident, causal connection, medical expenses, temporary total disability benefits, and the nature and extent of Petitioner's injuries. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Job Duties

Charles Hall ("Petitioner") testified that he began his employment at Koch Food ("Respondent") on December 20, 2022, having been hired the day before, December 19, 2022. (Transcript "T." 13-14) Petitioner testified that he was 59 years of age on December 20, 2022, and 60 years of age at the hearing. (T. 12) Petitioner testified that the highest form of education he completed was at the high school level. (T. 13) The parties stipulated that Petitioner's salary was $30,992.00 and that his average weekly wage was $596.00. (AX 1)

Petitioner testified that he was not provided a job title and was "not exactly" informed of his job duties. (T. 14) Petitioner testified that the machines he worked on were large and intimidating. (T. 15) Petitioner testified that someone showed him how to use the machine asked him if he had any experience working the machine. (T. 16) Petitioner testified that he replied "no." *Id*. Petitioner testified that the gentleman explained that Petitioner needed to "push the button, hit the switch, and the machine will do the rest." *Id*. Petitioner testified that he was not told to hit the switch at a particular time. *Id.* Petitioner testified that he later found out that if he hit the switch simultaneously, the machine would "spit the tote out." *Id*.

Petitioner testified that his job was to load containers full of chicken into a machine, which were dumped into larger containers. (T. 15) Petitioner testified that he physically lifted the containers full of chicken which weighed approximately 15-20 pounds. *Id*.

Accident

Petitioner testified that on December 20, 2022, the date of the accident, he was told to report to an area of the room where the machine he was assigned was located. (T. 16) Petitioner testified that he hit the switch, while the machine was in operation, and a tote ejected from the machine and hit him in the left shoulder. *Id*.

Petitioner testified that after the tote hit him, he notified the person who was in charge of that area and may have seen the accident. (T. 17, 20) Petitioner testified that he was told to take a break. *Id*. Petitioner testified that he hung up his coat and helmet in the room and left to take his break. (T. 21) Petitioner testified that he finished his shift that day, went home, and realized that he was "in a bit of pain." *Id.*

Petitioner testified that he may have reported the injury to Ivan Gutierrez on December 22, 2022. (T. 17-22) Petitioner testified that when he called to advise attendance about the accident, on December 22, he reported the accident because he was going to the hospital. (T. 22)

Petitioner testified that he filled out an incident report. (T. 37-41; Respondent's Exhibit "RX" 3) Petitioner testified that he initially indicated that the time of the accident was "approximately" 9:30 a.m. to 10:00 a.m. but later changed it to 6:30 a.m. to 8:30 a.m. because he did not know what time the accident occurred. *Id*.

Petitioner testified that he needed to review the video of the alleged injury to identify it and state when it occurred. (T. 51) At the hearing, Petitioner, counselors, and Arbitrator reviewed the video. Petitioner testified that the video allegedly capturing the accident was altered, something he determined by viewing all videos provided to him in chronological order. (T. 43)

Petitioner testified that the injury occurred between Video 2 and Video 3 (T. 52) Therefore, Petitioner was shown the end of "Video 2" (RX 1) covering 7:57:29 a.m. through 7:59:59. (T. 49) He identified himself as the individual in the red/brown helmet and coat (T. 46) Petitioner testified that the video showed him on break after the accident occurred. (T. 66-67) Petitioner was unable to identify an injury following his review of Video 2 on the witness stand. (T. 50)[1]

[1] It should be noted that the contents of Video 3 were not shown at the hearing because an issue subsequently arose with respect to the labeling and identification of the videos central to this case following transmission from Respondent's attorney to Petitioner's attorney. (T. 65)

Upon viewing footage from "Charles Hall 1" from 9:42 a.m. through 9:48 a.m. into "Charles Hall 2" Petitioner testified that he did not see an injury occurring on that film, despite the fact that he was performing the normal job duties. (T. 54-62; RX 1) Petitioner testified that he did not see anything to suggest that the video was altered. (T. 60-61)

Petitioner testified that, prior to this accident, he never had prior treatment or issues with his left shoulder and neck. (T. 23-24) Petitioner testified that he was always able to work full duty. *Id*.

Summary of Medical Treatment

On December 22, 2022, Petitioner presented to West Suburban Medical Center's Emergency Department complaining of left shoulder and neck pain stemming from his work accident two days prior. (PX 2 at 14) Petitioner reported that the pain was sharp and radiated from the neck to the shoulder and was worse with any movement. *Id*. The records indicated that Petitioner informed Dr. Randall Hayes, M.D., that two days prior, on December 20, 2022, a box was ejected from a machine at work, striking his left shoulder. *Id*. The records noted that he experienced left shoulder pain radiating toward his neck since then. *Id*. At that visit, Petitioner rated his pain as 7 out of 10 on a 10-point pain scale and noted that most of the pain stemmed from the focal to the anterior aspect of the left shoulder where it was struck by the box directly. During the visit, Dr. Hayes had Petitioner undergo x-rays of the left shoulder, left humerus, and cervical spine. (PX 2 at 35-37)

Dr. Hayes diagnosed Petitioner with a contusion of the left shoulder and neck pain. (PX 2 at 15) Due to Petitioner's pain complaints, Dr. Hayes prescribed Acetaminophen 500mg and Cyclobenzaprine 10mg for pain relief. In addition, Dr. Hayes instructed Petitioner to follow up with an orthopedic specialist for further care and ordered him to remain off work through December 25, 2022. (PX 2 at 23)

On December 27, 2022, Petitioner presented to Dr. Chad Allen Lee, M.D., at The Pain Center of Illinois, via Zoom, with complaints of left shoulder, neck, upper back, and lower back pain since his December 20, 2022, work accident. (PX 1 at 5) Petitioner reported the accident and rated his pain as 8-9 out of 10. *Id*. Dr. Lee diagnosed Petitioner with pain in the left shoulder, low back pain, cervicalgia, and pain in the thoracic spine. *Id*. Dr. Lee opined that Petitioner's left shoulder, neck, mid back, and low back pain were causally related to the December 20, 2022, accident. Dr. Lee prescribed Mobic 15mg and Cyclobenzaprine 7.5mg to help with muscle spasms; ordered a 4-week course of physical therapy; and ordered Petitioner to remain off work. (PX 1 at 5-6) Dr. Lee also referred Petitioner to Dr. Kevin Tu, M.D., an orthopedic specialist. (T. 27; PX 1)

On December 29, 2022, Petitioner presented to Dr. Kevin Tu, M.D., at G&T Orthopedics and Sports Medicine, with complaints of left shoulder pain. (PX 3 at 46) Petitioner reported the work accident and also stated that since the work accident, Petitioner had developed neck and shoulder pain. *Id*. With respect to the left shoulder, Petitioner noted having difficulty with overhead and reaching activities and

denied any prior left shoulder symptoms. Dr. Tu diagnosed Petitioner with left shoulder pain and weakness. *Id*. Dr. Tu ordered an MRI of the left shoulder and released Petitioner back to work with restrictions of no lifting greater than 10 pounds and no overhead activity with the left arm. After the consultation with Dr. Tu, Petitioner presented to Premier Physical Therapy and started his physical therapy sessions. (PX 4)

On January 3, 2023, Petitioner underwent the left shoulder MRI, prescribed by Dr. Tu, at Niles Open MRI. (PX 3 at 47) The MRI of the shoulder revealed a left shoulder partial-thickness rotator cuff tear, left shoulder contusion, and AC joint arthropathy. *Id*.

On January 10, 2023, Petitioner followed up with Dr. Lee. (PX 1 at 7) Petitioner reported that he had completed 4 sessions of physical therapy with minimal improvement and was still experiencing numbness and tingling in the left upper extremity. Dr. Lee reviewed Petitioner's left shoulder MRI and diagnosed him with low back pain, pain in the left shoulder, cervicalgia, and pain in the thoracic spine. (PX 1 at 8) Due to Petitioner's ongoing low back pain, Dr. Lee prescribed Acetaminophen 300mg and Gabapentin 300mg. With respect to the cervicalgia, Dr. Lee ordered an MRI of Petitioner's cervical spine. Dr. Lee released Petitioner back to work with the same restrictions as Dr. Tu did and provided another order for physical therapy. *Id*.

On January 12, 2023, Petitioner followed up with Dr. Tu. (PX 3 at 47) Dr. Tu diagnosed Petitioner with a left shoulder contusion and left shoulder partial-thickness rotator cuff tear, as indicated per the January 3, 2023, MRI. *Id*. Dr. Tu prescribed a course of physical therapy, released Petitioner back to work with restrictions of no lifting greater than 10 pounds, and no overhead activity with the left arm. *Id.*

On February 10, 2023, Petitioner was discharged from physical therapy.

Testimony of Omar Leon

Mr. Leon testified that he is the HR Manager at Respondent and that he has been there for over six years. (T. 70-73) Mr. Leon testified that in his role as HR Manager, he hired Petitioner (RX 4, T. 74) Mr. Leon testified that he is responsible for the video surveillance system for Respondent, which includes over 150 cameras around the facility that record whenever motion is detected. Mr. Leon also testified to having no IT experience or certificates (T. 70-76) Mr. Leon testified that the cameras are checked weekly to ensure they are functioning properly. *Id.* Mr. Leon testified that the video is stored in a room locked at all times, with only the IT team having access. *Id*. Mr. Leon testified that the video, which was recording on December 20, 2022, was in the splitter room, where the accident took place. *Id*. Mr. Leon testified that the splitter room had a camera facing the doorway, thus, anyone entering or leaving the room would be recorded. *Id.*

Mr. Leon testified that he was asked by Mr. Gutierrez to download video in association with Petitioner's workers' compensation claim. *Id*. Mr. Leon testified that, as HR Manager, he was familiar with the process to download video, that he had done so before and is the only one allowed to download the video footage, and that he followed the same process this time as he had previously done. *Id*. Mr. Leon testified that the reason he downloads surveillance footage, rather than the IT department, is because of the nature of the request for the video, making it an HR issue and responsibility to address. *Id.*

Mr. Leon testified that the process of being provided with an unopened flash drive that is then used to download the video footage directly from the computer on which it is stored. *Id.* He testified that once completely downloaded, he would walk the flash drive to Mr. Gutierrez. *Id.* Mr. Leon testified that at no point does the flash drive go to anybody other than Mr. Gutierrez after it is downloaded.

Mr. Leon testified that he did not download the video surveillance for the entire day of December 20, 2022, because he was not requested to do so. (T. 79) When asked what periods of time he was requested to download, Mr. Leon testified that it changed three different times because the time of the accident kept changing. *Id*. When shown video footage, Mr. Leon could not provide testimony on the video as Petitioner failed to establish the period of time covered in the video. (T. 81)

Upon being shown a clip from "Video 2" covering 8:06 a.m.. Mr. Leon testified that he observed Petitioner working while another individual proceeded to remove his helmet and coat and hang it up before walking out of the view of the camera. (T. 82-83; RX 1) Mr. Leon testified that he was unaware of any ability to alter the video footage that he downloaded. (T. 73) Mr. Leon testified that this was the first instance in which he received a claim that the video footage had been altered. *Id.*

Testimony of Ivan Gutierrez

Mr. Gutierrez testified as a current employee of the Respondent; he worked as the safety manager for the last two years. (T. 87-88) Mr. Gutierrez testified that he was involved in the workers' compensation claim process. (T. 88) Mr. Gutierrez testified that he reviewed the videos provided to him by Mr. Leon, that there were multiple videos, and that the videos accurately depict Petitioner working on December 20, 2022. (T. 88-89) Mr. Gutierrez testified that Petitioner's job duty that morning was to wait for a container to come down a conveyor, pick up the container, and walk it over to a pallet to palletize the containers in stacks. (T. 89-90) Mr. Gutierrez testified that the video accurately depicts Petitioner performing this job. *Id*.

Mr. Gutierrez testified that he was provided three USB drives by Mr. Leon on three separate occasions. (T. 91) Mr. Gutierrez testified that he could not accurately testify to the contents of the video because he was not certain what time the video purportedly covered. (T. 93)

Respondent's Section 12 Examiner

On March 21, 2023, Petitioner presented to Section 12 doctor, Dr. Hythem Shadid, M.D., for an independent medical examination ("IME"). (RX 6) Dr. Shadid noted that Petitioner had suffered a shoulder contusion, which had subsequently resolved. Dr. Shadid opined that no causal relationship existed between Petitioner's complaints and the alleged injury, as blunt trauma sustained to the anterosuperior shoulder from an empty plastic tote is not a plausible cause for either rotator cuff tendinopathy or aggravation of a rotator cuff condition. *Id.* He indicated that the fact that Petitioner did not feel pain and continued working speaks against an acute structural rotator cuff injury. *Id*. Dr. Shadid opined that the MRI findings were chronic in nature. *Id.*

Respondent obtained an addendum report from Dr. Shadid after requesting that Dr. Shadid review video footage from 8:30 a.m. to 11:29.59 a.m. (RX 7) Dr. Shadid reviewed the footage and commented that he did not see any specific incident resembling the job described by Petitioner at his IME. *Id*.

Petitioner's Current Condition

At the arbitration hearing, Petitioner testified that he returned to work for Respondent; however, he was no longer working for Respondent as of the hearing date. Petitioner currently works for Living Word Ministry as a chef but has difficulty performing his job duties, as he has to lift tubs of food, which is a constant struggle for him. (T. 34-35) Petitioner testified that he still has issues and deals with pain as a result of the work accident. Prior to the injury, Petitioner was able to lift and curl a 40-pound dumbbell; however, that is no longer possible due to the left shoulder injury. (T. 31) Additionally, Petitioner deals with ongoing effects of his injury at home while attempting to bathe himself, as he has trouble reaching behind to wash his back. (T. 32)

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 the Petitioner credible and that he was calm, well-mannered, and composed. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find 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:

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.

The Arbitrator finds that Petitioner was injured while performing his assigned duties for Respondent. The Arbitrator notes that Petitioner testified that he was loading containers of chicken into a machine as part of his job responsibilities. (T. 14-17) The Arbitrator notes that this activity was directly related to his employment and was within the scope of his assigned duties. The injury occurred during his shift while he was engaged in these activities, fulfilling the time and place requirements for an injury to be considered "in the course of employment. "

Regarding the "arising out of" employment element, the Arbitrator notes that the injury had its origin in a risk connected with Petitioner's employment. The task of loading containers of chicken into a machine exposed Petitioner to the risk of injury from the operation of the machinery and the handling of the containers. The Arbitrator notes that the injury, caused by a container ejected from the machine, was directly connected to this risk, and is therefore considered to have arisen out of his employment.

The Arbitrator considered the video surveillance presented at trial but did not find it persuasive enough to defeat Petitioner's claim. While the HR Manager, Mr. Leon, testified that he was unaware of any ability to alter the video footage, Petitioner claimed that the video he reviewed was different from what was presented at the hearing. Further, Mr. Leon testified that the requested video footage changed multiple times due to uncertainties about the timing of the incident. The Arbitrator notes that this lack of clarity raises doubts about whether the video footage accurately captures the events in question.

Based on the evidence presented, the Arbitrator finds that the accident arose out of and in the course of Petitioner's employment by Respondent on December 20, 2022.

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

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation 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. 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) "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)

The Arbitrator finds that Petitioner's conditions of ill-being, with respect to his left shoulder and neck, are causally related to the December 20, 2022, accident. The Arbitrator notes that, the chain of events presented by Petitioner's testimony establishes a previous condition of good health, an accident at work where he was struck in the left shoulder by a container ejected from a machine, and subsequent injury resulting in disability. The medical evidence presented showed a partial thickness tear of the supraspinatus tendon and AC joint arthropathy, supports the conclusion that the work accident played a role in aggravating Petitioner's preexisting condition and contributing to his current condition of ill-being.

The Arbitrator takes into consideration the opinions of Dr. Shadid, but does not find his opinions to be persuasive. The Arbitrator relies on the opinions of Petitioner's treating physician Dr. Lee who, after examining Petitioner, opined that the left shoulder, neck, mid-back, and low back pain were causally related to the work accident on December 20, 2022. The Arbitrator also considered Dr. Tu's diagnosis of Petitioner's left shoulder contusion and left shoulder partial-thickness rotator cuff tear, which he attributed to the work accident.

Thus, the Arbitrator finds that Petitioner's current condition of ill-being is casually related to the injury.

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 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)

Relying on Petitioner's testimony, the medical records, and the medical opinions of Petitioner's treating physicians over those of Dr. Shadid, 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 $19,273.00 in outstanding medical services (PX 5), pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHAT TEMPORARY BENEFITS ARE IN DISPUTE, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent disputes liability for TTD based on causal connection. Having ruled in favor of Petitioner for causation and relying on Petitioner's testimony, the medical records, and the medical opinions of Petitioner's treating physicians, the Arbitrator finds that Petitioner is entitled to TTD.

The Arbitrator finds Respondent liable for 7 1/7 weeks of temporary total disability benefits commencing December 21, 2022, through February 9, 2023. The parties stipulated Petitioner's average weekly wage was $596.00. Therefore, the Arbitrator finds Petitioner is entitled to TTD benefits of $397.33 per week for a period of 7 weeks and one day.

WITH RESPECT TO ISSUE (L), WHAT IS 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)

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 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. 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 Petitioner had only worked one day for Respondent at the time of the accident but that he is currently working as a chef for Living World Ministry. As a result, the Arbitrator therefore gives *lesser* weight to this factor.

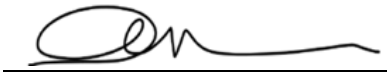
With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 59 years old at the time of the accident with several working years before him with the residual effects of his injury. As a result, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes while there is no direct evidence of diminished earnings. As a result, 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 Petitioner underwent physical therapy, pain medications, and activity modifications without much relief. The MRI of Petitioner's left shoulder revealed a partial-thickness rotator cuff tear and AC joint arthropathy. In addition, Petitioner was diagnosed with low back pain, cervicalgia, and pain in his thoracic spine as a result of the work accident. These ongoing and continued complaints limit his activities of daily life and limit his ability to lift weights, among other activities. As a result, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner PPD benefits of $357.60 per week for 40 weeks, because the injuries sustained caused an 8% loss of use of a person, as provided in Section 8(d)2 of the Act.

It is so ordered:



Arbitrator Antara Nath Rivera

April 5, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC033617
Case Name	Charles Hall v. Koch Foods Inc.
Consolidated Cases	22WC033245;
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0484
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Haris Huskic
Respondent Attorney	Michael Viverito

DATE FILED: 10/3/2024

/s/Carolyn Doherty, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHARLES HALL,
Petitioner,

vs. NO: 22 WC 33617

KOCH FOODS INC.,
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, 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 April 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $36,500.00. 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.

October 3, 2024

O: 09/26/24
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	22WC033617
Case Name	Charles Hall v. Koch Foods Inc.
Consolidated Cases	22WC033245;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Haris Huskic
Respondent Attorney	Michael Viverito

DATE FILED: 4/5/2024

/s/Antara Nath Rivera, 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

Charles Hall
Employee/Petitioner
v.
Koch Food
Employer/Respondent

Case # 22WC0033617

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 Antara Nath Rivera Arbitrator of the Commission, in the city of **Chicago** on **February 15, 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 **12/20/22** 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 $**30,992.00** the average weekly wage was $**596.00.**

On the date of accident, Petitioner was **59** 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 is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

See Arbitration Decision for Case Number 22WC33245 incorporated by reference 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.

Signature of Arbitrator

April 5, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Charles Hall,	)	
Petitioner,	)	
	)	Case No. 22WC33245
v.	)	*consolidated with*
	)	Case No. 22WC33617
Koch Food,	)	
Respondent.	)	

This matter proceeded to hearing on February 15, 2024, in Chicago, Illinois before Arbitrator Antara Nath Rivera on Petitioner's Request for Hearing under the Illinois Workers' Compensation Act "Act " The issues in dispute were accident, causal connection, medical expenses, temporary total disability benefits, and the nature and extent of Petitioner's injuries. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Job Duties

Charles Hall ("Petitioner") testified that he began his employment at Koch Food ("Respondent") on December 20, 2022, having been hired the day before, December 19, 2022. (Transcript "T." 13-14) Petitioner testified that he was 59 years of age on December 20, 2022, and 60 years of age at the hearing. (T. 12) Petitioner testified that the highest form of education he completed was at the high school level. (T. 13) The parties stipulated that Petitioner's salary was $30,992.00 and that his average weekly wage was $596.00. (AX 1)

Petitioner testified that he was not provided a job title and was "not exactly" informed of his job duties. (T. 14) Petitioner testified that the machines he worked on were large and intimidating. (T. 15) Petitioner testified that someone showed him how to use the machine asked him if he had any experience working the machine. (T. 16) Petitioner testified that he replied "no." *Id*. Petitioner testified that the gentleman explained that Petitioner needed to "push the button, hit the switch, and the machine will do the rest." *Id*. Petitioner testified that he was not told to hit the switch at a particular time. *Id.* Petitioner testified that he later found out that if he hit the switch simultaneously, the machine would "spit the tote out." *Id*.

Petitioner testified that his job was to load containers full of chicken into a machine, which were dumped into larger containers. (T. 15) Petitioner testified that he physically lifted the containers full of chicken which weighed approximately 15-20 pounds. *Id*.

Accident

Petitioner testified that on December 20, 2022, the date of the accident, he was told to report to an area of the room where the machine he was assigned was located. (T. 16) Petitioner testified that he hit the switch, while the machine was in operation, and a tote ejected from the machine and hit him in the left shoulder. *Id*.

Petitioner testified that after the tote hit him, he notified the person who was in charge of that area and may have seen the accident. (T. 17, 20) Petitioner testified that he was told to take a break. *Id*. Petitioner testified that he hung up his coat and helmet in the room and left to take his break. (T. 21) Petitioner testified that he finished his shift that day, went home, and realized that he was "in a bit of pain." *Id.*

Petitioner testified that he may have reported the injury to Ivan Gutierrez on December 22, 2022. (T. 17-22) Petitioner testified that when he called to advise attendance about the accident, on December 22, he reported the accident because he was going to the hospital. (T. 22)

Petitioner testified that he filled out an incident report. (T. 37-41; Respondent's Exhibit "RX" 3) Petitioner testified that he initially indicated that the time of the accident was "approximately" 9:30 a.m. to 10:00 a.m. but later changed it to 6:30 a.m. to 8:30 a.m. because he did not know what time the accident occurred. *Id*.

Petitioner testified that he needed to review the video of the alleged injury to identify it and state when it occurred. (T. 51) At the hearing, Petitioner, counselors, and Arbitrator reviewed the video. Petitioner testified that the video allegedly capturing the accident was altered, something he determined by viewing all videos provided to him in chronological order. (T. 43)

Petitioner testified that the injury occurred between Video 2 and Video 3 (T. 52) Therefore, Petitioner was shown the end of "Video 2" (RX 1) covering 7:57:29 a.m. through 7:59:59. (T. 49) He identified himself as the individual in the red/brown helmet and coat (T. 46) Petitioner testified that the video showed him on break after the accident occurred. (T. 66-67) Petitioner was unable to identify an injury following his review of Video 2 on the witness stand. (T. 50)[1]

[1] It should be noted that the contents of Video 3 were not shown at the hearing because an issue subsequently arose with respect to the labeling and identification of the videos central to this case following transmission from Respondent's attorney to Petitioner's attorney. (T. 65)

Upon viewing footage from "Charles Hall 1" from 9:42 a.m. through 9:48 a.m. into "Charles Hall 2" Petitioner testified that he did not see an injury occurring on that film, despite the fact that he was performing the normal job duties. (T. 54-62; RX 1) Petitioner testified that he did not see anything to suggest that the video was altered. (T. 60-61)

Petitioner testified that, prior to this accident, he never had prior treatment or issues with his left shoulder and neck. (T. 23-24) Petitioner testified that he was always able to work full duty. *Id*.

Summary of Medical Treatment

On December 22, 2022, Petitioner presented to West Suburban Medical Center's Emergency Department complaining of left shoulder and neck pain stemming from his work accident two days prior. (PX 2 at 14) Petitioner reported that the pain was sharp and radiated from the neck to the shoulder and was worse with any movement. *Id*. The records indicated that Petitioner informed Dr. Randall Hayes, M.D., that two days prior, on December 20, 2022, a box was ejected from a machine at work, striking his left shoulder. *Id*. The records noted that he experienced left shoulder pain radiating toward his neck since then. *Id*. At that visit, Petitioner rated his pain as 7 out of 10 on a 10-point pain scale and noted that most of the pain stemmed from the focal to the anterior aspect of the left shoulder where it was struck by the box directly. During the visit, Dr. Hayes had Petitioner undergo x-rays of the left shoulder, left humerus, and cervical spine. (PX 2 at 35-37)

Dr. Hayes diagnosed Petitioner with a contusion of the left shoulder and neck pain. (PX 2 at 15) Due to Petitioner's pain complaints, Dr. Hayes prescribed Acetaminophen 500mg and Cyclobenzaprine 10mg for pain relief. In addition, Dr. Hayes instructed Petitioner to follow up with an orthopedic specialist for further care and ordered him to remain off work through December 25, 2022. (PX 2 at 23)

On December 27, 2022, Petitioner presented to Dr. Chad Allen Lee, M.D., at The Pain Center of Illinois, via Zoom, with complaints of left shoulder, neck, upper back, and lower back pain since his December 20, 2022, work accident. (PX 1 at 5) Petitioner reported the accident and rated his pain as 8-9 out of 10. *Id*. Dr. Lee diagnosed Petitioner with pain in the left shoulder, low back pain, cervicalgia, and pain in the thoracic spine. *Id*. Dr. Lee opined that Petitioner's left shoulder, neck, mid back, and low back pain were causally related to the December 20, 2022, accident. Dr. Lee prescribed Mobic 15mg and Cyclobenzaprine 7.5mg to help with muscle spasms; ordered a 4-week course of physical therapy; and ordered Petitioner to remain off work. (PX 1 at 5-6) Dr. Lee also referred Petitioner to Dr. Kevin Tu, M.D., an orthopedic specialist. (T. 27; PX 1)

On December 29, 2022, Petitioner presented to Dr. Kevin Tu, M.D., at G&T Orthopedics and Sports Medicine, with complaints of left shoulder pain. (PX 3 at 46) Petitioner reported the work accident and also stated that since the work accident, Petitioner had developed neck and shoulder pain. *Id*. With respect to the left shoulder, Petitioner noted having difficulty with overhead and reaching activities and

denied any prior left shoulder symptoms. Dr. Tu diagnosed Petitioner with left shoulder pain and weakness. *Id*. Dr. Tu ordered an MRI of the left shoulder and released Petitioner back to work with restrictions of no lifting greater than 10 pounds and no overhead activity with the left arm. After the consultation with Dr. Tu, Petitioner presented to Premier Physical Therapy and started his physical therapy sessions. (PX 4)

On January 3, 2023, Petitioner underwent the left shoulder MRI, prescribed by Dr. Tu, at Niles Open MRI. (PX 3 at 47) The MRI of the shoulder revealed a left shoulder partial-thickness rotator cuff tear, left shoulder contusion, and AC joint arthropathy. *Id*.

On January 10, 2023, Petitioner followed up with Dr. Lee. (PX 1 at 7) Petitioner reported that he had completed 4 sessions of physical therapy with minimal improvement and was still experiencing numbness and tingling in the left upper extremity. Dr. Lee reviewed Petitioner's left shoulder MRI and diagnosed him with low back pain, pain in the left shoulder, cervicalgia, and pain in the thoracic spine. (PX 1 at 8) Due to Petitioner's ongoing low back pain, Dr. Lee prescribed Acetaminophen 300mg and Gabapentin 300mg. With respect to the cervicalgia, Dr. Lee ordered an MRI of Petitioner's cervical spine. Dr. Lee released Petitioner back to work with the same restrictions as Dr. Tu did and provided another order for physical therapy. *Id*.

On January 12, 2023, Petitioner followed up with Dr. Tu. (PX 3 at 47) Dr. Tu diagnosed Petitioner with a left shoulder contusion and left shoulder partial-thickness rotator cuff tear, as indicated per the January 3, 2023, MRI. *Id*. Dr. Tu prescribed a course of physical therapy, released Petitioner back to work with restrictions of no lifting greater than 10 pounds, and no overhead activity with the left arm. *Id.*

On February 10, 2023, Petitioner was discharged from physical therapy.

Testimony of Omar Leon

Mr. Leon testified that he is the HR Manager at Respondent and that he has been there for over six years. (T. 70-73) Mr. Leon testified that in his role as HR Manager, he hired Petitioner (RX 4, T. 74) Mr. Leon testified that he is responsible for the video surveillance system for Respondent, which includes over 150 cameras around the facility that record whenever motion is detected. Mr. Leon also testified to having no IT experience or certificates (T. 70-76) Mr. Leon testified that the cameras are checked weekly to ensure they are functioning properly. *Id.* Mr. Leon testified that the video is stored in a room locked at all times, with only the IT team having access. *Id*. Mr. Leon testified that the video, which was recording on December 20, 2022, was in the splitter room, where the accident took place. *Id*. Mr. Leon testified that the splitter room had a camera facing the doorway, thus, anyone entering or leaving the room would be recorded. *Id.*

Mr. Leon testified that he was asked by Mr. Gutierrez to download video in association with Petitioner's workers' compensation claim. *Id*. Mr. Leon testified that, as HR Manager, he was familiar with the process to download video, that he had done so before and is the only one allowed to download the video footage, and that he followed the same process this time as he had previously done. *Id*. Mr. Leon testified that the reason he downloads surveillance footage, rather than the IT department, is because of the nature of the request for the video, making it an HR issue and responsibility to address. *Id.*

Mr. Leon testified that the process of being provided with an unopened flash drive that is then used to download the video footage directly from the computer on which it is stored. *Id.* He testified that once completely downloaded, he would walk the flash drive to Mr. Gutierrez. *Id.* Mr. Leon testified that at no point does the flash drive go to anybody other than Mr. Gutierrez after it is downloaded.

Mr. Leon testified that he did not download the video surveillance for the entire day of December 20, 2022, because he was not requested to do so. (T. 79) When asked what periods of time he was requested to download, Mr. Leon testified that it changed three different times because the time of the accident kept changing. *Id*. When shown video footage, Mr. Leon could not provide testimony on the video as Petitioner failed to establish the period of time covered in the video. (T. 81)

Upon being shown a clip from "Video 2" covering 8:06 a.m.. Mr. Leon testified that he observed Petitioner working while another individual proceeded to remove his helmet and coat and hang it up before walking out of the view of the camera. (T. 82-83; RX 1) Mr. Leon testified that he was unaware of any ability to alter the video footage that he downloaded. (T. 73) Mr. Leon testified that this was the first instance in which he received a claim that the video footage had been altered. *Id.*

Testimony of Ivan Gutierrez

Mr. Gutierrez testified as a current employee of the Respondent; he worked as the safety manager for the last two years. (T. 87-88) Mr. Gutierrez testified that he was involved in the workers' compensation claim process. (T. 88) Mr. Gutierrez testified that he reviewed the videos provided to him by Mr. Leon, that there were multiple videos, and that the videos accurately depict Petitioner working on December 20, 2022. (T. 88-89) Mr. Gutierrez testified that Petitioner's job duty that morning was to wait for a container to come down a conveyor, pick up the container, and walk it over to a pallet to palletize the containers in stacks. (T. 89-90) Mr. Gutierrez testified that the video accurately depicts Petitioner performing this job. *Id*.

Mr. Gutierrez testified that he was provided three USB drives by Mr. Leon on three separate occasions. (T. 91) Mr. Gutierrez testified that he could not accurately testify to the contents of the video because he was not certain what time the video purportedly covered. (T. 93)

Respondent's Section 12 Examiner

On March 21, 2023, Petitioner presented to Section 12 doctor, Dr. Hythem Shadid, M.D., for an independent medical examination ("IME"). (RX 6) Dr. Shadid noted that Petitioner had suffered a shoulder contusion, which had subsequently resolved. Dr. Shadid opined that no causal relationship existed between Petitioner's complaints and the alleged injury, as blunt trauma sustained to the anterosuperior shoulder from an empty plastic tote is not a plausible cause for either rotator cuff tendinopathy or aggravation of a rotator cuff condition. *Id.* He indicated that the fact that Petitioner did not feel pain and continued working speaks against an acute structural rotator cuff injury. *Id*. Dr. Shadid opined that the MRI findings were chronic in nature. *Id.*

Respondent obtained an addendum report from Dr. Shadid after requesting that Dr. Shadid review video footage from 8:30 a.m. to 11:29.59 a.m. (RX 7) Dr. Shadid reviewed the footage and commented that he did not see any specific incident resembling the job described by Petitioner at his IME. *Id*.

Petitioner's Current Condition

At the arbitration hearing, Petitioner testified that he returned to work for Respondent; however, he was no longer working for Respondent as of the hearing date. Petitioner currently works for Living Word Ministry as a chef but has difficulty performing his job duties, as he has to lift tubs of food, which is a constant struggle for him. (T. 34-35) Petitioner testified that he still has issues and deals with pain as a result of the work accident. Prior to the injury, Petitioner was able to lift and curl a 40-pound dumbbell; however, that is no longer possible due to the left shoulder injury. (T. 31) Additionally, Petitioner deals with ongoing effects of his injury at home while attempting to bathe himself, as he has trouble reaching behind to wash his back. (T. 32)

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 the Petitioner credible and that he was calm, well-mannered, and composed. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find 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:

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.

The Arbitrator finds that Petitioner was injured while performing his assigned duties for Respondent. The Arbitrator notes that Petitioner testified that he was loading containers of chicken into a machine as part of his job responsibilities. (T. 14-17) The Arbitrator notes that this activity was directly related to his employment and was within the scope of his assigned duties. The injury occurred during his shift while he was engaged in these activities, fulfilling the time and place requirements for an injury to be considered "in the course of employment. "

Regarding the "arising out of" employment element, the Arbitrator notes that the injury had its origin in a risk connected with Petitioner's employment. The task of loading containers of chicken into a machine exposed Petitioner to the risk of injury from the operation of the machinery and the handling of the containers. The Arbitrator notes that the injury, caused by a container ejected from the machine, was directly connected to this risk, and is therefore considered to have arisen out of his employment.

The Arbitrator considered the video surveillance presented at trial but did not find it persuasive enough to defeat Petitioner's claim. While the HR Manager, Mr. Leon, testified that he was unaware of any ability to alter the video footage, Petitioner claimed that the video he reviewed was different from what was presented at the hearing. Further, Mr. Leon testified that the requested video footage changed multiple times due to uncertainties about the timing of the incident. The Arbitrator notes that this lack of clarity raises doubts about whether the video footage accurately captures the events in question.

Based on the evidence presented, the Arbitrator finds that the accident arose out of and in the course of Petitioner's employment by Respondent on December 20, 2022.

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

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). To obtain compensation under the Illinois Workers' Compensation 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. 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) "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)

The Arbitrator finds that Petitioner's conditions of ill-being, with respect to his left shoulder and neck, are causally related to the December 20, 2022, accident. The Arbitrator notes that, the chain of events presented by Petitioner's testimony establishes a previous condition of good health, an accident at work where he was struck in the left shoulder by a container ejected from a machine, and subsequent injury resulting in disability. The medical evidence presented showed a partial thickness tear of the supraspinatus tendon and AC joint arthropathy, supports the conclusion that the work accident played a role in aggravating Petitioner's preexisting condition and contributing to his current condition of ill-being.

The Arbitrator takes into consideration the opinions of Dr. Shadid, but does not find his opinions to be persuasive. The Arbitrator relies on the opinions of Petitioner's treating physician Dr. Lee who, after examining Petitioner, opined that the left shoulder, neck, mid-back, and low back pain were causally related to the work accident on December 20, 2022. The Arbitrator also considered Dr. Tu's diagnosis of Petitioner's left shoulder contusion and left shoulder partial-thickness rotator cuff tear, which he attributed to the work accident.

Thus, the Arbitrator finds that Petitioner's current condition of ill-being is casually related to the injury.

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 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)

Relying on Petitioner's testimony, the medical records, and the medical opinions of Petitioner's treating physicians over those of Dr. Shadid, 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 $19,273.00 in outstanding medical services (PX 5), pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (K), WHAT TEMPORARY BENEFITS ARE IN DISPUTE, THE ARBITRATOR FINDS AS FOLLOWS:

Respondent disputes liability for TTD based on causal connection. Having ruled in favor of Petitioner for causation and relying on Petitioner's testimony, the medical records, and the medical opinions of Petitioner's treating physicians, the Arbitrator finds that Petitioner is entitled to TTD.

The Arbitrator finds Respondent liable for 7 1/7 weeks of temporary total disability benefits commencing December 21, 2022, through February 9, 2023. The parties stipulated Petitioner's average weekly wage was $596.00. Therefore, the Arbitrator finds Petitioner is entitled to TTD benefits of $397.33 per week for a period of 7 weeks and one day.

WITH RESPECT TO ISSUE (L), WHAT IS 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)

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 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. 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 Petitioner had only worked one day for Respondent at the time of the accident but that he is currently working as a chef for Living World Ministry. As a result, the Arbitrator therefore gives *lesser* weight to this factor.

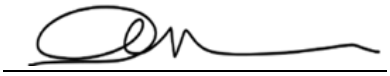
With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 59 years old at the time of the accident with several working years before him with the residual effects of his injury. As a result, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes while there is no direct evidence of diminished earnings. As a result, 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 Petitioner underwent physical therapy, pain medications, and activity modifications without much relief. The MRI of Petitioner's left shoulder revealed a partial-thickness rotator cuff tear and AC joint arthropathy. In addition, Petitioner was diagnosed with low back pain, cervicalgia, and pain in his thoracic spine as a result of the work accident. These ongoing and continued complaints limit his activities of daily life and limit his ability to lift weights, among other activities. As a result, the Arbitrator therefore gives *greater* weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner PPD benefits of $357.60 per week for 40 weeks, because the injuries sustained caused an 8% loss of use of a person, as provided in Section 8(d)2 of the Act.

It is so ordered:



Arbitrator Antara Nath Rivera

April 5, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC001749
Case Name	Vernice Terrell v. Pace Suburban
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0485
Number of Pages of Decision	20
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Michael Trybalski
Respondent Attorney	Gina Panepinto

DATE FILED: 10/3/2024

/s/ Christopher Harris, Commissioner

Signature

24IWCC0485

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VERNICE TERRELL,

Petitioner,

vs. NO: 15 WC 1749

PACE SUBURBAN,

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 the reasonableness of the medical charges, the calculation of temporary total disability benefits ("TTD"), and whether the total amount of the medical expenses awarded corresponds to the exhibits, 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 Respondent a credit of $15,000.00 resulting in a TTD obligation of $43,796.54 owed to Petitioner. Respondent's exhibit 3, however, demonstrates that Respondent paid TTD benefits to Petitioner totaling $18,433.28. Based upon Respondent's exhibit 3, the Commission modifies the Arbitrator's Decision and finds Respondent is entitled to a credit of $18,433.28 thereby reducing its TTD obligation owed to the Petitioner to $40,363.26. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 8, 2024 is modified as stated above and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $667.06 per week for a period of 88-1/7 weeks, January 21, 2020 through September 30, 2021, that being the period of temporary total incapacity for work under §8(b) of the Act. The

Respondent is entitled to a credit of $18,433.28 for TTD payments made to Petitioner.

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.

October 3, 2024

CAH/tdm
O: 9/26/24
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	15WC001749
Case Name	Vernice Terrell v. Pace Suburban
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Francis Brady, Arbitrator

Petitioner Attorney	Michael Trybalski
Respondent Attorney	Gina Panepinto

DATE FILED: 1/8/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 3, 2024 5.04%

/s/Francis Brady, 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

Vernice Terrell
Employee/Petitioner

Case: 15 WC 001749

v.

Pace Suburban
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 Francis M Brady, Arbitrator of the Commission, in the city of **Chicago**, on September 19, 2023 and 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. 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. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. X Is Respondent due any credit?
O. X Other BCBS, Humana, Medicare subrogation claims

FINDINGS

On January 5, 2015, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**52,031.20**; the average weekly wage was $1000, 60.

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

Petitioner has not received all reasonable and necessary medical services.

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

ORDER

Credit and Temporary Total Disability

Respondent does not dispute that Petitioner was temporarily and totally disabled from January 6, 2015, through January 20, 2020, and Petitioner agrees that Respondent properly paid benefits as required for that period (Arbitrator's Exhibit 1, p 3 and Tr. 12 - 16) and Respondent is awarded credit for any amounts actually paid to date to Petitioner for **TTD benefits.**

Respondent shall further pay Petitioner temporary total disability benefits of $667.06 per week for 54 6/7weeks, January 21, 2020, through February 8, 2021, ($36,592.98) and $667.06 per week for 33 2/7 weeks February 9, 2021, through September 30, 2021 ($22,203.56) as provided in Section 8(b) of the Act. The total TTD awarded, $58,796.54, is reduced by $15,000 given Respondent's credit for a prior advancement so the actual payout to Petitioner hereunder is $43,796.54; provided however, this $15, 000 credit is only taken by Respondent against its TTD obligation once.

Medical benefits including Credits and BCBS, Humana, Medicare subrogation claims

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, for all reasonable, necessary, and related medical treatment relating to Petitioner's low back condition in the total amount of $73,714.14.

RESPONDENT SHALL BE GIVEN A CREDIT OF $310, 551.67 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.

RESPONDENT SHALL HOLD PETITIONER HARMLESS ON A QUALIFIED BASIS FOR PURPOSES OF REIMBURSING PETITIONER'S BLUE CROSS & BLUE SHIELD GROUP MEDICAL POLICY FOR BENEFITS ISSUED TO DATE AND AS ITEMIZED BELOW AND IN PX 27:

EVENT ID 11229530:…….$16,709.90
EVENT ID 10163909:…….$8,604.59

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of $600.36 per week for 250 weeks, $150,090.00 because the injuries sustained caused the loss of 50% of the person as a whole, as provided in Section 8(d)2 of the Act.

JANUARY 8, 2023

Signature of Arbitrator

STATEMENT OF FACTS

On January 5, 2015, Petitioner, Vernice Terrell, "Terrell", fell three times while working for her then employer, Pace Suburban, "PACE" (Tr 22, 23, 24; PX24 2, 8). The first time she fell on her back, hitting the ground hard. (Tr. 23; PX24 2) The second time she fell, she hurt her left side and the third time she fell on her face and breast area. (PX24 2)

She was transported from the accident scene to Ingalls Memorial Hospital, "Ingalls" by ambulance with the emergency crew charting her complaints of left leg and arm pain but "no loss of consciousness, head, neck - back pain." (PX1 unpaginated but last page of exhibit)

At Ingalls, Terrell recounted she fell three times and now was suffering left sided arm back, and leg pain" along with "a slight headache" but she specifically denied neck pain (PX2 "1 of 12" and "4 of 12"). Head and cervical CTs were undertaken due to pain after the fall with the first revealing no acute intra cranial pathology and the second demonstrating prominent degenerative changes at multiple levels. (PX 2 reports 1/5/15 CT's unpaginated) X-rays of the low back, sacrum, coccyx, hip, and pelvis were also performed due to "pain" or "trauma" but yielded "(n)o acute findings . . . (or) osseous abnormalities . . ." (PX2 report of 1/5/15 x-rays, unpaginated) She was prescribed Tylenol #3 and discharged home with a diagnosis of "Low Back Strain (PX2 "7 of 12")

Later on January 5, 2015, Terrell returned to Ingalls, presenting at its Occupational Clinic, "IOC" where she was diagnosed with "1. Low Back Pain. . . 2. Hip Pain left; 3. Headache and. 4. Neck pain." caused by "work activities." (PX3 1/5/15 chart note and "Work Status Discharge Sheet", unpaginated).

She continued to treat at IOC with her diagnosis mostly low back and left hip pain (PX3 IOC Chart notes of January 6 and January 12, 2015); however, on the latter date she would also mention injuring the left side of her neck in the fall on January 5, 2015 (PX5 IOC "Flow Sheet Custom apparently from 1/12/15 but unpaginated).

Terrell commenced Physical Therapy, "PT" at Athletico on or about January 19, 2015 (PX3 IOC Chart notes of January 6; January 12, 2015; and, Athletico chart note of January 19, 2015, all unpaginated) When she

presented for PT, she complained not only of "constant and intense pain coming from low back . . . (L) hip/leg. . . "but "also from (L) side of her neck" Her symptoms were restricting all her daily tasks and she could not sleep due to pain. (PX3 Athletico Initial Evaluation January 19, 2015, unpaginated)

As of January 29, 2015, however, Athletico recorded Terrell was no longer having headaches or neck pain and on February 5, 2015, IOC designated her affliction as "Sprain/Strain Lumbosacral region" though because of findings on her MRI of January 28, 2015, perhaps accounting for her radicular pain, she was referred to pain management. (PX3 Chart notes of Athletico and IOC, 1/29/15 and 2/5/15 respectively, and Vertical Plus MRI unpaginated; PX5 chart note of 1/29/15 "Progress Note" of Athletico, and PX 6, report of 1/28/2015 MRI at Vertical Plus to evaluate Terrell's "bilateral leg pain and numbness with low back pain and radiculopathy" post "several falls on ice, most recently on 1/5/15" all unpaginated)

Terrell presented to Orland Medical SC/Illinois Back Institute, "Orland", on February 10, 2021, for complaints including left shoulder pain (PX7 35, 39). A course of pain management ensued at Advanced Pain and Anesthesia on February 16, 2015, where Suleiman B. Salman, DO "Salman", recorded she had fallen three times while working for PACE on January 5, 2015, incurring injury including left shoulder pain, which PT had helped, and low back and radiating left leg pain which was getting worse. (PX8 unpaginated)

On March 2, 2015, she returned to Orland complaining of low back pain of 6 on a scale of 10 but also of stabbing neck pain of 5 due to sleeping wrong. (PX 7 8) On March 5, 2015, she reported "dull pain in (her) shoulders" to the same provider (PX7 9). She recounted "throbbing right shoulder pain" at Orland on March 19, 2015, and April 14, 2015(PX7 12, 18, 51).

Salman treated Terrell's low back and radiating left leg pain, diagnosed on March 23, 2015, as disc displacement L4-L5 with spondylolisthesis with injections and medication on various dates through August 3, 2015 (PX8 unpaginated and PX9 unpaginated)

Terrell's ultimately came under the care of Dr. Tyler Koski, "Koski" an orthopedic surgeon at Northwestern Medicine, "Northwestern" who on September 29, 2015, recorded her complaints of severe low back and bilateral, left greater than right, leg pain. Her MRI "scans" demonstrated L4-5 stenosis along with bilateral lateral recess stenosis accounting for her symptoms of neurogenic claudication. Her x-rays revealed a mobile spondylolisthesis at L4-5 which explains most of her symptoms. (PX10 9, 571, 572; PX18 2). Koski felt Terrell would likely come to a transforaminal interbody fusion (id)

On October 8, 2015, Terrell commenced Aquatic Therapy upon Koski's referral at Riverside Medical Center "Riverside" focused on the "preexisting spondylolisthesis that was aggravated due to her fall . . . on a sheet of ice in the parking lot on January 5, 2015." (PX12 6) The therapy continued on frequent dates through January 14, 2016, with Terrell always complaining of her low back pain and limited functionality. (PX12 6 – 81)

Koski also continued to treat Terrell, seeing her again on December 22, 2015, when he confirmed the diagnosis of "L4-5 degenerative spondylolisthesis" and noting her ongoing pain was consistent with that condition. (PX10 34, 569) She was undergoing aggressive weight loss management to enable her to undergo a minimally invasive fusion procedure. (id) Koski ordered her off work due to "lumbar stenosis", but he made no refence to her neck (PX10 39).

On October 24, 2017, Koski's office wrote that Terrell was making progress with her weight loss and advancing toward the goal of "a surgical intervention" (PX10 68). On November 9, 2017, Terrell contacted Koski's office

concerning a problem with her knees (PX10 69). By December 19, 2017, Terrell had been "scheduled for surgery 2/7/18 with Dr Koski." (PX10 74)

Terrell followed with Northwestern neurosurgery on March 29, 2016, regarding her "L4-5 degenerative spondylolisthesis . . ." and the pain she'd been having with it "for the last several months" which, though she'd lost 17 pounds, was still quite bothersome (PX10 567). Her weight loss goal was 50 lbs., and she was to return upon achieving it. (PX10 567, 568)

The goal remained elusive at Terrell's next visit to neurosurgery on June 26, 2017; in fact, she had "gained a few pounds". (PX10 565) She still had the same back pain radiating into her legs and she "finds it difficult to walk any distance without significant pain." (id) Although she continued to struggle with "pain related to an L4-L5 spondylolisthesis", Koski wanted her at a BMI of 35 to undergo surgery and, as she was currently at 39, she would continue to work on weight loss. (PX10 565, 566)

By her next presentation at neurosurgery, November 15, 2017, Terrell had lost another 10 pounds, putting her BMI at 37, though her leg and back pain continued "more bothersome", and she was experiencing "increased difficulty walking without significant pain." (PX10 561). She'd be back to discuss surgery with Koski addressing her "L4-L5spondyloloisthesis" of several years' duration once her BMI goal of 35 was reached. (PX10 562)

On January 23, 2018, Terrell presented to Koski and two other physicians at Northwestern, Alice Cheong, MD, "Cheong" Andrew Yenphu Yew, "Yew" (PX10 82 – 119) and, among other things the Doctors recorded her left greater than right leg pain and significant weight loss, drop in blood pressure and reduction in body mass. (PX10 82, 114). Koski and Yew agreed a lumbar MRI lumbar performed that day demonstrated "improved L4/5 central stenosis compared with 2015 MRI" and ". . . significantly less L4/5 spondylolisthesis" (PX10 114, 115) There was shown, however, "new left L5/S1formainal stenosis and disc space widening. . ." which Koski thought "might be her symptom driver for her left lower extremity pain" (id) Yew and Koski prescribed a left L5/S1 nerve selective nerve root block (id) but Koski observed if it failed to ameliorate the radicular pain she should consider a "2-level decompression and stabilization (PX10 116)

Attempts at a left L5-S1 transforaminal epidural steroid injection on February 6, 2018, had be abandoned due to "bulky facet hypertrophy" (PX10 551)

As of February 16, 2018, Koski wrote he was working Tyrell up for spinal surgery after all and she needed to be off work until after she recovered from the procedure due to her "spondylolisthesis." (PX10 125).

Koski confirmed on February 28, 2018, that he recommended Terrell, who by that time was a 64-year-old with "lumbar stenosis and spondylolisthesis", undergo a minimally invasive L4-S1 TLIF (PX10 128, 213) and he performed that procedure on April 21, 2018, at Northwestern (Tr. 30, 31; PX10 210, 248; RX1 13). Pre and post op diagnosis matched: "L4-5 and L5-S1 degenerative disk disease with instability and spinal stenosis and morbid obesity". (PX10 248, 251) She was hospitalized until April 22, 2019, being discharged that date with "Lumbar thoracic precautions" including limiting forward bending; avoiding twisting at the waist, sitting for long periods, lying on her stomach; and no lifting over 10 pounds; (PX10 237) but she reported subjective improvement in her condition (id)

Terrell was "doing very well postoperatively" as of May 29, 2018, reporting "her left radicular symptoms are completely resolved "though she had occasional back pain when getting out of bed" and she "does continue to take Norco twice a day for pain control." (PX10 544) Koski observed she had gained weight and believed that might be stressing her back. He continued to recommend no "bending, twisting, flexion" and wanted Terrell to

commence PT in the meantime. (PX10 545). X-rays that day concerned him regarding the possibility a screw might be loosening, and he cautioned her about warning signs (id)

On June 12, 2018, and September 13, 2018, Terrell presented at Riverside for PT due to back pain stemming from a 2015 fall in her work parking lot (PX12 82). She had been a bus driver for PACE but was not going back to that job because its duties aggravate her complaints which indicated she might be self- limiting (PX12 82, 83)

In the meantime, Northwestern neurosurgery recorded on July 17, 2018 that Terrell was doing "reasonably well . . . approximately 3 months out from her L4-L5 and L5-S1 TLIF" though she "does have some aching back pain that radiates around into her bilateral hips and anterior thighs" and she "WILL occasionally take Norco for pain control. . ." (PX10 540) Northwestern felt some of her pain was muscular and directed her to keep working with PT (PX10 541)

As of October 16, 2018, however, Koski recorded Terrell's "persistent complaints of back and leg pain" which prevented her from returning to work (PX10 489). She still had "aching back pain that radiates around into her bilateral hips and anterior thighs, but Koski also note a new symptom of "recurrent left lower extremity pain which was mild but radiating and he was concerned stating that if PT did not alleviate the pain further imaging might be warranted. (PX10 536). She was going to the health center 5 days a week to cycle and do pool exercises. X rays revealed her hardware was stable She was to continue with PT. (PX10 536, 537)

Further imaging was undertaken on November 16, 2018, comprising a lumbar MRI with contrast due to Terrell's ongoing "(l)ow back pain radiat(ing) down the buttocks with pain in the hips and thighs" Her prior lumbar fusion of April 20, 2018 is listed and the films presently reflect hardware from that surgery and fairly significant degenerative changes at all lumbar levels (PX6 Report of 11/16/18 MRI at VerticalPlus MRI, unpaginated; PX16 40, 41)

Koski referred Terrell to Shirley Ryan Ability Lab, "Ryan" for non-surgical treatment of her "progressively worsening low back pain radiating to bilateral gluteal /thigh region" on December 12, 2018. Detailed intake paperwork recited back pain following her fall at work in 2015 ultimately requiring transforaminal lumbar interbody fusion by Koski in April 2018 after a lumbar MRI revealed degenerative changes and trace spondylolisthesis but nowhere does the charting allude to cervical or upper extremities difficulties. (PX 16 129 – 153)

She was still under neurosurgical care at Northwestern on January 21, 2019, and participating in PT since December 2018 (PX10 490). Koski continued PT for Terrell on February 5, 2019, as no other surgery was warranted. (PX10 491) Effective April 17, 2019, Koski released Terrell from his neurosurgical service and referred her to "physiatry for further management (PX10 494.

An increase in back pain brought Terrell back to Northwestern neurosurgery on April 17, 2019, where her history of difficulty standing up straight was charted, as was her status, post one year out from L4-L5, L5-S1 TLIF with Koski (PX10 534) Due to "insurance issues' she had been unable to establish care with physiatry. (id) That there was no role for further surgery was confirmed and the benefits of Physical Medicine were reiterated. (PX10 535) When she asked about work, she was told there was no surgical restrictions but if she felt unable to function, she should counsel with PT; thus, neurosurgery discharged her PRN (PX10 535).

Terrell reported left arm numbness, as well as her low back pain, on April 18, 2019, and/or June 20, 2019, to Dr Daniel Blatz, "Blatz, her treater at Ryan (PX16 360, 438)

On July 8, 2019, Terrell accessed PT at ATI, resulting in the formulation of an "Initial Evaluation/Plan of Care" reciting she'd undergone "a lumbar fusion L4-L5 in April of 2018" after "she slipped and fell in the parking lot at work and injured her LB Jan 5, 2015." (PX14 342) When she got hurt, she was a PACE bus driver, a position with a physical demand level of medium." (PX14 335)

A cervical MRI without contrast was performed on Terrell on July 13, 2019 to assess her neck relative to pain radiating down both arms with finger numbness though she had suffered "(n)o specific injury" nor had she undergone "prior cervical spine surgery . . .: (PX 6 Report of 7/13/19 c-spine MRI at VerticalPlus, unpaginated; PX14 193) Findings revealed significant degeneration with cord compression at C4-5 and significant stenosis at C3-4, C5-6 and C6-7 (PX14 193)

A chart note, most likely from Ryan, memorializes that as of August 1, 2019 Terrell complains she's been suffering right hand numbness for six months and her MRI demonstrates "'fairly severe canal stenosis with spinal cord impingement and suggestion of focal mild release of the cord and fairly severe right foraminal stenosis' at C4-C5 as well as 'fairly severe canal stenosis with spinal cord impingement and bilateral symmetric foraminal stenosis' at C5-6, among other findings." (PX16 281, 332, 333) She also reported "hand numbness." Accordingly, Dr Dan Blatz, "Blatz" Terrell's treater at Ryan, added the diagnosis of "Right hand numbness possibly related carpal tunnel or cervical radiculitis and he specifically referenced Terrell's MRI findings of severe degeneration and softening of the spinal cord at C4-5 (PX16 335)

Terrell presented at Ryan on September 25, 2019, citing pain on the right side of her neck in addition to the pain in her low back and down her right leg (PX 16 177, 277, 279) In her "History of Present Illness" that date however, Terrell ". . . denies neck pain and denies arm weakness" though she "reports numbness in her left arm." (PX 16 280)

She continued to attend frequent PT at ATI throughout the summer and fall of 2019 and by October 21st, had improved with gait and strength though she was still experiencing lower back pain with walking and standing up straight. (PX14 331; PX16 197).

ATI charting for her on November 4, 2019, involved not Terrell's lower back but her neck which was diagnosed as "Cervicalgia, (B) Radiculitis: Cervical" producing disability and pain along with impaired posture and poor body and lifting mechanics. (PX14 197; PX16 195). She was limited to functioning at a sedentary physical demand level and "neck pain, numbness into bilateral UE's R>L" are added to her "Primary" complaints along with her ongoing low back pain. (id) "Prior to (her) injury, (Terrell) worked as a Bus Driver for PACE that requires a PDL of Medium" (PX14 197). She related "she slipped and fell in the parking lot at work and injured her low back Jan 5, 2015, . . . since the fall she has had neck pain and just recently had imaging that showed a pinched nerve. . . she tried PT . . . (and) . . . had a lumbar fusion L4-L5 in April 2018. (PX 14 188)

An "acute onset of significantly bothersome left-sided low backpain that radiates down into her left buttock and posterior thigh" brought Terrell back to Northwestern neurosurgery on November 6, 2019, where personnel also noted she'd been to the emergency room "ER" and gotten pain medication and had been falling. (PX10 529). Charted as well were Terrell's complaints of "increased numbness and tingling into her right greater than left upper extremity. . . (and) . . . significant difficulty with fine motor skills . . ." along with "dropping things quite frequently." (PX10 529). Medication was prescribed for her lumbar pian and a cervical MRI for her evidence of myelopathy (PX10 530) She had undergone (Medial branch block) with Dr Blatz at Shirley Ryan Ability Lab, "Ryan" without any "significant improvement and therefore was not a candidate for radiofrequency ablation." (PX10 530)

Terrell continued with PT at ATI where, on November 22, 2019, her Rehab Potential/Prognosis" was characterized as "Excellent" still she reported low back pain with walking and standing up straight (PX14 330) There were, as well, multiple references to her inability to "maintain good upright posture for more than a minute "and an allusion to her inability to unclasp ankle weights due to weakness and decreased dexterity with both hands and all fingers (PX14 177, 249 256, 257, 266, 268, 270) Another "Progress Note" from November 22, 2019, detailed Terrell's decreasing "B UE strength and grip strength. . . "and her lament of lack of dexterity, weakness and dropping objects." (PX14 174, 194). Once again charting alludes to Terrell's poor posture due to her neck pain and numbness into both arms. (id)

Reports of cervical x-rays performed at Northwestern on December 10, 2019, on account of a history of "arthrodesis status" show that when those films were compared to films of a c-spine MRI dated November 18, 2019, there appeared moderate degenerative multilevel disc disease with multilevel uncovertebral and facet hypertrophy, but no dynamic instability. Koski further observed that Terrell's "cervical spine had come progressive degeneration where now she has significant degenerative disc disease with stenosis and spinal cord compression with disc herniations really at C3-C4, C4-C5, and C5-C6. She also has degenerative disc at C6-C7 but does not have active cord compression at that segment." (PX10 527) and a CT scan of her neck was ordered "for surgical planning." (PX10 497, 498, 528)

Terrell also persisted in PT at ATI into December 2019 complaining about her legs and her arms and hands on the 4th, 6th and 9th and her neck on the 11th when she reported she "may need a cervical fusion …" in addition to "a surgery on (her back) due to a (loose) screw . . ." (TX14 166, 167, 168, 169, 226, 227, 229, 231)

The CT scan was done at Northwestern on December 13, 2019, with Terrell's history of "spondylosis (and) myelopathy of the cervical region" noted (PX10 499) When compared with films of the cervical MRI of November 19, 2019 it demonstrated "(m)ultilevel discogenic and facet and uncovertebral hypertrophic degenerative change. . . with moderate to severe canal stenosis at C3-C4 and C4C5 and C5-C6 . . . similar to the . . . MRI from November 18, 2019 where there was also impingement of the spinal cord. Foraminal stenosis (was) most pronounced at C6-C7 where it is moderate to severe on the left, likely similar to the prior MRI." (id)

Management of her cervical stenosis made cervical spinal fusion advisable and Koski was scheduled to perform that procedure on January 15, 2020, with her "lumbar issues . . . addressed at a later date" (PX10 500, 501, 502). She was to remain off work in the meantime (id).

PT wrapped up on December 27, 2019, with ATI charting Terrell still suffered low back pain with walking and standing up straight and had not met her treatment goals but was discharged due to an upcoming surgery which was not described. (TX14 161, 163, 221, 222, 223)

That surgery was a "long segment cervical decompression and fusion" performed by Koski on January 15, 2020 (Tr. 33; PX28 1057, 1181 -1184) Even though her neck was the focus of care, charting also recited that after her 2018 lumbar fusion Terrell "developed acute onset of left sided low back pain that radiates down into her left buttock and posterior thigh . . ." and she had suffered ". . . several falls in which her legs buckled underneath her, and she felt very unsteady on her feet. (id)

Following her C2-T2 posterior spinal fusion and C3-C6 decompression on January 15, 2020, Terrell was hospitalized at Ryan for in- patient rehabilitation from January 23, 2020, through February 4, 2020 (Tr. 46; PX16 513). She had "progressed very well ... during her stay" meeting all but one of her goals. (PX16 515, 525) Still her "Problem List" upon discharge comprised, inter alia, chronic bilateral low back pain and facet arthropathy; right hand numbness and tingling and right lumbosacral radiculopathy status post spinal fusion (PX16 516). Consulting on January 17, 2020 another Doctor at Northwestern, Sindhoori Nalla, "Nalla" detailed

Terrell's "history of low back pain status post lumbosacral fusion (2018) with cervical spondylosis and myelopathy status post C2-T2 posterior spinal fusion and C3-C6 decompression 1/15/2020 . . . " (PX16 858) Leading up to the spine surgery, Terrell had been experiencing "progressive weakness" in her arms "associated with decreased fine motor control in the hands and numbness/tingling since Fall 2019." (PX16 859, 860)

On April 7, 2020, Northwestern neurosurgery conversed by phone with Terrell following up "her C2-T2 posterior cervical fusion with Dr Koski" and noting her complaints of "some residual numbness of her hands" which she felt was "progressive" (PX10 524) She had no new weakness or "worsening of fine motor skills" and was not "taking anything for pain control". (id) Her primary complaints presently involved back and leg pain "which initially prompted her visit when she was found to be myelopathic." (id) The plan was for her to return in three months and in the meantime continue with PT. (id; PX16 1470, 1472)

Koski examined Terrell personally on June 23, 2020, noting she was "6 months status post C2 to T2 posterior spinal fusion . . ." having done well "clinically. . . although she has some numbness that came on in her arms . . . after she removed her cervical collar." (PX10 506) There were findings on some of the objective tests which were being worked up but, in the meantime, Koski noted Terrell's low back pain had been progressing since an initial period of recovery following her minimally invasive transforaminal lumbar interbody fusion "MIS TLIF" and he ordered a CT and MRI to evaluate changes and formulate a plan as Terrell's "low back is becoming increasingly disabling." (PX10 506, 507)

Terrell was hospitalized at Northwestern through September 7, 2020, following revision of his previous lumbar fusion on September 2, 2020, and Koski pointed out the associated risks of "persistent or progressive pain despite a technically successful intervention. (Tr. 33; PX28 326, 331, 336, 387, 403 - 408) Stiffness from fusion and impact on (activities of daily living were) also discussed." (PX28 285, 295) Upon discharge home health care was recommended due to Terrell's "mobility impairment. . . extremity weakness, unsteady gait, balance issues, deconditioning and pain limiting functional ability and surgery resulting in pain/weakness. . . (Terrell was) confined to the home because an . . . injury renders. . . her normally unable to leave . . . except with the assistance of another person and/or . . . a supportive device. . ." as "Leaving the home requires considerable and taxing effort due to weakness." (PX28 308, 309, 310, 332, 333). Following this lumbar revision surgery, Terrell was specifically restricted to "No strenuous activity" no lifting "more than 10 lbs" no driving; no sitting "in one place for more than 30 minutes" and "Plan to be out of work until . . . evaluated by the surgical team at your first post-operative visit. Further work restrictions will be discussed at that time." (PX28 334, 335)

Terrell presented for PT at ATI on October 28, 2020, drawing a diagram which located her "Sharp" and "Dull/aching" pain to the middle of her low back and across her buttocks but there were no indications of symptoms in her neck or upper extremities. (PX14 139) She had undergone "several surgeries" "to improve stability" including the most recent September 3, 2020, lumbar fusion. She "reports she fell in the parking lot of her work." (PX14 129, 30)

As of October 30, 2020, she was having trouble sleeping and getting out of chairs and needed work on stabilizing her core and controlling her legs "due to past surgeries" (PX14 66, 110). The therapist had Terrell remove her TLSO brace for exercises on November 16, 2020, to try and improve her "(i)ncreased difficulty with maintaining core stability in standing." (PX14 63). Terrell required upper extremity support for stabilization on December 2, 2020 (PX14 46)

On December 11, 2020, an inferior vena cava filter which had been embedded in one of Terrell's prior spine surgeries, was removed (PX28 48 - 132) and charting references a history of deep vein thrombosis; "Patient Instructions" of "Regular activity as tolerated. No activity restrictions." (PX28 64, 72, 118, 126, 215

Terrell's left shoulder was bothering her in PT on December 14, 2020, but her back felt "pretty good" (PX14 43, 95).

Terrell continued to treat into January 2021, with charting reflecting her exam in advance of unrelated carpal and cubital release surgeries on or about January 8, 2021, when she denied "any back or neck pain." (PX28 30, 31). On the 11th Terrell was working on core range of motion strengthening and stability without her TLSO brace (PX14 23) X Rays of Terrell's spine were done January 21, 2021, at Northwestern demonstrating the multiple surgeries she had undergone up and down her spine and the instrumentation that remained in place and functioning satisfactorily." (PX28 14). As of January 25, 2021, she continued to require upper extremity support plus intermittent rest breaks (PX14 8)

Terrell was discharged from PT on February 8, 2021, as no further activity had been authorized, a "lack of funds" existed. (Tr. 35, 36, 54) She was functioning at a sedentary physical demand level and complained of pain that was both "sharp and dull" (Tr. 35, 36; PX14 3, 74)

Prior to January 2015 Terrell had never "seen a doctor specifically for (her) neck. . ." nor had she "had any sort of ongoing neck problems that (she was) seeking medical care for." (Tr. 37) She has not worked in any capacity since the accident in 2015 and has been without TTD since January of 2020. (Tr 37)

Terrell now treats with Dr Patello at Northwestern and is in PT at Riverside regarding her low back (Tr. 48, 49), but she offered no evidence documenting her care.

Currently Terrell suffers continuous pain in her low back waxing and waning from 3 on a 10 scale to 6 (Tr. 38, 39). She has not treated since February 2021 as further care was not being authorized. (Tr. 40) She takes a "pain pill" when her back discomfort reaches 6." (Tr. 39)

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

Dr Avi Bernstein, "Bernstein", a board-certified orthopedic surgeon examined Terrell on May 18, 2015, and testified in her behalf that she fell three times in the icy parking lot of her job as a Pace Bus Driver on January 5, 2015: the "first time directly on her buttocks, the second time, onto her left side, and the third time, forward. . ." (PX18 1). She had no history of back trouble before the falls (id). An MRI of January 20, 2015, revealed "a degenerative spondylolisthesis and spinal stenosis", findings confirmed by x -rays Bernstein had done (id) He concluded Terrell's "low back complaints are due to a degenerative L4-L5 spondylolisthesis and spinal stenosis . . ." which had been aggravated as a result of a work-related incident." PX18 2" No mention is made by either Terrell or Bernstein of any problem in her spine other than lumbar pain which radiated down her "butt and leg". (PX18 1, 2, "Patient History Questionnaire), pain diagram, and April 28, 2015, letter from Underwriters.)

Dr Thomas Gleason, "Gleason" also a board-certified orthopedic surgeon, but fellowship trained as well, testified as PACE's expert that he examined Terrell on September 24, 2019, and took a history confirming she "did not have any complaints or injuries to her lower back before January 5th, 2015" but on that date slipped on ice in a parking lot and fell hurting her low back. (RX1 6,7, 12, 14, 37, 64, Gleason deposition exhibit 2).

Also, in August 2019 she began to experience "numbness and coldness with very little pain into the right first and second digits, also with neck pain present down the right arm . . ." but she "did not relate any specific injury to her neck." (RX1 13, 14) Terrell reported "she had not had any complaints related to her neck before August 2019." (RX1 14) Gleason confirmed that, in fact, he had been given no evidence at all Terrell treated relative to

her cervical spine "prior to January 5th , 2015. . ." (RX1 46, 47, 48) Based on his examination of Terrell and review of her records, Gleason diagnosed "degenerative disc disease, especially L1-2-3" and plus "posterolateral fusion at L4-5-S-1 with segmental fixation with screws and rods and a transforaminal lumbar interbody fusion with cage at L4-5 and L5-S1" along with ". . . a grade1spondylolistheses . . . at L4-5-S1. . ." with potential loosening of the hardware at S1. (RX 1 18)

Regarding, her cervical spine, Gleason, felt his examination of Terrell and review of her records revealed "acute and ongoing right C5-6 cervical radiculopathy." (RX1 19) After reviewing additional records concerning Terrell's medical care, Gleason, on September 2, 2020, updated his assessment of her cervical condition diagnosing "left lumbar radiculopathy . . . with evidence of failed L5-S1 fixation with lucency of left S1 screw and loosening of the right S1 screw rod interface. . ." and ". . . cervical spondylosis, post-operative recent surgery including C2 through T2 fusion with decompression C3 through C6 with residual myelomalacia as well as post operative left C5 palsy and post-surgical debilitation . . . "(exhibit 3 to RX1 4; RX1 24 – 28)

Gleason was involved a third time in this case when he examined Terrell on May 24, 2022 at which time she reported that both her back and neck pain had improved and plateaued (RX1 29). Gleason had x-rays done of Terrell's neck and low back demonstrating, again, the various surgical approaches made to both areas ((RX1 30,3, 34, 35).

Gleason confirmed that Terrell's low back problems are related to the trauma on January 5, 2015, in the PACE parking lot, but he testified her cervical problems are not. (RX1 40). He believed the pathology in her neck was degenerative and did not become symptomatic, by Terrell's own account, until August 2019. (RX1 41, 54) That of course is years after the work accident and, even then, Terrell told Gleason of no "specific" inciting injury. (id). Gleason verified that ". . . Miss Terrell - - she reported neck pain present down the arm beginning in August 2019." (RX1 42, 43, 52, 53, 54)

Before that date though Terrell's neck/arm discomfort were connected to her fall on January 5, 2015, at least at several places in the evidence documenting her treating medical care. At Ingalls on that date, she both denied AND claimed neck pain. (PX2 "1 of 12" and "4 of 12"). Head and cervical CTs were undertaken due to pain after the fall with the first revealing no acute intra cranial pathology and the second demonstrating prominent degenerative changes at multiple levels. (PX 2 reports 1/5/15 CT's unpaginated). At yet another place in her interaction with Ingalls on January 5, 2015, Terrell was diagnosed with "1. Low Back Pain. . . 2. Hip Pain left; 3. Headache and. 4. Neck pain." caused by "work activities." (PX3 1/5/15 chart note and "Work Status Discharge Sheet", unpaginated).

In charting at IOC, apparently on January 12, 2015, Terrell mentioned injuring the left side of her neck in the fall on January 5, 2015 (PX5 IOC "Flow Sheet Custom apparently from 1/12/15 but unpaginated). When she presented for PT, she complained not only of "constant and intense pain coming from low back. . . (L) hip/leg. . . "but "also from (L) side of her neck" Her symptoms were restricting all of her daily tasks and she could not sleep due to pain. (PX3 Athletico Initial Evaluation January 19, 2015, unpaginated) As of January 29, 2015, however, Athletico recorded Terrell was no longer having headaches or neck pain. (PX Ex 8, unpaginated)

But on February 10, 2015, Terrell complained at Orland of left shoulder pain (PX7 35) and on March 2, 2015, of stabbing neck pain due to sleeping wrong. (PX 7 8) On March 5, 2015, she reported "dull pain in (her) shoulders" to the same provider (PX7 9). She recounted "throbbing right shoulder pain" at Orland on March 19, 2015, and April 14, 2015(PX7 12, 18, 51).

A cervical MRI without contrast was performed on Terrell on July 13, 2019, to assess her neck relative to pain radiating down both arms with finger numbness though she had suffered "(n)o specific injury. . ." (PX 6 Report

of 7/13/19 c-spine MRI at VerticalPlus, unpaginated; PX14 193) A chart note, most likely from Ryan, memorializes that as of August 1, 2019 Terrell complains she's been suffering right hand numbness for six months. (PX16 281, 332, 333)

Finally, in ATI charting of Terrell related "she slipped and fell in the parking lot at work and injured her low back Jan 5, 2015, . . . since the fall she has had neck pain and just recently had imaging that showed a pinched nerve. . . she tried PT . . . (and) . . . had a lumbar fusion L4-L5 in April 2018. (PX 14 188)

Though it is mixed, there exists anecdotal evidence of a causal relationship between Terrell's cervical condition and her January 5, 2015. What does not exist is dependable medical opinion specifically linking the two. In fact, the direct scientific evaluation of that issue indicates just the contrary. For example Gleason's opinion that Terrell's cervical problems were exclusively degenerative proceeds from MRI studies revealing "aging changes with no evidence of any acute injury" (RX1 48, 49).

There isn't enough clear evidence to link the cervical condition to the incident of 1/5/15. However, ACE's own experts connect her low back problems to the accident

Terrell's lumbar condition and the care rendered for it are causally related to the fall on January 5, 2015. Her cervical condition and required care, are not. She has not worked in any capacity since January 2020 and has been without TTD since that month as well. (Tr 37) PACE terminated her employment effective and has never "reached out to (her) about returning . . ." (Tr. 38)

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:

Pursuant to the medical fee schedule and as provided in Sections 8(a) and 8.2 of the Act, PACE shall satisfy those only those medical charges in Petitioner's Exhibits: 11, 13, 15, 17, & 26 pertaining to care and treatment specifically rendered to cure the effects of Terrell's low back injury as said charges were for the reasonable and necessary medical treatment of Petitioner's 1-5-15 work-related injuries.

PACE shall issue funds directly to Terrell's Counsel, who will then satisfy balances with each of the medical service providers/facilities.

11. Northwestern Medicine:……..….$1,943.17
13. Riverside Medical Center:……..…...$2,971.57
15. ATI physical therapy:……$13,826.02
17. Shirley Ryan Ability Lab:…….……$54,561.77

Terrell's proffered no evidence that her care and treatment at Ryan from January 23, 2020, through February 4, 2020 ($65,531.85) was related to her low back condition, indeed the documentary evidence demonstrated she was hospitalized during this period entirely for her cervical surgery. Thus, the total reflected in PX17, $120, 093. 62 is reduced accordingly. Care itemized in PX17 after February 4, 2020, indicates a discharge date of June 26, 2020, admitting of the inference that costs shown relate to care rendered for the low back as detailed in the medical records addressed at length above.

26. Physical Therapy & Spine……..…$411.61

$73,714.14

The record reflects PACE asserts it has already paid expenses of medical care totaling $310,551.67 while Terrell claims that figure is $294,570.97 (Tr. 11, 12; RX 2) PACE's evidence is persuasive and thus a credit for the higher

number is awarded and PACE shall hold Terrell harmless from any claims by any providers of the services for which Terrell is receiving this credit.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Terrell's entitlement to TTD before January 21, 2020, is not disputed by PACE. (Tr 15, 20). So, what does the preponderance of the evidence demonstrate as to her disablement after that date?

Terrell asserts it proves she never reached MMI nor received modified duty. PACE argues it demonstrates that as of January 21, 2020, she had recovered to the extent possible, and her condition had stabilized. (Tr. 12, 13, 14, 15, Arbitrator's Exhibit 1) Only medical evidence regarding her lumbar condition is relevant given the above finding on CAUSATION.

Respondents Exhibit 4 documents Koski's care of Terrell from November 11, 2019, through March 9, 2020 (1 – 97). Scrutinizing it reveals that although Terrell's cervical pathology had become the primary focus, Koski, as of December 12, remained aware of her ". . . basic complaint of left lower extremity pain . . . (and) low back issues . . ." (RX4 65). In fact, in addition to discussing her neck complaints and need of care, Koski discussed with Terrell "issues at play" in her lower spine "where she has some loosening of the left S1 screw which happened early on . . ." and they considered how that might be corrected. (RX4 66). He noted as well that Terrell was "in a wheelchair with pain in her leg with an antalgic gait so (they) were not able to do . . . testing" (RX4 66) Terrell's lumbar issues would have to be addressed at a later, however. (RX4 52)

On January 6, 2020, Koski reaffirmed he was treating Terrell for "both cervical and lumbar conditions. . ." and due to them both, she should remain off work. (RX4 45). He did not state that but for her cervical problems Terrell could work. The fair inference is that irrespective of her neck, Koski had Terrell off work entirely for her low back just days before her surgical surgery on January 15, 2020.

Did he ever lift that prohibition, in whole or even in part?

The next time the documentary evidence might be expected to substantively address Terrell's functionality regarding her low back comes February 25, when she presents at Ryan and to Koski (RX4 12) Her "Principle diagnosis" is "Lumbar fusion" and among her conditions she still suffers lumbar radiculopathy and stenosis . . ." (RX4 13) No refence is made to her ability to work but her "discharge disposition" shows she is to follow with "day rehab, occupational therapy, physical therapy" (RX 4 16). A fair inference is that, given Terrell's need for this degree of reclamation, she was not a candidate for the job market. Moreover, there is no evidence she would have been any better off if she were treating at this time only for the low back. (RX4 8)

On April 7, 2020, Northwestern neurosurgery conversed by phone with Terrell noting her primary complaints presently involved back and leg pain "which initially prompted her visit when she was found to be myelopathic." (PX10 524) The plan was for her to return in three months and in the meantime continue with PT. (id; PX16 1470, 1472). The surmise is warranted that the low back condition barring her from work as of January 6, 2020, was keeping her off still because it remained to be treated.

Koski examined Terrell personally on June 23, 2020, noting, inter alia, her low back pain had been progressing since an initial period of recovery following her minimally invasive transforaminal lumbar interbody fusion "MIS TLIF" and he ordered a CT and MRI to evaluate changes and formulate a plan as Terrell's "low back is

becoming increasingly disabling." (PX10 506, 507) The implication is plain that Terrell needs care to restore her to function.

Effective September 7, 2020, Terrell was medically restricted to "No strenuous activity" no lifting "more than 10 lbs" no driving; no sitting "in one place for more than 30 minutes" and "Plan to be out of work until . . . evaluated by the surgical team at your first post-operative visit. Further work restrictions will be discussed at that time." (PX28 334, 335)

The record contains evidence documenting Terrell's further care on October 28, 2020; October 30, 2020; November 16, 2020; December 2, 2020; December 9, 2020; December 11, 2020; December 14, 2020; January 8, 2021; January 11, 2021, January 21, 2021; January 25, 2021; and February 8, 2021. (PX14 8, 23, 30, 43, 44, 46, 63, 66, 95, 110, 129 139; PX28 14, 30, 31, 64, 72, 118, 126, 48 – 132, 215) and, while no estimate of specific work limitations can be uncovered, it's clear her mid and low back pian persisted as did her physical limitations; for example, arising from chairs and controlling her legs, "due to past surgeries." Her PT incorporated exercises to strengthen and stabilize her core.

Terrell was discharged from PT on February 8, 2021, as no further activity had been authorized, a "lack of funds" existed. (Tr. 35, 36). There was, however, "additional treatment (she) wanted to pursue." (Tr. 36, 36 40). She complained of pain that was both "sharp and dull" (PX14 3, 74)

The credible proof either expressly demonstrates, or permits of a fair inference, that from January 21, 2020, to February 8, 2021, Terrell was not recovered, still treating, and medically disqualified from working due to her low back condition. PACE owes her TTD for the entirety of this period, 54 6/7 weeks x $667.06 or $36,592.98.

After February 8, 2021, Terrell's low back had stabilized to the extent she had come capacity for physical exertion as the treating medical evidence showed her functioning at a sedentary physical demand level. (PX14 3, 74) But even with that, other evidence reflects her inability to work persisted. She continued to experience "symptoms" in her low back (Tr. 35, 38). Perhaps even more significantly, Gleason expected she'd be capable of "working at a sedentary to light level. . ." by September 2021 regarding her low 2020 low back surgery (RX1 35, 36) PACE should pay TTD benefits at least through the "return to work" date set by its expert. That date is not specified beyond "September 2021" but since the full month is mentioned the full 30 days is implied. PACE's obligation to pay Terrell TTD benefits continues from February 9, 2021, through September 30, 2021, 33 2/7 weeks x 667.06 or $22,203.56.

After September 30, 2021, evidence bearing on the Terrell's recovery consists of her own testimony that she is again treating and back to PT (Tr 48, 49). She has constant pain waxing for 3 t 6 on a scale of 10 and she takes a pain pill when her discomfort reaches 6. (Tr. 38,39) But there is no evidence allowing an evaluation of her ability to physically function. The only evidence on that remains frozen in Gleason's opinion that as of September 2021 she could work at no greater than a sedentary to a light level job.

The only conclusion permitted by the totality of the evidence is that Terrell's work restrictions were permanent as of September 30, 2021, and thus the issue may be not whether she's entitled to TTD but to maintenance. As to that, PACE never offered her a job nor is there evidence it offered vocational rehabilitation, or that such a program would have helped if it had been offered. Terrell proffered no proof she was conducting a job self-directed job search; in fact, she admitted she never looked for work after her accident and no accommodation was afforded by PACE. (Tr. 37, 38, 51, 52)

Though Terrell claimed she wanted to work (Tr. 51, 52) the evidence allows of only one inference: that she volitionally removed herself from the job market. She offers no proof that her restrictions were variable after

September 30, 2021, and guessing otherwise is impermissible speculation. There's simply a dearth of proof on TTD after September 20, 2021.

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

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

Regarding subsection (i) of §8.1b(b), no permanent partial disability impairment report and/or opinion was submitted into evidence. No weight is accorded this factor.

Regarding subsection (ii) of §8.1b(b), the occupation of the employee, the record reveals that Terrell was employed as a bus driver at the time of the accident and that she is not able to return to work in this capacity because of said injury. Significant weight is accorded this factor.

Regarding subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 62 years old at the time of the accident. Currently Terrell suffers continuous pain in her low back waxing and waning from 3 on a 10 scale to 6 (Tr. 38, 39). She is currently treating and back in PT. Moderate weight is accorded theses factors.

Regarding subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, Terrell was terminated by PACE on or about February 18, 2018. Significant weight is accorded this factor.

Regarding subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Terrell has undergone two involved low back surgeries each involving protracted recoveries resulting in onerous physical limitations which are permanent. Significant weight is accorded theses factors.

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 50% loss of use of the whole person pursuant to §8(d)2 of the Act corresponding to 250 weeks of permanent partial disability benefits at a weekly rate of $600.36, for an award of $150,090.00.

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

Terrell and Pace agree that PACE advanced $15,000 to Terrell prior to trial, and that amount should be subtracted from either TTD or PPD, should such be awarded. TTD in the total amount of $58,796.54 was awarded per ISSUE (K) above and PACE shall pay to Terrel a net of $43,796.54 as the parties stipulated. (Tr. 16- 18)

WITH RESPECT TO ISSUE (O), THE ARBITRATOR FINDS AS FOLLOWS:

Terrell's Exhibit 27 itemizes payments Blue Cross & Blue Shield "BC/BS" paid to providers on specific dates summarized as follows:

Event ID 11229530:…….$16,709.90
Event ID 10163909:…….$8,604.59

PACE did not object to the introduction of Exhibit 27 into evidence and thus its content is available on the decision of this issue. What this issue comprises, however, is murky. The Request for Hearing form reflects "BCBS, Humana, Medicare subrogation claims, see page 3" and was not further illuminated. (Tr 16) The record provides guidance only regarding BCBS. Page 3 refers only to the $15,000 advance addressed in "(N)" above. And it is not clear from the evidence that BCBS has a right to subrogation, or, if it does, is asserting it. Accordingly, in fairness to both Terrell and PACE, should BCBS seek reimbursement for any of the payments itemized in PX27, Terrell shall notify PACE which, in turn, shall, upon proper proof of lien repay BCBS directly up to the applicable Fee Schedule or negotiated amount, whichever is less but in no event shall PACE's obligation here under exceed $25, 314.49.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	16WC016849
Case Name	Mark Desch v. North American Lighting
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0486
Number of Pages of Decision	27
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Stephen Carter

DATE FILED: 10/3/2024

/s/Maria Portela, 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

MARK DESCH,
Petitioner,

vs. NO: 16 WC 16849

NORTH AMERICAN LIGHTING,
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 benefits, 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, but makes a clarification as outlined below.

The Commission affirms the Arbitrator's Decision, however corrects the following scrivener's error:

In the third sentence of the fourth paragraph on page 15 of the Arbitrator's Decision, the MRI date is changed from "6/9/16" to June 3, 2016 pursuant to Rx5.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 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 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.

/s/

October 3, 2024

MEP/dmm
O: 91024
49

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	16WC016849
Case Name	Mark Desch v. North American Lighting
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Stephen Carter

DATE FILED: 4/14/2023

THE INTEREST RATE FOR THE WEEK OF APRIL 11, 2023 4.79%

/s/ Linda Cantrell, Arbitrator

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARK DESCH
Employee/Petitioner

Case # **16-WC-016849**

v.

Consolidated cases:

NORTH AMERICAN LIGHTING
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **LINDA J. CANTRELL**, Arbitrator of the Commission, in the city of **MT. VERNON**, on **1/19/23**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ 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 exceeded his choice of two physicians as provided by Section 8(a) of the Act; What credit Respondent is entitled to receive for short-term disability benefits paid?**

FINDINGS

On **3/14/16**, 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 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 $**29,656.80/46**; the average weekly wage was $**644.71**.

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

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

Respondent ***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 $**2,892.65 in medical expenses paid and $3,901.66 in short-term disability benefits paid,** for a total credit of $**6,794.31.**

Respondent is entitled to a credit of $**21,892.49** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

The Arbitrator finds that Clay County Medical Center was Petitioner's first choice of physicians, and Dr. Gornet was his second choice of physicians. Therefore, the Arbitrator finds that Petitioner did not exceed his choice of two physicians under Section 8(a) of the Act.

Respondent shall pay the expenses contained in Petitioner's Group Exhibit 13, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall further reimburse Petitioner's out-of-pocket expenses contained in PX13 in the amount of $126.85.

Pursuant to the stipulation of the parties, Respondent shall be given a credit of $21,892.49 in medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act. The Arbitrator further finds that Respondent is entitled to a credit of $2,892.65 in medical expenses paid.

Respondent shall pay Petitioner temporary total disability benefits of $**429.81** for **7-3/7th** weeks commencing **7/19/17 through 9/8/17**, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $3,901.66 in short-term disability benefits paid.

Respondent shall pay Petitioner permanent partial disability benefits of $**386.83**/week for **125** weeks, because the injuries sustained caused permanent partial disability to the extent of **25%** loss of use of his body as a whole, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/6/17 through 1/19/23, 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.

APRIL 14, 2023

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARK DESCH,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No: 16-WC-016849**
	)	
NORTH AMERICAN LIGHTING,	)	**Consolidated Case No. 16-WC-016851**
	)	
Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Mt. Vernon on January 19, 2023. On May 27, 2016, Petitioner filed an Application for Adjustment of Claim alleging injuries to his neck and shoulders as a result of moving a fixture on 3/14/16. (Case No. 16-WC-016849) On May 27, 2016, Petitioner filed an Application for Adjustment of Claim alleging injuries to his neck and shoulders as a result of moving a fixture on 4/21/16. (Case No. 16-WC-016851)

The issues in dispute in Case No. 16-WC-016849 are causal connection, medical expenses, temporary total disability benefits, the amount of credit Respondent is entitled to receive for short-term disability benefits paid, whether Petitioner exceeded the choice of two physicians under Section 8(a) of the Act, and the nature and extent of Petitioner's injuries. The parties stipulated that Respondent is entitled to a credit of $21,892.49 in medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

The Arbitrator has simultaneously issued a separate Decision in Case No. 16-WC-016851.

TESTIMONY

Petitioner was 59 years old, single, with no dependent children at the time of accident. Petitioner began working for Respondent in 2013. At the time of his injury on 3/14/16 he was a side paint operator. Petitioner testified he currently works for a cleaning company that cleans Respondent's facility. He voluntarily retired from Respondent in 2019.

Petitioner testified that on 3/14/16 he was working in the side paint area moving a mask from the mask washer to a storage rack. He estimated the mask fixture weighed 60 pounds. As he lifted the mask fixture from the table to place it on the rack, the mask caught on the ledge of

the shelf causing him to fall back and hurt his neck. He stated that as he tried to catch the mask the table rolled away causing him to fall forward. As he was going down, his left arm went back up over his head and he hit the table. He stated he fell to his knees and heard a pop in his neck as he caught himself with his left elbow.

Petitioner testified he initially had symptoms in the left side of his neck. He developed pain in his left arm a couple of days later. Petitioner advised Team Leader Ron McDaniel and his supervisor Randy Flood of the incident. Petitioner completed an accident report on the date of accident wherein he stated, "While moving mask fixture from mask washer to table and then to rack, pulled neck." (PX12). Petitioner described the accident report as being an accurate depiction of his accident. He stated the diagram properly showed symptoms exclusively to his neck as his left arm symptoms began a couple of days later. Petitioner testified that the whole bottom of his arm and his little finger went numb and felt like it was asleep.

Petitioner testified he never had any symptoms or treatment to his neck prior to the accident on 3/14/16. Prior to his accident he was working full duty performing his job duties without issue.

Petitioner testified that following his accident he believed Respondent was going to send him for medical treatment. When he returned to work, Team Leader McDaniel moved him to Outside Booth because he could no longer perform the duties of Inside Paint Booth due to the symptoms in his neck. Petitioner testified he was moved because they felt sorry for him due to the work injury.

Petitioner testified that while performing this light duty activities, he continued to have symptoms in his neck and left arm that radiated to his little finger. He testified that his symptoms caused problems because he had to rely more on his right hand to perform activities. Petitioner testified that while performing his light duty activities, he sustained a second accident on 4/19/16. He testified he did not receive any medical treatment for his injuries prior to the second work injury.

Petitioner testified that on 4/19/16 he was pulling a rack out with his right hand due to the symptoms in his left arm. When he pulled on the rack, he felt increased pain in his neck. He testified that his symptoms in his neck and left arm where the same after the second accident as they were after his first injury. Petitioner reported the accident to his supervisor Ron McDaniel and Randy Flood, and he was sent to human resources to fill out an accident report. Petitioner testified that he completed an accident report with Teresa Bayler, the supervisor of HR, and they both signed it. Petitioner testified he requested medical treatment at that time.

Petitioner sought medical treatment on his own at Clay County Medical Center on 4/21/16. He saw a nurse practitioner and testified that the history of injuries contained in the medical report were accurate. He confirmed that the "unknown" date of injury mentioned in the medical report referred to his initial accident of 3/14/16.

Petitioner testified he was referred for a cervical MRI which was not approved by Respondent. Petitioner testified that Respondent sent him to Dr. Jeffrey Brower. He testified that

he reported both accidents to Dr. Brower. He testified that the first accident was the main cause of all his symptoms.

Dr. Brower referred Petitioner to physical therapy which he underwent at Respondent's facility. He stated he was unable to perform any significant therapy and he primarily sat in a chair and talked with the therapist. He testified that Dr. Brower prescribed narcotic medications that caused him to have a reaction at work. He was taken to Clay County Hospital at the request of Dr. Brower where he had his heart checked. Petitioner testified he had a heart related incident years prior but had no problems leading up to this event.

Petitioner testified Dr. Brower referred him for an MRI that was performed on 6/3/16. Dr. Brower then recommended chiropractic care and told him to pick the chiropractor he wanted to go to. Petitioner testified he would never have gone to a chiropractor had Dr. Brower's not recommended it. He stated that given the symptoms he was having, he did not want to go to a chiropractor because they were just going to give him a massage, charge you, and send you home. However, he testified he was willing to try anything to get rid of the pain.

Petitioner began receiving chiropractic treatment with Dr. Katie Burmeister. He testified that his son and daughter-in-law knew Dr. Burmeister, and her office was three blocks from his home. Petitioner testified that Dr. Burmeister discontinued treatment on his neck due to his level of symptoms. Instead, she massaged the rest of his back and the bottom of his legs.

Petitioner testified he continued to treat with his primary care physician, Dr. Elizabeth Sweet-Friend while he treated with Drs. Brower and Burmeister. He testified that Dr. Sweet-Friend referred him to a specialist. He testified that on 7/8/16, Dr. Brower agreed he needed to see a specialist. Petitioner believed it was Dr. Brower that referred him to Dr. Aiping Smith for pain management services. Petitioner testified he told Dr. Smith about both of his accidents. Dr. Smith recommended an injection that provided two days of relief. He testified that despite conservative treatment his symptoms were worsening, and he continued to have symptoms down his left arm.

Petitioner testified that based on Dr. Sweet-Friend's referral to an orthopedic surgeon, he went to Dr. Matthew Gornet. Prior to seeing Dr. Gornet, Petitioner underwent a Section 12 examination by Dr. Daniel Kitchens. Following the evaluation by Dr. Kitchens, Respondent did not approve further medical treatment. Petitioner testified that although Dr. Kitchens said he had degenerative problems in his neck, he had never had any symptoms until his work accident. He testified that all of his symptoms in his neck and down his left arm began following the first work accident.

Petitioner testified he told Dr. Gornet about both of his work accidents. He underwent a two-level disc replacement at C5-6 and C6-7 on 7/19/17. Petitioner was placed off work following surgery until 9/8/17 when he returned to full duty work. Petitioner testified that after surgery he was able to turn his head and could actually feel his fingers again. Petitioner testified he did not receive any workers' compensation benefits while he was off work.

Petitioner testified that when he returned to work, he was placed in a less physically demanding position where he did not handle the heavier masks and he no longer had to lift anything. Petitioner testified that the position was easier on his neck, and he continued working this position for two years. Petitioner testified that when he returned to work, he made sure not to lift anything heavy or make sudden movements. He also did not do any overhead lifting.

Petitioner was transferred to Hard Coat where he trained other employees, gave breaks, or floated where needed. Petitioner continued this position until he retired. He testified he currently works part-time for BS Cleaning Service who provides cleaning services for Respondent's facility. Petitioner testified he does not perform any heavy lifting in his current job.

Petitioner testified he continues to have soreness in the left side of his neck into the back of his head, especially in the morning. His pain goes as high as 7/10 and he has to stand up and move his head around to alleviate his symptoms. He takes Aleve on a daily basis to control his symptoms. Petitioner testified that his neck symptoms increase with laying wrong in bed, turning his head too far, looking up, prolonged overhead activities, and driving for long periods of time. He testified that cold and damp weather increases his symptoms. He testified that his left arm symptoms resolved following surgery.

Petitioner testified he owned a large motorcycle prior to his accidents. He sold the motorcycle due to increased neck pain while riding it. He testified he still owns one motorcycle.

On cross-examination, Petitioner testified he filled out the accident report on 3/14/16 with the assistance of Randy Flood. He agreed that the diagram was completed by him. He testified that Respondent did not provide him with a copy of either accident report. He agreed that he only had neck pain on 3/14/16 and his left arm symptoms started a couple of days later. Petitioner testified that he and Dr. Kitchens did not talk about his accident much at all and he did not tell Dr. Kitchens that his arm symptoms started one to two weeks after the accident.

Petitioner testified that he asked Respondent if he could seek medical attention when he was injured on 3/14/16. He did not know if the accident report had a section where he could have requested medical attention, but he told his supervisor he wanted to be seen by a doctor that day and several times thereafter. He agreed he did not mark on the accident report that he wanted medical treatment. He denied that the first time he asked for medical treatment was on 4/20/16. He stated that treatment was not volunteered by Respondent until after his second accident. He denied that he went to the supervisor of HR, Teresa Bayler, on 4/20/16 asking to receive treatment. Petitioner testified that his first accident report sat on Mark Coleman's desk, and he did not provide it to HR until after his second accident.

Petitioner testified he did not know why Dr. Brower's medical record did not mention his accident in April 2016. He testified that if the second accident report was stamped "received" on 4/20/16, he may have gotten his dates wrong. He agreed that when he saw the nurse practitioner on 4/21/16 he was experiencing numbness and tingling in his left arm.

Petitioner testified that he treated with Dr. Brower at Respondent's facility. He initially saw Dr. Brower on 4/28/16 and believes he reported both accidents to him. Petitioner identified a

diagram he completed for Dr. Brower on 4/28/16 where he circled his entire left arm. He identified a written form submitted to Dr. Brower that indicated a work accident on 3/14/16 and no mention of a work accident in April 2016.

Petitioner testified he was familiar with Gloria Toombs who was a receptionist in HR around May 2016. He denied asking Ms. Toombs on 5/11/16 if he could receive chiropractic treatment. He denied telling Dr. Brower on 6/23/16 that his neck pain was improving. He testified he did not return to Dr. Smith because he thought his treatment was over after receiving the injection. He stated he would have returned to see Dr. Smith if he was told to do so. Petitioner believed that Dr. Sweet-Friend referred him to Dr. Gornet. He agreed he did not receive any treatment from August 2016 through March 2017. He believed he reported both accidents to his treating physicians, but he could not recall.

Petitioner testified he has not received treatment for his neck since Dr. Gornet released him. He does not recall whether he received short-term disability benefits. Petitioner testified he would defer to his medical records and not his memory seven years later.

Barrie Ballentine testified on behalf of Respondent. Ms. Ballentine is the Wellness and Risk Manager for Respondent who oversees the workers' compensation program, wellness initiative, and leave initiatives. She was the Occupational Health Manager in 2016 and investigated and managed Petitioner's worker's compensation claims. She testified she only received one accident report from the plant related to a 3/14/16 accident. She stated the accident report was received in her office on 4/20/16. Ms. Ballentine testified that Respondent accepted the 3/14/16 accident until Dr. Kitchens' Section 12 report.

Ms. Ballentine testified she did not receive a second accident report and therefore there was no claim. She testified that the expectation is the employee fills out an accident report and the supervisor forwards the report to HR, who in turn forwards it to her for reporting to the TPA. She has no knowledge of an accident report related to an April 2016 incident. She testified she looked for such a report and did not find one. Ms. Ballentine testified there is a place on the 3/14/16 accident report where Petitioner could have indicated he needed medical treatment, but Petitioner did not mark that he did. She testified she was not aware of Petitioner contacting anyone in the workers' compensation department to request medical treatment until April 2016. She stated that the HR office at the Flora plant where Petitioner worked informed her that he was seeking medical treatment and they sent her the 3/14/16 accident report at that time.

Ms. Ballentine testified that Respondent operated as a for-profit business and it is an important part of its business to keep, maintain, and store records, including documents related to work accidents. Ms. Ballentine identified an email from Teresa Bayer to herself and Carey Clements dated 4/20/16. (RX2) Petitioner objected to the admissibility of the email based on hearsay which was taken under advisement following an offer of proof. The Arbitrator overrules the objection and admits RX2 into evidence as a business record. Ms. Ballentine testified that Ms. Clements was a work comp specialist and her assistant. Ms. Ballentine testified that the email was part of the work comp program kept in the ordinary course of Respondent's business. She testified that the email was stored in her system and printed by Ms. Clements to produce for purposes of litigation. The email from Ms. Bayler stated, "This was never received in the H R

Department. I found about it yesterday afternoon when Mark came up and was requesting information on going to see a doctor concerning this report." Ms. Ballentine testified that the 3/14/16 accident report was attached to the email. She assumed Petitioner was requested medical treatment related to the 3/14/16 accident which she stated was approved. Ms. Ballentine testified that the "received" stamp on the accident report was made by the HR department at the Flora facility, indicating the report was received on 4/20/16.

Ms. Ballentine read the medical record from FNP Marlissa Boyles and testified she relied on it investigating Petitioner's claim. She testified that based on the record, neither FNP Boyles nor Petitioner reported an injury that occurred at work on 4/19/16 and it did not state where the accident occurred. She confirmed Petitioner requested medical treatment following this second accident. Ms. Ballentine testified that Respondent paid $2,892.65 in medical expenses on behalf of Petitioner solely related to the 3/14/16 accident. (RX4)

Ms. Ballentine testified that Dr. Brower was employed by Midwest Occupational Health Associates who Respondent contracted with to come to the plant and treat work-related injuries. She agreed that Respondent referred Petitioner to Dr. Brower for treatment. Ms. Ballentine testified that injured employees saw Dr. Brower, regardless if they were also treating with their own doctors of choice. She testified that she received Dr. Brower's medical reports contemporaneously with each visit. She testified that as the company doctor in 2016, Dr. Brower did not have authority to refer injured workers to other physicians. She stated that if Dr. Brower made a recommendation that an injured employee see a specific type of doctor, she was the one that controlled who selected the doctor. She testified that Dr. Brower was aware he was not allowed to pick a provider or refer injured workers. Ms. Ballentine testified she had a list of preferred physicians that she utilized, and from which injured employees were able to choose from, or they could choose their own doctor.

Ms. Ballentine reviewed Dr. Brower's office note dated 6/9/16 and agreed he made a recommendation that Petitioner receive chiropractic treatment. She testified that she did not have a preferred chiropractor to offer Petitioner; therefore, it was his choice to select one.

Ms. Ballentine identified an email between Gloria Toombs and herself. (RX25) Petitioner objected to the admissibility of the email based on hearsay which was taken under advisement following an offer of proof. The Arbitrator overrules the objection and admits RX25 into evidence as a business record. Ms. Ballentine testified that Ms. Toombs was an HR Coordinator at the Flora plant in 2016. The email was authored by Ms. Toombs to Ms. Ballentine on 5/11/16, wherein Ms. Toombs stated Petitioner wanted to see a chiropractor "but he has already seen our doctor and a doctor of his own choice". Ms. Toombs asked if it was ok for Petitioner to see a chiropractor or if he need approval first. Ms. Ballentine replied the same day that Petitioner had two choices and the chiropractor would be his second choice. She stated that CCMSI will monitor the treatment closely. Ms. Ballentine testified that Dr. Brower did not recommend chiropractic treatment until 6/9/16 and he did not recommend a specific chiropractor. She testified she was not aware that Petitioner followed through with the chiropractic treatment. Ms. Ballentine testified that Dr. Brower did not refer Petitioner to neck specialist, Dr. Smith. She testified that Dr. Brower did not ask her for any referrals at all, other than the cervical MRI. She

stated that Dr. Brower had to get her approval before proceeding with the MRI referral. Ms. Ballentine testified that "refer" and "recommend" have different meanings.

Ms. Ballentine testified that Petitioner received pay raises after his work injury.

On cross-examination, Ballentine testified she worked at the Paris plant and acknowledged that both of Petitioner's alleged accidents occurred at the Flora plant. She admitted she only gets involved in work-related injuries once she receives an accident report and she did not receive Petitioner's 3/14/16 accident report until 4/20/16. She agreed that the accident report was signed by Petitioner's supervisor the day of the accident. Ms. Ballentine admitted that occasionally accident reports do not get to her timely. She assumed Petitioner's accident report was sitting on his supervisor's desk.

Ms. Ballentine testified she has never seen an accident report related to a 4/19/16 accident. She admitted it could have been placed in the supervisor's drawer and never forwarded to her. Ms. Ballentine admitted she received the Application for Adjustment of Claim within the 45-day time period required under the Act.

Ms. Ballentine testified she was not aware of interactions between Petitioner and his supervisor between 3/14/16 and 4/20/16. She was not aware Petitioner was working light duty due to his neck injury during that period. She agreed that after reviewing FNP Boyles medical report which she relied on in her investigation, she still approved the claim and authorized medical treatment.

Ms. Ballentine testified that Dr. Brower recommended diagnostic testing which she did not consider a second choice of physicians, even if Petitioner chose to go to a specific radiologist.

MEDICAL HISTORY

On 4/21/16, Petitioner was seen at Clay County Medical Center by FNP Marlissa Boyles. Boyles recorded as follows:

> "Here with reports of neck pain. Reports he works at NAL and a while back, unknown date, was lifting a object and twisted to put it on a higher shelf when he started to have left-sided neck pain. Reports he has continued to work since. Two days ago, again he was lifting and twisting when the pain started to increase. Patient reports he is having numbness/tingling on the posterior side of left arm/shoulder. Reports pain radiating down left arm." (PX4, p. 2)

Following examination, FNP Boyles ordered a cervical MRI and placed Petitioner off work. On 4/27/16, Petitioner returned to FNP Boyles with increased pain in his left arm with range of motion and decreased range of motion and pain in his neck. FNP Boyles diagnosed cervicalgia and cervical radiculopathy. It was noted that FNP Boyles discussed the matter with the workers compensation insurance director who would not approve the MRI. Petitioner was

recommended again for an MRI but was advised by the workers compensation director that they were scheduling Petitioner to be seen by Respondent's physician. (PX4, p. 4-5)

On 4/28/16, Petitioner was examined by Dr. Jeffrey Brower at the request of Respondent. Petitioner reported he developed left posterior neck pain that came on acutely on 3/14/16. (PX5) He reported a history of moving a mask fixture from the washer to the table, but he thinks the edge of the fixture got caught on the shelf and he developed acute pain in the left posterior neck. Petitioner reported that soon after his injury his pain radiating down the arm. He had numbness and tingling into his hand. Dr. Brower asked if his condition required special work assignments, and Petitioner advised that his neck was not healing properly by lifting masks/fixtures and pulling racks. Dr. Brower recommended physical therapy and work restrictions, and prescribed Prednisone.

Petitioner underwent physical therapy at Apex Physical Therapy from 4/30/16 through 5/24/16, at which time he reported no improvement. Petitioner expressed his frustration with the process of therapy and the therapist noted he made no improvements with range of motion, grip strength, or progress towards the goals. (RX12)

On 5/5/16, Petitioner followed up with FNP Boyles who noted he continued to have neck pain and unchanged symptoms. (PX4)

On 5/12/16, Petitioner followed up with Dr. Brower and reported the treatment was not helping his symptoms and he was having difficulty turning his head, despite taking Naproxen and a muscle relaxer. Dr. Brower recommended a cervical MRI and continued physical therapy. (PX5, p. 3)

On 5/26/16, Petitioner followed up with Dr. Brower and reported no improvement with his neck and left arm symptoms. He was proceeding forward with an MRI but was unable to do so because of the pain that restricted his ability to lie still. Dr. Brower noted Petitioner had not previously been prescribed pain medication and prescribed Tramadol. He diagnosed left C8 radiculitis. (PX5, p. 2)

On 6/9/16, Petitioner followed up with Dr. Brower and reported his symptoms were getting worse, with persistent numbness along the outer aspect of his forearm. Dr. Brower reviewed the MRI and believed the quality of the film suboptimal. Following evaluation, Dr. Brower diagnosed left C8 radiculitis. He recommended a trial of chiropractic treatment. (PX5, p. 37)

On 6/23/16, Petitioner returned to Dr. Brower and reported his neck pain and left arm numbness was finally improving. Dr. Brower discussed that Dr. Narla reviewed his cervical MRI and diagnosed a protrusion at C4-5 and minor degenerative changes at C4-5 and C5-6. At that time, his blood pressure was noted to be 190/128 and he was recommended to either go to the emergency room or contact his personal physician. (PX5, p. 35)

On 6/23/16, Petitioner was taken by ambulance to Clay County Hospital for complaints of chest pain. He was noted to have neck pain and symptoms down his left arm. He was transferred to Good Samaritan Hospital. (PX3)

On 7/7/16, Petitioner followed up with his primary care physician Dr. Sweet-Friend who noted Petitioner had chest pain and elevated blood pressure while taking narcotic pain medications. She noted that the testings at the hospital were negative. Petitioner believed that his increase in blood pressure was due to his neck pain. Following evaluation, Dr. Sweet-Friend referred Petitioner to an orthopedic physician to evaluate his neck pain. (PX4, p. 12)

On 7/8/16, Petitioner followed up with Dr. Brower who noted no significant changes in his neck and arm symptoms. Dr. Brower noted that Petitioner was going to be seeing a neck specialist and Dr. Brower recommended that Petitioner keep that appointment. (PX5, p. 32)

On 7/13/16, Petitioner was seen by Chiropractor Katie Burmeister. Petitioner reported he had never received chiropractic treatment before. The record states that Petitioner was referred by his son and daughter-in-law. Dr. Burmeister noted Petitioner was being seen for a work injury that occurred on 3/14/16. She reported that as Petitioner was picking up an item, it caught on the edge of the table jerking him to a stop and injuring his neck. She noted that he filled out an accident report and it was lost in a drawer for over two weeks causing a delay in his care. Petitioner reported that Dr. Brower diagnosed him with a crushed nerve. Dr. Burmeister noted that Petitioner was in too much pain to complete an MRI, so he was provided pain medication. Following examination, Dr. Burmeister diagnosed segmental and somatic dysfunction of the cervical spine, cervical disc disorder with radiculopathy of the mid-cervical, and spinal subluxation at C1, C4, and C7. (PX11)

Petitioner underwent chiropractic care with Dr. Burmeister on 7/14/16, 7/15/16, 7/18/16, 8/1/16, 8/2/16, 8/3/16, 8/4/16. At the last visit, Petitioner continued to have soreness, spasm, and tenderness to palpation of the cervical spine.

On 7/21/16, Petitioner followed up with Dr. Brower for left cervical radiculopathy. He noted that Petitioner had an appointment with a specialist but did not receive notice until the day before and he could not go because his uncle just died. Dr. Brower encouraged him to reschedule the appointment with the specialist. He continued Petitioner's work restrictions of no overhead work. (PX5, p. 28)

On 7/26/16, Petitioner followed up with Dr. Sweet-Friend due to problems with blood pressure. Petitioner noted that he developed mid-epigastric pain that began approximately one hour after taking pain medications. Petitioner was advised to follow up with his heart doctor. (PX4, p. 13-15)

On 8/11/16, Petitioner was seen by Dr. Aiping Smith on referral by Dr. Sweet-Friend. Petitioner noted that in March 2016 he was picking up a fixture at work and got his elbow caught on the table and felt a pinch in his neck. He reported 100% pain in the neck. Petitioner reported no pain in the arm but tingling and weakness in the left upper extremity. Petitioner disclosed his treatment with Dr. Brower and that he had physical therapy without benefit. He reported that the

therapist was afraid to touch him due to the severity of his pain. Petitioner reported taking Tramadol that significantly elevated his blood pressure causing him to be seen in the emergency room. He was taking Ibuprofen for pain. (PX10, p. 2-3)

Dr. Smith reviewed the cervical MRI and found it to be of poor quality. She concluded that Petitioner had degenerative disc disease at C5-6 and C6-7. She diagnosed axial pain with numbness and tingling, and sensory deficit in the left C8-T1 distribution, noting the quality of the MRI was poor. She discussed the possibility of thoracic outlet syndrome. Following evaluation, Dr. Smith recommended an updated MRI and an EMG/NCS of the bilateral upper extremities. Dr. Smith performed a series of two epidural steroid injection at C5-6 and C6-7. (PX10, p. 2-3)

On 11/9/16, Respondent was examined by Dr. Daniel Kitchens pursuant to Section 12 of the Act. (RX16) Petitioner reported:

> "I was working in side paint. While moving mask and fixture from cart to shelf, they caught on shelf bottom causing them to fall. I tried to catch them, which pulled my arm, neck and shoulder, causing me to drop them. Pain shot up my neck. I reported it to my supervisor, and filled out report. Returned to work thinking maybe just a strain, but as time went on just got worse with continued use. Then went to front office to seek medical help."

Dr. Kitchens recorded that when Petitioner was moving the heavy mask and it started to drop, his left elbow got caught on the table and went up causing severe pain in the left side of his neck. Approximately 1 to 2 weeks after the accident, he began to develop numbness into his left little finger and discomfort that radiated up his elbow. Petitioner reported he took one day off work in April and then used five personal days in order to regain his ability to perform his job duties. Petitioner rated his symptoms 7/10 and reported constant pain, sometimes very severe, which causes him to stop and take deep breaths before moving. Following examination, Dr. Kitchens concluded that Petitioner sustained a cervical strain as a result of the 3/14/16 work accident. He did not find any evidence of left cervical radiculopathy or acute injury to the cervical spine. He reviewed the MRI and noted mild degenerative bulging at C4-5, C5-6, and C6-7, without disc herniation, spinal cord compression, or nerve root compression. Dr. Kitchens commented he did not find any evidence of a second injury. He did not recommend chiropractic treatment or a repeat MRI. He opined that an EMG/NCS was indicated to evaluate for left ulnar neuropathy at the elbow. Petitioner completed an Accident Information Sheet and reported Date of Accident/Injury: "3-14, 4-21, 2016".

On 3/1/17, Petitioner was examined by Dr. Matthew Gornet. (PX1, Ex. 2, p. 158) Petitioner reported that his symptoms began on 3/14/16 when he was pulling a fixture from a cart to a shelf, and it got caught on the shelf. He pulled suddenly and had sudden severe pain in his neck, shoulder, and arm. He reported the accident that day. He continued to work but his pain became more severe, and he requested medical treatment. Dr. Gornet noted, "There was no new injury on 4/21/16, but this was when he essentially discussed and re-reported his injury of 3/14/16". Initially he was told there was no report, but they eventually found the accident report. Dr. Gornet noted Petitioner had no prior problems with his neck.

Dr. Gornet noted Petitioner's symptoms were constant and worse with reaching, pulling, or fixed head positions. He had left arm pain, numbness, and weakness. Dr. Gornet diagnosed Petitioner with cervical radiculopathy. Dr. Gornet reviewed Dr. Kitchens' Section 12 report and noted he essentially summarized the same history of injury that Petitioner provided to him. He stated the MRI was of poor quality, but noted a loss of disc height at C5-6 and C6-7, with pseudo-translation at C4 on C5. Dr. Gornet recommended a high-resolution MRI as well as a potential referral to a shoulder specialist. Dr. Gornet concluded that the foraminal narrowing coupled with a sudden mechanical load on the arm could easily aggravate the underlying condition making it symptomatic. He opined that Petitioner's current symptoms were causally connected to his work injury as described.

On 3/16/17, Petitioner underwent an MRI at MRI Partners. Dr. Greg Cizek diagnosed Petitioner with multilevel disc abnormalities with central protrusions from C3-4 through C6-7. There were larger protrusions at C5-6 and C6-7 with foraminal involvement at multiple levels most prominent at C5-6 and C6-7. He also noted to be a probable segmentation anomaly with lack of complete segmented disc at C2-3. (PX6).

On 3/16/17, Petitioner followed up with Dr. Gornet and reported symptoms in his neck, left trapezius, left shoulder, and tingling down his left arm into his hand. Dr. Gornet reviewed the MRI and diagnosed herniations at C4-5, C5-6, and C6-7 with disc osteophytes present at C5-6 and C6-7. (PX1, p. 165) Dr. Gornet recommended epidural steroid injections and surgery if Petitioner's symptoms failed to improve.

On 4/13/17, Dr. Boutwell performed a left C3-4 epidural steroid injection. (PX8, p. 8) On 4/27/17, Dr. Boutwell performed a left C5-6 ESI. (PX8, p. 5) On 5/11/17, Dr. Boutwell performed a left C6-7 ESI. (PX8, p. 2)

On 5/26/17, Petitioner returned to Dr. Gornet and reported the injections did not provide lasting relief but he had the most relief at C6-7. Dr. Gornet recommended disc replacement surgery at C5-6 and C6-7. (PX1, p. 167)

On 6/2/17, Petitioner underwent a cervical myelogram. Dr. Greg Cizek diagnosed degenerative changes at C5-6 and C6-7, with osteophyte complexes across the midline resulting in foraminal narrowing and mild central stenosis. (PX1, p. 171)

On 6/24/17, Dr. Gornet reviewed the myelogram and continued to recommend disc replacement at C5-6 and C6-7. (PX1, p. 173)

On 7/19/17, Petitioner underwent disc replacements at C5-6 and C6-7. (PX9, p. 4)

On 8/14/17, Dr. Gornet noted Petitioner was doing extremely well with his neck pain and his left upper extremity dramatically improved. Dr. Gornet continued to keep Petitioner off work until 9/11/17. (PX1, p. 179-180) Petitioner followed up again on 9/8/17 and noted that although his left arm and shoulder were better, he still continued to have some tingling. (PX1, p. 181)

On 10/30/17, Petitioner underwent a cervical spine CT scan. Dr. Ruyle diagnosed an interior decompression and disc replacement at C5-6 and C6-7 with the hardware in satisfactory position. The doctor noted Grade 1 anterolisthesis at C3-4 and C4-5 with erosive arthroplasty. (PX1, p. 183)

On 10/30/17, Dr. Gornet noted Petitioner was doing well and his left shoulder and arm were better. He noted that Dr. Kitchens did not see any evidence of foraminal narrowing despite the fact it was present on the MRI. Dr. Gornet noted that the results speak for themselves, and that Petitioner was much better following surgery. (PX1, p. 182)

On 2/1/18, Dr. Gornet reviewed the supplemental report from Dr. Kitchens. Petitioner stated he was confused that Dr. Kitchens concluded his problems were all preexisting when he had no significant issues with his neck prior to the accident. Dr. Gornet explained that the accident Petitioner sustained could easily aggravate or cause an asymptomatic condition to become symptomatic. Dr. Gornet recommended the Petitioner follow-up in six months. (PX1, p. 185)

Dr. Matthew Gornet testified by way of deposition on 3/12/18 and 2/20/20. (PX1, 2) His testimony was consistent with his medical records. Dr. Gornet testified he believed that Petitioner's symptoms were fairly classic of cervical radiculopathy. Petitioner had obvious objective pathology which was consistent with Petitioner's treating physicians that suspected cervical radiculopathy. Dr. Gornet noted that Petitioner had no previous cervical problems of significance. Dr. Gornet reviewed Petitioner's medical records and believed the history was consistent of a work-related accident.

Dr. Gornet testified the new MRI showed foraminal herniations that were acute on top of chronic disc osteophytes at C4-5, C5-6, and C6-7. The injections he ordered were both therapeutic and diagnostic. Dr. Gornet testified that he ordered a myelogram to better illustrate any bone spurs and to obtain a bone analysis. The myelogram was also used to assess the joints to make certain he would be a good candidate for motion preservation surgery such as disc replacement. He opined that the objective findings show on MRI could easily have been aggravated by the work accident.

Dr. Gornet testified that Petitioner's injury and symptoms were causally connected to his work accident of 3/14/16. He opined that the mechanism of injury could easily cause an injury or aggravate underlying conditions. He testified that Petitioner's second injury was not a new injury to him as Petitioner was already symptomatic.

Dr. Gornet testified that postoperatively, Petitioner did extremely well and his symptoms dramatically improved. Petitioner advised Dr. Gornet that the surgery made a huge difference in the quality of his life and that is left shoulder and arm were better. Dr. Gornet testified that he released Petitioner to work full duty as of 10/6/17.

On cross-examination, Dr. Gornet testified that Petitioner's symptoms of radiculopathy did not have to develop immediately after the accident. He noted that radiculopathy is caused by an inflammatory response which usually takes days to weeks to develop. He reviewed the pain

diagram noted in the accident report and stated it was consistent with his initial symptoms of neck pain that progressing over a period of weeks. Dr. Gornet testified it is an incorrect assumption to think that because Petitioner did not present immediately with tingling or pain down his arm that it is not related.

Dr. Gornet testified that the MRI showed foraminal narrowing with disc material out into the foramen. He concluded the herniations were acute component while the disc osteophytes had been there for a longer duration. Dr. Gornet noted that Petitioner had no ongoing symptoms or active treatment prior to this work accident. He reported symptoms consistently following the accident that improved with surgery.

Dr. Gornet noted that several of Petitioner's previous doctors diagnosed cervical radiculopathy but believed it to be coming from C8. Dr. Gornet explained that he understood why there were some sensory disturbances at that level. On re-direct, Dr. Gornet testified that in reviewing the medical records, the history was consistent with what Petitioner reported to him. He confirmed that prior doctors, including Dr. Brower, diagnosed cervical radiculopathy prior to Petitioner coming to him for treatment.

Dr. Gornet testified that the form completed by Petitioner shows two different accident dates of 3/14/16 and 4/21/16. He noted medical records recorded that on 4/19/16, Petitioner had some type of irritation or aggravation of his neck.

Dr. Daniel Kitchens testified by way of deposition on 10/30/19, 8/26/20, and 3/24/21. (RX18) Dr. Kitchens' testimony was consistent with his Section 12 reports. He reviewed Petitioner's medical records and performed a physical examination. Dr. Kitchens noted Petitioner had no problems with his neck prior to the work accidents. He stated that the pain diagram on Petitioner's accident report did not indicate cervical radiculopathy. He testified that Petitioner advised him of two accidents which occurred on 3/14/16 and 4/21/16. Dr. Kitchens concluded that Petitioner did not have cervical radiculopathy as a result of the injury on 3/14/16. He believed that Dr. Gornet described a C7-8 decreased sensation, osteophyte encroachment at C3-4, and foraminal herniations at C4-5, C5-6, and C6-7. Dr. Kitchens disagreed with that diagnosis and did not believe Petitioner had a herniation in his neck.

On cross-examination, Dr. Kitchens testified that degenerative disc disease can become symptomatic by an injury or accident. He acknowledged that Petitioner had no symptoms in his neck and was working full duty prior to the accident. Dr. Kitchens testified that Petitioner told him he experienced neck pain for the first time in his life following the accident of 3/14/16. Dr. Kitchens testified that Petitioner told him he had severe pain in the left side of his neck with the onset of symptoms down his arm one to two weeks after the accident. He opined that the work accident caused a cervical sprain.

Dr. Kitchens admitted that Dr. Brower's history of accident was similar, but Petitioner reported the onset of symptoms in his neck and down his left arm immediately following the injury of 3/14/16. Dr. Kitchens was shown the medical records from Clay County Medical Center, Dr. Brower, Dr. Smith, and Dr. Gornet that showed Petitioner consistently provided a

history of neck symptoms and radiculopathy in his arm that began immediately following the injury of 3/14/16.

Dr. Kitchens acknowledged there were no other accidents except for the two work accidents of 3/14/16 and 4/19/16. He testified that Petitioner advised him of an injury that occurred on 4/21/19 but Petitioner did not recall any specifics of the accident. He testified he did not inquire of Petitioner the events surrounding the 4/21/16 accident.

Dr. Kitchens admitted that the surgery performed by Dr. Gornet hoped to resolve Petitioner's left radiculopathy. The surgery also helped to reduce the symptoms in his neck that began on 3/14/16. Dr. Kitchens testified he was unaware of the intraoperative findings. Dr. Kitchens admitted that his conclusions of a degenerative disc disease and not herniated discs was contrary to the conclusions of Dr. Gornet, as well as the radiologist at MRI Partners.

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).

It is undisputed that Petitioner sustained accidental injuries to his cervical spine on 3/14/16. (AX1) Petitioner testified that when he filled out the accident report on 3/14/16 he only had pain in the left side of his neck, which is consistent with the pain diagram on the accident report. (RX1) Petitioner testified that his left arm symptoms began a couple of days after the accident.

Petitioner testified he never had any symptoms or treatment to his neck prior to the accident on 3/14/16. Prior to his accident he was working full duty performing his job duties without issue. He testified that his team leader Mr. McDaniel moved him to Outside Booth because he could no longer perform the duties of Inside Paint Booth due to the symptoms in his neck. He testified he continued to have neck and left arm symptoms while performing the duties in Outside Booth. Dr. Kitchens noted that Petitioner reported he took one day off in April and five personal days due to his symptoms.

Petitioner testified that while performing this light duty activities, he continued to have symptoms in his neck and left arm that radiated to his little finger. He initially treated with FNP Boyles who noted the work accident, ordered a cervical MRI, and placed Petitioner off work. Respondent did not approve the MRI and instead referred Petitioner to the company doctor, Dr. Jeffrey Brower. Dr. Brower examined Petitioner on 4/28/16 who recommended physical therapy and work restrictions. Petitioner underwent physical therapy through 5/24/16 with no improvement. The therapist noted he made no improvements with range of motion, grip strength, or progress towards the goals.

On 5/12/16, Dr. Brower recommended a cervical MRI but noted on 5/26/16 Petitioner was in too much pain to lay still for the MRI. Dr. Brower prescribed pain medication and diagnosed left C8 radiculitis. The MRI was performed on 6/9/16 and Dr. Brower continued to diagnose left C8 radiculitis. He stated the MRI films were suboptimal. He recommended a trial of chiropractic treatment. On 6/23/16, Dr. Brower stated the MRI was reviewed by Dr. Narla who diagnosed a protrusion at C4-5 and minor degenerative changes at C4-5 and C5-6.

Petitioner continued to have worsening symptoms, persistent numbness along the outer aspect of his forearm into his small finger and neck pain. He continued to follow up with Dr. Brower and his primary care physician Dr. Sweet-Friend. Dr. Sweet-Friend referred Petitioner to an orthopedic physician to evaluate his neck pain. Dr. Brower stated in two of his office notes that Petitioner should keep his appointment with the orthopedic specialist. Petitioner also underwent seven chiropractic sessions and reported continued soreness, spasm, and tenderness to palpation of his cervical spine.

On 8/11/16, Dr. Aiping Smith examined Petitioner at the referral by Dr. Sweet-Friend. She also found the cervical MRI to be of poor quality but diagnosed degenerative disc disease at C5-6 and C6-7. She diagnosed axial pain with numbness and tingling, and sensory deficit in the left C8-T1 distribution. She recommended an updated MRI, EMG/NCS of the bilateral upper extremities, and administered two epidural steroid injections at C5-6 and C6-7.

Petitioner was examined by Dr. Gornet on 3/1/17, one year after Petitioner's undisputed accident. Dr. Gornet ordered a new MRI that was interpreted by the radiologist as showing multilevel disc abnormalities with central protrusions from C3-4 through C6-7. There were

larger protrusions at C5-6 and C6-7 with foraminal involvement at multiple levels most prominent at C5-6 and C6-7. A cervical myelogram confirmed degenerative changes at C5-6 and C6-7, with osteophyte complexes across the midline resulting in foraminal narrowing and mild central stenosis.

Based on Petitioner's history, ongoing symptoms, and objective findings, Dr. Gornet performed disc replacements at C5-6 and C6-7. Petitioner's post-operative records and testimony indicate the surgery significantly improved his left arm and neck symptoms. Dr. Gornet released Petitioner to full duty work without restrictions effective 10/6/17. (PX1, p. 181)

The Arbitrator finds Dr. Gornet's opinions more persuasive than those of Dr. Kitchens. Dr. Gornet testified that Petitioner's symptoms were fairly classic of cervical radiculopathy and consistent with the mechanism of injury. He noted Petitioner had no history of neck issues prior to 3/14/16. Dr. Gornet testified the MRI showed foraminal herniations that were acute on top of chronic disc osteophytes at C4-5, C5-6, and C6-7. He testified that Petitioner's condition was causally connected to his work accident of 3/14/16. He testified that Petitioner's second injury was not a new injury to him as Petitioner was already symptomatic. He testified that Petitioner's symptoms of radiculopathy in his left arm were consistent with an inflammatory response that takes days to weeks to develop.

Dr. Kitchens agreed Petitioner had no history of neck problems or treatment and was working full duty prior to his injury on 3/14/16. Dr. Kitchens disagreed with Dr. Gornet's diagnosis and did not believe Petitioner had herniations in his neck. He diagnosed a cervical strain as a result of the 3/14/16 accident. He agreed that degenerative disc disease can become symptomatic by an injury or accident.

Dr. Kitchens acknowledged that Petitioner disclosed another accident on 4/21/16; however, Petitioner did not provide any information regarding that accident, and he did not ask Petitioner any details about the incident. Dr. Gornet acknowledged Petitioner's report of a second incident on 4/21/16. He stated that the 4/21/16 incident is when Petitioner discussed and re-reported his injury of 3/14/16 to his employer. Dr. Gornet testified he did not consider the 4/21/16 incident a new injury as Petitioner was already experiencing similar symptoms. Respondent disputes that a second injury occurred on 4/21/16, or 4/19/16, as alleged by Petitioner at arbitration.

The evidence supports that Petitioner had a dramatic improvement in his neck and left arm symptoms following surgery. He was able to return to full duty work and continued to work for Respondent until he voluntarily retired in 2019.

Based on the totality of the evidence, the Arbitrator finds that Petitioner's current conditions of ill-being is causally connected to the work accident of 3/14/16.

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): Whether Petitioner exceeded his choice of two physicians as provided by Section 8(a) of the Act?

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).

Petitioner was initially seen at Clay County Medical Center by FNP Boyles. FNP Boyles recommended an MRI which was not approved by Respondent. Instead, Respondent referred Petitioner to Dr. Brower. Ms. Ballentine testified that Dr. Brower was employed by Midwest Occupational Health Associates who Respondent contracted with to come to the plant and treat work-related injuries. Ms. Ballentine testified that injured employees saw Dr. Brower, regardless if they were also treating with their own doctors of choice.

Petitioner saw Dr. Brower on seven occasions. He recommended physical therapy and a cervical MRI, both of which were approved by Respondent. On 6/9/16, Dr. Brower recommended that Petitioner undergo chiropractic treatment. Ms. Ballentine agreed that Dr. Brower recommended chiropractic treatment but testified that Dr. Brower did not have authority to refer employees to other physicians, and even MRIs and physical therapy had to be approved by her before they were performed. Ms. Ballentine testified that "refer" and "recommend" have different meanings, attempting to suggest Petitioner chose to see a chiropractor on his own because Dr. Brower did not have authority to "refer", and therefore Chiropractor Burmeister was Petitioner's second choice of physicians under the Act. Petitioner testified he never would have treated with a chiropractor had one not been recommended. Dr. Burmeister's records indicate Petitioner had no history of ever having treated with a chiropractor. Ms. Ballentine testified she did not have a preferred chiropractor on her list to offer Petitioner. Petitioner testified he chose to see Dr. Burmeister because his son and daughter-in-law knew her, and her office was three blocks from his home. Petitioner did not begin receiving chiropractic care until 7/13/16, after Dr. Brower recommended such treatment. Based on the evidence, the Arbitrator finds that Dr. Brower referred Petitioner to chiropractic treatment and Dr. Burmeister was not Petitioner's second choice of physicians under the Act.

Petitioner's primary care physician, Dr. Sweet-Friend, who practiced at Clay County Medical Center with FNP Boyles, referred Petitioner to an orthopedic specialist on 7/7/16. Dr. Brower agreed the referral was appropriate as he encouraged Petitioner to keep the appointment in two of his medical records. Petitioner was examined by Dr. Aiping Smith on 8/11/16 who noted Petitioner was referred by Dr. Sweet-Friend. Dr. Smith is a physical medicine and rehabilitation physician that specializes in non-operative spine care. Dr. Smith administered a series of two epidural steroid injections at C5-6 and C6-7.

Petitioner testified that based on Dr. Sweet-Friend's referral to an orthopedic surgeon, he went to Dr. Matthew Gornet. Petitioner was examined by Dr. Gornet on 3/1/17 and his record does not indicate who referred Petitioner to his office. The Arbitrator finds that Dr. Gornet was Petitioner's second choice of physicians, particularly given the fact Petitioner saw Dr. Smith approximately one month after Dr. Sweet-Friend referred Petitioner to an orthopedic specialist and recommended Dr. Smith, and Petitioner did not see Dr. Gornet until eight months after the orthopedic referral.

The Arbitrator finds that Clay County Medical Center was Petitioner's first choice of physicians, and Dr. Gornet was his second choice of physicians. Therefore, the Arbitrator finds that Petitioner did not exceed his choice of two physicians under Section 8(a) of the Act.

Based upon the above findings as to causal connection and the opinions of Dr. Gornet, the Arbitrator finds Petitioner is entitled to medical expenses. Respondent shall therefore pay the expenses contained in Petitioner's Group Exhibit 13, pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall further reimburse Petitioner's out-of-pocket expenses contained in PX13 in the amount of $126.85.

Pursuant to the stipulation of the parties, Respondent shall be given a credit of $21,892.49 in medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act. The Arbitrator further finds that Respondent is entitled to a credit of $2,892.65 in medical expenses paid.

Issue (K): What temporary benefits are in dispute? (TTD)
Issue (O): What credit is Respondent entitled to receive for short-term disability benefits paid?

Petitioner was placed off work on 7/19/17 when he underwent disc replacements at C5-6 and C6-7. On 8/14/17, Dr. Gornet continued Petitioner off work through 9/11/17. (PX1, p. 180) On 9/8/17, Dr. Gornet ordered Petitioner to remain off work until 10/6/17, at which time he could return to full duty work without restrictions. (PX1, p. 181) However, pursuant to the Request for Hearing, Petitioner claims entitlement to temporary total disability benefits from 7/19/17 through 9/8/17, representing 7-3/7th weeks.

Therefore, the Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period 7/19/17 through 9/8/17, representing 7-3/7th weeks, at the TTD rate of $429.81/week.

Petitioner disputed that Respondent is entitled to a credit of $4,224.6 in short-term disability benefits paid and demanded strict proof. Petitioner objected to Respondent's Exhibit 6 based on hearsay and that the claimed credit did not coincide with the payments allegedly made. At arbitration, Petitioner did not object to Respondent receiving a credit for any and all short-term disability benefits paid, but that RX6 did not prove the credit amount. Petitioner's objection was sustained and Respondent's Exhibit 6 was rejected. The parties stipulated that Respondent would submit evidence of the short-term disability payments with its proposed decision. (Tr. 18) Based on the evidence presented, the Arbitrator finds that Respondent is entitled to a credit of $3,901.66, representing the following payments:

Check issued on:	Period paid:	Gross:	Net (check amount):
8/24/17	7-26-17 to 8-29-17	$ 2,385.00	$ 2,202.55
8/29/17	8-30-17 to 9-5-17	$ 477.00	$ 440.51
9/5/17	9-6-17 to 9-12-17	$ 477.00	$ 440.51
9/20/17	9-13-17 to 9-25-17	$ 885.86	$ 818.09

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 rating. Therefore, the Arbitrator places no weight on this factor.

(ii) **Occupation**: Petitioner returned to work for Respondent in a less physically demanding position; however, he was released to return to work without restrictions. Petitioner continued to work for Respondent until he voluntarily retired in 2019. The Arbitrator places some weight on this factor.

(iii) **Age**: Petitioner was 59 years old at the time of the accident. He continued to work full duty without restrictions for Respondent until he voluntarily retired in 2019. He is currently employed part-time for a cleaning company. The Arbitrator places some weight on this factor.

(iv) **Earning Capacity:** There is no direct evidence of reduced earning capacity contained in the record. The Arbitrator places some weight on this factor.

(v) **Disability**: As a result of the undisputed work accident, Petitioner sustained injuries to his cervical spine that resulting in a two-level disc replacement at C5-6 and C6-7. He continues to have soreness in the left side of his neck into the back of his head, especially in the morning. His pain goes as high as 7/10 and he has to stand up and move his head around to alleviate his symptoms. He takes Aleve on a daily basis to control his symptoms. His symptoms increase with laying wrong in bed, turning his head too far, looking up, prolonged overhead activities, prolonged driving, and cold and damp weather. He was released to return to full duty work without restrictions and continued to work for Respondent until he voluntarily retired in 2019. Petitioner is currently employed part-time for a cleaning service. The Arbitrator places greater weight on this factor.

Based upon the foregoing factors, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 25% loss of use of his body as a whole, pursuant to Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/6/17, 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	17WC027423
Case Name	Wanda Jimerson v. Advocate Christ Hospital
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0487
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Leo Alt
Respondent Attorney	Kelly Wiggins

DATE FILED: 10/3/2024

/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

WANDA JIMERSON,
Petitioner,

vs. NO: 17 WC 27423

ADVOCATE CHRIST 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, causation, medical expenses, temporary total disability benefits and permanent partial disability benefits and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof, but makes corrections as outlined below.

The Commission corrects the following scrivener's errors contained in the Arbitrator's Decision:

The Commission strikes the second and third sentences of the fifth paragraph of the second page of the Arbitrator's Decision which reads:

> Petitioner also testified to receiving a photograph She testified that there were no signs warning anyone of any slippers (sic) surface on the morning of the fall. (T-37) of a caution sign, placed shortly after her fall stating slippery when wet. (T-21)

> The Commission replaces said sentences with the following:
> Petitioner testified that there were no signs warning anyone of any slippery surface on the morning of the fall. (T. 37) Petitioner also testified to receiving a photograph of a caution sign placed shortly after her fall stating "slippery when wet". (T. 21)

In the sixth sentence of the first paragraph on the third page of the Arbitrator's Decision, the Commission strikes the word "slippers" and replaces with the word "slippery".

On the fourth page of the Arbitrator's Decision, in the second paragraph under section (C), the Commission strikes the word "title" and replaces it with the word "tile".

Finally, on pages 7-8 of the Arbitrator's Decision, the Commission strikes the multiple instances of the word "distality" and replaces them with the word "disability".

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 1, 2023 is hereby affirmed and adopted with the modifications as set forth above.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $46,592.00. 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.

October 3, 2024

MEP/dmm
O: 81324
49

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC027423
Case Name	Wanda Jimerson v. Advocate Christ Hospital
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Leo Alt
Respondent Attorney	Andrew Rane

DATE FILED: 2/1/2023

THE INTEREST RATE FOR THE WEEK OF JANUARY 31, 2023 4.68%

/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

WANDA JIMERSON
Employee/Petitioner

v.

ADVOCATE CHRIST HOSPITAL
Employer/Respondent

Case # **17** WC **27423**

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 **JOSEPH AMARILIO**, Arbitrator of the Commission, in the city of **CHICAGO**, on **DECEMBER 20, 2022**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ 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 22, 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 $**61,520.00**; the average weekly wage was $**1,183.06**.

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

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

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services. (Per group)

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**6,853.08** for other benefits, for a total credit of $**6,853.00**.

Respondent is entitled to a credit of $**32,772.71** under Section 8(j) of the Act.

ORDER (SEE ATTACHMENT)

Respondent shall pay Petitioner temporary total disability benefits of $ 788.71 per week for 12-2/7 weeks commencing 7-9-2017 through 10-2-2017, as provided in Section 8 of the Act. Respondent shall be given a credit of $6,853.08 for benefits that have been paid in non-occupational indemnity disability benefits.

Respondent is liable for the medical services rendered and for which it paid under group insurance. Respondent shall be given a credit of $32,772.71 for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by 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 disability benefits of $709.84/week for 61.5 weeks, because the injuries sustained caused a 30% loss of Petitioner's right 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.

/S/ *Joseph D. Amarilio*

FEBRUARY 1, 2023

Signature of Arbitrator JOSEPH D. AMARILIO

WANDA JIMERSON v. ADVOCATE CHRIST HOSPITAL 17 WC 027423

Attachment to Arbitration Decision

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary

This matter proceeded to hearing on December 20, 2022 in the City of Chicago and County of Cook of the following four (4) disputed issues: (1) Whether the Petitioner sustained an accident that arose out of and the course of her employment.; (2) Whether Respondent is liable for medical services incurred by Petitioner; (3) Whether Petitioner is entitled to temporary total disability benefits; if any, after credit for group benefits paid; and, (4) The Nature and Extent of Injury

II. Finding of Facts

Ms. Wanda Jimerson (hereinafter "Petitioner), was employed by the Respondent, Advocate Christ Hospital (hereinafter "Respondent"), as a Certified Pharmacy Technician. Tx. 10. Her employment with the Respondent began about 5 years prior to her claimed work accident. Id. Petitioner's job duties required her to gather ordered medications and IV bags, place them on carts and deliver the medication to omni cells for distribution to patients. (T-24)

On June 22, 2017, the Petitioner arrived at work at 5:45 a.m. and parked in the employee designated parking lot at the rear of the hospital which was the closest parking to the employee designated entrance and exit to the hospital. (T-11) Petitioner proceeded to the employee entrance, used the security card given to her by the Respondent and swiped the card to open and enter the employee door. (T-11) The entrance leads to the long and elevated incline that flattens at the top and before another set of doors. (T-12) The floor is a hard surface tile. (T-13) There were many employees coming and going in this corridor as it was a shift change time. The corridor is used exclusively by employees for changes of shifts and, thus, was fairly crowded. (T-13) There are handrails, however, the Petitioner was not able to grasp a handrail as she was in the middle of the crowd and other employees were between her and the handrail. (T-14) (T-31-32)

Petitioner testified that she "slipped" and fell forward hitting her head on the door and injured her right hand as she tried to break her fall (T-14) After the fall she noticed moisture on her pants, so she assumed there was something moist on the floor. She did not look to see what was on the floor. (T14-17) Employees regularly carry coffee and water with them and in backpacks through the corridor. (T-15) Petitioner clearly testified that she slipped and (T16) and that she was in the middle of the crowd. (T-30) She testified that "something must have been moist", because when she got up, there was a "little moisture" on her pants that she said was not there before the fall. Id. She did not inspect the area to see if there was any water or other substance on the floor, either before or after the incident.

Petitioner was placed in a wheelchair and taken to the emergency room (T-16) She again noticed "wetness" on her pants but did not check the floor. (T-14) Petitioner specifically denied giving any statement or signing any incident report as she was in too much pain. (T-19) The emergency room wrapped her wrist and hand and told her she needed surgery. She was referred to orthopedics. (T-18)

On June 29, 2017, Petitioner came under the care of Parkview Orthopedics and Dr. Baylis. (PX 1) The initial history is simply "fell at work" injured her wrist. But, Dr. Baylis recorded: "Walking to work. Slipped and fell. Right distal radical fracture." It was noted that Petitioner is right-handed. (PX. 1, p. 6) A typed report prepared by Dr. Baylis of the initial June 29, 2019 visit records a history of: " [a] 62-year-old right hand dominant pharmacy tech at Christ, had a work related injury. She was walking into work. There was a ramp. She walked on it. Slipped, sustained a hyperextension injury to her right wrist. She went to the ED [Emergency Department], put in a splint. She has an unstable two-part radius fracture on the right.,,, No history of similar problems in the past." The operative report contains the same history but states that she tripped instead of slipped. (PX 1, p. 10)

On July 5, 2017, Petitioner underwent surgery with open reduction and internal fixation for a two-part Colles fractured right wrist. (PX 1, p. 10) Petitioner thereafter received follow-up care and occupational therapy with steady improvement (PX 1) however, she continued to notice difficulty with her wrist rotation, pain in fingers and difficulty gripping (T-26) The hardware has not been removed. (T-19)

Petitioner was also examined by Dr. Samuel Chmell at the request of her attorney pursuant to Section 12 of the Act. (PX 3) Dr. Chmell's history indicated she slipped and fell on outstretched right hand and now has difficulty with strenuous or repetitive activity and difficulty getting right hand and wrist into various positions, both flexion and ulnar deviations. Petitioner also had loss of range of motion and some crepitus of right wrist. (PX 3)

Petitioner testified that the employee entrance exit was different from the main and general entrance in that there was no incline or ramp at the general entrance and there is security at the general entrance. (T-22) Petitioner also testified to receiving a photograph She testified that there were no signs warning anyone of any slippers surface on the morning of the fall. (T-. 37) of a caution sign, placed shortly after her fall stating slippery when wet. (T-21)

Petitioner returned to her regular job. Light duty and then with assistance from co-workers. (T-24) (T24) Petitioner retired but has return to employment at a different hospital and on a "per diem" basis and lighter duty. (T-28)

Petitioner received group benefits and group medical (PX 2) coverage subsequent her injury. Temporary totals disability benefits were not paid. Respondent introduced two weather reports reflecting that weather conditions were not a contributing factor. (Rx 1, Rx 2).

On cross examination, the Petitioner denied any conversation with co-workers, Shannon Phillips (T-33) or supervisor Kari Cooper (T-36) Petitioner testified that any report indicating she tripped and fell was incorrect. (T-40) Petitioner did not remember the weather condition that day (T-23) nor did she recall any broken tiles. (T-44) Petitioner was a former patient of the hospital, so she has a patient profile on file (T-51-52). Petitioner denied that her shoes played a part in her fall. (T-36) She testified that she did not see any other employees who were either coming to work or leaving work that morning slip, trip or fall. (T- 36) She testified that there were no signs warning anyone of any slippers surface on the morning of the fall. (T- 3) She denied having spoken with anyone nor did she prepare any reports about a slippery surface that morning to warn others of a potential hazard. No accident reports were submitted into evidence. Since being discharged from care and released to return to work without restrictions by Dr. Baylis in 2017, Petitioner has not contacted him to set up an appointment. (T- 44) She has not had any formal visits or physical therapy since being discharged in 2017. She returned back to work at her regular job for the Respondent earning the same wage. (T-45) She continued to work for the Respondent until she retired in May of 2020

Respondent introduced two weather reports reflecting that weather conditions were not a contributing factor. (Rx 1, Rx 2).

III. **Conclusion of Law**

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the Petitioner bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his or her claim *O'Dette v. Industrial Commission,* 79 Ill. 2d 249, 253 (1980) including that there is some causal relationship between the employment and the injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989). And, yet it also 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). The Act is a remedial statute which should be liberally construed to provide financial protection for injured workers. *McAllister v. IWCC*, 2020 IL 124848 ¶ 32. The Act's provisions are to be read in harmony to achieve that goal. *Vaught v. Industrial Commission,* 52 Ill.2d 158, 165 (1972). Workers are entitled to "prompt, sure, and definite compensation, together with a quick and efficient remedy" with industry bearing the "costs of such injuries" rather than the injured worker. *O'Brien v. Rautenbush*, 10 Ill.2d 167, 174 (1956). Decisions of an Arbitrator shall be based exclusively on stipulation of the parties, the evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e) The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Credibility Assessment: 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 The Arbitrator viewed Petitioner's demeanor under direct examination and under cross-examination. The Arbitrator considered the testimony of Petitioner with the other evidence in the record. Petitioner's testimony is found to be 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:

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. 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. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, citing Caterpillar Tractor, 129 Ill. 2d at 58; *see also The Venture—Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728; *Sisbro,* 207 Ill. 2d at 204.

The parties' dispute centers on whether the title floor was slippery in the area where Petitioner claims to have slipped or whether she tripped due to her footwear. Given the totality of this record, the Arbitrator finds that Petitioner has established that she sustained a compensable injury as claimed. In so concluding, the Arbitrator finds Petitioner's testimony to be credible and uncontroverted.

The Arbitrator finds that the crowded conditions during the shift change and Petitioner's inability to reach for a handrail to prevent her fall also caused an increased risk. The Arbitrator is also mindful the slippery when wet sign posted sometime or some day after her fall is indicative of floor being slippery when wet.

Petitioner herein parked in the employee parking lot. Petitioner used the Respondent's security card to enter the Respondent's designated ingress and egress employee entrance and exit when she fell. Accordingly, the Petitioner was in the course of her employment as she was at a place where her employer expected her to be and performing a duty or something incidental for her employer, starting her job. The Arbitrator finds Petitioner was in the course of her employment. It has long been held that accidental injuries sustained on an employer's premises within a reasonable time before and after work are generally deemed to arise in the course of the employment. *Caterpillar Tractor Company v. The Industrial Commission*. 129 III.2d 52, 57 (1989)

The Arbitrator finds that the floor was wet and that the floor was slippery when wet and that this condition constituted as a hazard. When, as in this case, an injury to an employee takes place in an area that is the usual route to the employer's premises, and the route is attendant with a special risk or hazard, the hazard becomes part of the employment. Special hazards or risks encountered as a result of using a usual access route satisfy the "arising out of requirement of the Act. See *Bommarito v. Industrial Comm'n*, 82 Ill. 2d 191, 195 (1980); see also *Mores-Harvey v. Industrial Comm'n*, 345 Ill. App. 3d 1034, 1040 (2004). It is for these reasons that the Arbitrator finds that Petitioner's injury in this case arose out of her employment.

The Arbitrator notes that the Petitioner clearly testified that her fall was due to slipping and she noticed her pants leg was moist subsequent to the fall. Petitioner also testified that the corridor hallway is quite crowded due to shift changes, and she was in the middle of the crowd and unable to have access or grab a handrail. The Arbitrator further notes that the hallway was inclined in an upward angle and flat right where Petitioner fell and that employees often carried in coffee and water bottles frequently. Respondent suggests that Petitioner tripped, possibly due to the shoes she was wearing. Respondent has produced no evidence in furtherance of these suggestions and produced no witnesses on its behalf.

The Arbitrator finds the case at bar is factually and strikingly similar to *Chicago Tribune Company v. Industrial Commission*, 136 Ill.App.3d 260 (1st Dist. 1985) In that case the claimant slipped and fell in employee's lobby after she entered the building on her way to work. She stated she did not know what caused her to fall, and she could not recall if the floor was wet or not. The location where she fell was used by both employees and the general public. The court held the claimant was subject to an increased risk because she was required to be in the area in order to get to her workstation while the general public was not, stating "It is difficult to see how the Respondent can escape liability by exposing the public to the same risks encountered by its employees". The Court further noted there was an inference that the floor was wet, even though the security guard on duty denied this. Unlike, *Chicago Tribune Co*, in the case as bar no persuasive evidence was introduced that the floor was not wet. *See also, Alka Jain v. Norwegian American Hospital*, 1999 Ill.Wrk.Comp 942, 9 IIC 381 where the Commission found under substantially similar facts to the case at bar that the accident arose out of and in the course of the employee's employment. Petitioner here, like in *Alka Jain*, said she did not see what caused her to slip and fall but realized that the floor was wet because her clothing got wet when she was on the floor. The no dispute that the floor was slippery when wet. The dispute is whether the floor was wet. Thus, as in *Chicago Tribune Co*., there is an inference that the floor

was wet, and as there is no persuasive evidence the fall may have been idiopathic in nature. Therefore based on the evidence as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that she sustained an accident that arose out of and the course of her employment.

In accordance with Petitioner's credible unrebutted testimony, the record as a whole, and legal precedent, the Arbitrator finds that the Petitioner's accident arose out of and in the course of her employment.

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:

Respondent does not dispute the reasonableness or necessity of the medical treatment or charges. Respondent disputes liability to pay for medical services rendered based on its dispute of accident. Given that the Arbitrator has found the accident arose out of and in the course of Petitioner's employment, the Arbitrator finds that medical treatment was reasonable and necessary. Respondent is liable for payment of the medical charges. The bills were paid by Petitioner's group insurance provider through her employer. Respondent shall be granted as a credit to in the amount of $32,772.71, however the Respondent shall also grant Petitioner a hold harmless for those services and amount.

The Arbitrator further finds that Petitioner reached maximum medical improvement on May 19, 2018. Neither Petitioner's surgeon nor Dr. Chmell opined that Petitioner required further treatment.

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:

Respondent does not dispute that the Petitioner was temporality totally disabled for the period claimed. Respondent disputes liability based on its dispute of accident. Also, Petitioner's time off work was authorized and corroborated by the medical records. Given that the Arbitrator has found the accident arose out of and in the course of Petitioner's employment, Respondent shall pay Petitioner temporary total disability benefits of $789.10 per week from July 9, 2017 through October 2, 2017 as provided by Section 8 of the Act. Respondent shall be given credit for group benefit paid during this time in the amount of $6,853.08.

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

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following five factors;

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no opinion comporting with the specific requirements of §8.1b(a) was submitted into evidence. However, the Arbitrator has considered the Petitioner's Section 12 examiner's comments as a factor in the evaluation of Petitioner's permanent partial disability as required by §8.1b(b)(i). The Arbitrator has considered this factor in evaluating the nature and extent of Petitioner's distality.

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 pharmacy technician at the time of the accident and that she was able to return to work in her prior capacity as a result of her injury. The Arbitrator has considered this factor in evaluating the nature and extent of Petitioner's distality.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 62 years old at the time of the accident. The Arbitrator is mindful that Petitioner's age impairs a recovery that is enjoyed by youth. The Arbitrator notes that she elected to retire after the accident and work part

time in a less physically demanding position. The Arbitrator has considered this factor and gives it some weight in determining disability.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that no evidence was introduced that Petitioner lost income due to medical restrictions. The Arbitrator has considered this factor and gives it less weight in determining disability.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes sustained a Colles fracture of right radius requiring open reduction and internal fixation for distal radius fracture of Petitioner's right wrist for which Petitioner has diminished range of motion and diminished strength it her dominant hand. The hardware has not been removed. The Arbitrator has considered this factor in evaluating the nature and extent of Petitioner's distality.

Based on the above factors and record taken as a whole, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 30% loss of use of the right hand pursuant to section 8 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC009917
Case Name	Lloyd Miller v. Village of Mount Prospect
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0488
Number of Pages of Decision	15
Decision Issued By	Marc Parker, Commissioner

	Pro Se
Respondent Attorney	John Fassola

DATE FILED: 10/4/2024

/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	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lloyd Miller,

Petitioner,

vs. NO: 19 WC 9917

Village of Mount Prospect,

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 jurisdiction, accident, causal connection, medical expenses, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 28, 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) 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.

October 4, 2024

MP:yl
o 9/26/24
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	19WC009917
Case Name	Lloyd Miller v. Village of Mount Prospect
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	
Respondent Attorney	John Fassola

DATE FILED: 12/28/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 27, 2023 5.08%

/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

Lloyd Miller **Case #** **19 WC 009917**
Employee/Petitioner

v.

Village of Mount Prospect
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 **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, on **October 24, 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 **01/17/2017**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, the Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent was defective bur Respondent was not prejudiced.

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

In the year preceding the injury, the Petitioner earned $**96,200.00**; the average weekly wage was $**1,850.00**.

On the date of accident, Petitioner was **42** years of age, ***married,*** with **1** child under 18.

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**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 Petitioner failed to prove that he sustained a compensable accident that arose out of and in the course of his employment by Respondent Therefore, all remaining disputed issues are moot, and no benefits are awarded to the Petitioner.

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.

Joseph D. Amarilio

/s/ _____ **DECEMBER 28, 2023**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ADDENDUM TO ARBITRATION DECISION

LLOYD MILLER,	)	
	)	
Petitioner,	)	
	)	
v.	)	**19 WC 009917**
	)	
VILLAGE OF MOUNT PROSPECT,	)	
	)	
Respondent.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

Mr. Lloyd Miller (Petitioner) filed an Application for Adjustment of Claim seeking benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)). Petitioner alleged that he sustained an accidental injury on January 17, 2017 while employed by the Village of Mount Prospect. (Respondent").

Petitioner represented himself *pro se.* The parties jointly submitted a completed Request For Hearing Form reflecting that the following issues are in dispute: 1. Whether Petitioner sustained an accident that arose out of and in the course of his employment. 2. Whether Respondent was given notice of the accident within the time limits stated in the Act. 3. Whether Petitioner's current condition of ill-being is causally connected to his accidental injury of January 17, 2017. 4. Whether Respondent is liable for unpaid medical bills. 5. Whether Petitioner is entitled to temporary total disability benefits for the period of April 8, 2017 through October 24, 2023. 6. The nature and extent of Petitioner's injury. And, 7. Whether Respondent intentionally misled the courts and whether Respondent refused to investigate its alleged wrongful activity. (Arb. X 1).

At trial, the following seven (7) witnesses testified: Mr. Brian Lambel, Ms. Kathy Miller, Mr. Russ Bechtold, Mr. Matthew Takoy, Mr. John Dolan, Mr. Brad Peterson, and Petitioner.

The parties stipulated that they were prepared to try the case to completion on October 24, 2023. At the conclusion of the hearing, the parties submitted exhibits into evidence. The parties requested a written decision, including findings of fact and conclusions of law. (Arb. X 1). The trial transcript was prepared and reviewed by the Arbitrator as well as the exhibits in rendering the arbitration decision.

The Arbitrator in reviewing Petitioner's exhibits redacted personal information consistent with Illinois Supreme Court Rule 138 for Petitioner's protection.

II. FINDINGS OF FACT

Prior Proceedings:

Mr. Miller complaints were considered by the following:

1. The Board of Fire and Police Commissioners;
2. The Illinois Labor Relations Board, State Panel;
3. The State of Illinois Department of Human Rights; and,
4. The United States Equal Employment Opportunity Commission**.**

Mr. Miller was represented by an attorney in each of the above four proceedings.

On January 17, 2017, Firefighter Paramedic Reschke submitted an Interoffice Memorandum regarding a unwitnessed conversation he had with Petitioner on January 13, 2017. Mr. Reschke alleged that Petitioner was angry about the lieutenants' testing process. He was upset that the process was approved by the union at a meeting two nights prior. "Then, unprovoked, he made a comment about how if does not make the next lieutenants' list he will 'kill some people.' He followed it up by saying 'literally kill" and then he would "line them up" so they could watch as it happened. '" (PX 6).

On January 17, 2017, Petitioner had a meeting with Local Union President Matt Takoy, Deputy Fire Chief John Dolan, and Chief Brian Lambel regarding Reschke's allegation. At the conclusion of the meeting, Petitioner was placed on paid administrative leave. (PX 5)

On March 24, 2017, Fire Chief Brain Lambel filed seven (7) charges with the Board of Fire and Police Commissioners alleging Firefighter Miller violated Department rules and policies. (RX 5)

On May 15, 2017 at 6:00 PM a hearing was commenced before the Board of Fire and Police Commissioners. An additional hearing date was needed on May 16, 2017 at 600 PM and concluded in the early morning hours of May 17, 20217. Mr. Miller was represented by counsel of his choice. At the hearing, the Board heard the testimony of witnesses and reviewed exhibits. (RX 6).

On June 5, 2017, the Board of Fire and Police Commissioners, consisting of five (5) members rendered its Findings and Decision. The Board unanimously found against Mr. Miller on all seven (7) charges and discharged Mr. Miller for cause. (RX 6).

On September 26, 2017, the Illinois Labor Relations Board, State Panel, dismissed a charge filed on July 3, 2017 by Mr. Llyod Miller a firefighter paramedic formerly employed by the Village of Mount Prospect. Mr. Miller, by and through his attorney, alleged that the Village of Mount

Prospect engaged in unfair labor practices when it discharged him. Mr. Miller charged that the Village discharged him in retaliation for disagreeing with the Village's changes to the lieutenants' promotional examination, agreed to by the Union, and for running for a position on the Union's Executive Board. Mr. Miller denied that he threatened to "kill some people" if the Village did not promote him to lieutenant. (RX1)

On October 10, 2018, The State of Illinois Department of Human Rights issued its Notice of Dismissal For Lack of Substantial Evidence. Based on its investigation report. The report consisting of eleven (11) pages is quite detailed. Mr. Miller alleged that he was discharged because of his Jewish religion. He alleged that was discharged for violating Respondent's workplace violence policy. He further alleged that similarly situated employees whose religion were different than his were not discharged under similar circumstances. (RX 2)

On December 20, 2019, The Equal Employment Opportunity Commission issued a Dismissal and Notice of Rights. Mr. Miller alleged that he was discharged because of his religion, Jewish. Mr. Miller alleged that he was discharged for violation of Respondent's workplace violence policy but that similarly situated employees whose religion was different from his were not discharged under similar circumstance. Without a hearing, the EEOC adopted the findings of the State of Illinois Department of Human Rights. (RX 3).

Petitioner's Workers' Compensation Claim

Petitioner alleges that he developed a mental health condition of ill-being, including post-traumatic stress disorder, because of unfair employment practices engaged by Respondent that led to his termination from employment on June 5, 2017. Petitioner, therefore, seeks benefits under the Act.

In instant case, Petitioner called four (4) present or former employees of the Village of Mount Prospect Fire Department to testify. Their testimony was, in large part, cumulative. Mr. Reschke was not called to testify by either party.

Mr. Brian Lambel, the former Fire Chief for the Village of Mount Prospect, identified a letter, marked as Petitioner's Exhibit 5, in which the Chief advised the Petitioner on January 17, 2017 that there was an investigation into an accusation that Petitioner threatened to shoot someone. He also identified Petitioner's Exhibit No. 6, which is a memo from Petitioner's accuser, in which Petitioner was accused of threatening to line up people and kill them. Petitioner's examination of various witnesses placed a great deal of emphasis on the distinction between "shooting" co-employees and "lining up and killing" co-employees in an attempt to attack the credibility of the testimony of the witnesses because of the inconsistency between shooting and killing.

During his examination of various witnesses, Petitioner was given a great deal of leeway to essentially testify on his own behalf and in the admission of documentary evidence. The Petitioner did not present his own testimony aside from making various statements during the questioning of other witnesses. Petitioner was called to testify by Respondent, however.

In addition to former Chief Lambel, Petitioner also called Union President Matthew Takoy, Chief John Dolan, and Union Vice President Brad Peterson as witnesses. Like former Chief Lambel, the witnesses were questioned by Petitioner on the distinction between threatening to shoot other employees and threatening to kill other employees. The witnesses were also asked about Petitioner's Exhibit No. 4, which was purportedly an agreement drawn up to potentially allow Petitioner to come back to work.

Union President Matt Takoy, in particular, testified that he made Petitioner aware of the contents of the proposed agreement. (T.176, 182, 190) For reasons that were not introduced into evidence on the record, the agreement was never implemented, and Petitioner did not return to employment with the Village of Mount Prospect.

Petitioner claims that his termination from employment was not appropriate and was handled improperly. Petitioner had the opportunity to litigate his employment termination in another forum.

With regard to the nature of the allegations against Petitioner, Union President Matthew Takoy, on cross-examination, put his concerns succinctly. Mr. Takoy testified as follows:

> "Now, when a threat comes across, we live in a world today even six years ago, where when something is said, even if it is kidding, joking or real, there is a concern. There is a concern for safety. We work in safety, ok, and we worry about not only ourselves but citizens around us and everyone.
>
> So, me being the President, me potentially being one of those people that, you know, allegedly would be lined up, ok, I had a concern for myself. And we were friends on Facebook, and I decided to look at your pictures on Facebook. So, to me in my own mind, I had a concern for my safety because all I wanted to do is go to work one day and come home the next and repeat the process." (T.198)

John Dolan, the current Fire Chief for the Village of Mount Prospect, and Brad Peterson, Union Vice President for the Village of Mount Prospect, were similarly questioned by Petitioner, and gave similar responses. The four Fire Department witnesses were also questioned by counsel for the Respondent. All four of the Fire Department witnesses testified that the allegations presented against the Petitioner, including that he made a threat to line up and kill individuals, were taken seriously. All witnesses also testified that, to their knowledge, the appropriate procedures of the Village of Mount Prospect, the Board of Fire and Police Commissioners, and the statutory Disciplinary Act were appropriately followed during Petitioner's employment proceedings. The witnesses testified that Petitioner underwent a formal interrogation, at which time he was represented by legal counsel. He was given a hearing before the Board of Fire and Police Commissioners, at which time he was likewise represented by counsel, and had the opportunity to testify and present a defense. The proceedings ultimately led to Petitioner's employment with the Village of Mount Prospect Fire Department being terminated.

Petitioner also called the former Chaplain for the Mount Prospect Fire Department, Ross Bechtold, and Petitioner's wife, Kathy Miller, to testify. Chaplain Bechtold essentially testified that, following a meeting with Petitioner, he wrote a letter to a Village of Mount Prospect Trustee requesting that Petitioner's termination from employment be further investigated. (T.151)

Mrs. Miller testified that Petitioner was not a gun enthusiast. (T.130-131) She testified that he loved his job, and that his demeanor changed following his termination from employment. (T.127-128, 133-134) She also testified, on cross-examination, that she would be concerned if one of her employees threatened to kill other people in her department, and she would be inclined to investigate such an accusation. (T.145-147) Mrs. Miller did not believe Petitioner would harm others.

As noted, Respondent called Petitioner as a witness in Respondent's case in chief. During the questioning, Petitioner admitted that the injury he is claiming as part of his Workers' Compensation case is related to his termination from employment with the Village of Mount Prospect. (T.243) His statements to his medical providers were related to anxiety about the fact that he had been terminated, or anxiety about his various court cases. (T.244-245)

Petitioner also admitted that during his interrogation, he had legal counsel available to him. (T.247) He was also represented by an attorney before the Board of Police and Fire Commissioners. His attorney had the opportunity to call and cross-examine witnesses. (T.247)

Following the completion of the Board and Police and Fire Commissioner's Hearing, Petitioner brought a claim before the Illinois Labor Relations Board, and that claim was dismissed by the Board in January of 2018. (T.248) He also brought a claim before the Illinois Department of Human Rights. He was represented by counsel during those proceedings. (T.248-249)

Finally, Petitioner testified that he had not been advised by any medical professional at any time that he was incapable of working. (T.250) The reason why he was not working is because he was terminated from his position as a Firefighter. (T.250) He is currently employed as an emergency room nurse (T.251).

IV. 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 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(d)*. 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)

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO DISPUTED ISSUE (C) WHETHER AN ACCIDENT OCCURED THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner alleges that he suffers from a mental health condition arising from workplace stress related to discipline leading to his termination of employment. Petitioner readily admitted that the basis of his claim is the investigation beginning on January 17, 2017 into alleged workplace threats made by Petitioner, and the resulting proceedings that resulted in the Board of Fire and Police Commissioners terminating his employment in June 2017. Petitioner did not testify to any other workplace stressors or incidents leading to his condition, aside from the disciplinary proceedings, termination and the related litigation.

The threshold question for the Arbitrator, therefore, is whether stress resulting from a termination of employment is a compensable claim under the Workers' Compensation Act. It is not. The legal precedent is clear and unequivocal. The law does not support a conclusion that Petitioner has an actionable claim under the Act.

In *Esco Corporation v. Industrial Commission*, 169 Ill.App.3d 376 (1988), the Appellate Court considered the question presented in the present case. In *Esco* the claimant contended that a change in his job position and ultimate termination of employment led to him being anxious and depressed. Ultimately, he had physical consequences as a result, which a doctor linked to his stress. However, the Court concluded that stress resulting from the loss of employment is not compensable under the Act. The Court reasoned the possibility of termination from employment is a circumstance which all employees face, it would not be found to exceed "the stress found in employment life generally". *Esco Corporation*, at 383.

Other cases have similarly held that "the routine involuntary termination of employment, although traumatic, does not, of itself, constitute an event sufficient to bring it within the confines of *Pathfinder*". *Skidis v. Industrial Commission,* 309 Ill. App. 3d. 720, 723 (1999). Likewise, an employment investigation or interrogation has been held not be compensable under the Act. *City of Elgin v. IWCC,* 2020 IL App (2d) 190713.

As noted, the workplace stress that Petitioner alleges is solely related his termination from employment. The proceedings which led to Petitioner being terminated from employment began with the Department receiving an allegation that Petitioner threatened to kill co-employees. Under the circumstances, the Arbitrator finds it was reasonable, and indeed necessary, for the employer to thoroughly investigate the allegations. The fact that this investigation would have been stressful for the Petitioner does not equate to compensability.

Petitioner contends that he was being unfairly targeted as a result of the investigation. For example, he placed a great deal of emphasis on the distinction of a threat to "line up people and kill them" and using a gun to shoot them. The Arbitrator considers this to be a distinction without

a difference. The end result remains the same. Moreover, the Arbitrator finds that a threat to "line up" employees to kill them could reasonably be inferred as a threat of gun violence. Regardless, the witnesses called by Petitioner testified credibly to why the alleged threats created a concern about Petitioner's continued employment with the Respondent.

Petitioner admitted that he had legal counsel available to him during the course of his interrogation and during the proceedings before the Board of Fire and Police Commissioners. While he contended an inability to fully present a defense, the totality of the evidence in the record does not support that conclusion. Likewise, while Petitioner contended that representatives from the Fire Department "lied under oath", no evidence was presented to corroborate that contention. And, even if his claims have merit, the Arbitrator does not have jurisdiction to review if Petitioner received due process in Board of Fire and Police Commissioners hearing. Nor does the Arbitrator have jurisdiction to review the holdings of the Illinois Labor Relations Board or the Illinois Department of Human Rights nor the EEOC.

All of the witnesses employed or formerly employed by the Respondent testified that appropriate procedures were followed in Petitioner's disciplinary proceedings. These included the Rules of the Board of Fire and Police Commissioners, as well as the statutory provisions of the Illinois Firemen's Disciplinary Act. In accordance with those procedures, the Board of Fire and Police Commissioners terminated Petitioner's employment following a full hearing. Petitioner likewise took the opportunity to pursue other remedies through the Illinois Labor Relations Board and Illinois Department of Human Rights. Those claims were also rejected. The Arbitrator notes that the Illinois Workers' Compensation Commission is not the forum to re-litigate employment grievances. The Commission is not the proper forum because it has no jurisdiction to address employment related grievances.

It is foreseeable that Petitioner would experience stress, anxiety or depression in association with being terminated from his employment as a firefighter. However, being terminated for cause, following an investigation and hearing, does not represent a compensable claim under the Illinois Workers' Compensation Act. To find otherwise would create a new legal principle and would open up the possibility of a multitude of claims by any employee who is subject to a disciplinary hearing or is terminated from employment. As a result, the Arbitrator, who is bound to follow the law and not make law, finds that Petitioner has failed to prove that he sustained a compensable accident under the Act.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO DISPUTED ISSUE (E) WHETHER TIMELY NOTICE OF ACCIDENT WAS GIVEN TO RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to the Arbitrator's Decision reached in Section C that Petitioner failed to prove that he sustained a compensable claim under the Illinois Workers' Compensation Act, the Arbitrator finds disputed issue E to be moot but *in dictum* decides that timely notice of a claim was given to Respondent. The Arbitrator finds that notice provided was defective, but the Arbitrator further finds Respondent was not prejudiced.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO DISPUTED ISSUE (F) IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to the Arbitrator's Decision reached in Section C that Petitioner failed to prove that he sustained a compensable claim under the Illinois Workers' Compensation Act, the Arbitrator finds disputed issue F to be moot.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO DISPUTED ISSUE (J) WERE THE MEDICAL SERVICES PROVIDED TO PETITIONER REASONABLE AND NECESSARY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to the Arbitrator's Decision reached in Section C that Petitioner failed to prove that he sustained a compensable claim under the Illinois Workers' Compensation Act, the Arbitrator finds disputed J issue to be moot.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO DISPUTED ISSUE (K) IS PETITIONER ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to the Arbitrator's Decision reached in Section C that Petitioner failed to prove that he sustained a compensable claim under the Illinois Workers' Compensation Act, the Arbitrator finds disputed issue K to be moot.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO DISPUTED ISSUE (L) WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to the Arbitrator's Decision reached in Section C that Petitioner failed to prove that he sustained a compensable claim under the Illinois Workers' Compensation Act, the Arbitrator finds disputed issue L to be moot.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATED TO DISPUTED ISSUE (O) WHETHER RESPONDENT INTENTIONALLY MISLED THE BOARD AND COURTS REGARDING HIS TERMINATION AND WHETHER RESPONDENT REFUSED TO INVESTIGATE ITS WRONGFUL ACTIVITY, THE ARBITRATOR FINDS AS FOLLOWS:

Pursuant to the Arbitrator's Decision reached in Section C that Petitioner failed to prove that he sustained a compensable claim under the Illinois Workers' Compensation Act, the Arbitrator finds disputed issue O to be moot. The Illinois Workers' Compensation Commission is not the forum to re-litigate employment grievances.

IN CONCLUSION Petitioner claims that he was wrongfully discharged from his employment with Respondent. Petitioner alleged that a co-worker falsely reported to Respondent that Petitioner intended line people up and kill them 13 months after learning that he would not be promoted but two days after his union adopted a new promotion process/ Petitioner has steadfastly denied these accusations.

Petitioner believes that in the course of the investigation and resulting litigation, Respondent failed to provide him with all the information that he was entitled to receive to properly present his defense, that Respondent engaged in wrongful conduct during the investigation and litigation; conduct that prevented him from remaining as a firefighter. Being a firefighter was not just a job to Petitioner. It was his life. His family also suffered personally and financially because of his wrongful termination. Petitioner proceeded with litigation to clear his name and be reinstated as a firefighter. He believes he lost because the process was not fair. As a result, he became stressed, depressed and suffered from PTSD. And, yet now, he no longer desires to be a firefighter. To his credit, Petitioner did not wallow in his loses, he changed careers and became an emergency room nurse. (T. 255 – 258).

Although Petitioner was granted significant leeway to prosecuting this claim and at all times treated with respect, Petitioner asserts that he has not been fairly treated in the pursuant of his workers' compensation claim. He asserted complaints of unfairness in the prior four proceedings in which he was represented by counsel.

It is axiomatic that *pro se* litigants must comply with the same rules and hare held to the same standards as licensed attorneys. *Holzrichter v. Yorath,* 2013 IL App (1st) 110287 (2013) The rules of evidence and of the Illinois Workers' Compensation Commission must be complied with by parties choosing to represent themselves without a lawyer. Petitioner, a party who chose to represent himself, is therefore subject to the same rules and procedures. His claims of unfairness in the process appear to be due to his lack of understanding of the law and rules and procedures of the Commission.

In light of the findings and conclusions stated above, the record as a whole, and the relevant law, the Arbitrator concludes that he does not have jurisdiction over Petitioner's employment related claimed grievances. The employment grievances raised by Petitioner are not within the jurisdiction of the Commission nor compensable under the Illinois Workers' Compensation Act. Therefore, the Arbitrator finds that Petitioner is not entitled to any benefits under the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	08WC015587
Case Name	Kristina Kormany (Admin. of Estate of Gyula Kormany, Deceased) v. A-Tech Stucco EIFS Co. & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0489
Number of Pages of Decision	19
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Brian Driscoll
Respondent Attorney	Rachel Hamer

DATE FILED: 10/7/2024

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kristina Kormany, administrator of the estate of
Gyula Kormany, Deceased,

Petitioner,

vs. NO: 08 WC 15587

A-Tech Stucco EIFS Co., and the
IWBF,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent IWBF herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, employment relationship, benefit rates, medical expenses, temporary total disability, permanent partial disability, statute of limitations, whether Respondent IWBF's motion to dismiss should have been granted, whether Respondent IWBF is liable, whether an award can be entered against Respondent-employer when it has been discharged in bankruptcy, and whether the Amended Application against Respondent IWBF was timely filed, 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 23, 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 $42,200.00. 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.

October 7, 2024

MP:yl
o 9/26/24
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	08WC015587
Case Name	Kristina Kormany, administrator of the estate of Gyula Kormany, Deceased v. A-Tech Stucco EIFS Co. and the IWBF
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Stephen Friedman, Arbitrator

Petitioner Attorney	Brian Driscoll
Respondent Attorney	Rachel Peter

DATE FILED: 6/23/2023

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

/s/Stephen Friedman, Arbitrator

Signature

[Type here]

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

Kristina Kormany, administrator of the estate of Gyula Kormany, Deceased
Employee/Petitioner

v.

A-Tech Stucco EIFS Co. and the IWBF
Employer/Respondent

Case # **08** WC **015587**

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 **Waukegan**, on **June 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 **Liability of the IWBF, Motion to dismiss IWBF**

FINDINGS

On **March 19, 2007**, 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 $**38,414,35**; the average weekly wage was $**800.30.**

On the date of accident, Petitioner was **47** years of age, ***single*** with **1** dependent child.

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 $**0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $**19,970.80**, detailed in the Arbitrator's finding with respect to Medical herein, as provided in Sections 8(a) and 8.2 of the Act. Said payment shall be made consistent with the medical fee schedule. Respondent shall further reimburse Petitioner's union health and welfare fund, Administrative District Council 1 Welfare Fund, in the amount of **$2,038.28.**

Respondent shall pay Petitioner permanent partial disability benefits of $**480.18**/week for **41.75** weeks, because the injuries sustained caused the **25**% loss of the **Left Foot**, as provided in Section 8(e) of the Act.

The Illinois State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award, if any, is hereby entered as to the IWBF to the extent permitted and allowed under §4(d) of the Act. In the event the Respondent/Employer/Owner/Officer fails to pay the award, the IWBF has the right to recover the benefits paid by it to the Petitioner pursuant to Section 5(b) and 4(d) of this Act. The IWBF's payment of medical costs awarded in this matter is limited to only those that are reasonable, related to this injury and that remain currently due and owing at the time of IWBF disbursement. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund. The Employer-Respondent's obligation to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured. The Motion to Dismiss 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.

/s/ Stephen J. Friedman **JUNE 23, 2023**

Signature of Arbitrator

Statement of Facts

Procedural History:
Petitioner filed his claim for an injury date of March 19, 2007. Prior to the Arbitration hearing, Petitioner died of unrelated causes and his estate was substituted as Petitioner. The matter proceeded to hearing before Arb. Dollison on January 25, 2016. Arbitrator Dollison entered his decision on March 16, 2016, awarding Petitioner benefits against the IWBF (PX 2: 6/21/23). The Arbitrator's Decision was affirmed by the Commission on June 1, 2017 as 17IWCC 0342 (PX 2: 6/21/23). The matter was appealed to the Appellate Court, who vacated the decision of the Commission and remanded the case to allow a properly appointed representative of Kormany's estate to be substituted as the Petitioner and for further proceedings thereafter in 19 Il. App. (1st) 180644WC (PX 3: 6/21/23). On March 11, 2020, the Commission entered it's Order on Remand finding that on June 25, 2019, the Circuit Court of Cook County appointed Kristina Kormany, the injured employee's only known heir, to be administrator of the injured employee's estate. On January 7, 2020, the Commission, through Commissioner Simpson, granted a motion to substitute Ms. Kormany as administrator of the Estate of Gyula Kormany, as Petitioner in this matter and remanded the matter for assignment to an Arbitrator to adjudicate this claim with the properly named Petitioner. 2020 Ill. Wrk. Comp. LEXIS 422.

6/21/23 Trial:
The matter was assigned to Arbitrator Friedman who proceeded to hearing on June 21, 2023. On the date of trial, Respondent A-Tech Stucco EIFS Co. did not appear. Petitioner offered PX 1: 6/21/23 documenting that proper notice had been given to this Respondent. The matter proceeded with Petitioner and the IWBF represented by counsel. The parties stipulated that the Request for Hearing from the January 25,2016 hearing was still accurate (PX 4: 6/21/23, p C71-72). Petitioner offered the above PX1, PX 2, and PX 3. Petitioner offered the record of proceeding of the previous hearing as PX 4: 6/21/23.

Petitioner offered the testimony of John Loerzal, who testified that he had previously testified at the original hearing. He was the superintendent for Respondent and testified to accident and notice. He testified that his prior testimony was true and accurate.

Kristina Kormany testified that her testimony at the previous hearing was true and accurate. Gyula Kormany dies in October 2014. He was not married. Ms. Kormany was his only child. He left no will. She testified that she filed a small estate affidavit listing her as the representative of the estate.

Finding of Facts from the Initial Arbitration Proceeding:
Gyula "George" Kormany ("Petitioner") was born on September 16,1961 and passed away on October 25, 2014 (PX 17 and 18). On March 19, 2007, he was single, and had one dependent daughter, Kristina Kormany ("Petitioner's daughter"), whose date of birth was May 29, 1990. On this date, Petitioner worked for Respondent A-Tech Stucco Eifs Company ("A-Tech"), owned by John Bajas ("Bajas"). On this date, A-Tech had a workers' compensation policy with West Bend Mutual Insurance Company ("West Bend") (PX 9).

Petitioner filed an Application for Adjustment of Claim on April 9, 2008, case number 08 WC 15587 (PX 20). On July 15, 2008, West Bend filed a Complaint for Declaratory Judgement against A-Tech alleging that A-Tech violated the terms of its workers' compensation policy with West Bend because it did not report Petitioner's accident to West Bend for over twelve months after the accident (PX 11).

On October 15, 2008, A-Tech filed a Petition for Chapter 7 Bankruptcy (PX 12). A-Tech listed Petitioner Kormany as a debtor in connection with its bankruptcy hearing (PX 13). On December 16, 2008, A-Tech's Bankruptcy Petition was closed (PX-12). On February 3, 2009, A-Tech's owner, Bajas, and his wife, Kana Bajas, were personally discharged from bankruptcy by the United States Bankruptcy Court of the Northern District of Illinois (PX 13).

On June 9, 2009, Judge Mary K. Rochford granted West Bend's Motion and found that West Bend had no duty to defend or indemnify A-Tech in workers' compensation case 08 WC 15587 and that Petitioner Kormany was bound by such order (PX 15).

On April 16, 2010, Petitioner amended his application to include the Illinois State Treasurer as ex- officio custodian of the Injured Workers' Benefit Fund as a party Respondent to case 08 WC 15587 (PX 20). After Petitioner's death, Petitioner's daughter completed a Small Estate Affidavit (PX 19). Thereafter, Petitioner's Application was amended to change the name on the Application from Gyula Kormany to the "Estate of Gyula Kormany" (PX 20).

Prior to the hearing on January 25, 2016, Petitioner sent notice of the hearing to A-Tech to two different locations, both of which were listed on different check stubs of Petitioner (PX 2). Petitioner's attorney called out the name of Bajas prior to commencement of the hearing and he was not present.

As Petitioner was not alive at the time of the hearing on January 25, 2016, Petitioner's case in chief came from the direct testimony of Petitioner's daughter and Petitioner's former boss, John "Jack" Loerzal ("Loerzal").

In 2005, Petitioner's daughter, at the age of 14, moved in with her father and her disabled grandfather at 428 West Touhy, Des Plaines, Illinois 60018. Prior to this time, she lived with her mother in the Chicago-area. On March 19, 2007, Petitioner's daughter continued to live with her father, and she was 16 years old at the time of his accident.

Loerzel worked as a superintendent for A-Tech from 2006 until 2009. He reported directly to owner Bajas and served as a liaison between other employees of A-Tech and Bajas. As superintendent he looked at blue prints, ordered materials for projects, delivered material and supervised employees. In March of 2007

Loerzel served as Petitioner's supervisor. Loerzel testified Petitioner worked as a plasterer and plastered walls. To perform this job, Petitioner had to climb up and down scaffolds and ladders as well as mix and apply plaster.

Petitioner's daughter testified that she regularly noticed her father deposit his paystubs from A-Tech into the bank. Loerzel testified A-Tech paid Petitioner on an hourly basis. On Fridays, Loerzel would drop off paychecks to Kormany at his job sites. He also dropped off a check to Petitioner at his house on Touhy Avenue the week after his accident.

Upon his death, Petitioner's daughter found old paystubs from the years 2006-2007 in the top drawer of his dresser at their house Touhy Avenue. Petitioner's daughter brought copies of the paystubs she located from A-Tech to trial on January 25, 2016 from pay periods of March 24, 2006 through March 17, 2007. There were a total of 48 weekly pay stubs (PX 8). Each pay check listed the name of the employer in the top left-hand comer

as "A-Tech Stucco EIFS Co." and the employee name as "Gyula Kormany". Each check listed "regular pay" and deduction for applicable taxes and union dues (PX 8).

Prior to March 19, 2007, Petitioner did not have any known problems with his left leg or ankle. On March 19, 2007, while working for A-Tech, Petitioner fell off a six foot, four inch, scaffold and was taken to the emergency room at Advocate Condell Medical Center via ambulance (PX 3). He complained of pain in his left ankle. Loerzel testified that he saw Petitioner in the emergency room at Advocate Condell Medical Center and Petitioner's foot was wrapped. Loerzel provided that he informed Bajas that he saw Petitioner in the emergency room.

Petitioner came under the care of Dr. Zoellick in the emergency room. The doctor diagnosed Petitioner with "left posterior talus fracture with left calcaneal anterior process fracture with mild displacement. Lateral calcaneal fracture at the calcaneocuboid joint, not displaced. Left knee strain/contusion" (PX 3). Dr. Zoellick opined that Petitioner could have problems with arthritis and need an ankle fusion in the future. Dr. Zoellick placed his left ankle in a cast, and he was discharged the next day (PX 3).

Petitioner followed up with Dr. Zoellick on March 23, 2007. Dr. Zoellick mailed all treatment notes to Bajas (PX 4). X-rays from March 23 showed a fracture of the anterior process of the calcaneus with slight displacement and an avulsion fracture of the talus by the fibula. Dr. Zoellick recommended Petitioner be seen by a foot and ankle specialist. Petitioner strongly advised he did not want any surgical intervention. Petitioner received a cam-boot and was advised to remain non-weight bearing (PX 4). At his follow up with Dr. Zoellick on April 2, Petitioner again indicated he did not want surgical intervention; and, as such, Dr. Zoellick indicated he would continue with conservative care, keep Petitioner off work, keep him in the cam boot and be non-weight bearing for six weeks. At this appointment, the doctor once again warned about the possibility of development of arthritis, decreased range of motion and the need for surgical intervention in the future (PX 4).

Petitioner continued to treat with Dr. Zoellick, and he prescribed physical therapy. On June 18, 2007, Dr. Zoellick indicated that Petitioner could try to return to work light duty, with a restriction of no lifting more than 20 pounds and no climbing ladders. On August 13, 2007, Petitioner still felt like he had broken glass in his ankle when walking. Dr. Zoellick indicated Petitioner could return to work full duty; however, he recommended an evaluation with Dr. Kodros or Dr. Kelikian, orthopedic foot and ankle specialists (PX 4).

Petitioner presented to Dr. Kodros for a second opinion on August 16, 2007, complaining of pain over the lateral aspect of the ankle, hindfoot and heel. He indicated the pain was aggravated by weight-bearing. Dr. Kodros opined that Petitioner may have some posttraumatic arthritis of the hindfoot and prescribed a custom molded brace for his weightbearing activity. The doctor recommended activity modification, pm use of ice and anti-inflammatory medications and periodic corticosteroid injections (which Petitioner declined at the visit).

Petitioner started using the custom molded brace (PX 6). The custom molded brace only provided relief for a short period. On April 9, 2008, Petitioner came under the care of Dr. League at the same office. Examination on that date revealed that Petitioner had only approximately 25 percent of the inversion-eversion hindfoot motion on the left side when compared to the non-injured right foot. At this appointment, Petitioner agreed to a steroid injection (PX 6). The relief from the steroid injection only lasted for 24 hours; as such, Dr. League recommended an MRI on April 30, 2008. The MRI revealed patchy edema throughout the lateral process of the

talus that likely indicated post-traumatic degenerative healing pattern and a slight tear of the Achilles tendon. Dr. League prescribed an additional course of physical therapy and consideration of excision of the lateral process of his talus. Petitioner continued to wear his custom molded brace (PX 6).

At his initial physical therapy evaluation on May 7, 2008, Petitioner indicated that "if he works one day, the next he cannot walk, because it is so painful" and that "his heel feels like a broken glass when he walks". He further stated that he could not move his ankle sideways and that he had a constant sharp/burning pain in the bottom of the heel and lateral foot (PX 6).

Petitioner stopped attending physical therapy on his own on June 30, 2008 and cancelled his follow up appointment with Dr. League on July 7, 2008.

During the course of his treatment with the orthopedic physicians, Petitioner also treated his ankle through chiropractic treatment at Community Health and Rehabilitation Center from May 3, 2007 through June 29, 2012 (PX 5).

Petitioner did not sustain any new accidents after March 19, 2007. Petitioner used one crutch and a cane after his accident. He used the cane until the date of his death. After he completed his medical treatment, Petitioner's daughter noticed that cold weather caused him pain and she sometimes saw him in tears. She also noticed that during rainy weather, her father had a hard time getting out of bed. Petitioner's daughter noticed that he would take pain medication at the dinner table (sometimes prescribed pain medication and sometimes samples given to him from his physician). She specifically remembers that he took Hydrocodone.

Similarly, Petitioner's daughter indicated that after he finished his medical treatment related to his accident, Petitioner no longer played soccer or gymnastics with her. She stated that prior to his accident, he would play soccer with her in their front or back yard. They also used to take long walks around their neighborhood together before the accident. After the accident, they did not take these walks as frequently. If they did, they did not walk for more than a half hour, they walked at a slower pace and Petitioner needed to take frequent stops and use his daughter's arm for stability.

At the time of trial, several medical bills remained unpaid and were entered into evidence as Petitioner's group exhibit 7A-7G. The bills are as follows: Adult and Pediatric Orthopedics ($3660.00); Lake County Radiology Assoc. ($433.00); Illinois Bone and Joint ($4851.00); Community Health and Rehabilitation Center ($2538.00); Condell Medical Center ($8234.80); Dr. Spiros Stamelos ($254.00); and, Administrative District Council 1 Welfare Fund, seeking reimbursement to union for group health payments made on behalf of Petitioner ($2038.28).

Conclusions of Law

In support of the Arbitrator’s decision with respect to (A) Operating under the Act, the Arbitrator finds as follows:

The Arbitrator finds that Respondent A-Tech was operating under and subject to the Illinois Workers' Compensation Act on March 19, 2007. Respondent was in the business of plastering and stucco work. The Arbitrator finds there to be automatic coverage under Section 3 of the Act.

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).

The Arbitrator finds that there was an employee-employer relationship between A-Tech and Petitioner. In coming to this conclusion, the Arbitrator relies on the testimony of Superintendent Loerzel, who served as a supervisor to Petitioner and confirmed he was employed by A-Tech at the time of the accident. The Arbitrator also relies on Petitioner's pay stubs that state the name of the employer as "A-Tech" and name of employee "Gyula Kormany".

In support of the Arbitrator's decision with respect to (C) Accident, (D) Date of Accident, and (E) notice, 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 Arbitrator finds that an accident occurred on March 19, 2007 that arose out of and in the course of Petitioner's employment. Petitioner arrived at Advocate Condell Medical Center via ambulance after falling off a scaffold while working for A-Tech on March 19, 2007. Petitioner injured his left foot and ankle. Petitioner

gave a history of his accident occurring at work to every physician he saw, including, the emergency room physicians, Dr. Zoellick, Dr. Kodros, Dr. League and the treaters at Community Health and Rehabilitation Center.

Regarding notice, the Arbitrator finds that timely notice of the accident was given to Respondent. Petitioner advised Supervisor Loerzel of the accident on March 19, 2007. Furthermore, on March 19, 2007, Loerzel saw Petitioner in the Emergency Room at Advocate Condell Medical Center with his foot wrapped. Loerzel informed the A-Tech owner Bajas of the accident. Finally, all of Dr. Zoellick's treatment records indicating that Petitioner injured his left foot when he fell from a scaffold while working for A-Tech were sent directly to Bajas.

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill. Dec. 83, 444 N.E.2d 122). The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983). However expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000).

The Arbitrator finds that Petitioner's left foot condition of ill-being at the time of his death on October 25, 2014 was related to his work accident of March 19, 2007.

Petitioner's daughter testified that Petitioner had no known problems with his left foot or ankle prior to March 19, 2007. Loerzel testified Petitioner was always able to perform his job prior to the date of the accident. All of the medical records indicate Petitioner's left foot/ankle was in fine condition until his injury of March 19, 2007.

Beginning with the date of the accident, Dr. Zoellick warned Petitioner that his injury was serious enough that it would lead to future arthritis and the need for a potential fusion. All of Petitioner's treatment from the date of the accident through the date of his death dealt with the initial treatment of his left foot/ankle or therapy and by April 2008 (one year after the accident) an MRI revealed post-traumatic arthritis.

Finally, Petitioner did not suffer any additional accidents to his left foot/ankle after March 19, 2007. In light of the above, the Arbitrator finds all of Petitioner's medical treatment to be causally related to his March 19, 2007 work accident.

In support of the Arbitrator's decision with respect to (G) Average Weekly Wage, the Arbitrator finds as follows:

The Arbitrator calculates Petitioner's average weekly wage to be $800.30. In coming to this conclusion, the Arbitrator used the paystubs entered into evidence as Petitioner's Exhibit 8.

Petitioner's daughter regularly noticed her father deposit his paystubs from A-Tech into the bank and she brought copies of his pay stubs to trial. Loerzel testified A-Tech paid Petitioner on an hourly basis. On Fridays, Loerzel would drop off paychecks to Kormany at his job sites. He also dropped off a check to Petitioner at his house on Touhy Avenue the week after his accident.

Upon his death, Petitioner's daughter found several old paystubs from the years 2006-2007 in the top drawer of his dresser at the house where they lived together on Touhy Avenue. Petitioner gave a detailed description of the dresser where she found the pay stubs and indicated that her father kept his television on the dresser. Each pay check listed the name of the employer in the top left-hand corner as "A-Tech Stucco EIFS Co." and the employee name as "Gyula Kormany". Each check listed "regular pay" and deduction for applicable taxes and union dues.

Petitioner's daughter brought copies of the paystubs she located from A-Tech to trial on January 25, 2016 from pay periods of March 24, 2006 through March 17, 2007. There were a total of 48 weekly pay stubs. The Arbitrator totaled the 48 pay stubs and found Petitioner's salary for the dates of March 24, 2006 through March 17, 2007 to be $38,414.35. That total divided by 48 weeks, equates to an average weekly wage of $800.30.

In support of the Arbitrator's decision with respect to (H) Age and (I) Marital Status, the Arbitrator finds as follows:

Petitioner was 47 years old at the time of the accident, single and never married (PX 17 and PX 18).

In support of the Arbitrator's decision with respect to (J) Medical, 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 necessary to diagnose, relieve, or cure the effects of his injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165, 351 Ill. Dec. 63 (2011)*. Based upon the Arbitrator's findings with respect to Accident and Causal Connection, reasonable and necessary medical to treat Petitioner's injury would be compensable.

Having found the requisite causal relationship, the Arbitrator finds that the medical services that were provided to Petitioner were reasonable and necessary. -

Petitioner arrived at Advocate Condell Medical Center emergency room via ambulance where he came under the care of Dr. Zoellick. After Dr. Zoellick felt he could no longer help Petitioner, he referred him to foot/ankle specialist, Dr, Kodros. Dr. Kodros treated Petitioner for some time, until he changed offices, at which time Petitioner came under the care of Dr. League at Dr. Kodros' former office. Petitioner attended physical therapy throughout the pendency of his treatment at Community Health and Rehabilitation Center.

All of the medical treatment received by Petitioner was reasonable and necessary and were within the allowed chain of medical providers. The Arbitrator finds that A-Tech did not pay all appropriate charges for this reasonable and necessary medical treatment. At the time of trial, the following bills remained outstanding (P. Ex. 7A-7G):

Adult and Pediatric Orthopedics	$3,660.00
Lake County Radiology Associates	$ 433.00
Illinois Bone and Joint	$4,851.00
Community Health and Rehabilitation Center	$2,538.00
Condell Medical Center	$8,234.80
Dr. Spiros Stamelos	$ 254.00

The Arbitrator finds Respondent liable for the above stated medical bills, which total $19,970.80. Additionally, Petitioner's union paid $2,038.28 in work- related medical bills. The Arbitrator finds Respondent shall reimburse Administrative District Council 1 Welfare Fund in the amount of $2,038.28.

In support of the Arbitrator's decision with respect to (L) Nature & Extent, the Arbitrator finds as follows:

Petitioner's date of accident is before September 1, 2011 and therefore the provisions of Section 8.1b of the Act are not applicable to the assessment of partial permanent disability in this matter.

Petitioner sustained fractures of the left posterior talus with a left calcaneal anterior process fracture as well as a lateral calcaneal fracture at the calcaneocuboid joint. From his very first trip to the emergency room, doctors advised Petitioner that he would have arthritis in the future as well as the potential need for an ankle fusion.

Although Petitioner was not able to testify at trial, it is very clear from the medical records that he was very resistant to anything more than conservative treatment, even though he was in a tremendous amount of discomfort. Throughout his treatment records, Petitioner described tremendous pain with weight-bearing.

Doctors Zoellick, Kodros and League all recommended eventual surgical intervention which Petitioner was strongly opposed to. Petitioner's objection to surgery was evident when he fact did not even agree to a cortisone injection until a year after the accident. By April 2008, Dr. League confirmed (via an MRI) that Petitioner had post traumatic arthritis. At a physical therapy appointment on May 7, 2008, Petitioner indicated that, "if he works one day, the next he cannot walk, because it is so painful" and that "his heel feels like a broken glass when he walks." He further stated that he could not move his ankle sideways and that he had a constant sharp/burning pain in the bottom of his heel and lateral foot. This description of pain was corroborated by Dr. League's April 9, 2008 examination, which showed that Petitioner had only approximately 25 percent of the inversion-eversion hindfoot motion on the left side when compared to the non-injured right foot. In April 2008, Dr. League recommended one more course of physical therapy and indicated the only other option for Petitioner would be surgical intervention if it did not work.

Petitioner stopped treating for his ankle on his own accord in July 2008. At that point, he had a current physical therapy prescription as well as a follow up appointment scheduled with Dr. League. Petitioner was not able to testify at trial on January 25, 2016, as such, the Arbitrator cannot speculate why Petitioner stopped treatment. Whatever the reason Petitioner stopped treatment, it is clear that he had continuing complaints at the time he stopped treatment. He continued to use a cane, one crutch, and the custom boot after his treatment stopped. Petitioner's daughter testified that he used the cane until the date of his death. Petitioner's daughter also testified that his ankle caused him pain during cold weather and/or rainy weather and that he had difficulty getting out of bed. He continued to take pain medication after his treatment ceased. On a personal level, he used to play soccer with his daughter and take long walks before the accident. After the accident, he no longer was able to play soccer with his teenage daughter and, if they took walks, they were less frequent, slower, and he needed to use his daughter for stability during the walk.

The Arbitrator finds Petitioner reached maximum medical prior to his death on October 25, 2014 and that the Estate of Gyula Kormany is entitled to a permanency award in the amount of 25% loss of use of the left foot.

In support of the Arbitrator's decision with respect to (O) Liability of the IWBF, the Arbitrator finds as follows:

IWBF Motion to Dismiss:

The Arbitrator denies party Respondent Injured Workers' Benefit Fund's Motion to Dismiss the Fund (R. Ex. 1) and finds that the Fund is liable for payment of this award under the Act. The circumstances behind Petitioner filing against the Fund are laid out in the Findings of Fact as well as in Petitioner's Response to Respondent Illinois State Treasurer, as Ex Officio of the Injured Workers' Benefit Fund's Motion to Dismiss (PX 16).

The party Respondent Injured Workers' Benefit Fund (IWBF) argues that because A-Tech had an insurance policy at the time of the accident, the IWBF is not liable to make any payments related to case 08 WC 15587. The Arbitrator disagrees and finds that the legislative intent of the IWBF is to protect injured workers that find themselves in situations similar to Petitioner. For the purposes of this case, A-Tech's insurance policy is essentially null and void due to the order of Judge Mary K. Rochford that the insurance carrier had no duty to defend or indemnity A-Tech in case 08 WC 15587 and Petitioner was bound by that order. To make matters worse for Petitioner, both A-Tech and Bajas filed for bankruptcy and listed Petitioner as a creditor. As such, Petitioner's only recourse to secure any type of benefits whatsoever would be through the IWBF. The Arbitrator finds that the IWBF's legislative intent was to help injured workers that found themselves in situations similar to Petitioner.

The Arbitrator acknowledges that there is no case law on point on this specific issue, and that it is a matter of first impression before this Commission. Respondent argues that since there are no cases saying that Petitioner should be entitled to benefits in this instance, that benefits should be denied. The Arbitrator disagrees. The IWBF was formed in July 2005, less than two years before Petitioner's accident and certainly was still very new in the eyes of the Commission at the time of trial 10 years later. It is not unusual that a case with this specific fact pattern has not yet come before the IWBF.

Section 4(d) of the Act clearly states:

"Moneys in the Injured Workers' Benefit Fund shall be used only for payment of workers' compensation benefits for injured employees ·when the employer has failed to provide coverage as determined under this paragraph (d) and has failed to pay the benefits due to the injured employee." 820 Ill. Comp. Stat. Ann. 305/4(d).

Under the circumstances of this case, A-Tech failed to provide coverage to Petitioner as well as failed to pay him the benefits that were due. There is no case law in Illinois that distinguishes the different ways an employer can "fail to provide coverage" under 4(d) and the Illinois Workers' Compensation Commission Rules do not present any information on this issue. However, it is clear from Section 4(d), under, "Penalties for Employer Lacking Insurance", that the legislature believed that there were different ways an employer could "fail to provide coverage". This section specifically distinguishes penalties for employers that "knowingly" fail to provide coverage as well as those that "negligently" fail to provide coverage.

Section 4(d) states:

"Whenever a panel of 3 Commissioners comprised of one member of the employing class, one member of the employee class, and one member not identified with either the employing or employee class, with due process and after a hearing, determines an employer has knowingly failed to provide coverage as required by paragraph (a) of this Section, the failure shall be deemed an immediate serious danger to public health, safety, and welfare sufficient to justify service by the Commission of a work-stop order on such business operations of such employer at the place of employment or job site... " Section 4(d) also states: "Any individual employer ... who knowingly fails to provide coverage as required by paragraph (a) of this Section is guilty of a Class 4 felony... "

Furthermore, Section 4(d) states

"Any individual employer ... who negligently fails to provide coverage as required by paragraph (a) of this Section is guilty of a Class 4 misdemeanor ... "

The Arbitrator finds that A-Tech negligently failed to provide coverage. There are several ways that a Respondent can fail to provide coverage. Certainly, breaching its agreement with its workers' compensation carrier in a way that the carrier is able to secure a judgment that it does not need to defend its insured falls within the meaning of "failing to provide coverage" to this Arbitrator. Although A-Tech may not have "knowingly" failed to provide coverage, it was certainly "negligent" in not following the terms and conditions of the policy and notifying the carrier within the time frame determined by the policy. In fact, A-Tech, did not notify the carrier for over one year after the accident, when it clearly had notice of the accident and was being sent all of Petitioner's medical records from Dr. Zoellick. The IWBF clearly states that it is funded by the penalties and fines collected from employers that both "negligently" and "knowingly" fail to provide coverage.

In light of the above, the Arbitrator finds that since A-Tech failed to provide adequate coverage pursuant to 4(d) of the Act and failed to pay benefits due to Petitioner, the IWBF is an appropriate party to this case, and as such, denies the IWBF's Motion to Dismiss itself from the case.

Was notice proper:
The Arbitrator finds that notice of the January 25, 2016 hearing in Waukegan, Illinois, was properly served on both Respondent A-Tech and party Respondent the Injured Workers' Benefit Fund. Specifically, with respect to A-Tech, the Arbitrator notes that notice was sent certified mail to both addresses listed on Petitioner's pay stubs, 29 W. 160 Calumet Avenue, Warrenville, Illinois 60555 and 1001 Aurora Avenue, Unit C, Aurora, Illinois 60505, respectively, on December 16, 2015. (PX 2C and 2D) The letter sent to the Calumet Avenue address was tracked and the status of the letter on January 4, 2016 was "Moved, left no address" and it was eventually sent back to the United States Post Office on January 16, 2016. (PX 2C) The letter sent to the Aurora Avenue address was tracked and the status of the letter on December 18, 2015 was, "Notice left (no authorized recipient available). On January 7, 2016, the maximum hold time expired and the United States Post Office found the letter to be "unclaimed". (PX 2D). The Injured Workers' Benefit Fund was copied on all notices sent to A-Tech. The Arbitrator similarly finds that notice of the June 21, 2023 hearing was proper (PX 1: 6/21/23).

Can an award be entered against respondent employer when it has been discharged in bankruptcy:
For the purposes of proceeding against the Injured Workers' Benefit Fund, the Arbitrator notes that Section 4(d) of the Act does not prevent Petitioner's from proceeding against the Fund if the Respondent- Employer has been discharged in Bankruptcy. The Arbitrator will not determine whether federal bankruptcy law prevents the Illinois Attorney General's office from prosecuting Respondent A-Tech for failing to provide coverage to Petitioner at the time of the injury.

Was amended Application against Fund timely filed:
Petitioner's Application for Adjustment of Claim was timely filed. Due to the complicated nature of this case and the fact that Petitioner tried many avenues to collect workers' compensation benefits, all of which were unsuccessful, on April 16, 2010, Petitioner amended his application to include the Illinois State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund as a party Respondent to case 08 WC 15587 (PX 20). The Fund was added exactly three years and four weeks after the date of accident. The Arbitrator again notes that the legislative intent of the Fund is to protect workers' whose employers fail to provide adequate workers' compensation coverage and that the Fund is Petitioner's only recourse for benefits under the Illinois Workers' Compensation Act ("Act"). Section 4(d) of the Act does not indicate any time limit under which the Fund may be added to an Application.

Furthermore, the Act specifically itemizes who is considered an Employer under Section l(a). The Fund is not considered an employer under l(a) and thus there is no statute of limitations under which the Fund may be added to a timely filed Application for Adjustment of Claim against an employer-respondent. Based upon the above reasons, the Arbitrator finds that the Application against the Fund was timely filed.

The Illinois State Treasurer as ex-officio custodian of the Injured Workers' Benefit Fund was named as a co-respondent in this matter. The Treasurer was represented by the Illinois Attorney General. This award, if any, is hereby entered as to the IWBF to the extent permitted and allowed under §4(d) of the Act. In the event the Respondent/Employer/Owner/Officer fails to pay the award, the IWBF has the right to recover the benefits paid by it to the Petitioner pursuant to Section 5(b) and 4(d) of this Act. The IWBF's payment of medical costs awarded in this matter is limited to only those that are reasonable, related to this injury and that remain currently due and owing at the time of IWBF disbursement. Respondent/Employer/Owner/Officer shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of Respondent/Employer/Owner/Officer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

The Employer-Respondent's obligation to reimburse the IWBF, as set forth above, in no way limits or modifies its independent and separate liability for fines and penalties set forth in the Act for its failure to be properly insured."

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC028247
Case Name	INSURANCE COMPLIANCE v. L6 CONSTRUCTION
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	24IWCC0490 [20INC00083]
Number of Pages of Decision	7
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Rufus Barner
Respondent Attorney	

DATE FILED: 10/7/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS DEPARTMENT OF INSURANCE
INSURANCE COMPLIANCE DEPARTMENT,

Petitioner,

vs. NO: 23 WC 28247
20 INC 00083

LUIS NAZARIO, Individually, and d/b/a L6 CONSTRUCTION,

Respondent.

DECISION AND OPINION ON INSURANCE COMPLIANCE MATTER

Petitioner, the Illinois Department of Insurance, Insurance Compliance Department, brings this action, by and through the Office of the Illinois Attorney General, against the above-captioned Respondents, alleging violations of Section 4(a) of the Illinois Workers' Compensation Act (the Act) and Section 9100 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission for failure to procure mandatory workers' compensation insurance. Proper and timely notice was provided to Respondents and an Insurance Compliance Hearing on the Merits was conducted before Commissioner Raychel A. Wesley in Chicago, Illinois on April 17, 2024 and June 18, 2024. Petitioner was represented by the Office of the Attorney General. Respondents did not appear in person or through counsel. A record was made.

Petitioner alleged that Respondents knowingly and willfully lacked workers' compensation insurance from October 15, 2009 through August 11, 2011 (666 days); August 13, 2013 through May 11, 2015 (637 days); February 25, 2017 through August 10, 2021 (1,628 days); and August 12, 2022 through September 7, 2023 (392 days). Petitioner sought the maximum fine allowed under the Act, $500.00 per day, for each of the 3,323 days Respondents did business and failed to provide coverage for its employees. In addition, Petitioner sought reimbursement for the liability incurred by the Injured Workers' Benefit Fund (IWBF) in claim *Harry Gelhar v. Luis Nazario d/b/a L6 Construction and the Injured Workers' Benefit Fund*, 18 WC 31670, in the amount of $18,440.33. X4.

The Commission, after considering the record in its entirety and being advised in the applicable law, finds that Respondents LUIS NAZARIO, individually, and doing business as L6 CONSTRUCTION, knowingly and willfully violated Section 4(a) of the Act and Section 9100.90(a) of the Rules during the aforementioned time periods.

As a result, Respondents shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with Section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against Respondents under Section 4 of the Act in the sum of $1,661,500.00 and orders Respondents to reimburse the Injured Workers' Benefit Fund in the amount of $18,440.33, for a total of $1,679,940.33.

FINDINGS OF FACT

The Commission finds:

1) On October 22, 2018, Harry Gelhar filed an Application for Adjustment of Claim with the Commission. In this claim, assigned case number 18 WC 31670, Mr. Gelhar named Luis Nazario d/b/a L6 Construction as Respondents and asserted he sustained a work accident while employed by Respondents on September 1, 2018. In March 2019, Petitioner's Application was amended to add Illinois State Treasurer as *Ex-Officio* Custodian of the Injured Workers' Benefit Fund as a Respondent.

2) An Arbitration hearing was conducted on April 12, 2023 before Arbitrator Paul Seal. Respondents were notified of the arbitration hearing but did not appear in person or through counsel. X4.

3) On May 17, 2023, the Arbitrator filed his Decision; observing Respondents performed construction work, the Arbitrator found Respondents were operating under and subject to the Illinois Workers' Compensation Act pursuant to the automatic coverage provisions of Section 3. *820 ILCS 305/1 et seq*. The Arbitrator further found an employer-employee relationship existed between Respondents and Mr. Gelhar. X4.

4) Petitioner Harry Gelhar prevailed in the action and Arbitrator Seal ordered the award against the IWBF to the extent permitted and allowed under Section 4(d) of the Act in the event of the failure of Respondent-Employer to pay the benefits due and owing to Mr. Gelhar. X4.

5) On February 27, 2024, the IWBF paid the award in the amount of $18,440.33. T. 15.

6) Petitioner presented Antonio Smith, an Investigator for the Illinois Department of Insurance, as a witness at the Insurance Compliance Hearing before Commissioner Wesley on June 18, 2024. Investigator Smith testified his department was notified when Mr. Gelhar filed his claim at the Commission, and his investigation into Respondents commenced in 2023. T. 34.

7) Investigator Smith identified Exhibit 3 as a Notice of Non-Compliance under Section 4(a) of the Act as well as a Notice to Employer of Insurance Compliance Informal Conference scheduled for September 27, 2023, both of which were mailed to Respondents via U.S. mail on September 7, 2023.

8) In the regular course of his investigation, Investigator Smith requested information from the National Council on Compensation Insurance (NCCI), the Illinois Secretary of State, the Illinois Department of Employment Securities, the Illinois Department of Revenue, and the Self-Insurance Unit of the Commission. T. 18-26.

9) The Commission has designated NCCI Holdings, Inc. as its agent for the purpose of collecting proof of coverage information on Illinois employers who have purchased workers' compensation insurance from carriers.

10) Investigator Smith identified Exhibit 6 as certification from NCCI that the requested search of the NCCI database revealed that Respondent L6 Construction had no proof of workers' compensation coverage for the periods from October 15, 2009 to August 11, 2011; August 13, 2013 to May 11, 2015; February 25, 2017 to August 10, 2021; and August 12, 2022 to September 7, 2023.

11) Investigator Smith identified Exhibit 5 as certification from the Office of Self-Insurance that no certificate of approval to self-insure was issued by the Commission to L6 Construction. Mr. Nazario was named as "Owner" on the certification.

12) Investigator Smith identified Exhibit 7 as certification from the Secretary of State that L6 Construction was not incorporated or licensed to transact business in the State of Illinois at any time.

13) Investigator Smith identified Exhibit 8 as a Letter of Certification from the Illinois Department of Revenue declaring L6 Construction did not file tax returns or pay state taxes for the identified periods.

14) Investigator Smith identified Exhibit 1 as a Notice of Insurance Compliance Hearing sent to Respondents via certified mail to multiple addresses: 1710 Golf Road, Apt. 211, Waukegan, Illinois, 60087; 2109 Gabriel Avenue, Zion, Illinois, 60099; P.O. Box 9310, Waukegan, Illinois, 60079; and 13475 North Nemesis Avenue, Gurnee, Illinois, 60031. The Notice, dated March 21, 2024, indicates the matter was set for hearing on April 17, 2024. The signed Certified Mail Return Receipt confirms delivery was personally accepted at the Zion address on April 3, 2024. X2.

CONCLUSIONS OF LAW

The Commission's authority and jurisdiction over insurance non-compliance cases is authorized by Section 4(d) the Act, as well as the Rules. Under Section 4 of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance, whether this is done through being self-insured, through security, indemnity, or bond or through a purchased policy. Section 9100.90 of the Rules codifies the language of the Act, and additionally describes the notice of non-compliance required, as well as the procedures of the Insurance Compliance Division, and how hearings are to be conducted. Reasonable and proper notice of the proceedings, as noted above, was provided to Respondents.

The Commission first considers whether Respondents are subject to the Act. Investigator Smith testified his investigation revealed the nature of Respondents' business during the periods of noncompliance was construction. T. 19. The Commission additionally takes judicial notice of the findings by the Arbitrator in this regard and as contained in the Decision rendered in 18 WC 31670: "Respondent, Luis Nazario, operated a construction business under the name of L6 Construction utilizing various pieces of heavy equipment, power saws, drills and jackhammers." Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including "Construction, excavating or electrical work" and businesses "in which electric, gasoline or other power driven equipment is used in the operation thereof." *820 ILCS 305/3(2), (15)*. The Commission finds Respondents' business falls under Sections 3(2) and 3(15) of the Act. Accordingly, the Commission finds that the work in which Respondents engaged automatically subjected it to the provisions of the Illinois Workers' Compensation Act.

Pursuant to Section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. *820 ILCS 305/4(a)*. Section 9100.90(a) of the Rules provides that any employer subject to Section 3 of the Act shall ensure payment of compensation required by Section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Admin. Code 9100.90(a). Section 9100.90(c)(3)(D) of the Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Admin. Code 9100.90(c)(3)(D). Section 9100.90(c)(3)(E) of the Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Admin. Code 9100.90(c)(3)(E).

In the instant case, Petitioner submitted the NCCI certification that Respondents did not have workers' compensation insurance from October 15, 2009 to August 11, 2011; August 13, 2013 to May 11, 2015; February 25, 2017 to August 10, 2021; and August 12, 2022 to September 7, 2023. X6. Petitioner also submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Respondents. X5. Respondents did not attend the hearing and thus presented no evidence indicating it provided workers' compensation insurance of any kind during these periods. Accordingly, the Commission concludes that Petitioner proved Respondents failed to comply with the legal obligations imposed by Section 4(a) of the Act from October 15, 2009 to August 11, 2011; August 13, 2013 to May 11, 2015; February 25, 2017 to August 10, 2021; and August 12, 2022 to September 7, 2023.

Section 4(d) of the Act states in pertinent part:

> Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section . . . the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the

> effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty. *820 ILCS 305/4(d)*.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. *See State of Illinois v. Murphy Container Service*, 03 INC 00155, 07 IWCC 1037.

The Commission finds the length of time Respondents violated the Act in failing to obtain workers' compensation insurance was significant. Respondents failed to have insurance for 3,323 days. In the Arbitration decision in case 18 WC 31670, the testimony of Mr. Gelhar and the Arbitrator's Findings established Respondents had employees. In fact, one of Respondents' employees sustained a work injury. As Respondents failed to have workers' compensation insurance, the Injured Workers' Benefit Fund paid benefits to that claimant as a result of the injury. Having reviewed the record, the Commission finds no evidence as to the inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The Commission finds Respondents knowingly and willfully failed to comply with the Act. Based on the record before us, the Commission finds the appropriate penalty to be $500.00 per each day of noncompliance. The Commission assesses a penalty of $1,661,500.00 ($500.00 x 3,323 days) against Respondents Luis Nazario, individually, and doing business as L6 Construction. Pursuant to Section 9100.85(a)(1) of the Rules, the Commission is also entitled to obtain reimbursement from Respondents in the amount of $18,440.33, representing the liability imposed on the Injured Workers' Benefit Fund in the *Gelhar* case.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents LUIS NAZARIO, individually, and doing business as L6 CONSTRUCTION, are found to be an employer who was in non-compliance with the insurance provisions Section 4(a) of the Act and Section 9100.90 of the Commission Rules and are hereby ordered to pay to the Illinois Workers'

Compensation Commission the sum of $1,679,940.33 pursuant to Section 4(d) of the Act and Section 9100.85(a)(1) of the Rules.

Pursuant to Commission Rule 9100.90(e), once the Commission assesses a penalty against an employer in accordance with Section 4(d) of the Act, payment shall be made according to the following procedure: 1) payment of the penalty shall be made by certified check or money order payable to the Illinois Workers' Compensation Commission; 2) payment shall be mailed or presented within 30 days of the final order of the Commission or the order of the court of review after final adjudication to:

Illinois Workers' Compensation Commission
Fiscal Department
69 W. Washington Street, Suite 900
Chicago, Illinois 60602

Bond for removal of this cause to the Circuit Court by Respondents 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.

October 7, 2024

/s/ Raychel A. Wesley

RAW/mck
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/s/ Stephen J. Mathis

/s/ Deborah L. Simpson

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC031060
Case Name	Raul Rodriguez v. Garber Fox Lake Toyota
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0491
Number of Pages of Decision	22
Decision Issued By	Maria Portela, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	John Rizzo
Respondent Attorney	Matthew Rokusek

DATE FILED: 10/8/2024

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Amylee Simonovich, Commissioner

Signature

24IWCC0491

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RAUL RODRIGUEZ,

Petitioner,

vs. NO: 19WC031060

GARBER FOX LAKE TOYOTA,

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, causation, temporary total disability, medical expenses and nature and extent, and being advised of the facts and law, reverses the Decision of the Arbitrator on the issue of accident, as stated below, but incorporates the Decision of the Arbitrator for the Findings of Fact, which is attached hereto and made a part hereof, and modified as explained below.

Petitioner alleged that he sustained a repetitive trauma injury arising out of and in the course of his employment that manifested on September 3, 2019. The Arbitrator found that Petitioner proved a repetitive trauma accident because:

> Petitioner's significant, forceful overhead recall work and vigorous work with his arms extended detailing the vehicles constitutes sufficient evidence of repetitive work activities. This repetitive work activity was conducted by Petitioner on a daily basis for several years including 2016, 2017, 2018, and 2019 and culminated in a need for medical attention to his bilateral shoulders on September 3, 2019. But, further, the petitioner's car detailing work alone, its extent and frequency, was sufficiently repetitively stressful with the use of the power buffer to which the petitioner testified.

Dec. 5.

The Arbitrator's finding was based on his lay knowledge of Petitioner's work activities. However, Petitioner did not present any medical opinion to support this conclusion. In *Nunn v. IC*, 157 Ill. App. 3d 470, 510 N.E.2d 502 (4th Dist. 1987), the appellate court wrote:

> in the cases relying on the repetitive trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability. [Citations omitted.] In the present case, no direct medical testimony was introduced as to the cause of claimant's back problems in 1981. The Commission is not precluded from finding against claimant on the issue of causation of her disability where claimant and the employer choose not to offer medical opinions on the issue. [Citation omitted.] Although medical testimony as to causation is not necessarily required [Citation omitted], 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. [Citation omitted.] **Cases involving aggravation of a preexisting condition primarily concern medical questions** and not legal questions. [Citations omitted.] This is especially true in repetitive trauma cases. [Citation omitted.] **In a repetitive trauma case, there must be a showing that the injury is work-related and not the result of a normal degenerative aging process**. [Citation omitted.]

Id. at 477-78, 506-07 (Emphases added).

In *Univ. of Illinois v. IWCC*, 2021 IL App (4th) 210236WC-U[1], the appellate court again addressed whether an expert medical opinion is required where there is evidence of a pre-existing degenerative condition and wrote:

> In this case, the claimant failed to prove by a preponderance of the evidence that he sustained a repetitive trauma injury arising out of his employment. The medical records revealed that the claimant had osteoarthritis and other preexisting degenerative conditions in his left shoulder. The claimant presented no expert medical opinion, medical evidence, or any other evidence suggesting that his injuries were work related and not merely the result of a normal degenerative process in his left shoulder. The only evidence that the claimant presented connecting his injuries to his employment was his own unrebutted testimony regarding the repetitive work duties he performed, the arm and shoulder movements he made while performing those duties, and the increased frequency of those movements in the months leading up to the manifestation of his injury. However, even assuming *arguendo* that this testimony was credible, it merely established a *correlation* between his increased work activities and the occurrence of his symptoms. **The claimant's testimony did not, and could not, establish that his injuries were the result of his employment, as opposed to the natural progression of his preexisting degenerative conditions.** Because this question is not within the common knowledge of a layman, only a medical opinion from an expert or a treating physician could provide evidence of causal connection. As noted, no such evidence was presented here.

[1] This decision was filed on May 26, 2022. Although it is unpublished pursuant to Illinois Supreme Court Rule 23, Rule 23(e)1 allows it to be cited since it was filed on or after January 1, 2021.

> The Commission found that medical testimony as to causation was not needed in this case because "the one-handed steering and maneuvering in tight spaces that [the claimant] described are certainly within a layperson's comprehension." We disagree. **The question is not whether the mechanics of the movements the claimant performed while driving, or the propensity of such movements to cause injury, were within the common knowledge of the layman. Rather, the question is whether the injury sustained by the claimant was the result of (or was accelerated by) his work activities and were not merely the natural progression of his preexisting conditions. That is a medical question that is not within the common knowledge of a layman. Accordingly, the Commission's finding of a work-related accident is contrary to the manifest weight of the evidence**. *Johnson*, 89 Ill. 2d 438. *Nunn*, 157 Ill. App. 3d at 477-78.
>
> The claimant argues that the circumstantial evidence presented in this case established causation because the claimant's symptoms appeared only after he performed particularly strenuous activities at work. We disagree. In cases involving a traumatic injury occurring at a particular time, and also in some repetitive trauma cases, "[a] causal connection between work duties and a condition may be established by a chain of events including petitioner's ability to perform the duties before the date of the accident, and inability to perform the same duties following that date." *Darling v. Industrial Comm'n*, 176 Ill. App. 3d 186, 193, 530 N.E.2d 1135, 125 Ill. Dec. 726 (1988). However, the claimant cites no repetitive trauma case finding causation based on a "chain of events" analysis where, as here, there is evidence of a preexisting degenerative condition. Nor have we found any such cases. Each of the cases upon which the claimant relies involve either a traumatic injury occurring at a particular time or the presentation of expert medical testimony to establish causal connection.

Univ. of Illinois v. IWCC at ¶¶ 45-46 (Emphases added).

Therefore, the Commission finds that a medical opinion from an expert or treating physician is required to "establish that his injuries were the result of his employment, as opposed to the natural progression of his preexisting degenerative conditions." *Id. at ¶ 45*.

Although the issues of accident and causation are intertwined in repetitive trauma cases, we point out that the Arbitrator found accident but then noted that the causation issue "is more troublesome" because Petitioner "did not offer an expert's causation opinion." *Dec. 5*. However, the fact that Petitioner did not offer an expert opinion on causation also means that he did not offer an expert opinion on accident.

To determine whether Petitioner sustained a compensable accident, we must first identify the type of risk to which Petitioner was exposed and determine whether it is: 1) distinctly related to the employment, 2) a neutral risk which has no particular employment or personal characteristics, or 3) a personal risk. *See McAllister v. IWCC*, 2020 IL 124848, ¶ 38, 181 N.E.3d 656.

Although decisions involving repetitive trauma claims don't always discuss these various

risks, we believe *Univ. of Illinois* stands for the proposition that, without a medical expert opinion, it is impossible to determine in which category the repetitive work activities belong. In other words, whether the injury was at least "accelerated by" the work activities (i.e., an employment risk or a neutral risk to a greater degree than the general public) or if it was "merely the natural progression of his preexisting conditions" (i.e., personal risk).

It is important to note that the court in *Univ. of Illinois* did not say that accident can be decided based solely on lay knowledge, but that causation requires an expert opinion. It did not separate those issues as the Arbitrator did. To the contrary, the issue was whether an accident was proven at all. The court found that, in a repetitive trauma case where there is evidence of a pre-existing condition, an expert medical opinion is required to determine that the accident arose out of employment.

We next turn to whether Petitioner had a pre-existing degenerative condition such that the analysis in *Univ. of Illinois* would apply. We disagree with the Arbitrator's finding that "but for the petitioner's testimony admitting a very brief period of some conservative physical therapy in 2013-2014, there is no evidence of the petitioner suffering any preexisting issues." *Dec. 6*.

On November 26, 2013, Dr. Z. Mark Hongs diagnosed Petitioner with "capsulitis in shoulders worse on [right]." *Px9, T.286*. On January 30, 2014, Dr. Hongs wrote "continue both shoulder pain [with] work to clean car" and noted "[increased] pain by [Yocum's] test, worse in [right]." *Id. at 287*. Petitioner underwent a right shoulder steroid injection on March 6, 2014, and a left shoulder steroid injection on April 3, 2014. *Id. at T.288, 291*. On May 1, 2014, Dr. Hongs recorded level 7/10 pain in the right shoulder and 2/10 pain in the left shoulder and Petitioner underwent another right shoulder injection. *Id. at 292*. On May 8, 2014, Dr. Hongs wrote "less pain in [right] shoulder after steroid [injection] a [week] ago" but also that it was increased by Yocum's test and Petitioner was tender in the anterior/lateral/posterior capsule. *Id. at 293*. Petitioner also had pain in the left shoulder with "fibroid tender mass in [rotator] cuff but [negative] arm drop on Yocum's. *Id*. The next (and last) record of Dr. Hongs, in evidence, dated August 27, 2015, does not mention Petitioner's shoulders.

Petitioner testified that, after his treatment in 2013-14, his shoulders were fine until 2019 when he started to notice weakness in his arms and pain all the way to his neck. *T.43-47*. This seems to be supported by the September 9, 2019 record of Dr. Roger Chams which states, "symptoms have returned dating back to 01/2019, with increased work responsibilities." *Px5, T.144*. However, other records seem to indicate that Petitioner had a longer period of symptoms. For example, the September 16, 2019 right shoulder MRI history section states, "Three-year exacerbation of 7 year history of chronic shoulder pain, weakness and decreased range of motion and clinical biceps tendon dysfunction." *Px5, T.146*. This would indicate that Petitioner had symptoms for the last three years, not just since January 2019. Also, Dr. Chams' September 19, 2019 record states, "he has had several years of pain." *Px5, T.150*.

Therefore, there is documented medical evidence that Petitioner had "preexisting issues" between 2014 and 2019. In any event, even if Petitioner did not have any symptoms for a few years between 2014 and 2019, that does not change the fact that this is a repetitive trauma claim and the evidence shows that Petitioner had pre-existing bilateral shoulder conditions.

First, as discussed above, Petitioner was previously diagnosed with bilateral shoulder capsulitis in 2013. Second, the November 26, 2019 physical therapy initial evaluation indicates that Petitioner's diagnoses were l) Pain in right shoulder and 2) Incomplete rotator cuff tear or rupture of right shoulder, not specified as traumatic. *Px8, T.215*. Therefore, it follows that, if the rotator cuff tear was not traumatic, it was degenerative. Third, Respondent's Section 12 physician, Dr. Nikhil Verma, specifically testified that he reviewed the September 16, 2019 right and left shoulder MRI images and that all of the findings were degenerative and chronic with nothing to suggest an acute injury. *Rx7 at 15-18*. Fourth, there is no medical opinion to dispute Dr. Verma's opinion that the findings on Petitioner's MRIs were degenerative.

Even if Petitioner did not have pre-existing, degenerative bilateral shoulder conditions, such that *Univ. of Illinois* should not apply, we find Dr. Verma's uncontradicted opinion persuasive. He testified that Petitioner's job duties did not aggravate or accelerate Petitioner's left and right shoulder conditions beyond their normal course. *Rx7 at 22-34, T.339-51*.

Petitioner did not claim that a specific incident caused his pre-existing condition to become symptomatic. Therefore, a medical expert opinion is required to support a finding that the work activities accelerated the injury and that it was not merely the result of the normal, degenerative process.

We next address whether the medical records contain valid medical opinions regarding Petitioner's repetitive work activities having accelerated his pre-existing condition. The September 9, 2019 record of Dr. Chams states, "He is here today for further management and consultation in regards to bilateral shoulders from work-related repetitive motions of detailing cars." *Px5, T.142*. However, we find that this is merely documenting Petitioner's reason for seeking care and not Dr. Chams' actual medical opinion regarding causation. That record also states, "He will only be allowed to detail one car versus three per day, which seems to irritate him at the end of his work session." *Id. at 144*. Similarly, this recitation of Petitioner's complaints is not a causation opinion regarding whether Petitioner's work activities accelerated his condition beyond the natural progression of his preexisting degenerative conditions. On September 19, 2019, Dr. Chams wrote, "He has had several years of pain. He thinks that it has been exacerbated with 17 years of working as a car detailer in which he has to use both of his arms repetitively in an overhead position." *Id. at 150*. Again, this is simply documenting what Petitioner *thinks* and not Dr. Chams' opinion regarding causation. The Initial Evaluation from Chebny Sports Medicine, on September 3, 2019 states:

> he has been detailing cars for over 17 years and he performs the same motions everyday. He states both of his shoulders are now painful and weak when he raises them up or reaches out to the side with the R worse than the L. He is having trouble at work with scrubbing windows and floors because of the repetitive motions, weakness and pain. He is concerned because his job is making him increase his workload from 2 cars a day, to 4 cars a day in about 2 months from now. *Px8, T.201*.

Again, this reflects Petitioner's complaints, symptoms and concerns but is not a medical causation opinion.

We find that these references in the medical records are Petitioner's own statements and beliefs. While they might support a chain-of-events analysis in a specific injury case, they are insufficient to constitute a causation opinion as required by *Nunn* and *Univ. of Illinois* in the case at bar. We disagree with the Arbitrator that this case is "distinguishable from Nunn and its Rule 23 progeny." *Dec. 6*.

Based on the above and the entire record, we find Petitioner failed to prove that he sustained accidental injuries due to repetitive trauma activities at work. In the event a reviewing court finds that Petitioner did prove accident, we also explicitly find that Petitioner failed to prove causation. We again find Dr. Verma's uncontradicted opinion persuasive. He testified that Petitioner's job duties did not aggravate or accelerate Petitioner's left and right shoulder conditions beyond their normal course. *Rx7 at 22-34, T.339-51*.

All other issues are moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed February 22, 2023, is hereby reversed and all awards vacated.

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 the removal of this cause to the Circuit Court by Respondent because no award was made. 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.

OCTOBER 8, 2024 /s/ *Maria E. Portela*

SE/ /s/ *Deborah L. Simpson*
O: 8/13/24
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DISSENT

I respectively dissent form the opinion of the majority and would affirm the Decision of the Arbitrator. After carefully considering the totality of the evidence, I believe Petitioner met his burden of proving by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment.

The majority is of the opinion that Petitioner suffered from a pre-existing condition and therefore, pursuant to the *Nunn* and *University of Illinois* cases, an expert medical opinion is required. While I don't disagree with the findings in those cases, I disagree that they are applicable in this case.

This is primarily because I disagree with the conclusion that Petitioner had a pre-existing condition. Petitioner presented to Dr. Hongs with bilateral shoulder pain on November 26, 2013. He was diagnosed with bilateral capsulitis right greater than left. Petitioner was treated conservatively with therapy and injections through May 8, 2014. After he was released from treatment, Petitioner had no further treatment with Dr. Hongs for over a year. While Petitioner did return to treat with Dr. Hongs on August 27, 2015, the record was devoid of any mention of his bilateral shoulders.

Furthermore, there was never any diagnosis of any biceps or labrum pathology throughout Petitioner's treatment with Dr. Hongs from November 26, 2013 through August 27, 2015. Nor were there any clinical signs of a rotator cuff tear, as his arm drop test was consistently negative.

Petitioner testified that after the treatment to his shoulders with Dr. Hongs in 2014, his shoulders were fine. T.43-44. He did not have any issues with weakness or moving his shoulders over his head until 2019. T.44. This is supported by the medical records, as the next mention of Petitioner's shoulders was nearly four years later, when he presented to Dr. Chams on September 9, 2019. The office note indicated Petitioner was being seen for "management and consultation in regards to [his] bilateral shoulders from work-related repetitive motions of detailing cars." PX5, p.13. At that time, Dr. Chams diagnosed bilateral shoulder biceps tendinopathy, bursitis, and shoulder instability. MRIs confirmed bilateral shoulder partial rotator cuff tear and biceps tendinopathy. Petitioner had not been treated for either of these diagnoses in the past. Dr. Chams ultimately performed an extensive right shoulder arthroscopy with debridement of the labrum, long head of biceps tenolysis for CW open long head of the biceps subpectoral tenodesis, subacromial decompression, Mumford procedure, as well as a rotator cuff repair.

I disagree with the majority's suggestion that if the medical findings do not support an acute injury, that it is automatically a pre-existing degenerative condition. Petitioner never claimed this to be an acute traumatic injury, but instead a repetitive trauma, which by its nature develops gradually. *Durand v. Ill. Indus. Comm'n*, 224 Ill. 2d 53, 66 (2006). Repetitive trauma injuries are progressive, and as such the Petitioner's medical treatment, the severity of the condition and how it affects his job performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work. *Id.* at 72.

I also disagree with majority's reliance upon the medical opinions of Respondent's Section 12 examiner Dr. Verma to support their finding that Petitioner had a pre-existing condition and the treatment provided was not related to Petitioner's work injury, but instead to his pre-existing condition. I find Dr. Verma's opinion to be less than persuasive. Dr. Verma's opinion was based solely upon the medical records he was provided. He did not meet with Petitioner and did not have an opportunity to discuss with Petitioner directly, his work duties, or his symptomology prior to his complaints of pain and weakness in September 2019. Based upon the limited information provided to Dr. Verma, he opined that Petitioner's job did not entail any significant overhead use. RX7 p. 52. He admitted that if he was provided information regarding all the jobs Petitioner performed, it was possible it might affect his opinion. RX7, p.54.

Further, and perhaps more importantly, Dr. Verma only rendered an opinion/diagnosis as to Petitioner's rotator cuff condition and did not diagnose/opine as to any labral or biceps

conditions. Therefore, any opinions he provided as to the pre-existing nature of Petitioner's condition would be exclusive to the rotator cuff.

The structural conditions of the labrum and biceps found at the time of the November 11, 2019 surgery were not previously diagnosed pathology. The clinical examinations in the prior medical records do not support their presence during Petitioner's brief shoulder treatment five years prior to his September 2019 claim and there are no medical records or expert opinions identifying a pre-existing diagnosis related to the labrum or biceps. As such, the injuries to the labrum and biceps cannot be said to be pre-existing.

However, even if we assume this case involves a repetitive trauma aggravation of a pre-existing condition, I still disagree with the majority's finding that Petitioner failed to prove he suffered an accidental injury arising out of and in the course of his employment or even that he failed to provide a medical opinion to support a causation finding. To result in compensation under the Act, a claimant's employment need only be a causative factor in his condition of ill-being; it need not be the sole cause or even the primary cause. *Tower Automotive v. Ill. Workers' Comp. Comm'n,* 407 Ill. App. 3d 427, 434 (2011).

The evidence supports a finding of a work-related injury occurring while in the course of Petitioner's employment. Petitioner provided credible testimony to detail the significant, forceful overhead work he performed with the recalls for rust removal (T.27-33), as well as the forceful repetitive use of his arms while buffing and detailing vehicles. T.23-25. Respondent's GM, Mr. Schumer, confirmed Petitioner was detailing 2-3 cars per day, or more, and that he was the only employee performing the recall work. T.73-75. Further, Petitioner expressly testified to pain in his arms and hands after performing said significant and forceful work. T.36.

The evidence also supports a finding of a work-related injury arising out of Petitioner's employment. Petitioner was clearly engaged in an employment-related activity -- one that his employer would have reasonably expected him to perform in fulfilling his assigned job duties – when he was working with both of his arms in an overhead position repetitively for 17 years. As a result, Petitioner was exposed to a risk of injury distinctly associated with his job, and as such the Arbitrator was correct in finding that Petitioner proved that he suffered accidental injuries arising out of and in the course of his employment on or around September 3, 2019, particularly in light of *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848 (filed 9/24/20).

Finally, contrary to the findings of the Majority, Petitioner did provide a medical opinion to support a work-related accident and causal connection between his performance of significant and forceful work duties and his current condition of ill-being. While treating with Dr. Chams, Petitioner advised him that he had worked for 17 years as a car detailer and that his duties included using both of his arms repetitively in an overhead position. PX5, p.21. Having this knowledge, in his June 22, 2020 office note, when describing the current status of the Petitioner, Dr. Chams explicitly stated, "This is a work-related injury." PX5, p.45. This statement could not be any less ambiguous. It provides a clear, definitive medical opinion as to the existence of an injury that occurred as a result of Petitioner's work.

For the foregoing reasons, I find that Petitioner met his burden of proving by a preponderance of the evidence that he suffered from a work-related injury arising out of an in the course of his employment. I respectively dissent from the majority's opinion reversing the Arbitrator's award of benefits.

/s/ *Amylee H. Simonovich*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC031060
Case Name	Raul Rodriguez v. Garber Fox Lake Toyota
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	John Rizzo
Respondent Attorney	Matthew Rokusek

DATE FILED: 2/22/2023

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 22, 2023 4.91%

/s/ Paul Seal, 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

RAUL RODRIGUEZ
Employee/Petitioner

v.

GARBER FOX LAKE TOYOTA
Employer/Respondent

Case # 19 WC 31060

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 Paul Seal, Arbitrator of the Commission, in the city of Waukegan, on November 30, 2022. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On September 3, 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 $ **39,716.56** ; the average weekly wage was $ **763.78** .

On the date of accident, Petitioner was **60** years of age, ***married*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $ **0.00** 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

Respondent shall pay Petitioner temporary total disability benefits of **$509.19 per week for 43 weeks,** commencing **10/8/2019 through 8/3/2020**, as provided in Section 8(b) of the Act because the injuries sustained caused the disabling condition of the Petitioner, the disabling condition is temporary and had not reached a permanent condition, pursuant to Section 19(b) of the Act.

Respondent shall pay Petitioner **Reasonable and Necessary medical services of $80,474.48**, as provided in Section 8(a) of the Act, contained and demonstrated in Petitioner's Exhibits #1 through #4.

Respondent shall pay Petitioner permanent partial disability benefits because the accidental work injuries caused the Petitioner to sustain **10% permanent loss of use of the man as a whole** for the right shoulder injury & **7½% permanent loss of use of the man as a whole** for the left shoulder injury as provided in Section 8(d)2 of the Act.

Respondent shall pay the Petitioner compensation that has accrued from September 3, 2019 through the present, and shall pay the remainder of the award 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.

FEBRUARY 22, 2023

Signature of Arbitrator

FINDINGS OF FACT:

The Petitioner is sixty (60) years old. He has been employed by the Respondent for the past seventeen (17) years and with the current owner since, at least June 2016. (Tr. Trans. Pgs. 19 & 70) Petitioner had multiple responsibilities while working for the Respondent including detailing cars, recall warranty work, and other tasks. (Tr. Trans. Pg. 22)

Petitioner testified to two (2) main jobs. He described detailing cars which involved vacuuming, shampoo carpets, cleaning engine and tires, and buffing/waxing cars. (Tr. Trans. Pg. 22-23) Petitioner explained that he utilized an electric buffer machine that required the forceful use of both arms in an extended fashion away from his body. (Tr. Trans. Pgs. 23-24) This extended and forceful use of his arms could require as much as one and a half hour to two hours of bilateral arm movements. (Tr. Trans. Pg. 24)

Petitioner also testified that he was required to work on the recall program for car and truck frame including, mostly, the Toyota Tacoma trucks (Tr. Trans. Pgs. 25, 27) These vehicles had to be raised on a car lift above his head and inspected for extensive rust. He described that some had holes that could not be repaired while others he was required to fix. (Tr. Trans. Pg. 27)

Petitioner explained that he had to remove the rust with a hammer and chisel with the vehicle on the lift. He would use his arms above his head while using the hammer and chisel to break the rust. (Tr. Trans. Pgs. 28-29) He would occasionally use an air compressed chisel with a pressurized hose, but it was not very good, and he would go back to using a traditional hammer and chisel. (Tr. Trans. Pg. 29) He would then use a compressor sprayer to apply chemicals and compounds using his arms in an overhead fashion with constant back and forth movement. (Tr. Trans. Pgs. 30-33) He stated that each vehicle would require this extensive overhead work for three to three and half hours per vehicle. (Tr. Trans. Pg. 33) He testified that he was the only person in the dealership certified to complete the rust recall work and his certificate was on the wall in the parts department. (Tr. Trans. Pg. 36-38) There were no other employees that completed any rust recall work using the hammer and chisel at any time. Only one person attempted to do the work, one time, and he stopped. While Petitioner had to complete his job. (Tr. Trans. Pg. 38)

Petitioner testified that there were days where he did nothing but rust recall work all day. There were days where he did both recall work and detailing. (Tr. Trans. Pg. 35) He stated that he was doing the hammer and chisel overhead work for many years including 2016, 2017, 2018, and 2019. (Tr. Trans. Pg. 36)

Petitioner stated in mid-2019 he would experience his right arm get very tired and he would switch to using the other arm. (Tr. Trans. Pg. 33) He had to finish each car quickly and in a timely fashion as the vehicles were promised at a certain time. (Tr. Trans. Pgs. 33-34) He testified that after working all day in the overhead fashion he noticed that his shoulders were

very tired and painful as well as the arms felt very heavy. (Tr. Trans. Pg. 36) He stated he noticed that he had no strength in his arms. (Tr. Trans. Pg. 36)

Petitioner testified that he did undergo a short course of physical therapy for his shoulders in 2013-14. (Tr. Trans. Pg. 43) (Px 9) He stated he had no problems completing his work after that including the vigorous detailing and the overhead hammer and chisel work required for the recall work. Petitioner testified that his arms were strong and could accomplish all his work without issue. (Tr. Trans. Pg. 44 - 45)

Finally, Petitioner stated he started to notice weakness in his arms and very tired sensations with pain going all the way up to his neck. (Tr. Trans. Pg. 45) He was having a hard time doing and finishing his work. (Tr. Trans. Pg. 46) He stated he told his supervisor he needed to seek medical attention and scheduled an appointment to see Dr. Chebny on September 3, 2019. (Tr. Trans. Pg. 46)

Petitioner was evaluated by Dr. Chebny on September 3, 2019. He received some therapy treatment and was instructed to obtain an orthopedic evaluation with Dr. Chams. (Tr. Trans. Pg. 46) (Px 8)

Dr. Chams noted pain and weakness in his right greater than left shoulder in regard to his work-related repetitive motions. (Px 5) Petitioner testified that he explained to Dr. Chams that his arms were painful at work and he described his work duties to Dr. Chams. (Tr. Trans. Pgs. 47– 48)

Dr. Chams prescribed continued physical therapy at Chebny Sports Medicine and recommended bilateral MRIs. (Px 5) (Tr. Trans. Pg. 49) The right shoulder MRI revealed a high grade partial thickness tear of the supraspinatus tendon and a partial thickness tear of the intra-articular segment of the biceps. (Px 6) The left shoulder MRI revealed a high grade partial thickness tear of the supraspinatus tendon and was suspicious for a SLAP tear as well as the potential for a partial tear in the biceps. (Px6)

After the MRIs, he returned to Dr. Chams. Dr. Chams, again, wrote that Petitioner was suffering from daily pain, weakness, and difficulty performing his job. Dr. Chams noted that the Petitioner was using both arms repetitively in an overhead position. (Px 5, 9/19/19) Petitioner was prescribed physical therapy and provided a cortisone injection into both right left shoulders. (Px 5) (Tr. Trans. Pgs. 50-51)

On October 29, 2019, Dr. Chams stated Petitioner had high grade partial thickness tears bilaterally, right worse than left, as well as long head biceps tendinopathy. (Px 5) The injections and physical therapy did not provide significant relief. Dr. Chams recommended the Petitioner undergo surgery on the right shoulder first. (Px 5, 10/29/19) Petitioner testified that he was taken off work prior to surgery. (Tr. Trans. Pg. 51) (Px 5)

Petitioner underwent surgery with Dr. Chams on November 11, 2019. (Px 7) Dr. Chams performs a right shoulder arthroscopy with debridement of labrum, long head biceps tenolysis for CW open long head of the biceps subpectoral tenodesis, subacromial decompression, Mumford procedure, as well as rotator cuff repair. (Px 7)

Postoperatively, Petitioner continued physical therapy with Chebny Sports Medicine. (Px 8) Petitioner testified that Respondent offered or made light duty work available to him despite requests. (Tr. Trans. Pg. 53) In fact, Petitioner indicated that when he was released from care by Dr. Chams on August 3, 2020, he was advised that he had been terminated. (Tr. Trans. Pgs. 53 – 54)

Petitioner testified that he returned to see Dr. Chams December 10, 2020. (Tr. Trans. Pg. 55) Dr. Chams noted that Petitioner was still experiencing some pain with weakness. Dr. Chams also wrote his ROM was not complete. (Px 5, 12/10/20) Petitioner was provided a cortisone injection into the right shoulder and advised a repeat MRI to rule out a recurrent rotator cuff tear. (Px 5, 12/10/20) Petitioner testified that he could not follow up with that recommendation or treatment for his left shoulder as he no longer had insurance, so he stopped going. (Tr. Trans. Pg. 56)

In his last examination of Petitioner, Dr. Chams found reduced strength of 4/5 in the right shoulder with forward flexion, Jobes, abduction, internal rotation, and external rotation. There was pain through range of motion which showed reduced ROM of at least 5-10 degrees with internal rotation and external rotation. Dr. Chams further noted that Petitioner demonstrated positive findings on provocative testing in the Isolated Jobe, Neer impingement, Hawkins II, and Empty can testing. (Px 5, 12/10/20)

Respondent called Mr. Daniel Schomer to testify. As the respondent's representative, he was present at the hearing for the entirety of Petitioner's testimony. Mr. Schomer is currently a managing partner of Garber and the general manager of Sunrise Chevrolet. (Tr. Trans. Pg. 67) Mr. Schomer indicated that he was Petitioner's boss and the general manager of Garber Fox Lake Toyota. (Tr. Trans. Pg. 68)

Mr. Schomer did confirm that Petitioner was detailing 2-3 cars per day, or more, and that each vehicle could take two or more hours. (Tr. Trans. Pgs. 73-75) He also confirmed that Petitioner was a union employee whose job included performing some semi-skilled tasks; some of which included the recall framework job. (Tr. Trans. Pgs. 95 – 96) He could not identify any other employee that performed the overhead recall work consistent with Petitioner's testimony that he was only employee conducting such work. Mr. Schomer did not contradict any of Petitioner's testimony. Mr. Schomer did not contradict Petitioner's description of his job duties including all the overhead work performed with a hammer and chisel. Nor did Mr. Schomer take issue with Petitioner's description of the vigorous extended arm work Petitioner performed while detailing cars.

Respondent requested a record review by Dr. Verma. (Tr. Trans. Pg. 5) Dr. Verma testified that he did not evaluate the Petitioner at any time. (Rx 7, pg. 7) Dr. Verma testified that his understanding of Petitioner's job duties was that of a porter/detail laborer. He testified that he was aware that Petitioner's job duties were to detail 2 cars per day with the only other duties being washing and transporting vehicles. (Rx 7, Pgs. 9 – 13) Dr. Verma testified that he was never provided information about any other job duties. (Rx 7, Pg. 43) Moreover, the job information provided reflected job duties that were to be put in place beginning in September 2019 and forward. (Rx 7, Pg. 45) There was no information about other job duties, only car detailing. (Rx 7, Pgs. 46 – 47)

Dr. Verma was not provided any information regarding the overhead work required for the recall work. (Rx 7, Pgs.48 – 49) Dr. Verma was not advised how many vehicles Petitioner was required to work on overhead using a hammer and chisel. Nor was he provided information as to how long that overhead work was performed. (Rx 7, Pgs. 50 – 51) These job duties were confirmed by General Manager, Daniel Schomer, but were not provided to Dr. Verma to obtain a complete and reliable opinion.

Dr. Verma did testify that Petitioner's condition was degenerative in nature and that his type of activities being performed would not cause or accelerate or aggravate the condition beyond its expected normal course. (Rx 7, Pg. 26) Dr. Verma stated that he viewed Petitioner's job as not having any overhead work or use. (Rx 7, Pg. 52) His premise was unfounded while the information provided was incorrect resulting in an unreliable opinion. The basis for his opinion as stated based upon an incomplete understanding of all of Petitioner's job duties. He was not provided with any information about the overhead work. (Rx 7, Pgs. 48 – 51) Dr. Verma testified that he would need more information and that his opinion could change. (Rx 7, Pgs. 51, 54)

CONCLUSIONS OF FACT & LAW

(C) Accident :

Petitioner testified that he was required to do significant, forceful overhead work with a hammer and chisel along with other tools while doing the rust recall work as described in more detail above. Moreover, he described the forceful repetitive use of his arms while buffing and detailing cars in the workplace. As he described the job duties involved with the rust recall work, Petitioner testified that he would be using both his arms overhead with the hammer and chisel for up to three to three and half hours per vehicle; sometimes doing as many as 3 vehicles per day. The duties he described with regard to the car detailing involved using both arms in an extended fashion while he had to forcefully control the electric buffer machine against the vehicle. Again, that activity could take up to one and a half to two hours of constant bilateral arm use.

Respondent called the General Manager and Petitioner's boss to testify. Mr. Schomer confirmed Petitioner's job description and provided no evidence to contradict the testimony of the Petitioner with regard to these job duties.

Petitioner testified that he had no problems using the hammer and chisel overhead for multiple hours per day during the years 2016, 2017, 2018, and 2019. He testified that his arms were strong and that he could accomplish all his work without issue. (Tr. Trans. Pg. 44 - 45)

Petitioner stated in mid-2019 he would experience his right arm get very tired and he would switch to using the other arm. (Tr. Trans. Pg. 33) He testified that after working all day in the overhead fashion he noticed that his shoulders were very tired and painful as well as the arms felt very heavy. (Tr. Trans. Pg. 36) He stated he noticed that he had no strength in his arms. (Tr. Trans. Pg. 36)

Finally, Petitioner stated he started to notice weakness in his arms and very tired sensations with pain going all the way up to his neck. (Tr. Trans. Pg. 45) He was having a hard time doing and finishing his work. (Tr. Trans. Pg. 46) He stated he told his supervisor he needed to seek medical attention and scheduled an appointment to see Dr. Chebny on September 3, 2019. (Tr. Trans. Pg. 46)

The Arbitrator finds that Petitioner's significant, forceful overhead recall work and vigorous work with his arms extended detailing the vehicles constitutes sufficient evidence of repetitive work activities. This repetitive work activity was conducted by Petitioner on a daily basis for several years including 2016, 2017, 2018, and 2019 and culminated in a need for medical attention to his bilateral shoulders on September 3, 2019. But, further, the petitioner's car detailing work alone, its extent and frequency, was sufficiently repetitively stressful with the use of the power buffer to which the petitioner testified.

Accordingly, the Arbitrator finds the Petitioner sustained an accidental injury that arose out of and in the course of his employment with the Respondent.

(F) Causal Connection :

This issue is more troublesome. The petitioner did not offer an expert's causation opinion.

Petitioner testified that he started to notice weakness in his arms and very tired sensations with pain going all the way up to his neck while performing his work duties. (Tr. Trans. Pg. 45) He was having a hard time doing and finishing his work. (Tr. Trans. Pg. 46) He stated he told his supervisor he needed to seek medical attention resulting in an initial evaluation by Dr. Chebny on September 3, 2019. (Tr. Trans. Pg. 46)

Petitioner also testified that he explained to Dr. Chams that his arms were painful at work and he described his work duties to Dr. Chams. (Tr. Trans. Pgs. 47– 48)

Dr. Chams noted that Petitioner was experiencing pain and weakness in his bilateral shoulders from work-related repetitive motions. (Px 5, 9/9/19) Dr. Chams further documented Petitioner's work as a car detailer and work where he has to use both his arms repetitively in an overhead position. (Px 5, 9/19/19)

Respondent's objection to casual connection relies upon the opinions of Dr. Verma. Respondent points to Dr. Verma's testimony that Petitioner's condition was degenerative in nature and that his type of activities being performed would not cause or accelerate or aggravate the condition beyond its expected normal course. (Rx 7, Pg. 26) Dr. Verma stated that he viewed Petitioner's job as not having any overhead work or use. (Rx 7, Pg. 52) He was not provided any information about the overhead work. (Rx 7, Pgs. 48 – 51)

Respondent did not provide Dr. Verma with Petitioner's complete job duties including the significant overhead work performed with the hammer and chisel. This work was verified by the general manager, Daniel Schomer, and not contradicted. Dr. Verma further testified under cross examination that he would need more information and that his opinion could change. (Rx 7, Pgs. 51, 54)

The Arbitrator finds Dr. Verma's opinion incomplete for lack of a proper foundation in understanding Petitioner's job and, therefore, unreliable.

But the respondent's causation dispute rests on more than just this. The respondent's position is that the two (2) mentions in the petitioner's treating records merely are the treating doctors' recitations of what the petitioner relayed: "petitioner's work-related duties." The respondent relies on the case of *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 478 (1987) In *Nunn,* the Appellate Court held that the lack of direct medical testimony to support causation was fatal to the claimant's case for an alleged repetitive trauma case, noting "[t]he difficulty proving an injury resulting from repeated trauma arose out of an in the course of employment presents a serious burden for a claimant. *Id.* at 480.

There have been several Rule 23 cases since Nunn holding that, in a repetitive trauma case, expert medical opinion is necessary to establish causal connection. The respondent's position in this instant case is that the two (2) notes in the petitioner's treating records do not meet that burden.

Nevertheless, the arbitrator finds that this instant case is distinguishable from Nunn and its Rule 23 progeny in that, but for the petitioner's testimony admitting a very brief period of some conservative physical therapy in 2013-2014, there is no evidence of the petitioner suffering any pre-existing issues. Therefore, in this instant case, the arbitrator finds that the records of the petitioner's treaters combined with his detailed and largely unrebutted testimony are sufficient to rely on in finding a causal connection between his work activities and his current condition of ill being.

The Arbitrator finds that under the totality of the circumstances and the statements of Dr. Chams in his records, the Petitioner's present condition in his right and left shoulders are causally related to the repetitive, forceful and overhead work performed for the Respondent over several years including 2016, 2017, 2018, and 2019.

(J) Medical Expense Benefits :

The Arbitrator's findings of fact and conclusions of law noted above, including (C) Accident and (F) Causal Connection, are incorporated and reiterated here for the purposes of findings regarding medical expense benefits.

Respondent disputes liability and payment of medical expenses presented in Petitioner's Exhibits #1 through #4 in the amount of $80,474.48 based upon its reliance of Dr. Verma's opinion.

Having found the medical opinions of Dr. Chams more reliable and trustworthy than those of Dr. Verma, the charges for treatment presented in Petitioner's exhibits #1 through #4 should be awarded to Mr. Rodriguez.

The outstanding charges include: #1 – Illinois Bone & Joint Institute, $18,733.53, #2 – Chebny Sports Medicine, $14,862.00, #3 – Northwestern/Lake Forest Hospital, $43,313.65, and #4 – Anesthesia Consultants, Ltd., $3,656.00.

The Respondent, Garber Fox Lake Toyota, shall pay to Petitioner, Mr. Raul Rodriguez, reasonable and necessary medical benefits of $80,474.48, as provided in Section 8(a) of the Act, contained and demonstrated in Petitioner's Exhibits #1 through #4.

(K) Temporary Total Disability Benefits :

The Arbitrator's findings of fact and conclusions of law noted above, including (C) Accident and (F) Causal Connection, are incorporated and reiterated here for the purposes of findings regarding temporary total disability benefits.

Respondent disputes liability and payment of temporary total disability benefits based upon its reliance of Dr. Verma's opinion.

Having found the medical opinions of Dr. Chams more reliable and trustworthy than those of Dr. Verma, temporary total disability benefits should be awarded to Mr. Rodriguez.

The Petitioner testified that he was taken off work by Dr. Chams prior to surgery. (Tr. Trans. Pgs. 51-52) Dr. Chams restricted Petitioner from working as of October 8, 2019. (Px 5, see 11/8/19 note) Petitioner was restricted from all work or restricted to light duty work after

surgery. Petitioner testified that he was never offered light duty from Respondent. (Tr. Trans. Pg. 53) Respondent presented no evidence of any light duty work offers.

Dr. Chams' records reflect that Petitioner was released to return to work as of August 3, 2020. (Px 5, 8/3/20 note)

The Respondent, Garber Fox Lake Toyota, shall pay the Petitioner, Mr. Raul Rodriguez, temporary total disability benefits of $509.19 per week for 43 weeks, commencing 10/8/2019 through 8/3/2020, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the Petitioner, the disabling condition was temporary and had not reached a permanent condition, pursuant to Section 19(b) of the Act.

(L) Nature & Extent of the Injury :

The Arbitrator's findings of fact and conclusions of law noted above, including (C) Accident and (F) Causal Connection, are incorporated and reiterated here for the purposes of findings regarding permanent partial disability benefits.

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 Petitioner was employed in a very heavy job which included significant, repetitive overhead activity and forceful use of bilateral arms at the time of the accident. Further, that although Petitioner was released to full duty, Dr. Chams noted significant residual deficits that will impair Petitioner's ability to work as effectively as prior to the injury. The Arbitrator, therefore, has given some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 60 years old at the time of the accident. As a result of his advanced age and his injuries, Petitioner's condition is likely to accelerate his degenerative aging process in his bilateral shoulder causing increasing disability over time. The Arbitrator, therefore, gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes there is no evidence provided regarding future earnings capacity presented other than Respondent replaced Petitioner and there was no longer any work available for Petitioner. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator identified several factors noted by Dr. Chams with

regard to Petitioner's current condition which are noted above and will be reiterated below. Accordingly, the Arbitrator gives greater weight to this factor.

As of December 10, 2020, Dr. Chams noted that Petitioner was still experiencing some pain with weakness. He wrote Petitioner's ROM was not complete. (Px 5, 12/10/20) Dr. Chams found reduced strength of 4/5 in the right shoulder with forward flexion, Jobes, abduction, internal rotation, and external rotation. There was pain through range of motion which showed reduced ROM of at least 5-10 degrees with internal rotation and external rotation. Dr. Chams further noted that Petitioner demonstrated positive findings on provocative testing in the Isolated Jobe, Neer impingement, Hawkins II, and Empty can testing. (Px 5, 12/10/20)

In fact, Petitioner was provided a cortisone injection into the right shoulder and advised a repeat MRI to rule out a recurrent rotator cuff tear. (Px 5, 12/10/20)

However, Petitioner testified that he could not follow up with that recommendation or treatment for his left shoulder as he no longer had insurance, so he stopped going. (Tr. Trans. Pg. 56)

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 10% permanent loss of use of man as a whole for the right shoulder injury & 7½ % permanent loss of use of the man as a whole for the left shoulder injury as provided in Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC015934
Case Name	Damenion Freeman v. Aurora Tallow
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0492
Number of Pages of Decision	20
Decision Issued By	Christopher Harris, Commissioner, Carolyn Doherty, Commissioner

Petitioner Attorney	Mark Fromm
Respondent Attorney	Emily Schlecte

DATE FILED: 10/9/2024

/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

DAMENION FREEMAN,

Petitioner,

vs. NO: 23 WC 15934

AURORA TALLOW,

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, notice, medical expenses, prospective medical care, temporary total disability, and evidentiary issues, including but not limited to, the Arbitrator's ruling that portions of Respondent's exhibits be redacted and/or rejected and other evidentiary findings, 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 25, 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 $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.

October 9, 2024

O: 09/26/24
CMD/ma
045

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

/s/ *Marc Parker*
Marc Parker

DISSENT

Petitioner failed to prove by a preponderance of the evidence that he sustained an accident on May 3, 2023 while working for Respondent.

The histories noted in the medical evidence were contrary to Petitioner's direct testimony regarding the onset of his right upper extremity complaints. He testified to feeling sharp pain in his elbow while rolling a barrel at work on May 3, 2023. Petitioner denied experiencing pain in his elbow just prior to May 3, 2023 but acknowledged having slight numbness in his fingers for three weeks. He provided a different history to his treating physician, Dr. Twu, and to Respondent's Section 12 examiner, Dr. Birman. Their records indicated that Petitioner's right elbow pain began weeks prior to the alleged accident date and that the numbness and tingling in Petitioner's right hand had been ongoing for three to four months prior to the accident. On this thread, Petitioner also testified to a different mechanism of injury than what the medical evidence documented. He again stated that his right elbow injury was the result of rolling a barrel. However, Petitioner reported to Dr. Twu that his injury was due to overuse. He then told Dr. Birman that he got hurt while forcefully squeezing a lever to open clamps and that his pain worsened on May 3, 2023 while rolling a barrel. Petitioner, to his detriment, made no attempt to clarify these obvious inconsistencies at arbitration.

Petitioner additionally denied ever injuring his right elbow prior to May 3, 2023 despite evidence that he had settled a workers' compensation claim in 2015 involving that body part. He further acknowledged previously completing accident reports and filing six workers' compensation claims – three of which involved the right upper extremity. Regardless, Petitioner

did not complete an accident report per Respondent's policy nor did he directly apprise Respondent that he had injured his right elbow in a work accident. He had exchanged text messages with Respondent's operations manager, Ms. Hruby, from May 3, 2023 to May 14, 2023, but at no time did he indicate that his right elbow pain was due to a work accident. Respondent learned of Petitioner's claim more than two weeks later when a healthcare provider asked for Respondent's workers' compensation information.

Petitioner also testified that he informed his co-worker, Andrew Myuzo, on the alleged accident date about his elbow, whereas Ms. Hruby testified that Mr. Myuzo did not report anything unusual occurring on May 3, 2023. Neither party called Mr. Myuzo to testify at arbitration. Petitioner's lone and unsubstantiated testimony regarding a May 3, 2023 work accident, when viewed cumulatively with the numerous factual inconsistencies in the record, damages his credibility and should have fatally undermined his claim.

Based on the above, I believe that Petitioner did not meet his burden of proof, and I therefore dissent from the Majority.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC015934
Case Name	Damenion Freeman v. Aurora Tallow
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Mark Fromm
Respondent Attorney	Emily Schlecte

DATE FILED: 3/25/2024

/s/Jennifer Bae, 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)

DAMENION FREEMAN
Employee/Petitioner

v.

AURORA TALLOW
Employer/Respondent

Case # **23** WC **015934**

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 **Jennifer Bae**, Arbitrator of the Commission, in the city of **Chicago**, on **January 26, 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, **May 3, 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 $**66,864.20**; the average weekly wage was $**1,285.85**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **2** dependent children.

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

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

Prospective Medical Care
Petitioner is entitled to prospective medical care, specifically a carpal tunnel release for the right wrist and OT for the right lateral epicondylitis, and any related and necessary post-operative care, as ordered and directed by Petitioner's treating physician, Dr. Jonathan Twu. Respondent shall pay for this prospective medical care.

TTD
Respondent shall pay Petitioner temporary total disability benefits of $857.23/week for 36 weeks, commencing May 20, 2023 through January 26, 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.

Jennifer E Bae
Signature of Arbitrator

March 25, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DAMENION FREEMAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 23 WC 015934
AURORA TALLOW,	)	
	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL HISTORY

Mr. Damenion Freeman ("Petitioner"), by and through his 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 he sustained an accidental injury on May 3, 2023 while employed by Aurora Tallow ("Respondent"). A hearing was held on January 26, 2024 on the following disputed issues: accident, causation, prospective medical, and temporary total disability. (Ax 1)

Petitioner testified in support of his claim. Ms. Lauren Hruby testified on behalf of Respondent by evidence deposition on January 23, 2024. (Rx 1A) Dr. Michael Birman, Respondent's Section 12 examiner generated a report addressing the issues being disputed. (Rx 2) 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 he is currently 47 years old. (T. 29) He had been working for Respondent as a full-timer driver collecting grease since July 2022. (T. 31) He testified that Respondent is a grease recycle company that sells grease to a biodiesel company. (T. 31) Petitioner further testified that he drove two different types of trucks for Respondent. (T. 32) One truck looked like a garbage truck with two long arms on the side that lifted containers of grease into the truck. (T. 32-33) Petitioner testified that he drove the truck alone when he was collecting used grease from various locations on his assigned route. (T. 33) He further testified that he had to manually perform certain functions, such as pushing containers of grease, using a winch to pull containers that have no wheels or using a vacuum hose which was connected to the truck to suck out the grease. (T. 33-34) Petitioner explained that he also drove a barrel truck for the Respondent. (T. 35) He described

this type of truck as having an open top and a liftgate. (T. 35) Petitioner testified that the barrels of used grease were made of metal, and a full barrel of used grease weighed about 250 to 300 pounds. (T. 35-36) In order to pick up the barrels, Petitioner explained that he had to pull the barrel out from where it was stored and then rolled it to the truck using his hands. (T. 36) Once the barrel was rolled toward the truck, he had to push it onto the liftgate so the barrel could be lifted. (T. 36) Once the barrel was lifted using a liftgate, he had to push it onto the truck. (T. 35-37) Petitioner further testified that when he returned to Respondent's place of business, he had to push the full barrels of grease onto a trailer. (T. 37) He stated that there can be 18-21 barrels on a truck to unload at any given time. (T. 37)

On cross-examination, Petitioner explained that his duties included driving both trucks, going back and forth to Morrison delivering tanks, bringing tanks back (sometimes using his personal vehicle), painting tanks, making lids, delivering tanks to new customers on Fridays, and going out with Ms. Hruby's father (previous owner) when he had heavier routes on a bulk truck. (T. 67-68, 70) Petitioner testified that he never was a solo barrel truck driver but was a solo bulk truck driver. (T. 68-69) He explained that he was scheduled to be a bulk truck driver twice per week as of March 2023. (T. 69) Other days, he was a helper for the barrel truck drivers and on Fridays, he would take the bulk trucks to Morrison to empty and wash them. (T. 69)

Accident

Petitioner testified that on May 3, 2023 he was assigned to work on a barrel truck as a helper, this required him to roll barrels and put them on the truck. (T. 38-39) On May 3, 2023, Petitioner began work between 4:00 to 4:30 a.m. (T. 39) He testified that he and his truck driver were assigned to a route in Chicago. (T. 40) On his third stop that morning, at a taco restaurant, the driver parked in the alley. (T. 41) Petitioner testified there were 8 barrels to pick up and load onto the truck. (T. 41-42) Petitioner testified the barrels were inside a garage. (T. 42) He stated he had to cover up the barrels so the grease would not leak as the barrels were tipped before rolling. (T. 42) Petitioner testified that he had to roll the barrels 15-20 feet toward the truck. (T. 42) As he was rolling the third or the fourth barrel, Petitioner felt a sharp pain in his elbow. (T. 42-43) He then advised the driver of the truck he was working with, that he felt pain in his elbow and that he would have to notify Ms. Hruby, the owner and operational manager. (T. 43) Petitioner testified that once he got back into the truck he sent a text message to Ms. Hruby telling her "I have pain in my elbow, and I need to see a doctor." (T. 44) Petitioner further testified Ms. Hruby replied, "Okay. Thanks for letting me know." (T. 44)

Petitioner testified that he finished work on May 3, 2023 and continued to have throbbing pain in his right elbow and slight numbness to his fingers. (T. 44-45) Prior to May 3, 2023, Petitioner said that he did not experience any pain to his right elbow. (T. 45) He testified that he had a bicep tendon surgery but no surgery to his elbow. (T. 45) He said he was experiencing some pain to his fingers for about 3 weeks prior to May 3, 2023. (T. 45)

Petitioner testified that he was not asked, and he did not volunteer to fill out any forms for the accident that occurred on May 3, 2023. (T. 62-63) He stated that he was not given any forms, nor any forms were kept in the trucks he drove for Respondent. (T. 62)

Petitioner's Prior Medical Condition

Petitioner testified that in 2010 or 2011, he had a work-related accident and received treatment for a bicep tendon tear that required a surgery. (T. 60-61) He further testified that he had sprains in his shoulder and injured his knee but never received treatment for his right elbow. (T. 61-62)

On cross-examination, Petitioner admitted experiencing numbness and tingling when he had a shoulder and neck injury. (T. 64) He testified that he had tingling in his fingers when he received an injection in his neck. (T. 64-65) Petitioner further admitted to having 6 prior WC claims. (T. 65) 3 WC claims were for right upper extremity. (T. 65-66)

Summary of Medical Evidence

On May 4, 2023, Petitioner saw Dr. Jonathan Twu and complained of right elbow pain and numbness and tingling in both hands. (Px 1, page 28) Petitioner reported that his pain started from overuse of his right elbow at work. (Px 1, page 30) After an exam, Dr. Twu diagnosed Petitioner with right elbow pain, right lateral epicondylitis, and numbness and tingling in both hands. (Px 1, page 28) For numbness and tingling in both hands, Dr. Twu recommended EMG and night bracing. (Px. 1, page 32) For right lateral epicondylitis, Petitioner elected to proceed with wrist brace and occupational therapy ("OT"). (Px 1, page 33) Dr. Twu issued work restrictions that required Petitioner to wear brace while driving, no repetitive pushing/pulling/lifting more than 5 pounds. (Px 1, page 34)

On June 1, 2023, Petitioner reported to Dr. Twu that he had not started OT and had not completed EMG. (Px 1, page 25) He further reported ongoing numbness and pain to his elbow. (Px 1, page 25) Petitioner was again diagnosed with right lateral epicondylitis and numbness and tingling in right hand. (Px 1, page 25) Dr. Twu recommended an EMG and OT with continue wrist brace intermittently. (Px 1, page 26) Dr. Twu concluded that both diagnosed symptoms could be exacerbated by Petitioner's work, and therefore, he placed Petitioner on light duty with restrictions of wearing brace while driving, no repetitive pushing/pulling, and no lifting more than 5 to 10 pounds for the next month. (Px 1, pages 26- 27)

The June 6, 2023 EMG revealed a moderate median neuropathy at the right wrist. (Rx 5, page 62) On June 7, 2023, Dr. Twu prepared a Carpal Tunnel Syndrome ("CTS") Questionnaire which noted that Petitioner's right elbow and right-hand conditions were related to his work with Respondent due to "repetitive wrist activity" and "pushing barrels and tanks." (Rx 5, page 126)

On June 22, 2023, Petitioner saw Dr. Twu and reported that his hand and elbow were progressively getting worse, especially at night and that he was unable to sleep. (Px 1, page 16) He also reported that his numbness/tingling was worse. (Px 1, page 16) Dr. Twu concluded that the EMG study was abnormal and that there was electrodiagnostic evidence of right CTS, moderately severe. (Px 1, page 16) Dr. Twu opined that both conditions could be exacerbated by Petitioner's work duties and recommended a right carpal tunnel release as well as OT for the right lateral epicondylitis. (Px 1, pages 16-17) Petitioner was placed on the same restrictions as previous month. (Px 1, page 21)

On July 21, 2023, per Respondent's request, Petitioner saw Dr. Birman, for a Section 12 Examination. (Rx 2)

On July 27, 2023, Petitioner saw Dr. Twu. (Px 1, pages 6-13) Petitioner continued to complain about pain in his right elbow and numbness in his right wrist. (Px. 1, page 6) He was again diagnosed with right lateral epicondylitis and CTS of right wrist. (Px 1, page 6) Dr. Twu recommended carpal tunnel release, start OT when approved, continue to wrist brace intermittently, and tennis elbow strap was given to Petitioner. (Px 1, page 9) Dr Twu again found that both symptoms could be exacerbated by his work, and therefore placed Petitioner on the same restrictions as previous month. (Px 1, page 9)

On August 10, 2023, Petitioner saw Dr. Twu and reported having right elbow pain and numbness in right hand. (Px 1, page 2) He reported using wrist brace but that it was not helpful. (Px 1, page 2) Dr. Twu noted that OT had not been approved by WC and that Petitioner had stopped taking Meloxicam which was not helpful to him. (Px 1, page 2) Petitioner was again diagnosed with right lateral epicondylitis and CTS of the right wrist. (Px 1, page 3) Dr. Twu recommended carpal tunnel release and OT for the right lateral epicondylitis. (Px 1, page 4) Dr. Twu opined that Petitioner's right elbow and right-hand conditions were both related to his work duties with Respondent. (Px 1, page 4) Petitioner was placed on light duty with brace and no repetitive work lifting/pushing/pulling more than 10 pounds. (Px 1, page 4)

Section 12 Examiner – Dr. Michael Birman

On July 21, 2023, Dr. Birman performed a physical examination and evaluation of Petitioner per Respondent's request. (Rx 2) Dr. Birman reviewed the May 21, 2023 Claim Filing Form, Claimant Questionnaire regarding CTS, Employer Questionnaire regarding CTS, Physician Questionnaire regarding CTS, Medical records from Dr. Twu, the EMG study from June 6, 2023, and a Job Function Evaluation for CDL Driver.

Petitioner told Dr. Birman that his duties included driving a bulk truck to restaurants at various locations picking up greases. He explained that the bulk truck had clamps that he had to open to hook up the grease containers. As a bulk truck driver, he made 20 -22 stops per day and handled 28 to 30 grease containers. His duties also included barrel work. He explained that he would have to roll 55-gallon barrels 100 yards to get them to the truck. A barrel route makes 15 to 17 stops per day with multiple barrels at each stop. He further explained that on a barrel route, Petitioner would have to manually load and unload barrels onto the truck. (Rx 2, page 2)

Dr. Birman reviewed a Job Function Evaluation for CDL Driver which noted: driving route, operating levers, and operating lift gate; rare lifting/carrying under 10 pounds; never handling 11-100 pounds for lifting/carrying; rare pushing/pulling 5 to 100+ pounds; simple grasping and pushing/pulling with bilateral upper extremity; never vibration; and occasional twist/turn (Rx 2, page 5)

Petitioner's Carpal Tunnel Questionnaire stated frequent pushing/pulling oil barrels over 50 pounds and tasks requiring continuous firm gripping with bending/rotating the wrists frequently. (Rx 2, page 4)

Petitioner complained of numbness and tingling in the right hand affecting the index, middle, and ring fingers for the past 3-4 months with associated right elbow pain and denied prior similar symptoms. (Rx 2, page 2) Petitioner attributed his symptoms to repetitive squeezing of a lever to open clamps and having to roll a barrel on May 3, 2023, all requiring a lot of force. (Rx 2, page 1)

After his examination and review of the records, Dr. Birman diagnosed Petitioner with right elbow lateral epicondylitis and right wrist CTS. (Rx 2, page 5)

Regarding causation, Dr. Birman opined that right elbow lateral epicondylitis is a common degenerative condition involving the extensor tendon origin at the elbow. (Rx. 2, page 5) Petitioner claimed to have symptoms over several weeks prior to the date of injury and the symptoms worsened after the accident. (Rx 2, page 5) Dr. Birman stated that work activities can be a factor if repetitive and sustained forceful gripping and/or forceful wrist extension with significant exposure to such activities, however, based on Respondent's description of the work activities, he believed that exposure to forceful activities was limited. (Rx 2, page 5) He believed that much of time was spent on driving the truck and any use of force was intermittent when Petitioner had to open the clamps or handle the barrels. (Rx 2, page 5) Dr. Birman did admit that Petitioner may have experienced symptoms of lateral epicondylitis while doing his work activities but that any forceful gripping or forceful wrist extension was limited and Petitioner's work activities on May 3, 2023 would not have caused nor aggravated the right elbow lateral epicondylitis. (Rx 2, page 5)

Regarding right CTS, Dr. Birman opined that this condition is most often idiopathic. (Rx 2, page 6) He again admitted that work activities can be a factor if repetitive and sustained forceful gripping is done, however, based on Respondent's description of the work activities, symptoms had developed over several months prior to the accident, and limited exposure to any forceful and heavy activities, he believed that Petitioner's work activities did not cause or aggravate this condition. (Rx 2, page 6)

Dr. Birman noted that there were objective findings by the EMG to support a diagnosis of right wrist CTS consistent with Petitioner's subjective complaints of numbness and tingling in the right hand. (Rx 2, page 6) Dr. Birman also noted that the right lateral epicondylitis is largely a clinical diagnosis and Petitioner's physical examination supported this diagnosis. (Rx 2, page 6)

As far as treatment for the right lateral epicondylitis, Dr. Birman stated that most often this condition resolves with nonoperative treatment such as OT, emphasizing appropriate stretching exercises that can be done at home. (Rx 2, page 6) In certain cases, he may consider an injection such as in this case. (Rx 2, pages 5-6) Finally, if nonoperative treatment fails, approximately 6 months from onset of symptoms, lateral epicondylitis surgery is an option. (Rx 2, page 6) With regard to the right wrist CTS, because Petitioner continues to be symptomatic, and the findings were significant enough on EMG, a right wrist carpal tunnel release surgery should be considered. (Rx 2, page 6)

Dr. Birman believed that MMI is not applicable here since no work-related condition has been identified, however, in general regardless of causation, he expected MMI for the right lateral epicondylitis at 6 to 8 months for nonoperative treatment, or at 4 to 6 months following a surgery.

(Rx 2, page 6) For right wrist CTS, he estimated MMI at approximately 3 to 4 months following a surgery. (Rx 2, page 6)

Testimony of Lauren Hruby

Ms. Hruby testified on behalf of Respondent. (Rx 1A) Ms. Hruby testified that she is employed by Respondent as the Operations Manager and has been in that role for 10 years. (Rx 1A, page 5) As the Operations Manager, Ms. Hruby handles new hire paperwork, accident reporting, incident reporting, disciplinary actions, employment scheduling, and is a liaison between Aurora Tallow and its insurance companies.(Rx 1A, pages 5-6) The nature of Aurora Tallow's work is to recycle used cooking oil from restaurants and various facilities. (Rx 1A, pages 6-7)

Ms. Hruby testified that Petitioner was hired on 7/11/22 as a bulk truck driver. (Rx 1A, page 13) A bulk truck driver makes 15 to 20 stops a day to pick up grease from bulk oil containers. (Rx 1A, page 14) The oil containers that a driver would pick up are on a frame that has wheels on the bottom, which move like a grocery cart and when full, weigh up to 50 pounds. (Rx 1A, page 15) Typically, the bulk truck can back right up to the grease container but in the rare event the container must be repositioned, the driver may have to push it approximately 5 feet. (Rx 1A, page 16) If necessary, a bulk truck has a winch on it to assist the driver when they must move something that is heavier than 50 pounds and the winch would do the lifting/pulling in place of the driver. (Rx 1A, page 16) Occasionally, if the driver needed to dump the tank, there are hydraulic arms that are operated with levers, the driver would attach chains and hooks to the bin and the lift would dump the grease into the truck and place the empty tank back onto the ground, which would weigh between 5 to 10 pounds. (Rx 1A, page 16)

In March 2023, Petitioner was moved to a role that included no-touch freight driving, painting tanks, cleaning tanks, working as a helper for barrel truck drivers. (Rx 1A, page 18) Ms. Hruby testified that 50% of Petitioner's job duties would be with barrel drivers, 50% would be with no-touch freight. (Rx 1A, page 19)

Ms. Hruby testified that Respondent's Accident Investigation Program was in place at the time of Petitioner's May 3, 2023 accident that outlined the policy and procedures for injured workers to follow in the event of a work-related injury. (Rx 1A, page 7) All employees are provided with a copy of Respondent's policy and an additional copy is in every truck in the glove box. (Rx 1A, pages 7-8) An accident reporting form is also contained in the glove box in every truck. (Rx 1A, page 8) If there is an accident or any type of incident, the injured worker was instructed to turn the incident report to Ms. Hruby or General Manager, Cory directly. (Rx 1A, page 8)

Ms. Hruby explained Respondent's accident reporting procedure in detail and described that once the employee is injured, they should immediately report it to her or the General Manager, Corey, or both and complete the accident reporting form contained in the glove compartment. (Rx 1A, pages 8-9) Next, Ms. Hruby or Corey would conduct their own investigation through witness interviews and, if necessary, contact the insurance carrier. (Rx 1A, page 9) If the employee needs medical care, Ms. Hruby would instruct the employee to seek medical care and would ask for a copy of their doctor's note. (Rx 1A, page 9)

On May 3, 2023, Ms. Hruby received a text message from Petitioner stating "Good morning. I need to go see a doctor for my right elbow. I think it's tennis elbow." (Rx 1A, page 24 and Rx 1A, Exhibit 4) Petitioner did not tell Ms. Hruby that the right elbow condition was work-related.

On May 4, 2023, Ms. Hruby received another text message from Petitioner with a screen shot of a work status note prepared by Dr. Twu stating that Petitioner "must wear the wrist brace while driving. No repetitive pushing, pulling, lifting more than 5 pounds for the next month." (Rx 1A, page 25, Rx 1A, Exhibit 4). The work note did not state that Petitioner's restrictions were work-related. (Rx 1A, page 25, Ex 1A, Exhibit 4) The text also included a restriction by Dr. Twu that Petitioner was limited to "not doing barrels for the next month." (Rx 1A, Exhibit 4). Ms. Hruby and Petitioner also discussed available light duty work on this date based on these restrictions. (Rx 1A, page 25) Ms. Hruby testified that Petitioner's restriction regarding "barrel work" did not have any significance because Petitioner did not work with barrels at the time of the alleged May 3, 2023 accident. (Rx 1A, page 25)

Ms. Hruby testified that she and Petitioner exchanged text messages from May 5, 2023 to May 14, 2023 and at no time did Petitioner report a May 3, 2023 work accident. (Rx 1A, Exhibit 4). Ms. Hruby further testified that Petitioner never reported his alleged work accident to her or Respondent's General Manager, Corey. (Rx 1A, pages 10-11) She further testified that if Petitioner reported a work accident on May 3, 2023 or during her text exchanges with Petitioner, she would have asked Petitioner to fill out an accident report pursuant to her standard operating procedure. (Rx 1A, pages 10-11)

On May 21, 2023, Ms. Hruby became aware of Petitioner's alleged work accident for the first time when she received a letter from Petitioner's healthcare provider requesting Respondent's workers' compensation information. (Rx 1A, page 12) Ms. Hruby immediately prepared and submitted a Claim Filing Form to Respondent's workers' compensation carrier, Encova (Rx 1A, pages 12 – 13)

On cross-examination, Ms. Hruby confirmed that a full barrel of grease can weigh from 250 to 300 pounds. (Rx 1A, page 45) She testified that only Andrew and the owner was able to load barrels to trucks. (Rx 1A, page 46) She believed that Petitioner was not capable of moving the barrels and was not assigned to move the barrels on May 3, 2023. (Rx 1A, page 47) On May 3, 2023, Petitioner was assigned to a barrel truck as a helper. (Rx 1A, page 48) Ms. Hruby testified that she did not know if Petitioner injured his elbow prior to May 3, 2023. (Rx 1A, page 48) The first time she became aware of Petitioner's injury was when she received a request from Petitioner's medical provider on May 21, 2023 for Respondent's worker's compensation information. (Rx 1A, page 48-49) Thereafter, Ms. Hruby notified her WC insurance company. (Rx 1A, page 49) She did not ask Petitioner to make out any type of accident report. (Rx 1A, page 49) Ms. Hruby confirmed that once she received Petitioner's work restrictions, an accommodation was made from May 5, 2023 through May 19, 2023. (Rx 1A, page 51) Thereafter, Petitioner was informed that Respondent no longer had light duty work available. (Rx 1A, page 51) Mr. Hruby confirmed that Petitioner had not been terminated. (Rx 1A, page 52)

Petitioner's Current Condition:

Petitioner testified that is currently working for his brother's company, Williams & Son's Heating & Cooling, as a driver. (T. 30)

Petitioner further testified that he saw Dr. Twu on September 28, 2023 and the recommendations were the same – OT for his right elbow and a carpal tunnel release with same work restrictions. (T. 59) Petitioner explained that he still had tingling in his fingers but that the pain in his elbow subsided since he stopped doing heavy work. (T. 59) He said that if he turns or twist, he "can still feel my elbow." (T. 59) His symptoms make it difficult to "open stuff." (T. 60) Petitioner explained that when he experiences discomfort, he would ice it, soak it, and take anti-inflammatories which helped at times but that the discomfort comes back. (T. 60) Petitioner testified that he would like to have the treatments recommended by Dr. Twu. (T. 60)

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 him to be a credible witness. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the records without any exaggeration regarding his injury, symptoms, treatment, and current condition. 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.

Furthermore, the Arbitrator reviewed all medical records including the medical records from previous work-related injury. The Arbitrator finds the findings and opinions of Dr. Twu to be more persuasive and consistent with the evidence and the reasonable inferences derived from the evidence over the opinions of Dr. Birman.

Issue C, whether the accident arose out of and in the course of Petitioner's employment by Respondent, 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.

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.*

In the present case, Petitioner testified that on May 3, 2023, he was assigned to work on a barrel truck as a helper. (T. 38-39) He began work around 4 to 4:30 am. (T. 39) At the third stop, there were 8 barrels to pick up and load onto the truck. (T. 41-42) He explained that he had to roll the barrels 15 to 20 feet towards the truck. (T. 42) The barrels of used grease weigh around 250 to 300 pounds (T. 35-36) As he was rolling the third or the fourth barrel, he felt a sharp pain in his elbow. (T. 42-43) He then advised the driver of the truck and informed Ms. Hruby by texting. (T. 43-44) The act of rolling barrels was part of Petitioner's assigned duties on May 3, 2023.

Based upon the medical and testimonial evidence presented at trial, and the reasonable inference from the evidence, the Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of employment, and entitled to benefits under the Act by a preponderance of the evidence.

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 his duties and responsibilities as a driver (sometimes helper) of both trucks, corroborated by Ms. Hruby, that caused pain to his elbow and tingling and numbness in his hand. Petitioner testified that he felt sharp pain in his elbow while rolling the third or the fourth barrel that contained grease weighting approximately 250 to 300 pounds on May 3, 2023. (T. 35-36, 42-43) Ms. Hruby testified that she filled out a CTS questionnaire for Respondent's WC insurance carrier. (Rx 1A, page 20) When answering these questions, Ms. Hruby wrote in that Petitioner's duties included driving a truck, operating levers, moving/positioning containers, and operating lift gate. (Rx 1A, Exhibit 3) She explained that Petitioner had to use machines/tools such as a hose, chains, hydraulic arms on the truck, winch, and dolly. (Rx 1A, Exhibit 3) The job also required pushing, pulling, and lifting anywhere from 0 to 50 pounds using both hands. (Rx 1A, Exhibit 3) Ms. Hruby confirmed that a full barrel of grease can weigh from 250 to 300 pounds and a full bulk container weigh around 50 pounds. (Rx 1A, page 15, 45) To this Arbitrator, the description of Petitioner's job duties, as described by both Petitioner and Ms. Hruby, to be heavy physical/forceful activities.

Second, Petitioner sought treatment with Dr. Twu on May 4, 2023. (Px 1) After examination, Dr. Twu diagnosed Petitioner with right elbow pain, right lateral epicondylitis, and numbness and tingling in both hands. (Px 1, page 28) He ordered EMG and night bracing, and placed Petitioner on light duty. (Px 1, page 32) He also recommended Petitioner to have OT and wrist brace. (Px 1, page 32) After positive findings from EMG, Dr. Twu prepared a CTS Questionnaire which noted that Petitioner's right elbow and right-hand conditions were due to "repetitive wrist activities" and "pushing barrels and tanks." (Rx 5, page 126) According to Px 1, Petitioner saw Dr. Twu on May 4, 2023, June 1, 2023, June 22, 2023, July 27, 2023, and August 10, 2023. Petitioner testified that he saw Dr. Twu again on September 28, 2023. (T. 59) During all the visits, the diagnosis and

recommendations stayed the same – a carpal tunnel release surgery, OT for the right elbow, and wrist brace intermittently. (Px 1) After each visit, Petitioner was placed on light duty with brace on and no repetitive work lifting/pushing/pulling more than 5 to 10 pounds. (Px 2) Dr. Twu believed that both conditions – right lateral epicondylitis and right CTS were exacerbated by Petitioner's work and activities. (Px 1) Dr. Twu further believed that Petitioner's condition was related to his repetitive job duties and classified Petitioner's work injury as work-related. (Px 1)

Third, Dr. Birman, Respondent's Section 12 examiner diagnosed Petitioner with right elbow lateral epicondylitis and right wrist carpal tunnel syndrome (Rx 2, page 5) Dr. Birman opined that right elbow lateral epicondylitis is a common degenerative condition. Dr. Birman did admit that Petitioner may have experienced symptoms of lateral epicondylitis while performing his work duties, but minimized the symptoms by stating that there was no forceful gripping or wrist extension, and therefore, Petitioner work activities on May 3, 2023 would not have caused or aggravated the lateral epicondylitis. (Rx 2, page 5) However, when describing his work activities, Petitioner stated there were 8 barrels to pick up at the third stop. (T. 41-42) To get the barrels onto the truck, he had to tilt each barrel weighing anywhere from 250 to 300 pounds and roll it using his hands towards the truck so it can be lifted onto the truck. (T. 42) As he was in the process of rolling the third or the fourth barrel, he felt a sharp pain in his right elbow. (T. 42-43) To this Arbitrator, the work activities that Petitioner described seemed to be a hard physical work that required forceful gripping of the barrels and wrist extension to roll the barrels. In addition, Petitioner was a bulk truck driver. (T. 32-33) Ms. Hruby testified that a bulk truck driver is scheduled to make 15 to 20 stops a day to pick up grease from bulk oil containers that weigh up to 50 pounds. (Rx 1A, pages 13-14) Ms. Hruby described the bulk oil container as a container that resembled a grocery cart with wheels on the bottom. (Rx 1A, pages 15-16) Petitioner testified that some of the bulk oil container did not have wheels and therefore, he had to push and pull containers using a winch. (T. 33-35) In any event, whether the bulk containers have wheels or not, it appeared that Petitioner had to utilize forceful and physical exertion using his hands to get the containers into the truck. Again, to this Arbitrator, being a bulk truck driver seemed to be a hard physical work that can lead to the injuries as described by Petitioner.

As far as treatment for right elbow lateral epicondylitis, Dr. Birman recommended a nonoperative treatment such as OT with emphasizing stretching exercises at home. In certain cases, he would consider an injection and if this fails, a lateral epicondylitis surgery was an option. (Rx 2, pages 5-6)

Dr. Birman noted that there were objective findings by the EMG to support a diagnosis of right CTS and a recommendation for a carpal tunnel release surgery. (Rx 2, page 6) He again admitted that work activities can be a factor if repetitive and sustained forceful gripping, however, based on Respondent's description of work, he opined that Petitioner's work activities did not cause or aggravate this condition. (Rx 2, page 6) The Arbitrator finds that the work described by Petitioner and corroborated by Ms. Hruby is repetitive requiring Petitioner to exert forceful and physical exertion suing his hands that caused his current condition of ill-being.

The Arbitrator adopts the findings of Dr. Twu and Dr. Birman that Petitioner has right lateral epicondylitis and right wrist CTS. The Arbitrator finds and concludes that the medical opinions of Dr. Twu to be more persuasive than those of Dr. Birman. Based on Petitioner's testimony, the

medical records and findings and opinions of Dr. Twu, the Arbitrator finds Petitioner has proven by a preponderance of the evidence that his current condition of ill-being with respect to his right elbow lateral epicondylitis and right wrist CTS are causally related to the repetitive trauma accident of May 3, 2023.

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.

As the Arbitrator has already found that Petitioner's current condition of ill-being with respect to right lateral epicondylitis and right wrist CTS, is causally related to the injuries sustained on May 3, 2023, and that medical services provided, thus far, were reasonable and necessary, the Arbitrator further finds that the Petitioner is entitled to OT for the right elbow lateral epicondylitis and carpal tunnel release surgery as recommended by Dr. Twu.

The Arbitrator relies on the surgical recommendations by Dr. Twu for a carpal tunnel release surgery and OT for the right elbow lateral epicondylitis. As such, the Arbitrator finds that Respondent shall approve and pay for the carpal tunnel release surgery, OT for the right lateral epicondylitis, and any related and necessary post-operative care as prescribed by Dr. Twu, 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 Arbitrator adopts the above findings of fact and conclusions of law 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 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).*

The Arbitrator has already found that petitioner sustained an accident that arose out of and in the course of Petitioner's employment, and that Petitioner's current condition of ill-being is causally related to the injury, and further awards temporary total disability (TTD) to Petitioner. Dr. Twu issued work restrictions beginning May 4, 2023 and Petitioner remains off work based on his persistent symptoms and the need for additional medical care. Respondent was able to accommodate Petitioner's work restrictions from May 5, 2023 to May 19, 2023.

The Arbitrator therefore finds that Petitioner is owed TTD benefits from May 20, 2023 through January 26, 2024. Parties agree that Petitioner's average weekly wage is $1,285.85. The Arbitrator finds that Petitioner is entitled to 36 weeks at the rate of $857.23 per week in the amount of $30,860.28, as provided in Section 8(b) of the Act.

It is so ordered:

Jennifer E Bae

Arbitrator Jennifer E. Bae

March 25, 2024

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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC024167
Case Name	Michael J. Bloom v. Greater Round Lake Fire Protection District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0495
Number of Pages of Decision	19
Decision Issued By	Maria Portela, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Richard Volpe
Respondent Attorney	Kisa Sthankiya

DATE FILED: 10/10/2024

/s/Maria Portela, Commissioner

Signature

DISSENT: /s/Amylee Simonovich, 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

MICHAEL BLOOM,
Petitioner,

vs. NO: 14 WC 24167

GREATER ROUND LAKE F.P.D.,
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, causation, medical expenses, occupational disease 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, but makes a clarification as outlined below.

The Commission affirms and adopts the Decision of the Arbitrator, however, corrects the age of the Petitioner in the "Findings" section of the Decision from 68 years old to 38 years old.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 29, 2022 is hereby affirmed and adopted with the modification as outlined above.

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

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

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.

October 10, 2024

MEP/dmm
O:81324
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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 reverse the Decision of the Arbitrator. After carefully considering the evidence, I do not believe Respondent submitted sufficient evidence to rebut the presumption of causation pursuant to Section 1(d) of the Occupational Diseases Act.

Petitioner worked as a firefighter and EMT for 19 years. During his career, he responded to various types of emergencies and was exposed to smoke, hazardous materials, and diesel fumes. The credible evidence shows Petitioner was most likely exposed to carcinogens. In 2013, he was diagnosed with myxoid liposarcoma, a very rare form of cancer. The Section 1(d) rebuttable presumption regarding causation is clearly applicable in this case.

In *Johnston v. Ill. Workers' Comp. Comm'n*, the Appellate Court concluded that the rebuttable presumption is an ordinary presumption, "…simply requiring the employer to offer *some* evidence sufficient to support a finding that *something other than* claimant's occupation as a firefighter caused his condition." 2017 IL App (2d) 160010WC, ¶ 45 (emphasis added). Drs. Cochran and Sweet agree that due to the rarity of myxoid liposarcoma, there are no studies or articles that address a possible link between the condition and firefighting. Dr. Sweet, Respondent's expert, testified that there is no known cause of myxoid liposarcoma. He identified certain risk factors for the disease including trauma to the affected leg, a puncture wound, chronic infection in the affected leg, and radiation therapy. He also testified that conditions such as neurofibromatosis, Gardner syndrome, and a defect in the P53 gene are risk factors for the disease. However, the identification of these risk factors cannot rebut the presumption in this case. There is absolutely no evidence that any of these risk factors apply to Petitioner. The mere existence of risk factors relating to a condition does not constitute evidence that something besides Petitioner's work-related duties and exposures caused his rare cancer. Thus, these risk factors certainly do not support a finding that something other than Petitioner's occupation caused his condition.

Notably, Dr. Sweet agreed that firefighters are exposed to elements that are linked to the development of some cancers. He admitted that he did not know whether Petitioner had been exposed to Class 1 carcinogens during the course of his prolonged career. He testified that his opinion denying causation between Petitioner's cancer and his occupation would change if Petitioner was repeatedly exposed to a carcinogen that studies prove firefighters face increased exposure. He testified that the origins of many cancers are prone to randomness; however, he did not testify that myxoid liposarcoma was one such cancer. Furthermore, Dr. Sweet testified that it is *possible* that Petitioner's myxoid liposarcoma is causally related to his work-related exposures. It is clear that neither Dr. Sweet's narrative report nor his testimony qualify as evidence that something other than Petitioner's occupation caused his rare form of cancer. Instead, Dr. Sweet's opinions and testimony strengthen Petitioner's argument that his work-related exposures caused his cancer.

I believe the rebuttable presumption was enacted to address cases such as this one. After almost two decades of working as a firefighter and EMT and being exposed to hazardous materials, smoke, and diesel fumes, Petitioner developed a very rare form of cancer. His cancer is so rare, that there are no studies regarding any link between its development and firefighting. In fact, there is no known cause of myxoid liposarcoma. The experts agree that there is no literature that considers a possible link between myxoid liposarcoma and firefighting. Under these circumstances, the Section 1(d) presumption of causation is crucial to allowing claimants such as Petitioner to recover benefits after developing such a rare cancer. The majority's decision that the opinions and testimony of Dr. Sweet are sufficient to rebut the presumption drastically undercuts the purpose of the presumption. It also does a grave disservice to similarly situated first responders.

For the foregoing reasons, I would reverse the Decision of the Arbitrator in its entirety and would find award benefits accordingly.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC024167
Case Name	Michael J. Bloom v. Greater Round Lake Fire Protection District
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Thomas Duda
Respondent Attorney	Kisa Sthankiya

DATE FILED: 12/29/2022

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

/s/Michael Glaub, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

☐ 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

Michael Bloom
Employee/Petitioner

Case # 14 WC 24167

v.
Greater Round Lake FPD
Employer/Respondent

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 Arbitrator Michael Glaub, Arbitrator of the Commission, in the city of Waukegan, on September 27, 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 8/26/13, 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.

In the year preceding the injury, Petitioner earned $76,031.28; the average weekly wage was $1,462.14.

On the date of accident, Petitioner was 68 years of age, married, with 0 children under 18.

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 $3,996.38 for other benefits, for a total credit of $3,996.38.

Respondent is entitled to a credit of $93,096.86 under Section 8(j) of the Act.

ORDER

Petitioner failed to prove by a preponderance of the evidence that he was exposed to an occupational disease on August 26, 2013, and further failed to prove that his condition of ill-being was causally connected to exposure of his employment with Respondent. 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 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.

Michael Glaub
Signature of arbitrator

December 29, 2022

FINDINGS OF FACT

Petitioner's Testimony

Petitioner testified he had been employed by the Greater Round Lake Fire Protection District as a firefighter from April 1, 2003, to March 28, 2022. (Tr. 9) His rank at the time that he left the Department was firefighter/paramedic. (Tr. 11) He was responsible for answering emergency calls, fire suppression, fire alarms, ambulance calls, hazardous materials, special responses, maintenance, training and public training. (Tr. 11-12)

Petitioner testified that he worked within three stations of the Greater Round Lake Fire Protection District. (Tr. 20) He rotated through the stations. (Tr. 21) The common elements of all the stations were a garage or apparatus floor, kitchen, day room, bunk bed and offices. (Tr. 21) The apparatus or bay floor held the fire engine, ladder truck, tanker and any ancillary vehicles. (Tr. 22) They were all diesel operated vehicles. (Tr. 22) Petitioner checked every day and ran the fire trucks for 1-2 minutes with the garage doors open. (Tr. 23, 72, 90-91) Unsealed doors separated the building from the apparatus floor. (Tr. 25-26)

In 2018, the Respondent received a grant for a Plymovent system. (Tr. 30) He felt the air quality was cleaner after the system was installed. (Tr. 31) He noticed his eyes wouldn't burn when he would start vehicles up and he wasn't breathing in whatever was coming out of the vehicle. (Tr. 31)

With respect to fires, he testified that he fought building fires, car fires and dumpster fires. (Tr. 32) The building fires included houses, commercial buildings, and apartments. (Tr. 32) For fire suppression, he would go in and put the fire out. (Tr. 32) The purpose of his fire gear was for thermal protection to keep stuff off. (Tr. 33) His gear consisted of an inner and outer shell jacket and pants, gloves, helmet and hood. (Tr. 34) While wearing the gear he noticed, "unburnt products and combustion or whatever" get through his gear. (Tr. 34)

After a fire, he would take the gear off and notice that his hands and neck would be dirty with whatever came through the material. (Tr. 35) He testified they also wore a device for respiratory protection, SCBA, which was a backpack with an air bottle that contained breathing air. (Tr. 36) After a fire, they did salvage and overhaul which was opening up the building making holes in the wall and the ceiling and checking for extension. (Tr. 36-37) During overhaul, he would at times wear his SCBA. (Tr. 37) Air monitoring was done for only carbon monoxide and hydrogen cyanide but not for asbestos, benzenes, PAH or formaldehyde. (Tr. 37-38)

Petitioner testified that he also fought other outdoor fires, which included car fires, dumpster fires and grass fires. (Tr. 38) He wore his SCBA at times when he responded to car fires. (Tr. 39) He alleged he confronted plastics, vinyl and "poly-whatever." (Tr. 39) He claimed he did not wear an SCBA mask all the time for a dumpster fire. (Tr. 39) He admitted that he did not know what was burning inside a dumpster fire but had seen various items in the past. (Tr. 39)

He claimed that his PPE was issued by the Fire Department, and they got one set every 10 years. (Tr. 40) There was a cleaning program and there was a mandate to wash the gear after every fire. (Tr. 41) They would have to get all the unburnt products and combustion off the gear. (Tr. 41)

They also wore the gear for car accidents, fire alarms, CO alarms, investigations but not ambulance calls. (Tr. 41) They were not allowed to bring the gear into other areas of the firehouse because of the contaminants. (Tr. 42) In 2017, they began to decon gear by using a brush to clean or knock debris off and then hose off on the fire ground. (Tr. 42)

Petitioner testified that in 2012 he noticed a bump on the back of his leg on the right side of his thigh. (Tr. 12) He first sought medical attention in July of 2013, and he was there to take a tag off his nose and asked the doctor to look at the bump. (Tr. 12-13) The doctor recommended an MRI of the right femur. (Tr. 14) On August 2, 2013, Petitioner underwent an MRI of the right femur that revealed a soft tissue mass consistent with sarcoma in the posterolateral right thigh. (PX2)

He testified that they then did research and found a sarcoma specialist at the University of Chicago, Dr. Rex Haydon. (Tr. 15) He testified that he saw Dr. Haydon sometime in early September of 2013 and they discussed his treatment plan, which included radiation and then surgery. (Tr. 15)

Petitioner underwent 25 radiation treatments at Advocate Good Shepherd Hospital because it was closer to him with Dr. Catherine Park conducted the radiation. (Tr.16, PX6)

Petitioner underwent an MRI of the right femur on October 27, 2013, that showed the mass had been reduced to 14.6 x 6 x 8 centimeters as compared to 16 x 8 x 10 centimeters. (Tr. 17, PX3)

Petitioner saw Dr. Haydon on November 11, 2013. Dr. Haydon noted that the radiation had decreased the tumor to about 30% of its original size. Dr. Haydon recommended complete excision. **Significantly, Petitioner provided Dr. Haydon information and studies regarding environmental exposures as a firefighter and the possibility that this may be related to his myxoid liposarcoma. He reported he had a firefighter colleague who had the exact same tumor in a very similar location. Dr. Haydon opined, "<u>that there is no clear evidence for or against specific exposures such as diesel exhaust that might be common amongst firefighters. As such, it is hard to establish a clear cut association."</u> (PX4)**

Petitioner underwent surgery on November 22, 2013. (Tr. 18) The operative report reflects that the sciatic nerve was uninjured and there was no evidence of metastatic disease (PX4

Petitioner alleged he took time off from November 19 through December 16, 2013. (Tr. 19) He claimed he used his sick time during this time off. (Tr. 19) He returned to work light duty on December 16, 2013, doing desk work. (Tr. 19) Petitioner commenced a course of physical therapy for his leg at Advocate Good Shepherd Hospital on December 19, 2013. (PX3)

Petitioner followed up with Dr. Haydon on January 8, 2014. He noted that Petitioner was doing well but there was some drainage from the incision. Petitioner had been undergoing lymphedema with compression dressings. He prescribed antibiotics returned Petitioner back to full duty work. (PX4)

Petitioner continued with his physical therapy on August 22, 2014. As of August 22, 2014, Petitioner had completed a physical demand test of climbing and carrying objects through his job and did not have any limitations. He reported no difficulty with work related activities. (PX3)

Petitioner saw Dr. Haydon on September 14, 2014. He reported his knee mobility and distal swelling had improved. He no longer had drainage. He was recommended to undergo CT scans and MRIs. (PX4)

Petitioner underwent a CT scan of the abdomen and chest on October 13, 2014, that was normal. He also underwent an MRI of the right femur on December 2, 2014, that was unremarkable and showed no evidence of recurrent disease. (PX3)

Petitioner saw Dr. Haydon on December 3, 2014. He was still in physical therapy and back to work. He only noticed some difficulty flexing the knee and strength with stair climbing. He had no significant distal

edema, and he was neurovascularly unchanged. Based on his review of Petitioner's clinical and x-ray findings, Dr. Haydon concluded there were no local or distant signs of relapse. (PX4)

He saw Dr. Haydon on March 2, 2015. Overall, Petitioner showed no local or distant signs of relapse. (PX4)

Petitioner saw Dr. Haydon on June 1, 2015, and he considered Petitioner disease-free and recommended that he return in three months for a repeat evaluation with an x-ray. (PX4)

He underwent x-rays of the chest on September 2 and December 2, 2015, that were both negative. (PX3)

Petitioner saw Dr. Haydon on December 2, 2015, and May 18, 2016, and continued to find no evidence of any local recurrence or metastatic disease in the chest at this time. (PX4)

Petitioner underwent a CT scan of the chest, abdomen and pelvis on October 26, 2016, which showed no evidence of metastatic disease. (PX3)

Petitioner saw Dr. Haydon on November 14, 2016. Based on his local examination and CT scan, he believed Petitioner was free of any local or distant signs of relapse. He wanted Petitioner to return in one year for a repeat evaluation with a CT of the chest, abdomen and pelvis and an MRI of the right femur.

Petitioner underwent a CT scan of the abdomen, pelvis and chest of October 17, 2017, that showed no evidence of metastatic disease. (PX3)

Petitioner saw Dr. Haydon on November 13, 2017. He reported that he was back to his normal activities but did notice some very slight weakness compared to the contralateral side. It did not limit him from any work-related or recreational activities. He denied any significant swelling, weakness or numbness in the leg. There was no erythema, induration or ecchymosis noted. There continued to be a small peri-incisional knot that was unchanged. He noted that Petitioner was otherwise neurovascularly intact with no distal edema. He reviewed Petitioner's CT scan, and he had no local signs of relapse based on physical examination. His CT was stable with the exception of the abnormality in the liver and the recommendation from the outside radiologist was to pursue a dedicated MRI of the liver. (PX4)

The last diagnostics submitted at trial revealed that the MRI of the liver on February 17, 2018, and CT scan of the chest on October 23, 2018, were normal. (PX3)

At the time of trial, Petitioner testified he was seeing Dr. Haydon biannually. (Tr. 20) He had pain in his leg, knee and hip. (Tr. 42) He alleged he still had swelling and his range of motion was not normal. (Tr. 43)

On cross-examination, Petitioner admitted that he researched with his family the best possible doctor to treat his sarcomas. (Tr. 44) He chose Dr. Rex Haydon, an orthopedic oncologist at the University of Chicago because he was the best specialist for myxoid liposarcoma. (Tr. 44) He admitted that Dr. Haydon does research into these types of cancers. (Tr. 44) He travelled from his home in McHenry all the way to the University of Chicago to treat with Dr. Haydon. (Tr. 44) He admitted bringing firefighting studies and articles for Dr. Haydon to review on November 11, 2013. (Tr. 46) He testified he did not recall what studies he showed Dr. Haydon. (Tr. 47) He admitted that Dr. Haydon told him he could not establish a clear-cut association with his firefighting and his sarcoma. (Tr. 48)

He admitted that Dr. Haydon did not testify on his behalf in the case. (Tr. 50) Instead, he had Dr. Barbara Cochran an internal medicine specialist located in Maryland testify on his behalf. (Tr. 50) He admitted he

only spoke with her over telephone for litigation purposes (Tr. 50) He was not aware of her qualifications and did not know if she had ever treated myxoid liposarcoma or any cancers before. (Tr. 51)

He admitted that he was not an air quality specialist or an industrial hygienist. (Tr. 54) He admitted that he had never done any testing of the air quality. (Tr. 55) He admitted that testing of the air quality had been done by the Illinois Department of Labor in 2012 of all the stations and after the testing they found no hazardous diesel particles or mold and made no recommendations to the Fire Department for any changes. (PX7; Tr. 55-58) The only hazard findings and recommendation made by the Department of Labor was to change signage errors. (PX7; Tr. 58)

He admitted that sometimes at the fire he would be at the ambulance only administering aid even if very rarely. (Tr. 67) There were times he wouldn't actually go into the fire or not have to stay for overhaul. (Tr. 68-69) His gear was specially created for fire suppression activities. (Tr. 71). He thought what came through his gear was unburnt products, combustion, contaminants but admitted he had never tested it. (Tr. 72) Petitioner admitted that his mother had kidney cancer in 2006 and his grandfather had died of testicular cancer in 1962. (Tr. 73)

Petitioner admitted that he was paid while he was off work from November 22, 2013, through December 16, 2013, his full salary of $3,996.38. (Tr. 74) If awarded TTD benefits, he would be paid for the same time period twice. (Tr. 75)

Petitioner had been working full duty since January of 2014 through January 2022. (Tr. 76) The reason why he stopped working was wholly unrelated to his cancer case. (Tr. 76) Although he claimed ongoing issues with his right leg, he admitted the last time he underwent physical therapy was 2014. (Tr. 78) He admitted he had not seen any orthopedic surgeon or specialist for his right leg since 2014. (Tr. 78) He had continued to receive all contractual raises until 2022. (Tr. 78) He had not lost any time due to treatment other than the 3.5 weeks he was off in November of 2013. (Tr. 77) He admitted that routine diagnostic testing through 2018 and there were no findings of relapse. (Tr. 77) There were no findings of spread. (Tr. 77) He admitted that he was given a good prognosis by Dr. Haydon. (Tr. 77) He admitted he had no restrictions imposed by Dr. Haydon or Dr. Park on being a firefighter. (Tr. 78)

On redirect, Petitioner testified that he asked Dr. Haydon of the causal relationship because it was a rare form of cancer and his friend in Joliet who was also a firefighter had the same cancer and died from it. (Tr. 79-80) Petitioner testified that he recalled breathing in smoke at the fires. (Tr. 81) He testified that even outdoors he would breathe in the smoke. (Tr. 81) He testified that when working on the ambulance at the fire scene he would do fire groundwork which included the hose line, search and ventilation. (Tr. 82)

On re-cross, Petitioner admitted that the other firefighter in Joliet who was his friend, lived in a different town. (Tr. 87) He admitted that Dr. Haydon told him that there was not enough research to form an opinion on causation of his myxoid liposarcoma. (Tr. 87) He admitted that no one else in his department had myxoid liposarcoma but six or seven guys had had cancer. (Tr. 87) He admitted that when he used the SCBA mask he was not inhaling any of the air smoke but clean air. (Tr. 88)

Additional Documentary Evidence

Petitioner entered the Consultation Report for the Greater Round Lake Fire Protection District as PX7. The Arbitrator finds this reported was generated by the Illinois Department of Labor Safety Inspection and Education Division in March of 2012. The Report included reviewing OSHA logs and performing air monitoring tests for diesel particulates and mold. The Arbitrator notes that in some areas of the firehouse

no diesel particulates were detected at all. In any areas where diesel particulates were found, the were below the USDOL Mine Safety and Health Administration's Permissible Exposure Limits. The Arbitrator also finds that there are no OSHA permissible exposure limits for diesel particulates. The only hazards found were to have proper signage on one door and the OSHA injury logs for review within a reasonable amount of time. No hazards were identified for mold and diesel particulates. (PX7)

Petitioner entered fire run reports obtained via FOIA as PX11. The Arbitrator reviewed the fire run reports in PX11 and notes that the run reports include fire calls from November 22, 2013, through January 3, 2014, while Petitioner was either off of work or restricted to desk duty. (PX11) Petitioner admitted that he could not have done a run on November 22, 2013 as he had surgery that date. (Tr. 60) He admitted that he worked light duty from approximately December 16, 2013, to January 3, 2014, which was only paperwork and was not responding to fire calls. (Tr. 61) Petitioner admitted that if the run reports in PX 11 included fire calls from November 22, 2013, through January 3, 2014, attributed to him, they would not be accurate, and show runs that he didn't actually go on. (TR. 61) In addition, Respondent admitted without objection RX6, a summary and analysis of all of Petitioner's runs included in PX11. (Tr. 62) This summary was then converted into a pie chart. (Tr. 63) Petitioner admitted to the findings on the pie chart that reflected that only 4.69% of calls in PX11 were fire related from April 1, 2003, to December 31, 2018. (Tr. 63)

Petitioner entered photographs of basic gear as PX12. The Arbitrator notes that these photos are not photographs of Petitioner's gear.

Petitioner entered photographs of his scarring taken by his attorney on September 26, 2022. (PX14)

Petitioner entered correspondence from Blue Cross Blue Shield regarding the amount of their lien. (PX15)

Respondent entered The Greater Round Lake Fire Protection District 2019 and 2018 Emergency Response Summary. (RX5) In 2018, the summary reflects that 3% of the calls the Department as a whole responded to was for fire divide between 78 structural, 11 vehicle and 56 miscellaneous fires. In 2019, the summary reflects that 1.4% of the calls the Department as a whole responded to was for fire divide between 78 structural, 11 vehicle and 69 other calls.

Dr. Barbara Cochran Deposition Testimony (PX8, PX9, PX10)

Dr. Barbara Cochran testified by way of evidence deposition on October 23, 2018 (Tr.2). She is board certified in Internal Medicine and licensed to practice medicine in Maryland and Florida (Tr.6- 7) Her practice consisted of performing disability evaluations for Social Security, performing independent medical examinations for workers' compensation cases, and doing independent cause analyses for various conditions. (Tr.8). She admitted to performing independent medical evaluations regarding causation claims on a variety of conditions that included cancer, cumulative trauma, and mold exposure (Tr.11).

Dr. Cochran testified that she performed a record review of Petitioner's records after a telephone interview (Tr.12). As a firefighter he participated in both suppression, overhaul, and takedown (Tr.17). She did not believe monitoring carbon monoxide and cyanide would mitigate the exposure to cancerous materials for firefighters during overhaul (Tr.17-18). Petitioner reported that he stored his personal protective equipment in the firehouse on the same floor where he slept and did not wash the equipment until two years prior. (Tr. 18) He also reported that his firehouse did not have a diesel exhaust system (Tr.18).

Dr. Cochran opined that based on the totality of the literature showing all of the carcinogens that firefighters are exposed to, Petitioner's lack of full protection from his personal protective equipment, and that the contamination from his personal protective equipment while hanging in the engine bays, she believed that "Petitioner had significant carcinogenic exposure to a reasonable degree of medical certainty" (Tr.27-28).

Dr. Cochran opined that within a reasonable degree of medical certainty Petitioner's cancer was caused in whole or in part by his exposure to carcinogenic materials (Tr.29). Her opinions rely on her theory of carcinogenesis as a concept of exposure to a carcinogen that causes inflammation due to oxidative stress on an organism, thus causing an alteration in the DNA and RNA sequencing (Tr.29). She believed that Petitioner likely sustained a genetic mutation that occurred because of his inflammation and oxidative stress, resulting in RNA and DNA sequencing at a cellular level (Tr.32).

On cross-examination, Dr. Cochran admitted that she did not do any residencies in Oncology, Surgery, or Orthopedics (Tr.35). She admitted that internal medicine was a very minimal part of her practice and only treated a handful of patients. (Tr.36-37). Her primary practice comprised almost entirely of performing independent medical examinations for cases. (Tr.36) She testified that she has served as an expert witness in workers' compensation cases, personal injury cases, and medical malpractice cases (Tr.40). She admitted that she has never treated or performed a surgery on a patient with myxoid liposarcoma tumor (Tr.38-39). Dr. Cochran admitted that she has testified as a medical expert for orthopedic, psychological, geriatric and brain injuries. She also had done presentations on repetitive motion injuries, carpal tunnel syndrome, cumulative trauma disorders, biomarkers in cardiology, complex regional pain syndrome, osteoarthritis, and traumatic brain injuries (Tr.44-45). She denied performing any presentations regarding cancer (Tr.45).

She admitted that Dr. Golden and their authors found in an article she relied up on regarding an increased risk of certain cancers in firefighters, but that myxoid liposarcoma was not one of those cancers mentioned in the article (Tr.48). She admitted that it is possible for an individual to be exposed to a carcinogen and not get cancer (Tr.49). She denied knowing what type of carcinogens Petitioner was exposed to in his own home (Tr.53). Dr. Cochran admitted that genetics is a risk factor for particular types of cancer (Tr.53). However, she had no idea what the genetic condition Li-Fraumeni Syndrome was or its relationship to sarcomas. (Tr.534)

Dr. Cochran admitted that out of all of the articles she quoted in both of her reports, none of them stated that exposures that firefighters face could replicate the DNA and RNA causing a myxoid liposarcoma. (Tr.55). Dr. Cochran admitted that she could not say whether dermal exposure caused Petitioner's myxoid liposarcoma (Tr.56) Dr. Cochran she had seen no studies that show firefighters are more prone specifically to myxoid liposarcoma than the general public (Tr.59). Dr. Cochran admitted that neither Dr. Haydon nor Dr. Park provided a causation opinion causally relating Petitioner's myxoid liposarcoma to his work duties as a firefighter (Tr.60).

On redirect examination, Dr. Cochran described her theory of "oxidative stress" as occurring when some action or exposure causes free radicals (Tr.64). She stated that the free radicals exceed the capacity of a body to neutralize than with antioxidants (Tr.64). However, when there is oxidative stress, they are not equal, and the free radicals come in and are prone to cause inflammatory cytokines (Tr.64). The cytokines go in and cause damage to the cells because they have too many free radicals floating around (Tr.65). This causes the alteration of DNA and RNA sequencing (Tr.65). She believed that this pro-inflammatory mechanism could cause diseases at many different levels, including cancer (Tr.65).

Dr. Cochran testified that Golden article discussed in detail carcinogens: benzene, asbestos, PAH, formaldehyde, and diesel exhaust. She admitted that the article focused on cancers such as non-Hodgkin's lymphoma, leukemia, brain cancer, and bladder cancer but not myxoid liposarcoma. (Tr.66)

On recross, Dr. Cochran admitted she had never been to the Round Lake Firehouse and did not know where the apparatus floor vehicles were parked in the Round Lake Firehouse (Tr.68-69). She admitted that she did not know how many fire calls Petitioner would have to go out on in a given year (Tr.69).

Dr. Donald Sweet Testimony (PX2, PX3, PX4)

Dr. Donald Sweet testified on behalf of the Respondent. He is board certified in the areas of oncology, hematology, and internal medicine. (Tr.6). He did his internship, residency and fellowship in hematology and oncology at the University of Chicago. (Tr.4-5). He also worked as an assistant professor of medicine at the University of Chicago prior to private practice. (Tr. 5). He was the medical director of Hinsdale AMITA Cancer Program since 1988 and 90% of his practice is devoted to clinical care of patients with cancer and blood conditions. (Tr. 5). He participates in a wide variety of research projects with various groups including the Eastern Cooperate Oncology Group, drug company protocols and colleagues at the University of Chicago. (Tr. 5). As an oncologist, Dr. Sweet testified that he treats all cancers including sarcomas. (Tr. 6-7). He also ran a non-compensated program with the Hinsdale Fire Department counseling firefighters regarding their risk of cancer based on family and personal history. (Tr. 8-9) He was familiar with firefighting activities and exposures. (Tr. 9). He treated firefighters with cancer and had an adequate understanding of the occupational exposures of firefighters and how varied they are. (Tr. 12).

Dr. Sweet testified that myxoid liposarcoma is a cancer of the fat cells and nobody knows what causes myxoid liposarcomas. (Tr. 14-15). There are some risk factors that are associated with increased risks of myxoid liposarcoma such as: a trauma to the leg, a puncture wound, a chronic infection to the leg and radiation therapy. (Tr. 15). Dr. Sweet testified that additional risk factors are neurofibromatosis, Gardner syndrome and Le-Fraumeni wherein there is a defect in the P53 gene. (Tr. 16). Dr. Sweet testified that chemicals had been implicated in live sarcomas, which are different from myxoid liposarcoma. (Tr. 16).

He testified there was no scientific evidence to provide a basis for firefighting as a cause myxoid liposarcoma. (Tr. 17) He came to this opinion with a deep investigation into the medical literature and specifically, looked at studies, and associational studies looking at cancers in firefighters. (Tr. 17-18). Dr. Sweet noted that he reviewed approximately 25 studies that included meta-analysis, none of them found an increased risk of myxoid liposarcoma. (Tr. 17). He appreciated that myxoid liposarcoma is a rare disease making up approximately 30 cancers per one million. (Tr. 18). In the 35,000-40,000 cases of firefighter cancer that he has referenced, there were no instances of liposarcomas. (Tr. 18). If firefighting, in whatever degree, caused liposarcomas, one would see an increased risk in that date set. (Tr. 18).

He explained that the body reproduces cells constantly. (Tr.18). Some cells reproduce more rapidly than others such as in the pancreas (Tr. 18). However, fat cells do not turn over which is why they are rare. (Tr. 18). He explained that every time a cell is reproduce, the old DNA must be copied in order to put the new DNA in the new cell. (Tr. 19) He stated that on average, there are three copying errors per DNA regeneration. (Tr. 19). Most of these errors have no impact, however, if that copying error happens in a known cancer gene, the same can lead to an expression of increased growth. (Tr. 19).

Dr. Sweet emphasized that Vogelstein and Tomasetti produced very persuasive evidence that about 2/3 of cancers are random. (Tr. 19). It was more likely that randomness is the explanation for Petitioner's cancer than his firefighting duties as there are no studies showing an increased risk of myxoid liposarcoma

by firefighting. (Tr. 19). He believed it was a "real statistical leap of faith" for Dr. Cochran to "cavalierly blame" Petitioner's myxoid liposarcoma on his firefighting and he did not accept her logic. (Tr. 19).

He stated there were three causes of cancer: (1) genetic mutation which accounted for up to only about 5%-8% of cancers (2) the environment (3) randomness. (Tr. 21). With respect to environmental causes, he noted that most of them are pretty well-known and include smoking. (Tr. 21). Dr. Sweet admitted that firefighters have exposures that are linked to the development of some cancers. (Tr. 21). However, based upon review of the literature and his understanding of the studies, myxoid liposarcoma is not one of the cancers caused by firefighting exposures or linked by any study. (Tr. 22).

He had reviewed Dr. Cochran's reports and did not know how anybody could have her opinions with statistical confidence and disagreed with her causation opinion. (Tr. 24) He opined there "was no science behind" her causation opinion. (Tr. 24). He believed Dr. Cochran did not come close to satisfying consensus guidelines in the field of occupational medicine as set forth by the American College of Occupational Environmental Medicine Practice regarding causation. (Tr. 24-25).

Dr. Sweet also noted that Dr. Cochran decried Vogelstein's 2015 paper, but it was updated in 2017 and both versions were both published and peer reviewed by the highly influential magazine, "Science." (Tr. 25). The primary criticism of the 2015 paper was that it left out breast and prostate cancer. (Tr. 25) It was updated in 2017 to include both and came to the same conclusion with even stronger data. (Tr. 25).

Dr. Sweet also testified that he did not believe that Dr. Cochran was qualified to treat a myxoid liposarcoma. (Tr. 27). Dr. Cochran's opinion that a carcinogen caused mutations in Petitioner's DNA and RNA resulting in tumors when those molecules replicated or mutated was an incomplete premise. (Tr. 27). He noted that Dr. Cochran did not state what chemicals, how much of those chemicals, or how often Petitioner was exposed. (Tr. 27). Likewise, he noted that there was no explanation of the scientific basis that those chemicals caused Petitioner's cancer. (Tr. 27). Rather, he believed that Dr. Cochran made a blanket statement that carcinogens caused Petitioner's cancer without much merit. (Tr. 27).

Dr. Sweet testified that IARC referenced in Dr. Cochran's testimony is an organization that looks at cancer statistics, correlative studies but is not authoritative. (Tr. 32). The IARC has created a classification scheme for carcinogens. (Tr. 32). He admitted that IARC Class I carcinogens are when they feel they have been shown to cause cancer in human organisms but not any specific type of cancer. (Tr. 33).

He stated the most common source of benzene is from automobiles and everyone is exposed to benzene but do not have acute leukemia. (Tr. 34). It therefore takes more than mere exposure to cause cancer. (Tr. 34). He admitted that the combustion of furniture and synthetic clothing would be sufficient to produce polycyclic aromatic hydrocarbon but there was no evidence that it causes liposarcoma. (Tr. 35). Arsenic and vinyl have been implicated in liver sarcomas, but not liposarcoma. (Tr. 36).

He disagreed that Vogelstein study was hotly contested and rather, in the journal "Epidemics," there was a big review in June of 2019 from Brazil in which the data was appraised and agreed to. (Tr. 40). Dr. Sweet testified that the director for the IARC disagreed with the Vogelstein conclusion because he was upset that the conclusion took away the concept of preventiveness. (Tr. 41). The director of IARC's conclusion that "evidence suggested that post-mitotic cells can be induced by injury or inflammation to re-enter the cell cycle and become stem like cells" was actually controversial. (Tr. 41-42).

He stated that patients who have inflammatory conditions that suppress the immune system have an increased risk of getting cancer i.e., rheumatoid arthritis but that inflammatory stress as cited by Dr. Cochran does not cause cancer. (Tr. 43) If Petitioner had evidence that he was exposed repeatedly to a

known carcinogen and studies showed it increased risk of a myxoid liposarcoma in firefighters, his opinion might be different but there was no such data (Tr. 46).

He stated that the Vogelstein study was peer reviewed but the IARC article referenced by Dr. Cochran was not peer reviewed. (Tr. 48-49). To his knowledge, none of the Class I carcinogens caused liposarcoma. (Tr. 50). He has not seen any literature that supports that residue on a bunker gear, pants or breathing in the residue can cause liposarcoma. (Tr. 51)

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision with respect to (c) Accident/Last Exposure and (F) Causal Connection, the Arbitrator finds as follows:

Petitioner is seeking compensation claiming that he suffered an occupational disease while employed by Respondent as a firefighter. In 2012, he was diagnosed with hypertrophic cardiomyopathy. He underwent treatment for removal of the myxoid liposarcoma and continue to work as a firefighter. The claimant in an occupational disease case has the burden of proving that he suffers from an occupational disease and that a causal connection exists between the disease and his employment. *Anderson v. Industrial Comm'n*, 321 III. App. 3d 463, 467, 748 N.E.2d 339, 254.

Section 1 (d) of the Workers' Occupational Diseases Act ("OD Act"), states, in part:

> "In this Act the term 'Occupational Disease' means a disease arising out of and in the course of the employment, or which has become aggravated and rendered disabling as a result of the exposure of the employment. Such aggravation shall arise out of a risk peculiar to or increased by the employment and not common to the general public. A disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the Occupational disease. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin or aggravation in a risk connected with the employment and to have flowed from that source as a rational consequence."

It is undisputed that Petitioner worked as a firefighter and has been a firefighter/EMT and firefighter/paramedic for Respondent since 2003. His duties included fire suppression, responding to emergency calls, fire, EMS, auto accident calls. Petitioner's testimony described his duties during fire suppression, motor vehicle and dumpster fires. He alleges that his exposure to diesel particulates and other substances while working as a firefighter was a cause of his development of myxoid liposarcoma. Petitioner testified that the medical evidence and opinions all agree that Petitioner had myxoid liposarcoma which was removed and that he could resume regular fire duties as of January 2014.

Petitioner initially raises the rebuttable presumption for firefighters to establish causal connection.

The provisions of 820ILCS310/1(d) relating to a rebuttable presumption reads as follows:

> "Any condition or impairment of health of an employee employed as a firefighter, emergency medical technician (EMT), emergency medical technician-intermediate (EMT-I), advanced emergency medical technician (A-EMT), or paramedic which results directly or indirectly from any blood borne pathogen, lung or respiratory disease or condition, heart or vascular disease or condition, hypertension tuberculosis, or cancer resulting in any disability (temporary; permanent,

> total, or partial) to the employee shall be rebuttably presumed to arise out of and in the course of the employee's firefighting; EMT, EMT-I, A-EMT, or paramedic employment and, further, shall be rebuttably presumed to be causally connected to the hazards or exposures of the employment. However, this presumption shall not apply to any employee who has been employed as a firefighter, EMT, EMT-I, A-EMT, or paramedic for less than 5 years at the time he or she files an Application for Adjustment of Claim concerning this condition or impairment with the Illinois Workers' Compensation Commission."

Petitioner has the necessary 5 years to qualify for the application of this presumption. The application of the statutory presumption has been addressed in *Johnston v. IL Workers' Comp. Com.,* 2017 IL App 160010WC, 80 N.E2d 573 (2d Dist. 2017) and *Simpson. IL Workers' Comp. Com.,* 2017 IL App 160024WC, 79 N.E2d 643 (3d Dist. 2017). The Occupational Disease provision has been interpreted the same as the Workers' Compensation provision in *Ekkert v. III. Workers' Comp. Comm'n*, 2018 IL App (2d) 170447WC-U; 2018 ILL. App. Unpub. LEXIS 2005 (2nd Dist, 2018).

In, *Johnston,* the Appellate Court held that this presumption was a bursting-bubble presumption. *Johnston*, 2017 IL App (2d) 160010. The presumption places a burden on an employer to come forward with some evidence to negate it *Id.* Once the employer does so, the presumption vanishes, and the trier of fact must then address the evidence as if the presumption never existed. *Id.* The ultimate burden of persuasion remains with the claimant. Id. Furthermore, this is not a "strong" presumption. Rather, it simply requires, "the employer to offer *some* evidence sufficient to support a finding that something other than claimant's occupation as a firefighter caused his condition." *Id.* It is not necessary for Respondent to present evidence eliminating occupational exposure as a cause of a claimant's condition of ill being. *Id.* It is sufficient to rebut the presumption if "the employer introduces some evidence of another potential cause of the claimant's condition." *Simpson,* 2017 IL App (3d) 160024WC. Once rebutted, the Commission is free to resolve any factual dispute as it would in an ordinary workers' compensation case, without reference to the presumption. *Id.*

Respondent offered the testimony of Dr. Donald Sweet who opined that Petitioner's firefighter activities did not cause or contribute to his myxoid liposarcoma. He opined that Petitioner's myxoid liposarcoma was idiopathic. Based upon the standard as set forth in *Johnston* and *Simpson*, Respondent has presented sufficient evidence to fulfill its burden of production and rebut the presumption.

Finding the presumption successfully rebutted, the Arbitrator must weigh the evidence to determine whether Petitioner has proven by a preponderance of the evidence that his myxoid liposarcoma was causally related to his occupational exposures.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony; and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 III. 2d 401, 406-07, *459 N.E.2d 963*, 76 III. Dec. 828 (1984) Expert testimony shall 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 III. 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, 960 N.E.2d 587, 355 III. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. *Id.* Expert opinions must be supported by facts and are only as

valid as the facts underlying them. *In re Joseph S.*, 339 III. App. 3d 599, 607,791 N.E.2d 80, 87, 274 III. Dec. 284 (2003).

Having heard the testimony and reviewed the exhibits in this matter, the Arbitrator finds that the evidence supports that Petitioner failed to prove that his myxoid liposarcoma arose of his employment or was caused, aggravated, exacerbated or contributed to by his duties as a firefighter.

The Arbitrator finds that the evidence presented at trial does not support that Petitioner has proven exposure to hazardous levels of diesel particulates or other substances. Petitioner relied on only his own testimony regarding his exposures to diesel particulates and admitted that he had not tested his gear or the levels in the fire station. The evidence establishes that number of fire suppression calls that Petitioner encountered was less than 4.69%. Petitioner admitted that this included small calls such as faulty wiring and larger structural fires. The Department of Labor Study includes objective evidence that diesel particulates were not detected or tested below permissible exposure limits in the firehouse.

Dr. Cochran admitted to having only a board certification in internal medicine and that a majority of her practice was medical-legal work performing IMEs. She admitted that she is not licensed to practice in Illinois. She denied any educational background, research or medical practice in cancers or myxoid liposarcoma. She admitted to testifying as an expert for a wide range of cases including psychiatric, cardiology, orthopedic and cancer. She denied finding any studies that linked myxoid liposarcoma to firefighting. The Arbitrator does not find her opinions regarding the rarity of the cancer to be persuasive for the lack of studies.

The Arbitrator finds Dr. Cochran's opinions based on speculation and an attempt to substitute correlation for any cancer for causation for myxoid liposarcoma, which is insufficient to establish causal connection. See *Mangiameli v. Village of Hoffman Estates*, 2021 Ill. Wrk. Comp. LEXIS 369, 21 IWCC 0416,

Dr. Sweet is a fellowship trained board-certified oncologist who has extensive experience researching, teaching medical students and treating patients with cancers including myxoid liposarcoma. He concluded upon review of literature and studies that there is no research linking firefighting or exposure to diesel particulates to myxoid liposarcoma. He opined that Petitioner's condition is idiopathic or random.

In addition to the above, the Arbitrator finds Dr. Haydon's opinions in the medical records significant. The Arbitrator finds relevant that Petitioner did not submit deposition testimony of Dr. Haydon. Dr. Haydon by Petitioner's own admission is a highly credentialed orthopedic oncologist and myxoid liposarcoma specialist. He opined there was no clear-cut association between Petitioner's firefighting and his myxoid liposarcoma. This opinion is consistent with Dr. Sweet.

The Arbitrator also finds *Ekkert v. III. Workers' Comp. Comm'n*, 2018 IL App (2d) 170447WC-U; 2018 ILL. App. Unpub. LEXIS 2005 (2nd Dist, 2018) instructive wherein the Commission denied compensation to a firefighter for his condition of prostate cancer. The Commission found petitioner's expert, Dr. Chiodo, who was an internal medicine specialist with a medical-legal practice less credible than a board-certified urologist, Dr. Elterman, to testify regarding petitioner's prostate cancer. In addition, the Commission adopted the opinions of Dr. Elterman that there were no studies or literature linking firefighting to prostate cancer in finding that petitioner failed to meet his burden of proof.

Having weighed the credentials and foundational basis for the claimed expertise of Drs. Cochran and Sweet, the Arbitrator finds that Dr. Sweet is better credentialed and possesses a greater understanding

of Petitioner's condition of myxoid liposarcoma. As such, the Arbitrator assigns greater weight to the causation opinions of Dr. Sweet over those of Dr. Cochran.

Based upon all of the above, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that he was exposed to an occupational disease on August 26, 2013, or that his condition of ill-being of myxoid liposarcoma is causally connected to his employment with Respondent

In support of the Arbitrator's decision with respect to (E) Notice, (J) Medical, (K) Temporary Compensation, (L) Nature & Extent and (N) Credits, the Arbitrator finds as follows:

Based upon the Arbitrator's finding with respect to Accident/Exposure and Causal Connection, the remaining issues of Notice, Medical, Temporary Compensation, Nature & Extent and Credits are moot.

Petitioner's claim for compensation is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC030680
Case Name	Rochelle M. Duncan v. ManorCare
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0496
Number of Pages of Decision	14
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	David Feuer
Respondent Attorney	Daniel Flores

DATE FILED: 10/15/2024

/s/Stephen Mathis, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rochelle M. Duncan,

Petitioner,

vs. No. 18 WC 30680

ManorCare,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, credit, temporary disability 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 Commission vacates the Arbitrator's award of medical expenses. In its place, the Commission enters a new award that comports with the evidence and the law. The Arbitrator, after reviewing and crediting the medical payments, awarded the sum "pursuant to the medical fee schedule, of $465.80 to Intervention Arms Medical Center and any appropriate unpaid balance to Fullerton Drake Medical Center, as provided in Sections 8(a) and 8.2 of the Act." In his analysis, the Arbitrator repeatedly put the burden on Petitioner to show the payments Respondent had made were insufficient pursuant to the fee schedule. The Arbitrator denied the bills from Premium Health Care and G&T Orthopaedics and Sports Medicine for that reason. Regarding balance bills from Fullerton Drake Medical Center, the Arbitrator noted: "The balance appears to be a dispute over the appropriate fee schedule reduction." The Arbitrator did not consider whether the remaining balances represented prohibited balance billing under section 8.2 of the Act. In any event, it is difficult to see how the award of "any appropriate unpaid balance to Fullerton Drake Medical Center, as provided in Sections 8(a) and 8.2 of the Act" would be

helpful to the parties. Further, the Arbitrator denied the bills from Prescription Partners and G&U Ortho because "Dr. Gerber's 8/28/18 office note does not include any prescriptions for medication or durable goods." However, the record shows Dr. Gerber *did* prescribe medications and medical equipment. Lastly, regarding the bill from Intervention Arms Medical Center, the Arbitrator noted: "These charges have been paid by Medicaid and show a zero balance." The Arbitrator referenced the case law that an employer under such circumstances would have the benefit of the negotiated rate; the Arbitrator found that "Respondent would owe the Medicaid payments of $465.80 for treatment through October 29, 2018." It is unclear why the Arbitrator proceeded to award the sum "pursuant to the medical fee schedule, of $465.80 to Intervention Arms Medical Center."

The Commission vacates the Arbitrator's award of medical expenses and instead enters an award of related medical bills in evidence that Petitioner incurred through the maximum medical improvement date of October 29, 2018, pursuant to sections 8(a) and 8.2 of the Act. The Commission gives Respondent credit for the medical bills it paid. As to the bills paid by Medicaid, Respondent may claim the benefit of the negotiated rate and a credit, pursuant to *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427 (2011), subject to reimbursing Medicaid.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 17, 2023, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $344.40 per week for a period of 15 2/7 weeks, from July 15, 2018 through October 29, 2018, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall be given a credit of $3,936.18 for temporary total disability benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay related medical bills in evidence that Petitioner incurred through October 29, 2018, pursuant to §§8(a) and 8.2 of the Act. Respondent shall have credit for the medical bills it paid. As to the bills paid by Medicaid, Respondent may claim the benefit of the negotiated rate and a credit, pursuant to *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427 (2011), subject to reimbursing Medicaid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $309.96 per week for a period of 10.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 5 percent loss of use 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $6,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

October 15, 2024
SJM/sk
o-09/25/2024
44

/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	18WC030680
Case Name	Rochelle M. Duncan v. ManorCare
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	David Feuer
Respondent Attorney	Daniel Flores

DATE FILED: 10/17/2023

THE INTEREST RATE FOR THE WEEK OF OCTOBER 17, 2023 5.33%

/s/Stephen Friedman, 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

Rochelle M. Duncan
Employee/Petitioner

v.

ManorCare
Employer/Respondent

Case # **18** WC **030680**

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 **Waukegan**, on **September 19, 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 **July 12, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**26,863.20**; the average weekly wage was $**516.60**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **1** dependent child.

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 $**3,936.18** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**3,936.18**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $344.40/week for 15 2/7 weeks, commencing July 15, 2018 through October 29, 2018, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $3,936,18 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $465.80 to Intervention Arms Medical Center and any appropriate unpaid balance to Fullerton Drake Medical Center, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $309.96/week for 10.75 weeks, because the injuries sustained caused the 5% loss of the Left Leg, 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.

OCTOBER 17, 2023

/s/ Stephen J. Friedman
Signature of Arbitrator

Statement of Facts

Petitioner Rochelle Duncan testified that on July 12, 2018, she was employed by Respondent ManorCare as a CNA. She had been employed for about 2 months. Her duties were to care for the residents on her shift, including giving showers, getting them to meals, getting weight and blood pressure, getting them ready for bed, or taking them to the bathroom. On July 12, 2018, during dinnertime, she noticed a resident that requires 2 CNAs out of her chair. She went to assist the resident, she went down, and her knee buckled. She testified she had never had pain or seen a doctor for her left knee before.

She testified she was seen at Condell Hospital emergency room, and then at Concentra. Petitioner testified she was not released to light duty. That is why she did not return to ManorCare. Medical records show an initial visit with Intervention Arms on July 17, 2018. Petitioner was seen for follow up for her left hip for which she had therapy in January. She reported left knee pain for 5 days. She denied accident or injury. She was using a leg brace (PX 2). The x-ray report dated July 18, 2018 states transferring patient toa chair, twisted knee 1 week ago? The x-ray noted early degenerative changes (PX 2).

Petitioner was seen at Concentra on July 23, 2018 for complaints of left knee pain. She reported she was transferring a patient when she felt a pop in her left knee and her knee gave out. She was wearing a knee immobilizer and a crutch. Dr. Shiba diagnosed a left knee strain. He ordered physical therapy and prescribed Norco. He released Petitioner to work with restrictions (RX 3, p 9-11). The initial therapy note indicates Petitioner was 5” 4” tall and weighed 227 pounds (RX 3, p 6).

Petitioner saw her primary care doctor, Dr. Lisa Fields at Intervention Arms on July 25, 2018. She complained of left knee pain from the work injury and increased left hip and back pain. She was using a walker. She was referred for physical therapy and given an off work slip, noting she could return to work on August 8, 2018 (PX 2). On August 13, 2018, Petitioner reported 7/10 pain. She had not had any therapy. Dr. Fields continued Petitioner’s disability through August 30, 2018 and again ordered 3-4 sessions of PT (PX 2).

Petitioner transferred to Dr. Gerber at Fullerton Drake Medical Center at her attorney’s suggestion. She saw him on August 28, 2018. She noted she had not had physical therapy. Dr. Dr. Gerber prescribed physical therapy and an MRI. He stated that according to the history, she cannot do her normal work duties. This will apply until her next appointment on 9/11/18 (PX 1, P 14-17). On September 13, 2018, Dr. Gerber noted the MRI was scheduled and the work status was extended to 9/27/18 (PX 1, p 9-10). The September 18, 2018 MRI impression was degenerative arthritis as osteophytes, joint space reduction and chondromalacia and edema/ contusion seen involving the medial femoral condyle and medial tibia plateau (PX 1).. On October 2, 2018, Dr. Gerber stated Petitioner will continue therapy. She can do sitting work only through October 16, 2018. His diagnosis was sprain of the left knee (PX 1, p 5). Dr. Gerber saw Petitioner through October 13, 2018 with continued recommendation for therapy (PX 1, p 1).

Petitioner saw Dr. Tu at G&T Orthopedics (PX 5, RX 4). Petitioner missed the 10/24/18 appointment. On October 29, 2018, Dr. Tu states Petitioner is seen at the request of Dr. Gerber for left knee pain. He administered a cortisone injection (RX 4, p 5). Petitioner was a no show for visits on 12/3/18 and 1/28/19 (RX 4, p 3-4). Dr. Tu prepared a form for Respondent on December 26, 2018 stating his diagnosis was aggravation of preexisting chondromalacia. He noted Petitioner was disabled as of October 29, 2018 (RX 4, p 15).

On April 26, 2019, Petitioner saw Dr. Fields for a general checkup. She noted multiple conditions including bilateral knee pain. The history states she now has 7/10 pain in the right knee. She admits she was playing tennis this past week. Petitioner called Dr. Fields on 6/25/2018 stating that she denies saying she was playing tennis. Her husband said that. Dr. Fields notes that she does not recall any denial (PX 2). Petitioner testified the right knee pain came because of shifting weight from the left knee. Petitioner thinks she had an MRI in 2019.

Petitioner was seen for a pre-placement examination at Concentra on September 16, 2019 for a job as a cook at Brookdale. She stated she could physically do the job. She denied currently taking any medication. She denied any injuries or problems with her knees or legs. The doctor notes she reported a right knee injury at work, but no restrictions for work currently. She denied she has changed jobs for medical reasons. The physical examination of her knees is notes as 'Normal." She was allowed to work without restrictions (RX 3, p 13-18).

Petitioner testified she did not seek additional treatment in 2020 because of COVID. She saw Dr. Fields on March 4, 2021 with complaints of right knee pain and left sided sciatica. On September 6, 2021, She reported low back pain with radiation down the left side of her buttock. She also reported left knee pain and stated she needed a walker. Dr. Fields' records note that Petitioner saw Dr. Logue for the right knee, who provided a steroid injection. Dr. Logue's March 16, 2021 report is included in the Intervention Arms records. He documents a history of Petitioner complaining of right knee pain following an injury in October 2019 when she was transferring a patient and her knee buckled. Petitioner was recommended for physical therapy (PX 2).

Petitioner was seen for a Section 12 examination by Dr. Mark Levin on March 30, 2023 (RX 5). Dr. Levin took Petitioner's history of accident and medical treatment including recommendations for surgery by Dr. Fields. Petitioner reported pain in her left knee radiating to her thigh and now into her left foot. She reported she has been using a walker since 2018. She takes pain pills, muscle relaxers, and a sleeping aid. After review of medical records and the MRI films, and performing a physical examination, he notes her medical records are directly inconsistent with the history she provided. He states he cannot substantiate any true orthopedic pathology to the left knee from an alleged injury on July 12, 2018. He opines that there is no left knee pathology caused or aggravated by the alleged work injury on July 12, 2018. He opines that there are no finding of a right knee injury. He does not find any treatment reasonable or necessary for the alleged work injury. He notes Petitioner has degenerative arthritis in her left knee and other areas which is not related to the injury. He notes the subjective complaints are inconsistent with the history and physical examination. He opines that Petitioner is at MMI and can work without restrictions (RX 5).

Dr. Levin testified by evidence deposition taken June 14, 2023 (RX 6). He testified to the history his took and medical records reviewed consistent with his report. He noted Petitioner was morbidly obese at 255 pounds. He notes Petitioner put Coban tape on her left thigh because she was being examined. He noted Petitioner flexed her hips to 90 degrees when sitting on the table, but only to 70 degrees during the examination. Her knee was stable. She had negative anterior drawer, and McMurray's signs. She had give-away strength testing with a positive Hoover. This is inconsistent and also inconsistent with the ability to stand and walk. He noted inconsistency in the history with the medial records where her treatment modalities are not as she described. Dr. Levin testified at most she would have suffered a sprain that was treated and resolved. He found no evidence of an aggravation or exacerbation of her left knee from the alleged work injury. She has been at MMI for years. The MRI showed chronic changes (RX 6).

Petitioner testified therapy and medication helped. She could not do everything the therapist wanted because of pain. She is no longer under treatment. She did not return to work. She testified she cannot work as a CNA anymore because she cannot stand longer that 10 minutes without excruciating pain. With the medication she takes she cannot drive and would not be able to function at work. She takes Vicodin. She has not tried any other type of work. She is not computer literate, so she has not considered work at home. She testifies she is in pain all the time. She has difficulty with activities including showering or cooking because of pain and because the medication puts her to sleep. She does not ride her bike. She has gained weight. She uses a walker.

Conclusions of Law

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill. Dec. 83, 444 N.E.2d 122). The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000).

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 considering the "credible evidence" presented, the Arbitrator must address the weight to be given to Petitioner's testimony. The Arbitrator, having heard her testimony and reviewed the evidence as a whole, finds that Petitioner's testimony and subjective presentation is inconsistent, contradictory, and generally not dependable. Petitioner's medical histories contain multiple inconsistencies. The July 17, 2018 history denies any accident or injury, although the work accident described is noted in the July 18, 2018 x-ray report, the July 23, 2018 Concentra records and Dr. Fields July 25, 2018 office note. The Arbitrator finds no prescription for a leg brace, crutches, or walker in the records before Petitioner presents using these devices. Petitioner's subsequent records note different dates of accident, and refer to the accident causing right leg symptoms, not left leg. On April 26, 2019, Dr. Fields recorded Petitioner injured her right knee playing tennis. While Petitioner denied saying that, Dr. Fields notes she did not deny that it occurred.

Further Petitioner, despite testifying she has not looked for work, was seen for a pre-employment physical for Brookdale in September 2019. In that physical she stated she could physically do the job of a cook. She denied currently taking any medication. This directly contradicts her current testimony that she cannot cook at home, that she cannot stand for more than 10 minutes, that she is taking Vicodin. She denied any injuries or problems with her knees or legs. The doctor notes she reported a right knee injury at work, but no restrictions for work currently. She denied she has changed jobs for medical reasons. The physical examination of her knees is notes as 'Normal." She was allowed to work without restrictions.

Dr. Levin highlighted multiple inconsistencies in both her subjective reporting of her condition and in the physical examination. Petitioner told Dr. Levin she has been using a walker since 2018, yet passed a physical for a cook position in 2019, a physically demanding job well beyond what she presented to her doctors. Dr. Levin's report and deposition testimony identify multiple inconsistencies in her physical presentation. Based upon these multiple points of evidence, the Arbitrator discounts Petitioner's testimony unless corroborated by credible evidence.

The parties stipulated to the accident on July 12, 2018. Other than the July 17, 2018 notes, Petitioner had consistently described her left knee buckling at work. Petitioner was treated for a left knee strain and thereafter sought various modalities of care for her left knee complaints through October 29, 2018, when Dr. Tu provided the steroid injection. Dr. Gerber's records include statements that his treatment was causally related to the accident. Dr. Levin, while questioning whether Petitioner suffered an injury at all, agreed that she could have sustained a left knee sprain.

After October 29, 2018, Petitioner sought no further treatment until April 26, 2019, six months thereafter, when she returned to her family doctor, Dr. Fields with complaints of bilateral knee pain. The Commission has considered such a gap in care in determining causal connection. See: *Richard Olcikas v. Dominick's Finer Foods, Inc*., 2009 Ill. Wrk. Comp. LEXIS 1098, affirmed *Olcikas v. IWCC*, 2012 Ill. App. Unpub. LEXIS 26; 2011 IL App (1st) 103274WC-U; 2012 WL 6951575; *Jacob Haltom v. Center for Sleep Medicine*, 2013 Ill. Wrk. Comp. LEXIS 509; 13 IWCC 563, affirmed *Haltom v. IWCC*, 2015 IL App (1st) 133954WC-U; 2015 Ill. App. Unpub. LEXIS 1568; *Jose Ruben Meraz vs. Minute Men Staffing*, 2015 Ill. Wrk. Comp. LEXIS 30; 15 IWCC 30. The Arbitrator notes Petitioner's course of continuous care ended after the injection by Dr. Tu on October 29, 2018.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that as a result of her July 12, 2018 work accident, she sustained a left knee sprain, which condition reached maximum medical improvement as of October 29, 2018. The Arbitrator finds any other condition of ill-being to the left leg or any other body part is not causally related and denied.

In support of the Arbitrator's decision with respect to (J) Medical, 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 necessary to diagnose, relieve, or cure the effects of his injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165, 351 Ill. Dec. 63 (2011)*. Based upon the Arbitrator's finding with respect to Causal Connection, reasonable and necessary treatment for Petitioner's left knee through October 29, 2018 would be compensable. Petitioner presented her claim for unpaid medical through the medical exhibits submitted.

Petitioner is claiming $717.60 for unpaid medical bills of Fullerton Drake Medical Center, $1,055.00 for bills of Intervention Arms Medical Center which were not paid by Respondent, $2,336.00 for unpaid bills of Premium Health Care, $1,106.34 for unpaid bills of Prescription Partners, $775.00 for unpaid bills of G&T Sports Medicine, and $1,601.00 for unpaid bills of G&U Ortho. There was no presentation of the appropriate reduction in the bills pursuant to the fee schedule or negotiated rate. Respondent presented its payment log as RX 8. Having reviewed the evidence presented, the Arbitrator finds as follows:

Fullerton Drake Medical Center: Respondent has paid for each visit noted in the billing. Adjustments were made leaving an unpaid balance for each visit. The balance appears to be a dispute over the appropriate fee schedule reduction.

Intervention Arms Medical Center: The Arbitrator finds that the charges for treatment by Dr. Fields through September 2018 are reasonable, necessary and causally related. These charges have been paid by Medicaid and show a zero balance. The statute does not require the employer to be a party to the rate agreement in order to receive the benefit of the agreement." Relying on this court's decision in *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 943 N.E.2d 153, 347 Ill. Dec. 863 (2011), the Commission accepted the employer's argument that the maximum amount of medical expenses for which it was liable was the claimant's out-of-pocket expenses and the amount actually paid , not the amount owed under the fee schedule. *Perez v. Ill. Workers' Comp. Comm'n*, 2018 IL App (2d) 170086WC. Respondent would owe the Medicaid payments of $465.80 for treatment through October 29, 2018.

Premium Health Care, G&T Sports Medicine, Prescription Partners, and G&U Ortho: RX 8 shows payment for the 9/18/18 MRI charges and the 10/29/18 injection. Petitioner provided no evidence that the payments made were not sufficient pursuant to the fee schedule. RX 8 also shows payments to Prescription Partners and G&U Ortho for date of service 8/28/18. The billing submitted by Petitioner does not reflect these payments were received or insufficient. The Arbitrator also notes that these providers list Dr. Gerber as the prescribing physician, but Dr. Gerber's 8/28/18 office note does not include any prescriptions for medication or durable goods. Therefore, the Arbitrator denies these charges and finds that no further benefits are owing for these services.

Based upon the record as a whole, and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $465.80 to Intervention Arms Medical Center and any appropriate unpaid balance to Fullerton Drake Medical Center, as provided in Sections 8(a) and 8.2 of the Act.

In support of the Arbitrator's decision with respect to (K) Temporary Compensation, the Arbitrator finds as follows:

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which 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. The dispositive test is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003). To be entitled to TTD benefits a claimant must prove not only that he did not work but that he was unable to work. *Freeman United Coal Min. Co. v. Indus. Comm'n*, 318 Ill. App. 3d 170, 175, 741 N.E.2d 1144, 1148 (2000)

Petitioner did not seek medical attention until July 15, 2018 at the emergency room. Her subsequent treatment with Concentra and Dr. Fields place her on restrictions that precluded a return to her regular work through August 30, 2018. Dr. Gerber stated she could not return to her normal job duties through October 16, 2018. Dr. Tu provided a disability slip through the date of his injection on October 29, 2018.

Based upon the record as a whole, and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Petitioner has proved by a preponderance of the evidence that she is entitled to temporary total disability commencing July 15, 2018 through October 29, 2018, a period of 15 2/7 weeks. Respondent shall be given a credit of $3,936,18 for the stipulated temporary total disability benefits that have been paid.

In support of the Arbitrator's decision with respect to (L) Nature & Extent, the Arbitrator finds as follows:

Petitioner's date of accident is after September 1, 2011 and therefore the provisions of Section 8.1b of the Act are applicable to the assessment of partial permanent disability in this matter. Based upon the Arbitrator's finding with respect to Causal Connection, only causally related disability to the left knee will be addressed.

In assessing the weight to be given to the factors, the Arbitrator must determine the weight to be given to Petitioner's testimony, and symptoms presented to her medical providers. The Arbitrator notes, as more fully addressed above with respect to Causal Connection, the inconsistencies of Petitioner's reported histories, symptoms advanced and subjective findings on examination, and considers this in determining the weight to be given to her testimony and medical presentation.

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 CNA at the time of the accident and that she has not returned to work in her prior capacity. The Arbitrator does not find that this failure to return to work is as a result of said injury. The Arbitrator notes Petitioner was found able to work without restrictions in September 2019. She stated she could perform the duties of a cook, which is physically demanding. Dr. Levin's persuasive testimony is that she does not need work restrictions. Because of this, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 46 years old at the time of the accident. Petitioner would be expected to remain in the workforce for many years. However, Petitioner's failure to return to the workforce is not attributable to the work injury. Because of this, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes Petitioner has not returned to work in any capacity. There is no credible evidence that this is related to the compensable condition of Petitioner's left knee. There is credible evidence that Petitioner is able to work without restrictions in the September 2019 pre placement physical and Dr. Levin's persuasive opinions. Because of this, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the substantial inconsistencies in Petitioner's presentations. The credible medical evidence notes that Petitioner suffered a left knee strain or sprain. She has had no treatment since 2018. Because of these facts, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 5% loss of use of Left Leg pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC024871
Case Name	Kevin Thomas v. Empire Comfort Systems
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0497
Number of Pages of Decision	14
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	James Keefe Jr

DATE FILED: 10/16/2024

/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

KEVIN THOMAS,

Petitioner,

vs. NO: 19 WC 24871

EMPIRE COMFORT SYSTEMS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's bilateral hip conditions are causally related to the May 23, 2019 work injury and entitlement to prospective medical care, and being advised of the facts and law, corrects the Decision to properly reflect the parties' stipulations but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

Correction

On the Request for Hearing, the parties stipulated Petitioner was temporarily and totally disabled from December 29, 2022 through April 23, 2023, and Respondent was entitled to a credit of $7,644.89 for TTD benefits already paid. ArbX1. The Arbitrator's Decision awarded Respondent's credit but failed to award Petitioner the corresponding TTD benefits. Therefore, the Commission corrects the Decision to award the stipulated Temporary Total Disability benefits from December 29, 2022 through April 23, 2023.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 29, 2024, as amended above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $461.33 per week for a period of 16 4/7 weeks, representing December 29, 2022 through April 23, 2023, that being the stipulated period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall have a credit of $7,644.89 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses detailed in Petitioner's Exhibit 9, as provided in §8(a), subject to §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 §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for hip treatment as recommended by Dr. Corey Solman, as provided in §8(a) of the Act.

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

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

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $10,100.00. 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.

October 16, 2024

/s/ *Raychel A. Wesley*

RAW/mck

O: 9/4/24

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/s/ *Stephen J. Mathis*

/s/ *Deborah L. Simpson*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC024871
Case Name	Kevin Thomas v. Empire Comfort Systems
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Eric Kirkpatrick
Respondent Attorney	James Keefe Jr

DATE FILED: 1/29/2024

THE INTEREST RATE FOR THE WEEK OF JANUARY 23, 2024 5.02%

/s/Edward Lee, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Kevin Thomas
Employee/Petitioner

v.

Empire Comfort Systems
Employer/Respondent

Case # **19** WC **24871**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Collinsville**, on **12/28/23**. 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, **5/23/19**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**35,984.00**; the average weekly wage was $**692.00**.

On the date of accident, Petitioner was **51** years of age, ***single*** with **1** dependent children.

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

Respondent shall be given a credit of $**7,644.89** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**7,644.89**.

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

ORDER

Petitioner has proven his bilateral hip conditions are causally related to the accident.

Petitioner is entitled to the prospective medical care as set forth by Dr. Solman.

Respondent is responsible for medical expenses as set forth in Petitioner's exhibit nine and in the text of this decision. All to be paid in accordance with the fee schedule and with Respondent entitled to a credit for amounts 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.

Edward Lee_____ **JANUARY 29, 2024**
Signature of Arbitrator

ICArbDec19(b)

Petitioner's Testimony

Petitioner was injured on May 23, 2019. Since the accident, Respondent accepted the injury and treatment for his low back that resulted in two surgeries and permanent restrictions. The Petition for Immediate Hearing concerns the causal connection and need for prospective medical care on Petitioner's bilateral hips as recommended by Dr. Solman.

Petitioner testified that he was pulling sheets of metal that were 48 in. x 96 in. or 46 in. x 80 in. from one location about 2 feet height to another location about 3 feet high. This required him to twist from right to left. Two sheets stuck together and as he twisted, this caused his torso to stop and his legs and hips to keep twisting toward the left. At this point he felt a pop in his back at his beltline. He had pain in his low back and buttocks. He specifically demonstrated that his pain was just above his beltline, down his back, and on each side of his hips, wrapping around from back to front. He also had some pain down the backs of his thighs with the left worse than the right.

He was seen at two emergency/urgent care facilities on the same day. He ultimately came under the care of Dr. Matthew Gornet who operated on low back on two occasions.

The first surgery was on January 24, 2020, and consisted of discogram with x-ray interpretation at L4-5 and L5-S1 (aborted) with facet block left at L4-5 and L5-S1. After the first surgery, he saw relief from most of the pain that was in his low back.

The second surgery consisted of anterior decompression L5-S1 and anterior lumbar fusion L5-S1 with 14 mm x 23 mm LT cages, large kit BMP and crushed cancellous allograft and autograft shavings on October 14, 2020. Petitioner stated this surgery relieved some of the pain down his left leg and on the outside of his calf on the left. It also helped relieve the spasms.

Petitioner testified the pain in the hips, that being the pain he described that wrapped around from his buttocks to the front of his hips about one-half way down his pockets, remained.

Dr. Gornet prescribed injections for his low back. When nothing helped, Dr. Gornet referred Petitioner to Dr. Blake, who placed injections into the front of his hips.

Petitioner described these provided relief of the described hip pain for two-three hours.

Dr. Gornet then referred him for treatment for the hips with Dr. Corey Solman.

Dr. Corey Solman had seen Petitioner on two occasions and recommended bilateral arthroscopic surgeries to repair torn labrum. Petitioner stated he desired to have the surgeries so that he could get out of pain.

Petitioner described ongoing issues with his hips. He cannot sit or stand for long periods. Getting up from a seated position is painful. His employer accommodates the restrictions set forth by Dr. Gornet and the additional restrictions set by Dr. Solman, but by the end of the day, he is unable to do much at all. He described he is in constant pain and it affects his ability to walk and perform activities.

Dr. Solman's Testimony

Dr. Solman's deposition was introduced into evidence as Petitioner's Exhibit 1. Dr. Solman is a board-certified orthopedic surgeon who saw Petitioner on May 19, 2023, and August 25, 2023. When he first saw Petitioner he was given a history that Petitioner was lifting 4x8 foot sheets of metal and was doing a quick movement from the left side of his body to the right. Petitioner attempted to throw the piece of metal and it got stuck and essentially jarred his body. Petitioner described he felt popping in his back and in his SI joint area. Petitioner had undergone treatment with Dr. Gornet as of October 2019, complaining of back, buttock and hip pain. He described injections into the low back at the hand of Dr. Blake. He had undergone surgery on October 14, 2020, consisting of an anterior laminotomy with an internal fixation at L5-S1 and then eventually a second surgery, which included a laminotomy and foraminotomy at L5-S1 on the left. Petitioner continued to have some bilateral hip pain after the surgeries. On March 6, 2023, he had undergone injections consisting of intraarticular hip injections at the hand of Dr. Blake with a fair amount of improvement in his hip pain. It was after the injections that Dr. Gornet referred him to see Dr. Solman.

Dr. Solman described that the intraarticular injections are done at the front of the hip. He described that a lot of patients will complain that their hip hurts but then they point to their buttock or SI joint area and that is really more back related or pelvic related. He described the hip is actually in the front of the hip, so the needle goes directly into the hip joint. He pointed out that the significantly positive response of one to eight hours indicates that area of the body was the source of the pain.

With regard to the right hip, on examination, Petitioner had positive log roll testing and Stinchfield testing. Both of these were indicative of intraarticular pathology. Petitioner also had pain over the lateral side of the hip over the greater trochanteric bursa and gluteus medius tendon insertion area. He noted that Petitioner had pain with the impingement maneuver that can indicate some impingement or labral tearing inside the hip. He also had a "clunking" sensation in his hip that was palpable. There was also tenderness over the right sacroiliac joint.

With regard to the left hip, the log roll testing was worse than on the right. Other than that, the exam findings were essentially the same for both sides.

When asking his impression at the time he felt the Petitioner had bursitis, but he was also suspicious of a tear of the gluteus medius muscle. With the impingement findings he was also concerned that Petitioner had labral tears.

When asked whether the pain he had could have been masked by symptoms from findings with regard to the lumbar spine, Dr. Solman responded that patients can have these types of pain from the lumbar spine pathology, sacroiliac joint pathology, and intraarticular and lateral hip pathology. He described that a lot of times patients will come in with one large pain in that area and then have four or five different pathologic entities going on at the same time. He also noted it was important to note that L5-S1 joint pain and sacroiliac pain and inflammation can cause some growing pain. He then prescribed an MRI.

His review of the left hip MRI showed significant areas of partial thickness tearing of the gluteus medius tendon with possible early arthritic changes. He did not see any significant signs of labral tearing. With regard to the right hip, he had partial thickness

tearing of the gluteus medius tendon, cartilage thinning, and again no significant evidence of labral tear.

On August 25, 2023, Petitioner did not have quite as much growing pain on the left. His log roll test was negative for intraarticular pain, but it did cause lateral pain. He had a negative Stinchfield test. He also continued to have impingement testing pain, but it did not appear to be in the groin but was more on the left side. The rest of the examination of both hips was essentially the same as it was in May.

His diagnosis for the left hip was greater trochanteric bursitis and gluteus medius partial thickness tear. He testified he believed that both might or could have been related to the mechanism of injury Mr. Thomas had described to him. With regard to the right hip, the diagnosis was greater trochanteric bursitis, partial thickness tearing of the gluteus medius, and he could have a small labral tear that wasn't showing on the MRI, or he could have simply femoral acetabular impingement, which is where the bones rub together and can cause pain that mimics a labral tear. Again, he stated that the mechanism of injury could have caused the issues with regard to the right hip.

Dr. Solman described the mechanism of injury. He described that the body and ligaments are very sensitive to eccentric force. He described an example that if a person is pushing a weight in one direction and the force is pushing a limb in the opposite direction then that can create a significant problem. He referenced something such as a bicep curl. If you are lifting a weight and it is too heavy or someone is pushing the weight down as you are trying to pull it up, that is called an eccentric force, which puts stress on the musculotendinous junctions of the muscle and on the attachment of tendons to the bone. He stated that Mr. Thomas moving a piece of metal, throwing it in one direction when he abruptly came to a stop when the metal got stuck, that was and eccentric force on the soft tissues and that could lead to soft tissue tearing. The surgery he was recommending on the left hip consisted of a trochanteric arthroscopy with a gluteus medius repair and cleaning out of the trochanteric bursa. With regard to the right hip, he recommended an arthroscopy with debridement of the bone, possible labral repair and repair of the gluteus medius tendon with debridement of the bursa.

He believed these surgeries would be necessary to relieve the symptoms related to the accident. He believed that the prognosis after surgery was good for each.

The doctor was asked about his reference that there was not significant narrowing and whether that was the same as saying there was not significant arthritis. He stated that was important because studies have shown patients who have no to mild arthritis in the hips do very well with arthroscopic procedures.

With regard to recovery time, he expected Petitioner would need therapy and a brace but would be feeling well enough to start being aggressive with their activities between three to four months post-operative.

On cross examination, Dr. Solman described that the gluteus medius tear would lead to pain over the lateral side of the hip, right at the tip of the greater trochanteric. He described that a person would complain of a lot of pain from sitting to standing and going up and down stairs, because the outside of the IT band rubs against that area and is painful. These symptoms are essentially the same as bursitis symptoms. He stated that if an injury contributed to a gluteus medius tear and bursitis he would expect the symptoms would appear fairly quickly after the injury, but, in this case, Petitioner had SI joint and lumbar spine issues at the same time, which could mask those areas and can cause similar types of symptomatology. He also agreed that if this accident of May 23 contributed to a labral tear, he would expect the pain in the front of the hip or groin be relatively close in the proximity to the event.

Respondent had Petitioner examined by Dr. Pitts, an orthopedic surgeon. His report and deposition were entered into evidence. Dr. Pitts did not believe Petitioner had symptoms that related to any hip pathology. He set forth that intraarticular hip specific pathology would be felt in the groin, while trochanteric hip pathology would be more on the outside of the hips, at the bones one can feel on each side of the hips. He felt the examination findings were related to low back or SI joint pathology. His diagnosis for the hips was mild to moderate preexisting degenerative osteoarthritis and he felt that was not aggravated by the trauma. He felt petitioner all tests performed on the hips were negative. He opined that he saw no tears and that surgery was not necessary or reasonable.

On cross-examination, he testified that if the accident was a direct cause of hip pathology, he would have expected Petitioner to have groin pain if it was a labral tear. He described a “C test” meaning when someone makes a C with their hand and points to the front part of their hips. If it was a trochanteric issue, the pain would be at the side of the hips. A gluteal tear would be at the trochanteric area and pain would exist on attempting to move the leg out. A person would also have trouble sleeping on their side.

He also described that if a person with something such as a gluteal tear will have a tilt to one side when walking. The hip will dip because of lack of strength to lift the leg.

While Dr. Pitts did not believe the treatment records reflected any complaints that were indicative of hip pathology, Dr. Pitts was then shown the note from MedExpress of May 28, 2019, which indicates “increased lateral trunk shift noted with walking. Also limited motion with lower back function.” He was then shown another note from SSM Health Physical Therapy of June 25, 2019, that states, “he did present with mild pelvic asymmetry and tenderness of the lumbosacral and glutes.” He stated it was possible that could have meant trochanteric pain. The same note also referenced “mild pelvic asymmetry,” and Dr. Pitts stated this type of pain fits with a different mechanism of injury.

Dr. Pitts also agreed that he has seen patients who have something wrong with their low back and then they end up in his office because there is also a concurrent hip problem that wasn’t caught by the doctor treating the low back. He stated that this scenario is not uncommon and people “can have one thing misdiagnosed as something else. There’s a lot of situations that arise.”

The medical records of Dr. Gornet are Petitioner’s exhibit 8. These records reflect numerous indications of low back pain and radiation of pain into the hips and buttocks. After two surgeries that provided varying relief of pain, on December 5, 2002, he noted also that Petitioner had pain in his hips walking on a treadmill. He then referred Petitioner to Dr. Helen Blake for “diagnostic hip injections.” (PE8 p.46) He also noted pain on rolling Petitioner’s hips.

Petitioner’s exhibit 3 is the records of Dr. Helen Blake who performed injections and nerve branch blocks on Petitioner’s low back and SI joint areas. On 12/9/22, when

Petitioner presented for the hip injections, she specifically noted that Petitioner was having posterior buttock pain and some minimal radiation of pain into the groin. She gave injections into the bilateral hips.

Dr. Gornet saw Petitioner again on March 6, 2023, and understood that the injections given by Dr. Blake provided complete relief of the hip pain for a period of time. This is when he referred Petitioner to Dr. Solman for evaluation of his hips.

CAUSATION:

This arbitrator finds the Petitioner has proven a causal relationship between the condition of his hips and the accident. Of significance is the opinion of Dr. Solman who testified to a well-reasoned causal relationship. It is also significant that the diagnostic hip injections caused total relief of the complained of hip pain and allowed Petitioner to walk pain free for a period of hours. Petitioner testified that he had pain in the same areas since the accident. He also explained how the low back surgeries provided much relief from his low back pain and pain down through his left leg, but that he had continued to have specific pain below his beltline, into his buttocks, and around to the lateral hip into the front bilaterally at mid-pocket level.

Dr. Pitts opinions are acknowledged. This arbitrator finds it understandable that there could have been some overlap of symptoms and that the source of these symptoms may not have been discovered. Dr. Pitts agreed that it is not uncommon for him to see a person for hip issues after he or she has been treated for a concurrent low back issue.

This arbitrator finds in favor of Petitioner on the issue of causation.

PROSPECTIVE MEDICAL:

Dr. Solman has recommended bilateral hip surgeries, and this arbitrator finds it both reasonable and necessary. The diagnostic injection is a good indicator of hip pathology.

MEDICAL BILLS:

Petitioner submitted medical bills of the Orthopedic Surgery Center, $4,476.82; United Physicians Group, $1,195.64; and MRI Partners, $5,500.00. This arbitrator notes

that the parties agreed that bills related to the low back treatment are not disputed. Respondent only disputes bills for hip related pathology and treatment. Respondent is ordered to pay the above listed bills pursuant to the fee schedule, with Respondent receiving credit for any amounts paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC011500
Case Name	Robert Sobeck, Jr. v. LSC Communication
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	24IWCC0498
Number of Pages of Decision	4
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Christopher Williams
Respondent Attorney	Susan Walsh

DATE FILED: 10/16/2024

/s/Maria Portela, Commissioner

Signature

24IWCC0498

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

ROBERT SOBECK, JR.,

Petitioner,

vs. NO: 22WC011500

LSC COMMUNICATION,

Respondent.

DECISION AND OPINION ON PETITION FOR PENALTIES AND ATTORNEY FEES

This matter comes before the Commission on Petitioner's "Petition for Penalties and Attorney Fees" under §19(k) and §16 of the Act (hereafter "Petition"), filed on June 3, 2024. A hearing was held before Commissioner Maria Portela on October 1, 2024, in Chicago, Illinois and a record was made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1) A hearing was held before Arbitrator Dalal on January 30, 2024, and a Decision was issued on March 12, 2024.

2) The Decision ordered, "Respondent shall pay directly to Petitioner all reasonable and necessary medical expenses which was submitted into evidence. All payments will be pursuant to the medical fee schedule regarding Petitioner's neck and shoulder conditions as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid." *Dec. at Order section*.

3) Under issue "J," in the Conclusions of Law section, the Arbitrator awarded the following medical expenses:

   1) Physicians Immediate Care - $483.25 (PX1 p. 7-17);
   2) Hinsdale Orthopaedics/Illinois Bone and Joint - $410.00 (PX3 p. 250-255);
   3) Modern Pain Consultants - $73,155.75 (PX4 p. 31-34);
   4) ADCO - $7,206.62 (PX5 p. 3); and
   5) Northwest Community Hospital - $296.00 (PX6 p. 17).

Dec. at 10.

4) The total amount of these medical bills equals $81,551.62.

5) The Decision was not reviewed and thus became final.

6) In his Petition, filed June 3, 2024, Petitioner alleged that Respondent "had not paid the amount awarded 83 days ago" and that "Petitioner, through counsel, has contacted Respondent's counsel regarding the amount be paid on 4/8/24, 5/6/24, 5/10/24, 5/14/24, and 5/21/24." *Petition at #4 and 5*.

7) At the hearing on October 1, 2024, Petitioner's attorney stated:

> To date, no payment has ever been made for those medical bills, despite repeated attempts and communications with Ms. Miller, who represents respondent. We filed our petition for penalties due to nonpayment as it's been nearly seven months now since the award came down. So we're asking for 50 percent of penalties pursuant to 19(k) and a 20 percent attorney's fee pursuant to Section 16. *T.6*.

8) Respondent's attorney, Susan John, appeared on behalf of Emilie Miller who was the attorney handling this case for Respondent and the following discussion was had:

> THE COMMISSIONER: And do you have anything to add?
>
> MS. JOHN: No, Your Honor. In agreement with petitioner's attorney. There was no dispute with medical bills, and our client has not paid despite communications multiple times from Ms. Miller to the client.
>
> THE COMMISSIONER: And they are aware that if there is no sound reason for nonpayment of this award, there is exposure to penalties, as it doesn't appear that there is any defense?
>
> MS. JOHN: Yes, Your Honor. Ms. Miller has sent multiple communications to her client regarding penalties as a future potential. *T.6-7*.

9) Petitioner's Petition requested the following remedies:

> 1. Assessment of penalty against the Respondent or its insurance carrier and in favor of the Petitioner in an amount equal to 50% of the awarded and unpaid medical benefits.
>
> 2. Assessment of attorney fees against the Respondent or its insurance carrier and in favor of the Petitioner in an amount equal to 20% of the awarded and unpaid medical expenses pursuant to Section 16.

The Commission finds that Respondent's delay in payment of the medical expenses awarded in the Decision is unreasonable and vexatious under §19(k) of the Act. *See McMahan v. IC,* 183 Ill.

2d 499 (1998). It appears that Respondent has simply refused to pay without any justification.

In our discretion, due to Respondent's unreasonable and vexatious refusal to pay, we award §19(k) penalties based on the full amount of the medical bills ($81,551.62) unadjusted for the fee schedule and other provisions in §8.2 of the Act. In *Thorne v. Card Dynamix,* 2022 Ill. Wrk. Comp. LEXIS 302, the Commission wrote:

> The Court in *Navistar Int'l Transp. Corp. v. Indus. Comm'n*, 331 Ill.App.3d 405 (2002) did not directly address the issue of whether Section 19(k) penalties are to be calculated based on the full amount of the unpaid medical bills versus the fee schedule amount of the bills, that being "the amount payable at the time of such award." However, the *Navistar Int'l Transp. Corp. v. Indus. Comm'n*, 331 Ill.App.3d 405, 415 (2002) Court held "To clarify, Section 19(k) penalties and attorney fees pursuant to section 16 may be based on the entire amount of the award that has accrued or only the unpaid portion thereof, as the Commission in its discretion sees fit. The Commission cannot impose penalties and fees on that portion of an award that has not accrued, however. *See Zitzka v. Industrial Comm'n*, 328 Ill. App. 3d 844, 851 (2002).
>
> Consistent with the Court's reasoning in *Navistar*, the Commission finds it is within its discretion to calculate 19(k) penalties on the full amount of the unpaid medical bills rather than on the fee schedule amount of the bills.

Thorne at 10-11.

We agree with the reasoning in *Thorne* and find the total §19(k) penalties should be calculated as $81,551.62 x 50% = $40,775.81. We also award attorney's fees pursuant to §16 of the Act, calculated as $81,551.62 x 20% = $16,310.32. We note that Petitioner did not request penalties under §19(l) of the Act.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner $40,775.81 as further compensation pursuant to §19(k) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner $16,310.32 for attorney's fees pursuant to §16 of the Act.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $57,500.00. 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.

October 16, 2024

SE/
R: 10/1/24
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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	11WC007911
Case Name	Sandra Scott v. State of Illinois - Illinois Dept of Revenue
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0499
Number of Pages of Decision	24
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	
Respondent Attorney	Dan Kallio

DATE FILED: 10/22/2024

/s/Kathryn Doerries, Commissioner

Signature

24IWCC0499

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

SANDRA SCOTT,

Petitioner,

vs. NO: 11 WC 007911

STATE OF ILLINOIS, DEPARTMENT OF REVENUE,

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, notice, statute of limitations, temporary disability, medical expenses including prospective medical, §19(k) and §19(l) penalties, §16 attorneys' fees, and other issues including modification of Arbitrator's Findings of Fact, connection of original work related condition to subsequent injuries and accident, the extent of the disability as to subsequent injuries and accident and TTD related to Petitioner's right wrist fracture, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission agrees with the Arbitrator's Decision with two exceptions. First, under the Findings on page two of the Decision Form, the Commission corrects a scrivener's error in the first line by striking "2210" and substituting "2010" so the sentence now reads, "On **December 22, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act."

Second, on page 18, under the caption "WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON RESPONDENT." The Commission strikes the last two paragraphs and substitutes the following:

Dr. Carroll released Petitioner on October 9, 2017, with restrictions that Respondent could accommodate. She returned to work. (T. 80) Petitioner testified that thereafter, she obtained an off-work note from the Emergency Room (ER) at Northwestern after the ER doctor contacted her

primary care doctor, Dr. Suh "because I made them aware I was awaiting approval for pain management". (T. 81) Petitioner explained, "And so Dr. Suh requested that they take me off work. They took me off work on 11/21." *Id.* Respondent obtained a Section 12 evaluation with Dr. Fernandez who, on January 18, 2018, opined that Petitioner could work within the restrictions imposed by Dr. Carroll. (RX9, 40; T. 4633) Respondent notified Petitioner that her restrictions could be accommodated and TTD was paid for the time period from November 21, 2017 through January 23, 2018 on March 8, 2018. (PX63)

Petitioner returned to work for only a few days after January 23, 2018, and again returned to the ER and again obtained an off-work note. (PX64B) That note reads: "Patient may not return to work until cleared by her orthopedic specialist. Patient would benefit from rehab at Shirley Ryan Ability Lab/pain management." *Id.* The Commission notes that both Dr. Carroll and Dr. Fernandez had previously opined that Petitioner could work with restrictions and Dr. Carroll had initially referred Petitioner to pain management with Dr. Co and Petitioner treated with Dr. Co. Respondent again obtained a Section 12 evaluation, in the form of a records review. Dr. Fernandez authored an Addendum opinion, dated March 27, 2018. (RX4) Dr. Fernandez reviewed the February 9, 2018, Shirley Ryan evaluation for treatment records. He noted the evaluator stated that Petitioner's "pain problems appeared to be reinforced and maintained at least in part by financial disincentives" and that the pain problems appeared to " be affected by psychosocial factors that could be addressed with a cognitive behavioral intervention with a multidisciplinary approach to pain management that would include psychological intervention." *Id.*

Dr. Fernandez also opined: "I would state that it is extremely unusual that short of a catastrophic injury or the median nerves for carpal tunnel syndrome that there would be such an extent or residual pain and disability with relationship to the diagnosis of carpal tunnel syndrome even after two prior surgeries and treatment for neuroma for the palmar cutaneous branch of the median nerve. This is extremely unusual. There is no diagnosis for CRPS which would warrant an extended or an intense pain management program other than teaching her some of those skills." Dr. Fernandez also noted: "The medical treatment incurred since the 01/11/2018 IME has been somewhat reasonable. It is again extremely unusual that after such an extensive amount of time and after the surgery that she would have to go to the emergency room after going to work for a few days. It appears that she went to work on 01/24 and then had pain complaints after which she then put in a few half days and then attempted again some full days and had pain to the extent that she had to come off of work. It does not appear that she presented to work for more than five or six days at most. Again this is extremely unusual given the fact that the work activities would have been very light and would have allowed for frequent breaks. This again is very unusual."

The Commission notes that the TTD dispute arose only after Petitioner's PCP, Dr. Suh, intervened on her behalf to enter into a pain management program at Shirley Ryan Ability Lab when Petitioner had previously been treating, at Dr. Carroll's referral, with Dr. Co. Dr. Carroll's opinion with regard to Dr. Suh's off work recommendation between February 2018 and August 2018 was not obtained contemporaneously in February but in June, (T. 3234-3235) and only after Petitioner's attorney wrote a letter to Dr. Carroll in May seeking his agreement with Petitioner's three month hiatus despite his previous release to work with restrictions. (T. 3229-3232). The Commission finds Dr. Carroll's letter was obtained in anticipation of litigation, and after he had discharged Petitioner from his care. Nonetheless, the Respondent ultimately paid the TTD and for the treatment at Shirley Ryan Ability Lab and Petitioner returned to work October 15, 2018. (T. 202) The Commission, examining the totality of evidence, finds that Respondent reasonably relied upon

the opinions of Dr. Carroll and Dr. Fernandez regarding Petitioner's ability to work within her accommodated restrictions. As the *Mechanical Devices* Court held: "Generally, an employer's reasonable and good-faith challenge to liability does not warrant the imposition of penalties." [Citation.] *Mech. Devices v. Indus. Comm'n (Johnson)*, 344 Ill. App. 3d 752, 800 N.E.2d 819 (2003).

Thus, the Commission finds that Respondent's conduct was not unreasonable and does not warrant penalties.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's Decision filed on April 1, 2024, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim for additional temporary total disability benefits is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $669.64 per week for a period of 112.75 weeks, as provided in §8(e)9 of the Act, for the reason that the injuries sustained caused the 40% loss of use of the right hand and the 15% loss of use of the left hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical services of $32,781.02, as provided in §8(a) and §8.2 of the Act, and as is set forth under Issue (J) in the Arbitrator's Decision. Respondent is entitled to a credit for all awarded expenses that it has paid or compromised.

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, this decision is not subject to judicial review. *820 ILCS 305/19(f)(1).*

October 22, 2024

O101524
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	11WC007911
Case Name	Sandra Scott v. State of Illinois - Department of Revenue
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Pro Se
Respondent Attorney	Rachel Peter

DATE FILED: 4/1/2024

/s/ Jeffrey Huebsch, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 26, 2024 5.105%

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

April 1, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Sandra Scott
Employee/Petitioner
v.
Illinois Dept. of Revenue
Employer/Respondent

Case # **11** WC **007911**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **6/11/2018, 12/19/2022 and 1/192024**. 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 **"Mannifestation date of the accident; Notice regarding body parts affected; Statute of Limitations as to subsequent injuries; Timeliness of Petition for Penalties".**

FINDINGS

On **December 22, 2210**, 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 $**96,438.68**; the average weekly wage was $**1,854.59**.

On the date of accident, Petitioner was **57** 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 $**124,352.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**124,352.00**.

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

ORDER

Petitioner's claim for additional temporary total disability benefits is denied.

Respondent shall pay reasonable and necessary medical services of $32,781.02, as provided in Sections 8(a) and 8.2 of the Act, and as is set forth below.

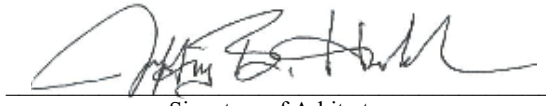
Respondent shall pay Petitioner permanent partial disability benefits of $669.64 per week for 112.75 weeks, because the injuries sustained caused the 40% loss of use of the right hand and the 15% loss of use of the left hand, as provided in Section 8(e)9 of the Act.

Petitioner's claim for penalties, as provided in Section 19(k) of the Act and Section 19(l) of the Act is denied.

Respondent shall pay Petitioner the compensation benefits that have accrued from 12/22/2010 through 1/19/2024, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

April 1, 2024

PROCEDURAL BACKGROUND

This case was tried on January 19, 2024. Petitioner appeared Pro-Se and Respondent was represented by counsel from the Attorney General's office. The Request for Hearing for the January 19, 2024 trial was marked as Arbitrator's Exhibit 4.

It was noted by the Arbitrator that 2 prior hearings in the case (June 11, 2018 and December 19, 2022) had taken place before him with the Request for Hearing Forms for those hearings being marked and admitted as Arbitrator's Exhibits 1 and 2 and admitted, respectively on those dates. No testimony was taken and no other exbhibits were tendered on those days. It was further noted that Petitioner's counsel at those hearings had subsequently withdrawn (effective March 17, 2023, per CompFile) and had waived all fees and costs. Petitioner's original counsel had filed a Petition for Fees, which was entered and continued to disposition by the Arbitrator on March 8, 2018. (ArbX 3). (T. 5-11).

Petitioner was the only witness who testified at the hearing.

FINDINGS OF FACT

Petitioner identified herself and testified that she was born on May 27, 1953. She obtained a graduate degree in accounting and a law degree from IIT/Chicago Kent Law School. She was employed by Respondent from December, 2003 to February, 2021. Her official job title was Public Service Administrator and her position at Respondent was known as Informal Conference Board Conferee. She had previously worked for Respondent as a litigator. (T. 14-16).

Her position required a law degree. In the Conferee job, Petitioner would review taxpayers' protests of proposed notices of tax deficiencies that they received as a result of tax audits. This involved small corporations and large multi-national corporations. She would review documents from the taxpayer and from the audit to determine if the taxpayer's protest was appropriate. She would review documents consisting of 2 or 3 banker's boxes, or a small file folder, depending on the case. As she reviewed documents, she would type on the computer. Conferees did not have support staff to provide typing assistance. She would communicate with legal, board members, supervisors, staff, taxpayers and auditors via email. She conducted conferences with the taxpayer and audit staff and would then type recommendations for the board. She would do internet legal research as needed. Her usual caseload was 40. About 85% of her work involved computer work. She described her typing as hunt and peck with her index and middle fingers. Recommendations would be 4 to 90 pages long. (T. 17-25). Petitioner said that she turned pages she was reviewing primarily with her left hand and typed with both hands. (T. 29).

Petitioner testified that in December of 2010, she began to have pain in her index and middle fingers. It was causing her pain when she typed. She saw her PCP on December 22, 2010, complaining of pain in her index and middle fingers and her wrist. Her doctor prescribed ibuprofen and suggested resting over the Holidays. When Petitioner returned to work and started typing again, the pain returned. (T. 25-26). Her PCP referred her to an orthopedic doctor, Dr. Michael Jablon. The Dr. Jablon visit was scheduled for January 27, 2011. Petitioner reported her hand problems to her supervisor and that her doctor thought it might be work related, verbally and via email, around January 25, 2011. (T. 27). Respondent gave Petitioner a workers' compensation information package. (PX 61).

Dr. Jablon's diagnosis was strain associated with hunt and peck typing, carpal tunnel syndrome, localized swelling consistent with tendonitis and/or possible overuse syndrome. (PX 32, 122-123). Dr. Jablon

recommended that Petitioner continue the ibuprofen that her PCP prescribed, gave her wrist braces and ordered an EMG. (T. 30). Petitioner elected to discontinue treatment with Dr. Jablon because his office faxed a document to Petitioner's work, (an apparent HIPPA violation).

Petitioner was referred to Dr. Charles Carroll by her PCP. She saw Dr. Carroll at the end of March of 2011. (T. 30-33). Dr. Carroll ordered an EMG and physical therapy. (T. 33-34). Petitioner was in therapy while she was working (and typing) and continued to experience pain. Dr. Carroll recommended frequent breaks and a Dragon voice-activated typing system, which did not work out well and then Respondent changed computer systems. Thereafter, Dr. Carroll recommended surgery, left hand first, which was authorized by Respondent around September 6, 2011. (T.35-37, PX 32, 139).

On September 13, 2011, Petitioner fell down the stairs at her house, suffering a colles fracture to her right wrist. Petitioner testified that she had the wrist stabilizers on both hands and she tried to grab the handrail, but couldn't because of the metal in the stabilizer. Petitioner's husband told her that he found her on the floor, unconscious. She had a bump on her head and her right wrist was swelling and was painful. Her husband took her to St. James Hospital, Olympia Fields. (T. 37-40).

The records of St. James show that the history was that the patient fell and hit head downstairs. She had right wrist pain and a right forehead contusion. She thinks she tripped, but is amnestic to the event. (PX 19, 17-18). Right wrist x-rays showed a comminuted distal radius fracture. The cervical spine x-ray was negative for fracture or dislocation and did show minimal DJD. The head CT was negative for a brain bleed. The diagnosis was: right radial fracture, concussion and neck strain, status post fall. She was instructed to follow up with her PCP and an ortho. (PX 19).

Petitioner followed up with Dr. Jovito Angeles, a hand surgeon at the University of Chicago, on September 13, 2011. The impression was distal radius fracture and possible scapholunate widening. A wrist CT was ordered and surgical reconstruction of the wrist and a carpal tunnel release was contemplated. (PX 20, 244-245). Petitioner elected to undergo only the fracture repair, which was performed by Dr. Angeles on September 19, 2011. The procedure was an Open Reduction and Internal Fixation (ORIF), intraarticular fracture, right distal radius and scapholunate ligament repair. (PX 20, 199).

Petitioner returned to work in February of 2012, with a removable cast and again experienced right hand pain when typing. She continued with the hunt and peck method of typing. (T. 40-42).

Dr. Carroll recommended CTS surgery on the right wrist and recommended that Dr. Angeles perform that surgery, as he had done the prior ORIF procedure. Respondent consented to this referral. (T. 42-43). Dr. Angeles performed the right CTS release and neurolysis of the median nerve on May 10, 2012. (PX 20, 85).

On May 20, 2012, Petitioner presented the ER at South Suburban Hospital with complaints of head pain and facial numbness that started when she woke up. She had a work-up for a possible stroke, and it was thought that she had a reaction to gabapentin that had been prescribed post surgery. She was to discontinue the gabapentin. (PX 23, 63). Petitioner testified that the headaches and numbness subsided. (T. 45).

Petitioner testified that embedded sutures were noticed as she participated in OT in June of 2012. The therapist tried to remove the sutures and it was painful. Petitioner cancelled therapy the next day and went to the ER at Northwestern, where she was diagnosed with cellulitis. Antibiotics were prescribed and Petitioner was to follow-up with her doctor. (T. 45-47).

Petitioner then followed-up the next day, with Dr. Angeles on June 26, 2012. (PX 20, 45). The interval history was as above, and Dr. Angeles assessed 6 weeks post right carpal tunnel release, with 2 small suture abscesses. She was to continue the antibiotics and therapy and hopefully the sutures would fully absorb in the future. She was to continue to work with light duty restrictions, 5 pounds lifting, no repetitive work, can drive, type and write. (PX 20, 45). When Petitioner was seen by Dr. Angeles on July 25, 2012, she was noted to be 2 months status post CT release with cellulitis and suture abscesses, which seemed to have resolved. Deficits in strength and motion were noted. She was to be more aggressive in hand therapy. Light duty work, using dictation software to minimize typing was ordered. (PX 20, 33).

Petitioner had missed OT and her participation was limited due to the cellulitis. Dr. Angeles ordered more OT, which was declined by Respondent. Dr. Angeles attributed Petitioner's lack of progress to lack of additional therapy. (T. 48, PX 20, 23-25).

Dr. Carroll supported additional right hand therapy as well, in order to transition Petitioner to return to work and put her in a position where the left hand CTS could be addressed. (T. 49, PX 32, 95-96).

Petitioner testified that, as the OT was being denied, she went to Accelerated Rehab for 4 weeks, using her Blue Cross/Blue Shield. (T. 49-50).

Petitioner's last visit with Dr. Angeles for her right hand was on October 4, 2012. She had continued radiating pain down her wrist to the palm and towards the base of the thumb. There was pain over the volar scar. Stiffness and lack of full motion was noted. Dr. Angeles termed it significant scar pain and stiffness. A hand MRI and continued therapy was recommended. (PX 20, 5-6).

Petitioner testified that she moved her work station around because of her right hand issues and noticed left shoulder problems which she believed were due to overuse. Petitioner discussed her shoulder problems with Respondent's work comp coordinator, Dave Klintworth. Petitioner testified that Klintworth told her that the shoulder condition would be considered part of the carpal tunnel claim and she didn't need to file another claim. There was a confirming email from Klintworth. (T. 51). PX 67 was an email chain regarding Petitioner's left shoulder claim, where Petitioner advised Respondent of intense left shoulder pain on July 2, 2013 and was advised not to file a new claim, as she was relating her shoulder issues to limited use of the right hand, as "there was no new incident." Petitioner advised that she was going to file a "protective claim" for her left shoulder on April 9, 2014. No such protective claim was filed.

Neither Party submitted a copy of the email, or the testimony of Mr. Klintworth.

Dr. Carroll performed a left hand carpal tunnel release on September 13, 2012. When petitioner was seen on September 17, 2012 in follow-up, it was noted that the therapist noted bumps on her hand. Dr. Carroll thought that it was a rash and recommended Benadryl and PCP follow-up. (PX 32, 22). Petitioner testified that she was off-work through December of 2012. Petitioner was released to work, full use of the left hand, effective December 10, 2012. (PX 32, 13-16). She was said to be at MMI regarding her left hand on January 4, 2013. (PX 32, 8, 12). The left shoulder exam and the left wrist/CTS exam on January 4, 2013 was benign. (PX 33, 145-148).

Dr. Carroll then took over the management of care for Petitioner's right hand. Dr. Carroll recommended a repeat EMG for the right hand at the visit of 2/22/2013. (PX 33, 140-143). The EMG was done on March 15, 2013 and showed a right palmar median cutaneous neuropathy between the thenar eminence and the median nerve. Dr. Carroll offered possible surgery: lysis of adhesions and scar release. Petitioner was to follow-up if she wished to pursue surgery. (PX 33, 136-139).

On May 2, 2013, Petitioner was seen for an IME by Dr. John Fernandez. (RX 4). Dr. Fernandez noted excellent resolution of the left hand carpal tunnel syndrome, but Petitioner had complaints of significant right hand pain and hypersensitivity. The diagnosis was bilateral carpal tunnel syndrome, causally related to Petitioner's work. Regarding the left hand, she was at MMI. As to the right hand, he recommended an excision of the local nerve branch, or neuroma excision and burial. Neurolysis would not be inappropriate. (RX 4).

On June 28, 2013, Petitioner was seen for left shoulder pain and weakness by Dr. Martin Hall at Keystone Orthopedics. (PX 28). She had a right rotator cuff repair by Dr. Hall in 2003. (PX 28, 28). The nurse's note of June 28, 2013 says that the patient reported left shoulder pain for about 1.5 years, had a right hand fracture and was dependent on her left side, difficulty with overhead use and soreness. (PX 28, 7). Dr. Hall diagnosed left shoulder rotator cuff impingement and adhesions. He recommended an MRI and prescribed Lodine. (PX 28, 6). The MRI showed a SLAP tear, which was fraying. Dr. Hall recommended medication, therapy and a cortisone injection. The injection was declined and she was given a script for PT. The chart states that Petitioner was following up with Dr. Carroll for surgery on the nerve in her right wrist, but she really should rehab her shoulder to get it better. She had been seen for her shoulder in the past and it was presently not worse than it was 8 years ago. (PX 28, 4). Left shoulder pain complaints were noted on March 23, 2005. (PX 28, 13).

Petitioner was seen by Dr. Carroll regarding her right hand on July 29, 2013. She was to see him in 2 days for the left shoulder, as she may transfer care form Dr. Hall. (PX 33, 126-1280. She was seen regarding her left shoulder by Dr. Carroll on August 2, 2013. He reviewed the MRI and assessed rotator cuff syndrome. The plan was therapy and OTC medications. "Not part of Comp issue." (PX 33, 123). On February 20, 2014, Petitioner told Dr. Carroll that she had a new desk at work that helped and she was having less frequent pain. (PX 33, 88). Petitioner's last visit with Dr. Carroll for her left shoulder was on May 28, 2014. She reported ergonomic changes at work had helped. She was scheduled for further right hand surgery and they would consider further shoulder treatment after the hand surgery. (PX 33, 72-73).

Dr. Carroll performed a right carpal tunnel release with exploration of the palmar cutaneous neuroma and resection/burial of the neuroma on June 10, 2014. The post operative diagnosis was: 1.) Adhesions and scar of palmar cutaneous nerve, right wrist; 2.) Recurrent right carpal tunnel syndrome with scar on median nerve, right wrist; and 3.) Flexor carpi radialis tendon adhesions. (PX 33, 169). The hand function was improving and less scar pain and sensitivity was noted at the follow-up visit of June 19, 2014. (PX 33, 68). Scarring can occur after surgery and the median nerve will recover with time. Dr. Carroll did not see an indication to cut and bury a neuroma because the scar tissue seemed to be the source of the problem. Petitioner could see a dermatologist for the dorsal dermatitis that she had on her right hand after the surgery. (PX 33, 69).

Petitioner continued to follow up with Dr. Carroll, attended therapy and was authorized off work until October 15, 2014. (T 53, PX 33, 59). On November 6, 2014, Petitioner reported less pain and improved function in her right hand, with some numbness with work activities. (PX 33, 54). When Petitioner was seen on February 26, 2015, she was advised to continue work and therapy as tolerated. A return of palmar sensitivity and numbness was reported. Surgery might not help. A repeat EMG was ordered. (PX 33, 44-47). On March 27, 2015, Petitioner was seen by Dr. Carroll for continued right hand sensitivity over her scar and wrist. Petitioner was referred to Dr. Mathew Co for pain management. The diagnosis was generalized osteoarthritis of the right hand and carpal tunnel syndrome. (PX 33. 38-41). On April 24, 2015, Petitioner reported that her left-hand symptoms had increased over the past several months since her return to work in October. She was using a brace. Function has decreased. She had no left shoulder pain and the left shoulder exam was benign. Pain in the CMC joint was noted. The diagnosis was Generalized osteoarthritis of the left hand; Left carpal tunnel syndrome; CMC joint arthritis, left hand. An EMG was prescribed. Dr. Carroll noted continue work at current position with splint. May look for similar work. Cannot support SSDI, as she can work. (PX 33, 29-33).

On April 30, 2015, Petitioner was seen at Evanston Hospital by Dr. Matthew Co for right hand pain management, with complaints which ranged from 5 to 9 out of 10. (PX16, 30). She was prescribed a cream and Norco but the pain cream was not authorized. (PX 16, 36), (PX 33, 25).

On June 17, 2015, Petitioner followed up with Dr. Carroll for left hand pain. Petitioner's nerve study from June 15, 2015 was normal. Petitioner was instructed to continue with pain management and therapy and work as tolerated. (PX 33, 16-20).

On July 14, 2015, Petitioner attended a second IME with Dr. John Fernandez. (RX 5). Petitioner had returned to work in October 2014 with a splint, was in pain management but continued to have left and right hand complaints. The exam was apparently focused on the right hand, as that is what was "authorized". Dr. Fernandez answered 17 "Interrogatories", apparently posed by an "Insurance Adjuster" who apparently did not realize that the claim involved both hands and that questions 1 – 5 had been previously addressed by the doctor or had been made irrelevant by Dr. Fernandez's prior endorsement regarding causation. There was a PPI rating was requested for a pre-September 1, 2011 date of accident case. Petitioner's subjective complaints correlate well with the objective findings. The complaints were of right hand residual numbness and tingling with sensitivity in the thumb, index and middle finger particularly. She had significant pain and hypersensitivity along the palmar radial wrist corresponding to the volar scar. She had weakness complaints with loss of endurance. Left sided complaints were voiced, but not documented. Causal connection was again endorsed. The treatment to date was reasonable and necessary. Petitioner was diagnosed with right wrist palmar cutaneous neuroma, right wrist residual medial neuropathy, and right wrist pain and stiffness, status post ORIF with retained plates. Further surgery would have a very guarded prognosis, even if she were to get the neuroma resection and burial he had recommended previously. No surgery regarding the median nerve would help and no further therapy would be of any benefit. Dr. Fernandez recommended non-steroid anti-inflammatories and the occasional use of local patches with a splint. The prognosis is guarded regarding an overall full recovery and/or pain free function. Petitioner was at maximum medical improvement if she did not undergo additional surgery. Dr. Fernandez calculated a PPI rating of 9% upper extremity, 5% loss of the whole person. (RX 5).

On August 24, 2015, Petitioner was seen by Dr. Carroll regarding her right hand. She advised that she was following up with Dr. Co and regarding possible Lidoderm allergy. She had continued scar and nerve sensitivity in the right hand. Left hand follow-up was set for 9/4/15. Near full motion of the wrist was noted, along with full motion of the hand. Surgery was discussed, but the outcome was not necessarily good and the allergy issue had to be resolved. Petitioner was advised to go slowly and continue with Dr. Co. (PX 33, 7-9, PX 56, 301-303). The diagnosis was carpal tunnel syndrome of right wrist and left wrist. (PX 56, 296).

On October 7, 2015, Petitioner was seen by Dr. Richard Fitzsimmons of Associated Allergists and Asthma Specialists and it was stated that the cause of Petitioner's rash was unclear. A lidocaine challenge was set for October 16, 2015. It was determined that she was not allergic to 2% lidocaine. A possible reaction to the additives could not be ruled out. (PX 54, 12-14).

On October 22, 2015, Petitioner followed up with Dr. Co for pain management of her bilateral hands, right hand trigger finger, and neuropathic pain but an allergic reaction to Voltaren gel was noted, so she was given lidocaine patches. (PX 16, 23, PX 56, 283-294).

On December 7, 2015, Petitioner saw Dr. Carroll and received an injection to the right palmar cutaneous nerve. (PX 56, 262, 260-269). Petitioner continued follow-up care with Dr. Carroll and Dr. Co.

Petitioner had multiple follow-ups with Dr. Carroll and Dr. Co from January through April of 2016, and continued neuropathic right hand pain was documented. (PX 56, 212-259).

On June 21, 2016, Petitioner underwent a right wrist resection and transposition of a neuroma. She had her first follow-up visit with Dr. Carroll on July 1, 2016. Surgical pathology revealed scar tissue. She was doing well post-surgery, neuroma pain decreased, with numbness noted in the palm. (PX 56, 171-179). UR denied the Game-ReadyWrap DME ordered by Dr. Carroll, as there are no hand/wrist studies confirming efficacy. (PX 56, 188-201). It appears that Dr. Carroll called Dr. Visostky and left a message for peer review on 8/1/2016, but there does not appear to have been further contact. OT was approved and the therapist noted post-op residual nerve sensitivity and numbness that was to be addressed via desensitivity PT. (PX 56, 202). Petitioner had follow-ups with Dr. Carroll and post-op therapy. (PX 56, 70-170).

On August 26, 2016, Petitioner followed up at Associated Allergists and Asthma Specialists for a rash with blisters on the right wrist and it was determined it was unlikely to be a drug reaction from the June 2016 surgery. Claritin was recommended, with a follow-up with a dermatologist. (PX 54, 11, T 53-55). On August 30, 2016, Petitioner was seen at Dermatology Associates for the same rash that started on August 18, 2016. (PX 55, 25-27). The rash was originally on the right shoulder, chest, and under her right eye but a Benadryl injection from the emergency room cleared up the other areas except for the right arm. (Id.) She reported that she had a history of breaking out after each surgery. (Id.). Petitioner testified that the first time she had an eczema flare-up was after her left-hand carpal tunnel release and she had never had a reaction from any of her prior surgeries. (T 207-208). The rashes continued and Petitioner was seen at South Suburban emergency room in August of 2016, where she was given Benadryl IV which she testified did not help. (T 56). Patch tests on September 6, 2016, with two with readings on September 8th and September 10th, were both negative. (PX 55 at 15-22, T 56). Petitioner was diagnosed with contact dermatitis and, on October 28, 2016, the rash had resolved with a steroid. (Id.), (PX 56 at 84, T 58-59). Petitioner testified that her last flare-up was in 2021 and 2022 and that it occurs on other parts of her body, but she is relating it to her claim because it occurred after every surgery she had for carpal tunnel. (T 61).

On December 5, 2016, Petitioner reported to Dr. Carroll that she still had right wrist numbness and increased tingling to the index finger since her return to work and that her volar wrist pain had improved with surgery. (PX 56, 59). Dr. Carroll opined that she was overall improved and she was at maximum medical improvement and could work with a splint and in 20-30-minute intervals of typing. She had less than full range of motion in the wrist, decreased sensitivity of the palmar cutaneous and pain with deeper compression and palpation. The diagnosis was: generalized osteoarthritis of hand (right?); palmar cutaneous neuroma; rash; carpal tunnel syndrome; distal radius fracture. (PX 56, 59-68).

Dr. Co saw Petitioner on August 17, 2017. (PX 16, 5). She had some allodynia at the right wrist scar. The remainder of the exam was benign. She did not exhibit CRPS. Dr. Co deferred to Dr. Carroll regarding a right wrist injection. Medications were ordered. An EMG was suggested and Petitioner was to follow-up as necessary. (PX 16, 5-12).

On October 9, 2017, there was a follow-up visit with Dr. Carroll. (PX 56, 2-17). Her exam was largely unchanged, with it being noted that she was sensitive from residuals of median nerve and had some pain, volar left wrist. (PX 56, 4). Dr. Carroll charted that Petitioner was stable following injury. She was at MMI from his care. Work status was as tolerated, use splint as needed. Dr. Carroll reviewed the IME reports. Petitioner was to see RIC or Dr. Ko (Co?) for pain. FMLA documents were completed. Dr. Suh was consulted and she was going to make a referral to RIC. Further surgery or injections would not likely help. Dr. Carroll made no promises regarding who would pay for Ability Lab/RIC. (PX 56, 5).

On January 11, 2018, Petitioner attended a third IME with Dr. Fernandez, who reviewed an EMG from October 3, 2017 that showed moderate bilateral carpal tunnel syndrome. Petitioner reported residual right-hand pain that ranged from 3 to 8 out of 10. She also reported residual left hand pain that was minimal. Dr. Fernandez

diagnosed Petitioner with post-surgical right hand and wrist residual median neuropathy and palmar cutaneous neuroma pain and opined that this was causally related to Petitioner's work. He opined that Petitioner was at Maximum Medical Improvement and her prognosis was good for very light use of the hands and that she could work with 10-pound restrictions and breaks between typing. (RX 7).

Petitioner returned to work per Dr. Fernandez's restrictions on January 24, 2018. Respondent paid TTD from November 21, 2017 through January 23, 2018. (RX 3). Petitioner was paid regular pay from January 24, 2018 through January 31, 2018. (PX 64-C). Petitioner testified that she presented to the ER again on approximately February 1, 2018 for hand pain. Petitioner testified that she was instructed to remain off work until she completed the SRAL program. (T 67-)

Petitioner testified that after reaching MMI per Dr. Carroll, she was referred to pain management at Shirley Ryan Ability Lab (SRAL). by Dr. Suh around October, 2017. Respondent did not respond to the request, per Petitioner. She had returned to work and experienced pain on November 21, 2017 and presented to the Northwestern ER. The ER contacted Dr. Suh and petitioner was again taken off work. Petitioner requested TTD and off-work slips were sent to Tri-Star. (T 62-63).

The initial evaluation at SRAL was on February 9, 2018 and resulted in Petitioner being recommended to participate in Shirley Ryan's Advanced Pain Management Program as an outpatient. (T 62-64). Petitioner testified that this was denied by workers' compensation after an IME by Dr. Fernandez. Petitioner testified that her PCP doctor thereafter requested reasonable accommodations for Petitioner to work at home, but this was also denied. (T 65-66). Petitioner testified she was not paid TTD while she was off work from February 1, 2018 through July 5, 2018. (T 72). Petitioner testified that because she failed to return to work, she received notice of a disciplinary action because she had run out of FMLA time and she had not returned to work. (T 72-73). Respondent paid Petitioner the TTD from February 1, 2018 to July 5, 2018 on December 18, 2018. (RX 3).

Dr. Fernandez authored an IME addendum on March 27, 2018, after reviewing the February 9, 2018 evaluation report from the Shirley Ryan Ability Lab. Dr. Fernandez opined that Petitioner was a candidate for chronic pain management. Dr. Fernandez opined that surgery was not needed and there was no CRPS and that Petitioner did not need an extensive chronic pain management program like the one being recommended. He opined that medical treatment since the last IME had been somewhat reasonable, but that it was unusual that Petitioner went to the emergency room after only working for a few days. He opined that based on the moderate findings of the most recent EMG, it was unusual for her to be having the degree of pain and disability she was reporting. Dr. Fernandez stated that pain management was not his specialty and that a pain specialist could provide a more extensive opinion if needed. (PX 8).

Petitioner testified that Tristar, Respondent's TPA, initially approved the SRAL program, which was scheduled to start on February 22, 2018. Tristar revoked the approval the same day that they sent the acceptance. (T 64).

Petitioner testified that the pain management program at SRAL was approved on July 6, 2018. (T 69). On August 27, 2018, Petitioner was released from the SRAL program. Petitioner said that she was required to take a typing class, which she said that she could not complete due to pain. (T 69-71).

A work station evaluation was performed by UIC, which was requested by Respondent. (T 87). The evaluation concluded that Petitioner needed a new desk and mouse. (T 88). Respondent provided Petitioner with the desk, mouse and a new desk chair and foot rest and she returned to work on October 15, 2018. (T 88). Petitioner testified that five months after returning to work she noticed pain in the back of her knee and had difficulty bending it. (T 76-77). She reported the leg pain to her employer, indicating that she believed the new chair was the cause. (T 78) Respondent then provided her with three to four other chairs. (T 78).

On April 22, 2019, Petitioner was seen at Premier Orthopedics by Dr. Venkat Seshadri for 4 out of 10 left knee pain. (PX 21, 8). X-rays confirmed end-stage osteoarthritis of the knee and Petitioner declined a cortisone injection, so physical therapy was recommended. (Id. at 8-9). Petitioner testified that she was told by Premier Orthopedic that based on her x-rays, she had arthritis, but Petitioner did not agree with this assessment. (T 80). On April 25, 2019, Petitioner sought a second opinion at Midwest Orthopedics and reported 8 out of 10 left knee pain. (PX 18). An x-ray of the left knee showed severe medial compartment degenerative arthritis and Petitioner requested an MRI. On May 1, 2019, the MRI of the left knee showed severe osteoarthritis, a small joint effusion, a complex tear of the medial meniscus, and chondral degeneration. (PX 18, 16-19). Petitioner testified she had a prior history of hip arthritis in 2010 that resulted in a right hip replacement. (T 166).

Petitioner had PT for her left knee/leg at SRAL, starting May 3, 2019. (PX 59, 213-265).

On May 30, 2019, Dr. Venkat Seshadri noted that Petitioner had completed a course of physical therapy at the Shirley Ryan Ability Lab and her knee pain had gotten better. (PX 21). He further noted that Petitioner yelled at Dr. Seshadri's receptionist, saying that her knee pain was caused by work and that Dr. Seshadri had not provided documentation reflecting this. Dr. Seshadri charted that he categorically would not falsify medical records to help her workers' compensation claim. (PX 21, 17).

On July 19, 2019, Dr. Scott Sporer at Midwest Orthopedics at Rush noted that Petitioner's left knee had made slight progress and that she had left knee arthritis. (PX18, 15-16). He noted that prior films demonstrated severe medial compartment osteoarthritis, a degenerative medial meniscal tear with a large posterior cyst and that her symptoms are causally related to left knee degenerative arthritis. Petitioner reported that she felt this was related to a muscle condition and not to underlying degenerative changes. (T 81-82). Due to the difference of opinion and because Petitioner declined an intraarticular injection, she was told to obtain an additional opinion. (PX 18).

On October 21, 2019, UIC performed a Worksite Modification Evaluation at Petitioner's Illinois Department of Revenue office. (PX 68). Per the report, Petitioner said she was experiencing severe pain behind her left knee caused from sitting in her chair which put pressure against the back of both knees from the seat cushion being too long and the lumbar support of the chair not being effective. It was noted that since April 2019, Petitioner had tried several other chairs but that none were comfortable. It was also noted that she did not want her physical therapy provider to be contacted for them to gather information regarding her injury and treatment. It was concluded that Petitioner had full mobility to walk through the office and to work full days, five days per week, and the following recommendations were made: 1) that she be provided an ergonomic office chair with appropriate seat depth and adjustability; 2) that she be provided a powered height adjustable desk; and 3) that she try out a vertical mouse with approval of her physician. (PX 68, 5-8).

On December 3, 2019, Petitioner was seen at Northwestern in the Orthopedic Surgery Department by Dr. James Hill for another evaluation of her left leg. (PX 17, 95-98). Petitioner reported she had been putting excessive pressure on her left leg because of her office chair, with an onset of symptoms in March of 2019. She was adamant of determining a diagnosis. An MRI of the left thigh was recommended and Petitioner was to continue PT. The impression was chronic left hamstring strain and Petitioner was to follow up, PRN (patient to return as necessary). On December 11, 2019, Dr. Hill's office noted that Petitioner called and asked them to "correct" her forms she submitted to work to say she has flare-ups that prevent her from doing her job. This request was declined by Dr. Hill. (PX 17, 79). On December 13, 2019, Petitioner had an MRI of the left femur at Northwestern which showed chronic low-grade partial thickness undersurface tear at the hamstring, nonspecific mild edema, and left knee osteoarthritis. (PX 17, 71-72).

On January 30, 2020, Dr. Hill diagnosed Petitioner with a strain of the left hamstring and encouraged her to continue physical therapy. (PX 17, 59-61). On March 5, 2020, Dr. Hill noted that she was in physical therapy which was helpful and she acquired a donut which was helpful for sitting. (Id. at 52-54). On September 17, 2020, Petitioner's physical therapy had been delayed secondary to the Covid-19 pandemic, but she had resumed and completed her physical therapy with some improvement to her left knee and thigh pain. (PX 17, at 14-17). Petitioner has a full left knee range of motion with only mild tenderness on palpation of her hamstring and so she was encouraged to continue at home exercises. (Id.).

During the Covid-19 pandemic, Petitioner purchased an ergonomic work station and worked from home. (T.86-87, 90). She received an IME notice in July of 2020. She testified that she did not attend due to the pandemic, and because she could not walk or drive at the time, and because she believed she learned the pain management techniques she needed from Shirley Ryan. (T 92-95). She received subsequent IME notices for August 26, 2020 and September 23, 2020 and refused to attend those two IME appointments as well. (T 192-193). Petitioner testified that for her own doctor appointments she would take a cab, and would only drive to Athletico because it was close to her home. (T 194). Petitioner testified that she underwent physical therapy for the arthritis and hamstring issue from July 2020 to September 2020 and that it helped her leg pain. (T 85, 90). Petitioner last saw Dr. James Hill on September 17, 2020, and reported her knee was improved after the physical therapy. (T 189-190).

Petitioner testified that she was able to keep working and volunteered to work overtime from 2020 up to her retirement in February 2021. (T 128-129). Petitioner retired at the end of February 2021. (T 96).

On April 5, 2021, Petitioner was seen via telehealth by her primary care doctor, Dr. Suh for a rash and possible hives on her left upper arm after her Pfizer vaccine and was told to take Benadryl and triamcinolone cream. (PX 15, 53-58). On June 29, 2021, Petitioner reported that the rash had spread to her right hand, right forearm, right eye, check, left eye, and left legs and she was concerned that it was from her Pfizer vaccine. (Id., 21, 48). Petitioner was referred to dermatology. (Id. at 37). On July 6, 2021 and July 20, 2021, Petitioner was seen at Dermatology Associates and was diagnosed with chronic eczema. (PX 55, 9, 11). Petitioner was given a topical steroid at each visit. (Id.).

On cross-examination, Petitioner testified that she had one carpal tunnel release surgery on the left hand and four total surgeries for her right hand including the right carpal tunnel release, a right revision surgery, a neuroma resection, and the right wrist fracture ORIF surgery. (T 173-174).

Petitioner testified that prior to her injury she enjoyed gardening, bowling, walking, exercising, cooking and playing with her grandchildren. (T 98-100) She testified that she was also intending to take up golf, but had never golfed prior to the injury. (T 206). She testified that she is limited in activities she can do while on vacation and she stopped driving long distances and stopped gardening. (T 99-102). She still has pain in her hands near the base of the wrist and in the thumb. (T 103-104). She can also have an eczema flare-up at any time. (T 104). Petitioner's right hand was viewed at trial and it was noted she had a standard open carpal tunnel release scar about three inches long as well as suture scars and eczema spots. (T 106-107). Petitioner's said that her leg is better and she is back to walking 10,000 steps per day and does Fitbit challenges with her friends. (T 110-111). Her left shoulder also improved. (T 112).

Petitioner is no longer treating for carpal tunnel. Petitioner testified that she has occasional pain with swelling when cooking, cleaning, and doing her normal activities, but is able to stop and take a break if needed. (T 195-198). She is retired and so her pain is not like what it was before, but she takes Advil when needed, generally five to six times per month. (Id.). On cross examination, Petitioner rated her dominant right-hand pain at 3 out of 10 at the time that she was testifying, but said it can go up to 5 out of 10 with exasperating activity. (T 198-

199). Petitioner rated her left-hand pain as 2 out of 10 and said it can go up to 3 out of 10 with exasperating activity. (T 199-200). For her right wrist fracture, Petitioner also takes Advil for the pain. (T 201). She rated her cassions.urrent pain level at 0 out of 10. (T 202). For the left shoulder injury, Petitioner is no longer treating and also just takes Advil. (Id). She testified that after she had physical therapy with Dr. Carroll, her shoulder injury eventually resolved and her pain level is 0 out of 10. (T 201-202). Regarding her left knee injury, Petitioner is no longer treating and generally does not need to take Advil for it. (T 202-203). She testified that her current pain was 0 out of 10 for the left knee, but that she does get some stiffness from her arthritis from sitting too long. (T 203). Petitioner did not file a new Application for Adjustment of Claim for her left knee because she believed it arose from the work chair she was provided as a result of her carpal tunnel. (T 186). Petitioner is currently on Medicare and received SERS benefits for her injuries while she was getting paid TTD. (T 204-205). She did not ever receive Social Security Disability benefits. (Id.)

The Parties took the evidence deposition of Dr. John Fernandez on two occasions, March 7, 2016 and October 30, 2023. (RX 6, RX 9).

At the March, 2016 deposition, Dr. Fernandez testified that he is a fellowship trained, board certified with additional qualifications in hand surgery and microsurgery orthopedic surgeon. He is a principal partner at Midwest Orthopedics at Rush and an assistant professor of orthopedic surgery at Rush University Medical Center. (RX 6, 5-7). He examined Petitioner twice, on May 2, 2013 and July 14, 2015. The physical exam of the right hand appreciated the ORIF procedure and that Petitioner was post carpal tunnel release, with the likely presence of a neuroma of the palmar cutaneous branch of the median nerve, with associated pain and loss of range of motion. The left wrist exam was consistent with a benign post carpal tunnel release condition. (RX 6, 17-19). He endorsed causation to Petitioner's work activities, based upon positioning and frequency. (RX 6, 19-23). Petitioner was at MMI for her left hand and needed further treatment to address the neuroma in the right hand. She could return to work at full duty. (RX 6, 22-23).

Regarding the July 14, 2015 exam, the diagnosis regarding the right hand was residuals of a palmar cutaneous neuroma of the median nerve. The diagnosis regarding the left hand was status post CTR, with negative EMG. (RX 6, 28-29). Dr. Fernandez recommended the same treatment that he had recommended for the neuroma previously, identifying and resecting the palmar cutaneous branch of the median nerve and burying it. The prognosis would be very good regarding pain relief and questionable regarding general function. (RX 6, 29-30). The proposed neuroma procedure would be causally related. Dr. Fernandez had no criticism of Dr> Carroll's care. (RX 6, 34-37).

At the October 23, 2023 deposition, Dr. Fernandez testified that he again endorsed causation, at least to aggravate Petitioner's carpal tunnel condition. (RX 9, 24). He testified that he examined Petitioner on January 11, 2018 and noted a symptomatic neuroma. The diagnosis was continued evidence of residual median nerve neuropathy and neuroma. She was at MMI and could work sedentary/light duty with frequent breaks. Further surgery was not recommended. (RX 9, 39-40). Dr. Fernandez authored an IME Addendum on March 27, 2018. (RX 8). He did not examine Petitioner on that day. He stated that Petitioner had significant residual pain and was a candidate for pain management. She did not have CRPS (complex regional pain syndrome). Surgery was not recommended. (RX 9, 41-43). On cross-examination, Dr. Fernandez endorsed causation on wrist positioning. (RX 9, 46-49). Petitioner's subjective complaints correlate 100% with the objective findings. She was not exaggerating her symptoms. (RX 9, 57). Petitioner would benefit from the proposed pain management program for the purpose of learning the proper skills to manage her pain. (RX 9, 65). The deposition exhibits were not attached to the transcript that was admitted into evidence, but the Dr. Fernandez reports were admitted as RX 4, RX 5, RX 7, and RX 8.

The number and size of the documents submitted into evidence amounts to 2 banker's boxes. Many of the exhibits contained SSN information and they were redacted to comply with SCR 138. The following is a summary of the Exhibits.

PX 1 was a request for reimbursement from Equian for payments from Health Care Service Corporation in 2019 and 2020 for treatment regarding Petitioner's left leg. **PX 2** through **PX 5** were withdrawn. **PX 6** was a description of the AON PPO Blue Cross/Blue Shield plan's reimbursement rights. **PX 7** was withdrawn. **PX 8** was Blue Cross/Blue Shield request for reimbursement for payments made 1/3/2012 through 11/2/2012. **PX 9** was withdrawn. **PX 10** was Blue Cross/Blue Shield request for reimbursement for payments made from 2/25/2017 through 10/31/2017. **PX 11** was Blue Cross/Blue Shield request for reimbursement for payments made from 1/27/2011 through 12/30/2011. **PX 12** was bills from Northwestern/Dr. Hill for treatment regarding Petitioner's left leg (14 dates of service). **PX 13** was bills from University of Chicago Medicine from 9/19/2011 through 8/20/2012. These bills show no payments or outstanding balances. **PX 14** was records from Athletico. **PX 15** was records from Dr. Suh. **PX 16** was records from Dr. Co. **PX 17** was records from Dr. Dr. Hill. **PX 18** was records from Midwest Orthopedics at Rush. **PX 19** was records from St. James Hospital. **PX 20** was records from University of Chicago. **PX 21** was records from Premier Orthopedic. **PX 22** was records from St. James Hospital (same as **PX 19**). **PX 23** was records from South Suburban Hospital. **PX 24** was records from Athletico. **PX 25** was a bill from Athletico that reflected that it was paid as of 1/22/2015. **PX 26** was withdrawn. **PX 27** was records from Dr. Suh. **PX 28** was records from Keystone Orthopedics. **PX 29** was Records from Midwest Orthopedics at Rush. **PX 30** was withdrawn. **PX 31** was Northwestern Memorial Hospital bills from 6/15/2015 through 11/20/2017, some with balances and some showing as paid by Blue Cross/Blue Shield or "Commercial Insurance/Worker's Compensation. **PX 32** was records from Northshore Orthopaedics (1/8/2013. **PX 33** was **PX 52** was regarding the request for reimbursement from Equian, updated form PX 1, but for the same amount. records from Northshore Orthopaedics (9/1/2015). **PX 34** through **PX 51**were withdrawn. **PX 52** was regarding the request for reimbursement from Equian, updated form PX 1, but for the same amount. **PX 53** was a request for reimbursement from Blue Cross/Blue Shield for treatment at Northshore and Northwestern Hospital and physicians from 8/2/2013 through 9/17/2015. **PX 54** was records from Associated Allergists/ Dr. Fitzsimmons. **PX 55** was records from Dermatology Associates/Michelle D. Ovando, PA-C. **PX 56** was records from Northshore Orthopaedics sent in response to a subpoena issued 5/24/2023. **PX 57** was the 12/13/2019 report regarding the MRI of Petitioner's left femur. **PX 58** was billing records from Graymont Medical/Gray Medical, Inc. for the Game Ready DME services, 6/21/2016 through July 18, 2016. **PX 59** was records from Shirley Ryan Ability Lab. **PX 60** was withdrawn. **PX 61** was Petitioner's email of 1/25/2011 advising her supervisor of her carpal tunnel condition and that it may be related to her employment, with the Work Comp Claim Filing Instructions she received in response. **PX 62** was a copy of the Order that was entered by Arbitrator Zanotti on July 11, 2012 regarding Petitioner's 19(b)/Penalty Petition noticed for 5/29/2012 and Respondent's response, evidencing payment of disputed TTD from 4/19/2012 through 6/3/2012 on 7/2/2012. **PX 63** was documents supporting Petitioner's claim for late TTD payment regarding the time period of 11/21/2017 to 1/23/2018 (date of payment, 3/8/2018). **PX 64-A** was documents supporting Petitioner's claim for late TTD payment regarding the time period of 2/1/2018 to 7/5/2018 (date of payment, 12/18/2018). **PX 64-B** was documents showing Petitioner's request for TTD, dated 2/1/2018, with an off-work slip dated 2/1/2018 and a Physician's statement from Dr. Suh 2/2/2018. **PX 64-C** was a pay statement from SERS regarding the time period of 1/24/2018 to 1/31/2018. **PX 65-A** was Petitioner's Response to a Notice of 3/8/218 Pre-Disciplinary meeting and **PX 65-B** was a Disciplinary Action Notice, dated 4/3/2018. PX 65-A and 65-B were rejected, as Respondent's relevance objection was sustained. **PX 66** was a job description for Petitioner's job. **PX 67** was an email chain regarding Petitioner's left shoulder claim, where Petitioner advised Respondent of intense left shoulder pain on July 2, 2013 and was advised not to file a new claim, as she was relating her shoulder issues to limited use of the right hand, as "there was no new incident." Petitioner advised that she was going to file a "protective claim" for her left shoulder on April 9, 2014. **PX 68** was the UIC Assistive Technology Unit Workstation Ergonomic Report, dated 10/21/2019. **PX 69** was documentation

of Petitioner's attempt to subpoena the Workstation Ergonomic Report. **PX 70** was Petitioner's bills analysis. **PX 71** was a photo of the D-Ring wrist brace that she was wearing when she fell down the stairs at her house on September 13, 2011 and broke her wrist. **PX 72** was photos of the cellulitis due to the suture abscess from the 5/10/2012 CTR surgery. **PX 73** was photos of the eczema flare up that occurred after the 6/20/2016 right hand surgery by Dr. Carroll. **PX 74** was photos of the eczema flare in June of 2021. **PX 75** was photos of the back of Petitioner's knee dated April 26, 2019.

RX 1 was the Application for Adjustment of Claim, filed March 2, 2011. **RX 2** is the wage calculation. **RX 3** was a payment log, showing payments from 2012 through 2019. **RX 4** was the 5/2/2013 Dr. Fernandez report. RX 4 contains a document regarding Frank Phillips, MD's examination of a Rowena Kasper on 5/14/2013 at page 7. That document was destroyed. **RX 5** was the 7/14/2015 Dr. Fernandez report. **RX 6** was the Dr. Fernandez deposition transcript from March 4, 2016. **RX 7** was the 1/11/2016 Dr. Fernandez report. **RX 8** was the 3/27/2018 Dr. Fernandez IME Addendum report. **RX 9** was the transcript of the evidence deposition of Dr. Fernandez taken on October 10, 2023. **RX 10** was Petitioner's resignation letter, indicating that she was retiring, effective the end of February of 2021 (dated 2/16/2021).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law that follow.

Section 1(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(d).

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between her employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989)

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e)

The Arbitrator notes that several of the exhibits admitted into evidence contained Petitioner's SSN and the same were redacted to the best of the Arbitrator's ability in order to comply with SCR 138.

WITH RESPECT TO ISSUE (C), DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT, THE ARBITRATOR FINDS:

Petitioner sustained accidental injuries which arose out of and in the course of her employment by Respondent on December 22, 2010.

This finding is based upon the testimony of Petitioner, the medical records and the testimony and reports of Dr. Fernandez.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT, THE ARBITRATOR FINDS:

Notice as to the December 22, 2010 accident date for Petitioner's bilateral carpal tunnel condition was stipulated to by Respondent. Notice was also established by PX 61, was Petitioner's email of 1/25/2011 advising her supervisor of her carpal tunnel condition and that it may be related to her employment, with the Work Comp Claim Filing Instructions she received in response. Notice was established by PX 61.

As noted below, Petitioner only filed one Application for Adjustment of Claim for work injuries occurring on or after December 22, 2010. Notice has been established for that claim.

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

Petitioner's present condition of ill-being of bilateral carpal tunnel syndrome, status post Left CTR procedure on September 13, 2012 and status post Right CTR procedure on May 10, 2012, with development of suture abscess and cellulitis, with development of right palmar median cutaneous neuropathy, status post Right CTR number 2 with exploration of the palmar cutaneous neuroma and resection/burial of the neuroma on June 10, 2014, status post Right wrist resection and transposition of neuroma procedure on June 21, 2016. This finding is based upon Petitioner's testimony, the medical records and the persuasive testimony and reports of Dr. Fernandez.

The following medical conditions that Petitioner has or had are found to be not causally related to the December 22, 2010 accident that is the subject of this case for the reasons set forth below.

Right Wrist Colles Fracture: Petitioner fell down the stairs at her home and broke her right wrist. She was unconscious after the fall per the medical records and was amnestic to the event, per the ER records. Petitioner related the wrist fracture to the CTS wrist brace that she was wearing, causing an inability to grab the handrail on her stairs and stop the fall. There is no causal connection opinion in the records and the Arbitrator is not persuaded that the wrist brace had anything to do with the wrist fracture on that basis and the basis that Petitioner was amnestic to the event (the exact events of the fall and the effect of the wrist brace on the fall and the Colles fracture are speculative, as the fall was unwitnessed and Petitioner did not know details of the fall, per the ER records.

Rash/Eczema: The medical records do not establish causation and it is noted that Petitioner had complaints of a rash when she saw Dr. Suh initially regarding her hand complaints that she related to her work activities on December 22, 2010, well before any surgery and subsequent eczema flares.

Left Shoulder: Petitioner related her left shoulder treatment/symptoms in 2013 at trial to her work duties/work station position/overuse after the right CTR procedure done in May of 2012. The medical records do not establish causation. The records of Dr. Hall show that Petitioner presented to Dr. Hall on June 28, 2013, reporting a 1.5 year history of left shoulder pain, had a right hand fracture and was dependent on her left side, difficulty with overhead use and soreness. Dr. Hall charted that Petitioner had left shoulder pain in the past and it was not worse than it was 8 years ago.

Left Leg/Knee: Petitioner related her left leg/left knee condition for which she sought treatment after she returned to work in October of 2018 to work chairs. There is no causal connection endorsement contained in

the medical records and the records imply that Drs. Seshardi, Sporer and Hill did not support causation. In any event, the Arbitrator believes that if Petitioner's left leg condition is related to her work for Respondent in 2018/2019, this would be a new accident/injury which would be barred by the Statute of Limitations. (820 ILCS 305/6(d).

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:

Petitioner's claimed medical bills, per the RFH form, are: "See attached Exhibits 1-13; 25-26; 47; 52-53; and 58. (ArbX 4).

PX 1 was a request for reimbursement from Equian for payments from Health Care Service Corporation in 2019 and 2020 for treatment regarding Petitioner's left leg. These services are not causally related to the December 22, 2010 work injury, as is set forth above and the bills are not awarded.

PX 2 through PX 5 were withdrawn.

PX 6 is not a bill.

PX 7 was withdrawn.

PX 8 was Blue Cross/Blue Shield request for reimbursement for payments made 1/3/2012 through 11/2/2012. First, only reimbursement for provided benefits will be considered. Services related to the wrist fracture are denied, based upon the Arbitrator's finding above on the issue of causation. Services by Accelerated Rehabilitation, (9/6/2012, 9/10/2012, 9/12/2012, 9/19/2012, 9/24/2012, 9/26/2012 and 10/3/2012 are related to the OT recommended by Dr. Angeles after the 5/10/2012 CTR procedure and are awarded. (**$1,027.00**). The 9/13/2012 bill from Northwestern Medical FAC FDN is related to the left hand CTR procedure and is awarded. (**$535.44**). The Northshore 11/2/2012 bill is related to Dr. Carroll's services and is awarded. (**$1,466.00).**

PX 8 award: $3,028.44.

PX 9 was withdrawn

PX 10 was Blue Cross/Blue Shield request for reimbursement for payments made from 2/25/2017 through 10/31/2017. This was for ER visits for hand pain and follow up with Dr. Carroll.

PX 10 award: $3,307.97.

PX 11 was Blue Cross/Blue Shield request for reimbursement for payments made from 1/27/2011 through 12/30/2011. The charges are related to the wrist fracture, with the exception of $370.05 from Northwestern Memorial in the amount of $370.05, which is awarded.

PX 11 award: $370.05.

PX 12 was bills from Northwestern/Dr. Hill for treatment regarding Petitioner's left leg (14 dates of service). These bills are denied, based upon the Arbitrator's finding above on the issue of causal connection.

PX 13 was bills from University of Chicago Medicine. The bills are itemizations of charges and do not reflect payments which may have been made by Respondent. The charges regarding the wrist fracture are denied. The charges for the 5/10/2012 CTR procedure and subsequent treatment are awarded: 5/10/2012: $12,850.00; 7/19/2012: $406.00; 10/4/2012: $337.00; 8/20/2012: $373.00.

PX 13 award: $13,966.00.

PX 25 was a bill from Athletico that reflects that it is paid as of 1/22/2015. Nothing is awarded.

PX 26 was withdrawn.

PX 47 was withdrawn.

PX 52 is correspondence from Equian regarding reimbursement from Medicare for charges for treatment in 2019 and 2020 regarding her left leg/knee. Nothing is awarded based upon the Arbitrator's findings above on the issue of causation.

PX 53 is a claim for reimbursement from Blue Cross/Blue Shield for charges from Northshore and Northwestern from 8/2/2013 through 9/17/2015, with a balance due of $5,033.56.

PX 53 is award: $5,033.56.

PX 58 is the billing for the Game Ready DME ordered by Dr. Carroll in 2016. This was not certified by UR, as being not proven for the upper extremity. As stated above, Dr. Carroll's records show that he attempted peer review contact and there is no explanation regarding anything further. With no further non-certify information, the charges will be awarded.

PX 58 award: $7,075.00.

Total medical expenses awarded: $32,781.02, subject to the Medical Fee Schedule and Section 8(a) and 8.2 of the Act. Respondent is entitled to a credit for all awarded expenses that it has paid or compromised.

WITH RESPECT TO ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS:

Petitioner claimed on the Request for Hearing form that she is seeking an award for the following periods of TTD: February 3, 2011 to February 8, 2011 (0 and 6/7 weeks); April 19, 2012 to June 3, 2012 (6 and 4/7 weeks); September 13, 2012 to December 9, 2012 (12 and 4/7 weeks); June 10, 2014 to October 14, 2014 (18 and 1/7 weeks); June 21, 2016 to October 23, 2016 (17 and 6/7 weeks); November 21, 2017 to January 23, 2018 (9 and 1/7 weeks); and February 2, 2018 to October 10, 2018 (35 and 6/7 weeks). It was noted that Respondent had paid $124,352.00 in TTD benefits. (ArbX 4).

Respondent's Exhibit (3) indicates that Respondent has paid benefits for all the above periods claimed except for 2 and 1/7 weeks of TTD from February 3, 2011 to February 8, 2011 (0 and 6/7 weeks) and October 15, 2016 to October 23, 2016 (1 and 2/7 weeks). The medical records do not contain any off work slips for the period of February 3, 2011 to February 8, 2011 or the period of October 15, 2016 to October 23, 2016. Regarding the latter period, it appears that Petitioner was seen twice for treatment her right hand by Dr. Carroll in October 2016 and at both visits, she was told she could continue working with her wrist splints. (PX 56 at 88, 96). The

medical records do not show that Petitioner treated in February 2011 but Petitioner was seen by Dr. Michael Jablon, MD on January 27, 2011 and he recommended she should take ibuprofen and use wrist splints. (PX 32, at 122-123). It does not appear that he placed her off work. Therefore, the Arbitrator does not award any additional TTD benefits.

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

Because the accident date is December 22, 2010, the hands are worth a maximum of 205 weeks and there is no cap on PPD awards for carpal tunnel syndrome due to repetitive or cumulative trauma. 820 ILCS 305/8(e)9. Further, Section 8.1b does not apply to the PPD award.

First, it is noted that Tristar, on behalf of Respondent, requested a PPI report from Dr. Fernandez, regarding Petitioner's right hand only, which was dated June 14, 2015 (well before Petitioner reached MMI). Dr. Fernandez assessed 9% impairment to the upper extremity, 5% impairment to the whole person. This is given appropriate weight in determining PPD.

The causally related hand conditions are: bilateral carpal tunnel syndrome, status post Left CTR procedure on September 13, 2012 and status post Right CTR procedure on May 10, 2012, with development of suture abscess and cellulitis, with development of right palmar median cutaneous neuropathy, status post Right CTR number 2 with exploration of the palmar cutaneous neuroma and resection/burial of the neuroma on June 10, 2014, status post Right wrist resection and transposition of neuroma procedure on June 21, 2016. Petitioner is right-handed.

Considering the medical records, the opinions of Dr. Fernandez and Petitioner's credible testimony regarding her limitations and the residual symptoms that she experiences, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 40% loss of use of the right hand pursuant to §8(e)9 of the Act and 15% loss of use of use of the left hand pursuant to §8(e)9 of the Act as a result of the December 22, 2010 work accident.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON RESPONDENT, THE ARBITRATOR FINDS:

Based upon the evidence adduced, Petitioner's claims for Penalties, pursuant to sections 19(l) and 19(k) of the Act is denied.

This was a complicated case and the handling of the claim by Respondent's agents, while inept, does not stoop to the level of being unreasonable and vexatious, so the claim for section 19(k) penalties is denied. The Arbitrator does not agree that Section 19(l) penalties are appropriate, either.

If the Commission disagrees, then so be it.

WITH RESPECT TO ISSUE (O), OTHER, "MANNIFESTATION DATE OF THE ACCIDENT; NOTICE REGARDING BODY PARTS AFFECTED; STATUTE OF LIMITATIONS AS TO SUBSEQUENT INJURIES; TIMELINESS OF PETITION FOR PENALTIES", THE ARBITRATOR FINDS:

As to "Manifestation date of the accident, Notice regarding body parts affected (effected?), Statute of Limitations as to subsequent injuries", the above issues have been addressed above by the Arbitrator's findings on the issues of accident and causation.

As to "Timeliness of Petition for Penalties", the case went to trial on January 19, 2024. The previously filed Penalty Petitions were timely.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC019349
Case Name	Faidat L Woleola v. FedEx Ground Package System Inc
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0500
Number of Pages of Decision	15
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Joshua Rudolfi
Respondent Attorney	Timothy Alberts

DATE FILED: 10/24/2024

/s/Maria Portela, Commissioner

Signature

24IWCC0500

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

FAIDAT WOLEOLA,

Petitioner,

vs. NO: 19 WC 19349

FEDEX GROUND PACKAGE SYSTEM, INC.,

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 medical expenses and permanent partial disability benefits and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's Decision regarding causation, medical expenses, and temporary total disability benefit payments. However, the Commission modifies the award of permanent partial disability benefits from 25% loss of the person as a whole to 30% loss of the person as a whole.

Although the Arbitrator cites to the testimony of both Petitioner and Respondent's witness, Christopher Brown, as support for the proposition that other employees with permanent accommodated positions have not been promoted, and the fact that Petitioner has lifting restrictions, the Arbitrator does not specifically point out that this has, in essence, resulted in a loss of trade.

At a minimum, the work for which Petitioner was qualified to perform pre-injury and post-injury is significantly different. Petitioner now has permanent lifting, sitting, standing, carrying restrictions that make her unable to complete a fair number of tasks outlined in her previous job

description. (Px4, FCE) This is also reflected in the fact that her accommodated position is purely administrative by the testimony of both Petitioner and Respondent witness, Christopher Brown.

Petitioner met her burden of proof that she sustained a loss of trade as a result of her work accident. Based on the loss of trade analysis below, the Commission modifies the award of the Arbitrator's award from 25% loss of use of a person as a whole to 30% loss of use of a person as a whole.

The Commission further modifies the Arbitrator's analysis under Section 8.1b(b) as follows:

(i) No permanent partial disability impairment report and/or opinion was submitted into evidence. No weight should be afforded to this factor.

(ii) The occupation of the employee: the record reveals that Petitioner was employed as an operations manager at the time of the accident and that she is not able to return to work in her prior capacity as a result of said injury. Petitioner is presently in a permanent accommodated position with the job title of Operations Engagement Manager. Respondent's witness, assistant senior manager for FedEx Ground's Chicago Hub, Christopher Brown, testified that Petitioner's current, primary job duties consist of administrative tasks, rather than working on the dock as before. (T. 78) Mr. Brown testified (which was corroborated by Petitioner) that she does not perform any lifting. (T. 93) Further, Mr. Brown personally conducts reasonable accommodation requests for FedEx employees, but is not aware of any employees in permanently accommodated positions ever being promoted. (T. 86-87) This factor is given significant weight.

(iii) Petitioner was 38 years old at the time of the accident. Because of Petitioner's young age and likelihood that she will work for a number of decades with permanent lifting restrictions, this factor is given greater weight.

(iv) Petitioner's future earnings capacity: the Petitioner does not have a loss of wages. Because of Petitioner's ability to earn the same wage with meritorious increases, this factor is given less weight.

(v) Petitioner had an FCE performed on December 22, 2020 that was conditionally valid and placed Petitioner in the Sedentary-Light demand level. (Px4, p. 100) Petitioner's treating physician, Dr. Jain, released Petitioner with these permanent restrictions on February 24, 2021. (Px1, p. 154) Respondent's IME physician, Dr. Edward Goldberg, agreed with Petitioner's permanent restrictions in his September 2, 2021 addendum report. (Rx7, p. 2) As Petitioner's undisputed permanent work restrictions do not allow her to perform the essential functions of her pre-accident position, this factor is given greater weight.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $728.82 per week for a period of 75 2/7 weeks, from July 1, 2019 through August 29, 2019 and from September 18, 2019 through December 29, 2020, 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 $655.94 per week for a period of 150 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 30% loss of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $21,958.51 (Pinnacle Pain Management Specialists $2,021.50; Windy City Anesthesia $4,275.00; ATI Physical Therapy $15,662.01) 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 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.

October 24, 2024

MEP/dmm
O: 92424
49

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC019349
Case Name	Faidat L Woleola v. FedEx Ground Package System Inc
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Jacqueline Hickey, Arbitrator

Petitioner Attorney	Joshua Rudolfi
Respondent Attorney	Timothy Alberts

DATE FILED: 6/15/2023

/s/ Jacqueline Hickey, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 13, 2023 5.15%

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
CORRECTED ARBITRATION DECISION

Faidat Woleola
Employee/Petitioner

v.

FedEx Ground Package Systems, Inc.
Employer/Respondent

Case # **19** WC **19349**

Consolidated cases: **-----**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jacqueline Hickey**, Arbitrator of the Commission, in the city of **Chicago**, on **July 22, 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 **6/27/2019**, 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 $**56,847.96**; the average weekly wage was $**1,093.23**.

On the date of accident, Petitioner was **38** years of age, ***married*** 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 $**39,896.57** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**4,941.46** for other benefits (short term disability), for a total credit of $**44,838.03**.

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

ORDER

Medical benefits
After incorporating Respondent's stipulated credit for medical benefits already paid pursuant to the Arbitrator's Exhibit 1 and RX1, Respondent shall pay Petitioner for reasonable and necessary medical services, pursuant to the medical fee schedule: Pinnacle Pain Management Specialists $2,021.50, Windy City Anesthesia $4,275.00, and ATI Physical Therapy $15,662.01, as provided in Sections 8(a) and 8.2 of the Act.

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $728.82/week for 75 2/7 weeks, commencing 7/1/2019 through 8/29/2019 and from 9/18/2019 through 12/29/2020, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $44,838.03 (TTD and short-term disability) for temporary total disability benefits that have already been paid.

Permanent Partial Disability
Considering the evidence and evaluating permanent partial disability in accordance with the five factors pursuant to Section 8.1b, the Arbitrator finds that Petitioner sustained 25% loss of use of the person as a whole under Section 8(d)(2), representing 125 weeks of permanent partial disability compensation. See Rider to Decision.

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

June 15, 2023

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Faidat Woleola,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 19WC19349
FedEx Ground Package Systems, Inc.,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on July 22, 2022 in Chicago, Illinois before Arbitrator Jacqueline Hickey on Respondent's Request for Hearing. Issues in dispute include Causal Connection, Medical bills, Temporary Total Disability and Nature and Extent. Arbitrator's Exhibit "Ax" 1.

Background

Petitioner, Faidat Woleola (current surname "Oguntade" following divorce), worked for Respondent as an operations manager beginning in April 2019. Transcript of Arbitration, hereinafter referred to as "R.", 11-12. As an operations manager Petitioner worked on the dock with the package handlers and loaded and unloaded trailers. R. 12. She testified that she would assist package handlers in loading packages weighing between 5 and 75 lbs. R. 14-15.

Petitioner's Current & Prior Medical Conditions

Petitioner denied any medical issues or treatment for her cervical and thoracic spine prior to the work accident of June 27, 2019. R. 41-42. She denied having any issues performing her full duty job prior to the accident. R. 42. She testified that as of the date of trial she continues to have pain in her cervical and thoracic spine and takes over-the-counter medication to help. R. 44. She does not believe that her medical bills have been paid. R. 45.

Accident

Petitioner was working as an operations manager on June 27, 2019. On the date of accident, she was standing inside a trailer when a package came off of the loading chute and struck her in the head. R. 18, 20. The package contained ceramic toilet parts. R. 21. Petitioner testified that she immediately felt pain in her neck, reported the accident, and went to the on-site nurse. R. 21-22. Petitioner continued working her shift that day. R. 22.

Summary of Medical Records

Petitioner sought medical care with Dr. Neeraj Jain with Pinnacle Pain Management Specialists on July 1, 2019. Px1, p. 10. Dr. Jain recorded a history of injury consistent with Petitioner's trial testimony and noted that she complained of pain in her head, neck, and mid-back following the accident. *Id.* Dr. Jain noted that Petitioner had a positive cervical compression test and limited range of cervical motion. *Id*. at 11. Dr. Jain diagnosed cervical/thoracic strains, cervical facet syndrome, and post-concussion headache. *Id.* at 12. He recommended physical therapy, prescribed meloxicam and cyclobenzaprine and provided work restrictions of no lifting or pushing greater than 10 lbs. *Id.* Dr. Jain addressed causal connection and stated that Petitioner had an underlying degenerative condition that was silent and asymptomatic but was rendered symptomatic requiring treatment as a result of the injury. *Id.* Petitioner testified that Respondent did not accommodate her restrictions. R. 23. She began receiving TTD benefits at that time. R. 24.

Petitioner underwent a course of physical therapy for her thoracic and cervical conditions with Premier Physical Therapy from July 2, 2019 through August 13, 2019. Px3, pp. 4-64. Petitioner followed up with Dr. Jain on July 15, 2019 where she continued to complain of pain in the neck, mid-back, and left knee. Px1, p. 13. Dr. Jain recommended bilateral C4, C5, and C6 medial branch blocks and bilateral thoracic facet joint injections while placing Petitioners off work. *Id*. at 16. Those nerve blocks were not initially approved by the Respondent. R. 25. Petitioner followed up again with Dr. Jain on July 29, 2019 wherein the blocks were again recommended and Petitioner continued off work. Px1, p. 18-21. Petitioner testified that she returned to work on August 30, 2019. R. 25-26.

Petitioner underwent bilateral medial branch blocks at C4, C5, and C6 performed by Dr. Jain on September 18, 2019 and was placed off work. Px1, p. 155-156. Petitioner underwent right T3, T4, and T5 medial branch radiofrequency ablations with Dr. Jain on September 23, 2019 and was continued off work. *Id.* at p. 164-165. Petitioner testified that these blocks provided temporary relief of her symptoms. R. 26. Petitioner followed up with Dr. Jain on September 25, 2019 and it was noted that she had 100% relief from the injections temporarily. Px1, p. 23. Based on these results Dr. Jain recommended a second round of cervical blocks in order to increase the efficacy of radiofrequency ablations while continuing Petitioner off work. *Id.* at 25-26. Petitioner followed up with Dr. Jain on October 7, 2019 and November 5, 2019 wherein the blocks were still recommended and Petitioner continued off work. *Id.* at 28-39.

On December 4, 2019 Petitioner underwent right C4, C5, and C6 radiofrequency ablations with Dr. Jain. *Id.* at 157-159. Petitioner followed up with Dr. Jain on December 30, 2019 and complained of a numbing sensation into the neck with continued pain. Px1, p. 40. Dr. Jain recommended thoracic nerve block at T3, T4, and T5 due to continued axial pain at those levels and continued Petitioner off work. *Id*. at 44. Dr. Jain also changed Petitioner's medication to include Cymbalta. *Id*.

On January 15, 2020 Petitioner underwent bilateral T3, T4, and T5 medial branch blocks with Dr. Jain. *Id.* at 160-161. On January 22, 2020 those blocks were repeated. *Id*. at 162-163. Petitioner testified that these blocks helped her temporarily. R. 29-30. Petitioner followed up with Dr. Jain on January 27, 2020 and it was noted that her cervical pain had improved and the thoracic blocks provided temporary relief. Px1, p. 46. Dr. Jain recommended T3, T4, and T5 radiofrequency

ablations and continued Petitioner off work. *Id.* at 51. Petitioner testified that Respondent did not approve these procedures. R. 30. Petitioner followed up with Dr. Jain on March 6, 2020, April 13, 2020, May 11, 2020, June 8, 2020 and July 6, 2020 wherein Dr. Jain noted that they were still awaiting approval for these procedures and Petitioner remained off work. Px1, p. 53-87. Petitioner followed up with Dr. Jain on August 11, 2020 and September 10, 2020 when the radiofrequency ablation was approved. Px1, p. 88-105.

Petitioner underwent right T3, T4, and T5 medial branch radiofrequency ablation with Dr. Jain. *Id*. at 164-165. Petitioner followed up with Dr. Jain on October 7, 2020 and it was noted that she had mild improvement following the ablation and that her neck pain was recurring. *Id*. at 106. Dr. Jain recommended cervical ablations and continued Petitioner off work. *Id.* at 112. Dr. Jain noted at the next office visit on November 4, 2020 that they were giving more time for the ablation to take effect and continued Petitioner off work. *Id.* at 121.

On December 2, 2020 Dr. Jain recommended that Petitioner undergo a functional capacity evaluation in order to attempt to return Petitioner to work. *Id*. at 129. Petitioner underwent a functional capacity evaluation at ATI Physical Therapy on December 22, 2020. Px4, p. 100-106. The FCE revealed that Petitioner could return to work in a Sedentary/Light level. *Id.*

Petitioner followed up with Dr. Jain on December 28, 2020 and Dr. Jain recommended that Petitioner undergo a course of physical therapy and return to work pursuant to the FCE restrictions. Px1, p. 138. Petitioner returned to work in an accommodated position for Respondent on December 29, 2020. R. 36. Petitioner underwent a course of physical therapy at ATI Physical Therapy from January 7, 2021 through March 19, 2021. Px4.

Petitioner followed up with Dr. Jain on January 27, 2021 and February 24, 2021 and was discharged with restrictions per the FCE. Px1, p. 139-154.

Petitioner's New Position with Respondent

Petitioner testified that when she returned to work on December 29, 2020 it was in an accommodated position that was different from her previous one. R. 38. Petitioner was removed from the dock so she would not be required to lift or load/unload trailers. R. 39. Petitioner testified that she performs no lifting whatsoever and performs more office type work despite her job title remaining the same. R. 39. She receives her job assignments from the area manager and does not perform any work outside of a seated setting. R. 40-41. Petitioner testified that she is making the same amount of money as she was making prior to the accident, with yearly increases. R. 41, 62.

Testimony of Respondent's Witness, Chris Brown

Respondent called Mr. Christopher Brown to testify. R. 67. Mr. Brown is the assistant senior manager of the Chicago hub for Respondent. R. 67. Mr. Brown is Petitioner's supervisor, with other managers in between in rank. R. 68. Mr. Brown identified the job offer made to Petitioner in April 2019 for the position of operations manager and the job duties of an operations manager. Rx2 and Rx11. He confirmed that Petitioner continues to work in an accommodated position with Respondent and that Respondent intends to permanently accommodate Petitioner's restrictions. R. 73-74. Mr. Brown completed a reasonable accommodation assessment with Petitioner on September 30, 2021. Rx4.

Mr. Brown testified on direct examination that Petitioner's current job duties are primarily administrative, while an operations manager would be primarily on the dock and around packages and trailers. R. 78-79. Petitioner's current job title is operations engagement manager. R. 79. Mr. Brown testified that Petitioner is not precluded from promotions due to her restrictions, however, Mr. Brown was unaware of any individuals working for Respondent in permanently accommodated positions ever being promoted. R. 83, 87.

On cross-examination Mr. Brown testified that Petitioner's job description (Rx11) does not demonstrate what Petitioner currently does for Respondent. R. 91. He testified that Petitioner does not perform any lifting contained in the job description. R. 91.

Section 12 Examiner- Dr. Goldberg

Respondent sent Petitioner for an IME with Dr. Edward Goldberg on August 5, 2020. R. 32. Dr. Goldberg opined that Petitioner sustained cervical and thoracic strains and cervical thoracic facet joint syndrome as a result of her work accident. Rx5, p. 2. Dr. Goldberg believed these conditions were causally related to her June 27, 2019 work accident. *Id.* He further opined that she required an FCE for her cervical condition and radiofrequency ablation for her thoracic condition, the need for which was causally related to the work accident. *Id.* Dr. Goldberg stated that the treatment Petitioner had received to date had been reasonable, appropriate, and causally related to the accident. *Id.* He believed Petitioner capable of working with a 10 lb. lifting restriction. *Id.*

On August 18, 2021 Dr. Edward Goldberg authored an addendum IME report and opined that all treatment had been reasonable and necessary, and due to the accident. Rx6, p. 2. Dr. Goldberg recommended an FCE to see whether Petitioner could return to work as an operations manager. *Id.*

On September 2, 2021 Dr. Goldberg authored a second IME addendum report and confirmed that he believes that Petitioner's cervical and thoracic strains and facet syndromes were related to the accident. Rx7, p. 2. He opined that Petitioner was at maximum medical improvement and could continue to work pursuant to her FCE. *Id.*

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. *820 ILCS 305/1(b)3(d)*. To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of 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) 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 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).

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The Arbitrator, as the trier of fact in this case, has the responsibility to observe the witnesses testify, judge their credibility, and determine how much weight to afford their testimony and the other evidence presented. *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 47. Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission,* 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission,* 52 Ill. 2d 490 (1972).

The Arbitrator observed Petitioner during the hearing and finds her to be a credible witness. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable. None of the physicians who treated or examined her noted any symptom magnification. The Arbitrator finds Petitioner's testimony to be straight forward, truthful, and consistent with the records as a whole.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Tolbert v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130523WC, ¶ 1, 11 N.E.3d 453. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n,* 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

The Arbitrator finds that it is unrebutted that Petitioner's thoracic and cervical conditions are causally related to the 6/27/19 accident and that Respondent's dispute per Arbitrator's Exhibit 1, hereinafter "Ax1" was subject to testimony. Ax1. Given Petitioner's testimony that she is not claiming that any lumbar condition is causally related to the 6/27/19 accident and per Dr. Goldberg's IME opinions that no such condition is, the Arbitrator finds accordingly.

The Arbitrator therefore finds that Petitioner's current condition of ill-being is causally related to Petitioner June 27, 2019 work accident. Dr. Jain and Dr. Goldberg both opine in their records and

reports that Petitioner's condition is causally related to the undisputed work accident. There are no opinions to the contrary, thus causal connection is clearly established.

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:

Dr. Jain state's specifically in each office note that Petitioner's medical care has been reasonable and necessary. He states this in the final office note of February 24, 2021. Px1, p. 154. Likewise, Dr. Goldberg states specifically in each one of his reports that Petitioner's medical care been both reasonable and necessary. The only opinions as to the necessity of medical care are the three utilization review reports produced by Respondent. Rx8, Rx9, Rx10. These reports dispute the need for Lidozen patches, ondansetron, and fexmid. The Arbitrator finds the opinions of both the treating physician and IME physician to be more credible. Accordingly, the Arbitrator finds at Petitioner's medical care mentioned above was also reasonable and necessary.

Petitioner produced outstanding medical bills from Pinnacle Pain Management Specialists, Windy City Anesthesia, and ATI Physical Therapy. The bills from Pinnacle Pain Management Specialists are for office visits with Dr. Jain. Px1, p. 2-9. The bills from Windy City Anesthesia are for the injections received on September 16, 2020 and September 23, 2020. Px2, p. 3, 6. The bills from ATI Physical Therapy are for therapy visits and the FCE. Px4, p. 5-8, 99. None of these bills are for disputed medical care. Therefore, these bills are awarded to Petitioner and are to be adjudicated pursuant to the Illinois Medical Fee Schedule.

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for all of said treatment. As such, after incorporating Respondent's stipulated credit for medical benefits already paid pursuant to the Arbitrator's Exhibit 1 and RX1, the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

- Pinnacle Pain Management Specialists $2,021.50
- Windy City Anesthesia $4,275.00
- ATI Physical Therapy $15,662.01

Issue K, 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).

The Arbitrator finds that Petitioner is entitled to TTD benefits from July 1, 2019, through August 29, 2019 and from September 18, 2019 through December 29, 2020, a period of 75 2/7 weeks. Petitioner's medical records and testimony establish that she was either in an off-work capacity during these periods or had work restrictions that could not be accommodated. Respondent paid these periods but stopped TTD effective August 5, 2020. Ax1, p. 2. The Arbitrator finds no basis for the stoppage of benefits on this date as Petitioner was still in an off-work status on that date. Further, while Respondent's IME doctor, Dr. Goldberg, opined in his August 5, 2020 IME report that Petitioner could return to work with restrictions, there was no evidence introduced that an accommodated position was available nor offered at that time. The evidence introduced however does establish that a permanent, accommodated position was eventually offered to and accepted by Petitioner, effective December 30, 2020. Accordingly, the Arbitrator finds that Petitioner is entitled to these two periods of TTD benefits, totaling 75 2/7 weeks, less Respondent's stipulated credit for benefits already paid. Respondent's credit totals $44,838.03: $39,896.57 in TTD paid and $4,941.46 in short term disability paid, covering from 7/1/19-8/29/19 and from 9/21/19-8/5/20. Ax1.

Issue L, the nature and extent of the injury, the Arbitrator finds 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 an operations manager at the time of the accident and that she is not able to return to work in her same prior capacity as a result of said injury. Despite having the same job, the function of her new position is administrative now. The Arbitrator notes that Petitioner is presently in a permanent accommodated position with the job title of Operations Engagement Manager. Respondent's witness, assistant senior manager for FedEx Ground's Chicago Hub, Mr. Brown, testified that Petitioner's current primary job duties consist of administrative tasks, rather than working on the dock as she did before the accident. R. 78 He testified (which was corroborated by Petitioner) that now she does not perform any lifting. R. 93. Further, the Arbitrator notes that Mr. Brown personally conducts reasonable accommodation requests for FedEx employees but is not aware of any employees in permanently accommodated positions ever being promoted. R. 86-87. Because of Petitioner's inability to perform lifting in her new accommodated position and the inability to be promoted due to this accommodated position, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 38 years old at the time of the accident. Because of Petitioner's young age and likelihood that she will work for a number of decades with permanent lifting restrictions, the Arbitrator therefore gives significant weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner does not have a loss of wages. Because of Petitioner's ability to earn the same wage with meritorious increases, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner had an FCE performed on December 22, 2020 that was conditionally valid and placed Petitioner in the Sedentary-Light demand level. Px4, p. 100. Petitioner's treating physician, Dr. Jain, released Petitioner with these permanent restrictions on February 24, 2021. Px1, p. 154. Respondent's IME physician, Dr. Edward Goldberg, agreed with Petitioner's permanent restrictions in his September 2, 2021 addendum report. Rx7, p. 2. Because of Petitioner's undisputed permanent work restrictions that do not allow her to perform the essential functions of her pre-accident position, the Arbitrator therefore gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 25% loss to the Person as a Whole pursuant to §8(d)(2) of the Act, representing 125 weeks of PPD compensation.

It is so ordered:

Jacqueline C. Hickey
Arbitrator

6/15/23
Date

June 15, 2023

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC008452
Case Name	Tracy Schalk v. Fresenius Kabi USA
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0501
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Kitra Killen
Respondent Attorney	Jeff Goldberg

DATE FILED: 10/24/2024

/s/Maria Portela, Commissioner

Signature

24IWCC0501

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TRACY SCHALK,

Petitioner,

vs. NO: 21 WC 8452

FRESENIUS KABI USA,

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 and permanent partial disability benefits and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's Decision as to causal connection and medical expenses. The Commission further affirms the credit awarded for the temporary total disability benefits that were paid, but clarifies the Award to reflect an award of temporary total disability benefits are awarded for the period of March 18, 2021 through February 28, 2022.

However, based on the totality of the evidence, the Commission reduces the award of permanent partial disability benefits from 27.5% loss of a person as a whole to an award of 20% loss of a person as a whole. The Commission agrees with the Arbitrator that the Petitioner's testimony was credible and that the medical records corroborate Petitioner's testimony as well as her current condition of ill-being. However, the Commission finds the award to be excessive in comparison to other awards of the Commission for the same or similar injuries. The Commission therefore modifies the award down based on the following Section 8.1b(b) analysis:

(i) No AMA impairment rating was submitted. This factor is given no weight.

(ii) Petitioner is a Set Up Operator and has held that position for many years and was able to return to this position following the treatment for her work-related injury. This factor is given some weight.

(iii) At the time of the work accident, Petitioner was 45 years old. There is no evidence as to how, if at all, Petitioner's age impacted her recovery, employability and/or ability to perform her job duties. This factor is given no weight.

(iv) Although there was evidence that Petitioner is moving to another position with Respondent, there was no evidence that Petitioner's earning capacity has been either positively or negatively impacted by Petitioner's need to request help from co-workers or her limitations with lifting. Additionally, Petitioner has a full-duty release to work. As there is no evidence that Petitioner's earnings have been impacted, this factor is given no weight.

(v) The evidence is clear that Petitioner sustained a 4 mm disc herniation (Px1 4/1/21 visit; Px2) and that she failed conservative treatment before ultimately undergoing surgery (Px1 6/7/21 visit). Petitioner underwent a revision lumbar laminotomy with partial facetectomy and discectomy at L5-S1 on the right side on 8/31/23. (Px1) Following surgery, Petitioner remained off work, underwent PT and work conditioning, and ultimately returned to work full duty at maximum medical improvement ("MMI"). Although Petitioner testified that she does not lift anything heavy and gets help from co-workers (T. 25, 29-30), Petitioner did not establish that this has caused her any problems at work as far as potential promotions or a difference in wages. Petitioner does not take any prescription medications due to her work injury. (T. 28) Although Petitioner testified she has to get up if she sits too long and asks for assistance if she's lifting anything over 25, 30 pounds, (T. 25) overall, Petitioner did not testify as to any long-term or ongoing deficits as a result of her work injury. This factor is given significant weight.

Based on the above, the award is modified down from 27.5% loss of the person as a whole to 20% loss of the person as a whole.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $761.55 per week for a period of 49-5/7 weeks, March 18, 2021 through February 28, 2022, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent is awarded a credit in the amount of $37,751.12 for temporary total disability benefits paid for the same time period.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $685.39 per week for a period of 100 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 20% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $16,508.00 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 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.

October 24, 2024

MEP/dmm

O: 92424

49

/s/ *Maria E. Portela*

Maria E. Portela

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/*Kathryn A. Doerries*

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC008452
Case Name	Tracy Schalk v. Fresenius Kabi USA
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Raychel Wesley, Arbitrator

Petitioner Attorney	Kitra Killen
Respondent Attorney	Jeff Goldberg

DATE FILED: 3/14/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 14, 2023 4.70%

/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

Tracy Schalk
Employee/Petitioner

v.

Fresenius Kabi USA
Employer/Respondent

Case # **21** WC **008452**

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 **Raychel Wesley**, Arbitrator of the Commission, in the city of **Chicago**, on **January 10, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **2/23/21**, 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 $**59,400.64**; the average weekly wage was $**1,142.32**.

On the date of accident, Petitioner was **45** 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 $**37,751.12** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**37,751.12**.

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

ORDER

The Arbitrator finds that the Petitioner sustained a permanent partial injury to her lumbar spine and awards 27.5% person as a whole.

The Arbitrator finds the outstanding medical bill from Loyola University Medical Center in the amount of $16,508.00 is reasonable and necessary and orders Respondent to pay this bill pursuant to the Fee Schedule.

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 **MARCH 14, 2023**

Signature of Arbitrator

Schalk v. Fresenius Kabi USA, 21 WC 08452

STATEMENT OF FACTS

Petitioner testified that as of February 23, 2021, she had been employed by Respondent as a set-up operator. (TR 10-11). She explained that her job required pushing, pulling, standing and lifting between 10 to 55 pounds. On February 23, 2021, Petitioner was lifting a stainless steel part weighing approximately 35 pounds. (TR 11-12). When she bent over to lower the steel part into the sink down to knee level she felt a sharp pain in her right lower back and then felt pain going down into her right leg. (TR 12). She tried to walk over to tell her boss about the incident and instantly began having numbness down her right leg (TR 12).

Petitioner sought medical attention initially at Physicians Immediate Care in Park Ridge, Illinois. (TR 13-14). At Physicians Immediate Care, she was examined and given a referral for physical therapy. (TR 14). She attended a few physical therapy sessions and also underwent a lumbar MRI as recommended by Physicians Immediate Care. (TR 14). After about 3-4 visits at Physicians Immediate Care, Petitioner sought treatment with spine surgeon, Dr. Alexander Ghanayem, who had treated her in the past for a work related spine injuries and had performed spine surgeries for Petitioner. (TR 15-16). Petitioner testified that following her prior surgeries with Dr. Ghanayem, she returned to work for Respondent at the same position and she continued to work without interruption for about five years until her work injury on February 23, 2021. (TR 15-17).

Regarding the February 23, 2021 work injury, Petitioner testified she had her initial visit with Dr. Ghanayem on April 1, 2021. At that visit, she was examined and the doctor reviewed the MRI films. (TR 17). The doctor also ordered physical therapy, prescribed medication and recommended an epidural steroid injection. (TR 17) (PX 1).

Petitioner underwent the recommended epidural steroid injection and then returned to see Dr. Ghanayem on May 3, 2021. (TR 17) (PX 1). At that time, a second epidural steroid injection was recommended and Petitioner did have the second injection before returning to Dr. Ghanayem on May 24, 2021. (TR 18). At the May 24, 2021 visit, a third epidural steroid injection was ordered and performed on May 28, 2021. (TR 18-19).

Petitioner testified she next saw Dr. Ghanayem on June 2, 2021 at which time he recommended lumbar surgery involving a repeat discectomy at level L5-S1. (TR 19) (PX 1). Petitioner did undergo the recommended surgery at Loyola Hospital on August 31, 2021 and remained in the hospital until she was discharged on September 2, 2021. (TR 20) (PX 1).

Petitioner had her first post-op visit with Dr. Ghanayem on October 4, 2021. (TR 20) (PX 1). At that time, Petitioner testified that she still experienced pain in her lower back, however, she no longer had the numbness in her right leg. (TR 20-21). Dr. Ghanayem proceeded to order post-op physical therapy which Petitioner underwent until her next visit with Dr. Ghanayem on

November 1, 2021. (TR 21) (PX 1). At the visit on November 1, 2021, the doctor ordered an additional month of physical therapy and provided an off work note. (TR 21-22) (PX 1).

Petitioner next saw Dr. Ghanayem on December 6, 2021 at which time the doctor examined her, recommended four more weeks of physical therapy and provided another off work note. (TR 22) (PX 1). Petitioner returned to Dr. Ghanayem on January 24, 2022 at which time the doctor recommended she complete

the physical therapy program and then begin a work conditioning program. The doctor recommended she continue off work and to return in four weeks. (TR 22-23). (PX 1). Petitioner did attend the work conditioning program. (TR 23).

Petitioner testified she had her final visit with Dr. Ghanayem on February 28, 2022. Dr. Ghanayem examined Petitioner and provided a release for full duty work. (TR 23) (PX 1). Petitioner testified that she has had no medical visits with Dr. Ghanayem or any other physicians since February 28, 2022 related to her work injury. (TR 23). She also testified that she has had no new accidents or injuries involving her lower back since the work accident on February 23, 2021. She further testified that she returned to work for Respondent approximately on February 29, 2022 to the same position as a set-up operator. However, Petitioner explained she has co-workers who help her if she has to lift anything over 25-30 pounds. (TR 25).

Petitioner testified that at the present time, if she tries to sit longer than two hours, she begins experiencing pain in her right lower back. (TR 25). She explained that she can only walk four or five blocks without feeling pain in her right lower back. (TR 25).

Petitioner testified that she did attend an Independent Medical Examination at the request of Respondent in August of 2021. (TR 24) (PX 2).

CONCLUSIONS OF LAW

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

The Arbitrator notes that Respondent offered no evidence to dispute that the outstanding medical bill from Loyola University Medical Center was both reasonable and necessary. (PX 3). In fact, the IME report of Dr. Deutsch supports that the treatment rendered to Petitioner was reasonable and necessary. Dr. Deutsch opined that the treatment and surgery proposed by Dr. Ghanayem was causally related to the work accident as well. (See PX 2).

For these reasons, the Arbitrator orders Respondent to pay the outstanding bill from Loyola University Medical Center in the amount of $16,508.00, pursuant to the Fee Schedule. (PX 3).

With respect to Issue (L), what is the nature and extent of the injury, the Arbitrator finds as follows:

The Arbitrator has taken into consideration that Petitioner underwent two (2) lumbar surgeries, both with Dr. Ghanayem, prior to her work accident on February 23, 2021. Petitioner testified that she had prior lumbar surgeries on 2014 as well as 2016. (TR 15-16)

The treating medical records verify that on August 31, 2021, Dr. Ghanayem performed a “revision lumbar laminectomy and discectomy at L5-S1, right.” This surgery was to address the diagnosis of a “recurrent lumbar disk herniation, L5-S1, right.” (See Operative Report, PX1 page 581-582). After her surgery on August 31, 2021, Petitioner underwent an extensive course of physical therapy and work-conditioning. (PX 1). She was ultimately released from care by Dr. Ghanayem on February 28, 2021, however, it was noted by the doctor that Petitioner “continued to have mild discomfort across her lower back.” (PX 1, Page 1197).

The Arbitrator found Petitioner to be a very credible witness and notes that she testified to various ongoing and continuing symptoms regarding her February 23, 2021 work injury. The Petitioner testified honestly and credibly that the August 31, 2021 surgery improved her symptoms, however, she did explain that because lifting over 25-30 pounds caused pain, she had co-workers who helped her and lifted any items weighing over 25-30 pounds. (TR 25). She further testified that she experiences pain in her low back if she sits longer than two hours and she can only walk 4 to 5 blocks without feeling pain in her right lower back. (TR 25).

Pursuant to Section 8.1(b) of the Act, the Arbitrator must consider certain factors and criteria in assessing permanent partial disability, including, the level of impairment under the AMA Guides, the occupation of the injured worker, the age of the injured worker, the future earning capacity of the injured worker and evidence of disability corroborated by the treating medical records. The Act provides that no single enumerated factor shall be the sole determinant of disability. After considering the factors, the Arbitrator finds that Petitioner is permanently partially disabled to the extent of 27.5% loss of use of the person as a whole. With respect to the factors, the Arbitrator finds the following:

A. Level of Impairment under the AMA Guides

The Arbitrator finds that neither Petitioner nor Respondent submitted a report setting forth an AMA impairment rating. The Arbitrator finds that an impairment rating is not necessary based on the appellate courts holding in *Corn Belt Energy v. Illinois Workers' Compensation Commission*, 2016 IL App (3d) 150311WC (3d Dist. 2016). The court held that an AMA Impairment Rating is not required for the Arbitrator to award permanent partial disability benefits. *Id.* Accordingly, the Arbitrator will not consider this factor as it relates to the nature and extent of the injury.

B. Occupation of Petitioner

At the time of the work-related accident, Petitioner had been employed as set-up operator for many years. Petitioner was able to continue in that occupation albeit with assistance to perform her duties. The Arbitrator gives this factor some weight.

C. Age of Petitioner

At the time of the accident, Petitioner was 45. No evidence was presented as to how Petitioner's age affected her disability. At age 45, the Arbitrator notes that Petitioner is most likely several years away from retirement and does not give this factor significant weight because of the lack of any evidence indicating that it is relevant. The Arbitrator does not consider that Petitioner's age increased her disability at all.

D. Future Earning Capacity

The Arbitrator finds that Petitioner has ongoing and continuing symptoms regarding her February 23, 2021 work injury. The Petitioner testified that the August 31, 2021 surgery improved her symptoms, however, she did explain that because lifting over 25-30 pounds caused pain, she had co-workers who helped her and lifted any items weighing over 25-30 pounds. (TR 25). She further testified that she experiences pain in her low back if she sits longer than two hours and she can only walk four to five blocks without feeling pain in her right lower back. Based on this testimony, which is unrebutted and supported by the medical records, the Arbitrator places significant weight on this factor. However, Petitioner did testify additionally that she is being moved to another

position within the company and this move will most likely balance out any diminished earning capacity as it relates to this employer.

E. Evidence of Disability Corroborated by the Treating Medical Records

The medical records establish that on August 31, 2021, Dr. Ghanayem performed a "revision lumbar laminectomy and discectomy at L5-S1, right." This surgery was to address the diagnosis of a "recurrent lumbar disk herniation, L5-S1, right." (See Operative Report, PX1 page 581-582). After her surgery on August 31, 2021, Petitioner underwent an extensive course of physical therapy and work-conditioning. (PX 1). She was ultimately released from care by Dr. Ghanayem on February 28, 2021, however, it was noted by the doctor that Petitioner "continued to have mild discomfort across her lower back".

The medical records and Petitioner's testimony document her subjective complaints. The medical records also document Petitioner's objective findings. Dr. Ghanayem released the Petitioner to return to full duty but did note some ongoing symptoms. The Arbitrator accords this factor significant weight.

Accordingly, based on the credible testimony of Petitioner, the medical evidence and considering the above factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 27.5% loss of use of the person as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC015143
Case Name	Kody Stueve v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0502
Number of Pages of Decision	9
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 10/24/2024

/s/Maria Portela, Commissioner

Signature

24IWCC0502

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

KODY STUEVE,

Petitioner,

vs. NO: 23 WC 15143

STATE OF ILLINOIS – MENARD CORRECTIONAL CENTER,

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 nature and extent and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission affirms the Arbitrator's Decision as to the award of 15% loss of use of each arm, however, modifies the Arbitrator's Decision to reduce the award of 15% loss of use of the right hand to 12.5% and to increase the award of 12.5% loss of use of the left hand to 15%.

Petitioner performed repetitive job duties resulting in diagnoses of both carpal tunnel and cubital tunnel syndromes. Both conditions failed to respond to conservative care and required surgery. Petitioner credibly testified that following surgery, he would still experience residual symptoms after a long day at work. The Commission agrees with the Arbitrator's Decision, but finds that although Petitioner is right hand dominant, the testimony of Petitioner, which is corroborated by the medical records, indicates that Petitioner's left hand was always worse than the right hand. (T. 16, Px4) Based on that evidence, the Commission increases the permanency award as to the left hand. In the same vein, despite the fact that Petitioner is right hand dominant, his symptomatology was always less in his right hand. The Commission, therefore, reduces the permanency award as to the right hand.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $998.02 per week for a period of 128.15 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 15% loss of use to the left hand, 12.5% loss of use to the right hand, and 15% loss of use to each the left and right arms.

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.

October 24, 2024
MEP/dmm
O: 101524
49

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC015143
Case Name	Kody Stueve v. State of Illinois - Menard Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 5/21/2024

/s/ Bradley Gillespie, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 21, 2024 5.16%

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

May 21, 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
NATURE AND EXTENT ONLY

KODY STUEVE
Employee/Petitioner

v.

STATE OF ILLINOIS/MENARD CORRECTIONAL CENTER
Employer/Respondent

Case # **23** WC **015143**

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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin**, on **April 2, 2024**. By stipulation, the parties agree:

On the date of accident, **June 2, 2023**, 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 $**92,801.90**, and the average weekly wage was $**1,784.65**.

At the time of injury, Petitioner was **35** years of age, ***married*** with **4** dependent children.

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

Respondent shall be given a credit of **all paid** for TTD, $- for TPD, $- for maintenance, and $- 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 **128.15** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **a 15% loss of use of the right and a 12.5% loss of use of the left hand (52.25 weeks) and the 15% loss of use of the right and left arms (75.9 weeks)**.

Respondent shall pay Petitioner compensation that has accrued from **January 4, 2024,** through **April 2, 2024**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Bradley D. Gillespie

Signature of Arbitrator

May 21, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KODY STUEVE,	)	
	)	
Petitioner,	)	
	)	
v.	)	**IWCC No.: 23WC015143**
	)	
STATE OF ILLINOIS/ MENARD CORRECTIONAL CENTER,	)	
	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR

FINDINGS OF FACT

On the date of injury, Petitioner was a 35-year-old Correctional Food Service Supervisor II for Respondent. (AX1; T.10) The parties stipulated he sustained compensable repetitive injuries arising out of and in the course of his employment which manifested on June 2, 2023. (AX1) He testified he began his career with Respondent on August 17, 2009, as a correctional officer and remained so for seven (7) years. (T.10) He estimated that he spent approximately 90% of his time working in cell galleries. (T.11) He reported numbness and pain in his wrists and elbows that began during his time as a gallery officer and continued while working as a food service supervisor, as he continued to aggravate his symptoms as he turned keys, moved heavy supplies, and prepared food in the course of his duties. (T.12-13) Petitioner testified that there was no part of his job as either a correctional officer or food service supervisor that didn't require the use of his upper extremities. (T.13) Documentation containing in-depth analyses regarding both of Petitioner's job titles were entered in to evidence as Petitioner's Exhibits 11 through 17.

Petitioner sought treatment with his primary care physician, Dr. Molnar, and was referred for nerve conduction studies with Dr. Fakhre Alam. (T.13; PX3) These were performed on June 2, 2023, and showed moderately severe bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. (PX3) Petitioner thereafter came under the care of Dr. Matthew Bradley, who noted Petitioner's complaints of upper extremity pain, numbness, and tingling that impaired his ability to sleep and even hold his phone. (PX4) He noted Petitioner's symptoms worsened during the pandemic, because "two to three people were doing the work of 20-30 inmates, requiring significant increases in the repetitive use of his hands and elbows". *Id.* Physical examination showed positive findings of compression neuropathy consistent with the nerve studies, which Dr. Bradley reviewed on June 26, 2023. *Id.* Since Petitioner had already been using splints with no relief in his symptoms, Dr. Bradley recommended surgery. *Id.*

On July 28, 2023, Dr. Bradley performed open right carpal and cubital tunnel releases. (PX6) Objective intraoperative findings demonstrated significant chronic inflammatory changes with some adhesions noted to the underlying nerve of the cubital tunnel, a thickened and flattened appearance of the transverse carpal ligament, and a flattened median nerve. *Id.* Once Petitioner's right side recovered sufficiently (PX4), Dr. Bradley performed the same procedures on Petitioner's left upper extremity on September 6, 2023, and similarly found thickening with adhesions and scar tissue about the cubital tunnel and flattening of the median nerve. (PX6) Petitioner reported improvement in his symptoms during the September 21st follow-up, but noted residual tingling in his digits and swelling of his left elbow. (PX4) Dr. Bradley placed Petitioner on light duty and advised him to take anti-inflammatory medication for his symptoms. *Id.*

Respondent had Petitioner examined by Dr. William Feinstein on September 7, 2023. (RX2) He examined Petitioner, reviewed Petitioner's medical history, and reviewed Petitioner's job history for the Department of Corrections. *Id.* He agreed with Petitioner's diagnoses and further agreed that Petitioner's work injury was the cause or a contributing cause to his condition of ill-being. *Id.* He believed that Petitioner's care and treatment had been reasonable and necessary, and he believed Petitioner would require additional care until he reached maximum medical improvement. *Id.*

Petitioner returned on November 2, 2023, and advised that although he was doing well, he continued to have residual paresthesias in his left small finger. (PX4) Dr. Bradley note it was possible that Petitioner had some ongoing Guyon's tunnel but released him to full duty. *Id.* Petitioner's symptoms continued to improve, and on January 4, 2024, Dr. Bradley noted that Petitioner's complaints had resolved and placed him at maximum medical improvement. (PX4)

Petitioner testified that after his release by Dr. Bradley, he was in fact doing well at the time of his release to full-duty work. (T.15-16) However, he has since been asked and/or mandated to work overtime on a frequent basis, and his symptoms have increased. (T.16, 23) He stated, "Usually, every day by the time I get home, I'm hurting. And then if I work over, depending on what it is, but most of the time it's pretty – pretty painful. If I work a 12-hour shift, I'm definitely taking Ibuprofen when I get home." (T.16) Petitioner also stated that his left hand and elbow go numb with increased lifting/carrying or prolonged flexion, that his grip strength is diminished, and that he no longer has full extension in his left elbow. (T.16-18) Petitioner testified that his job as a food service supervisor requires him to lift a lot of heavy pans, and he voiced difficulty with not only lifting but also with twisting motion and peeling or chopping food due to the pain it causes. (T.17) He takes medication for his symptoms three (3) to four (4) times a week and stretches to relieve his symptoms. (T.18) His hobby of gardening has also been adversely affected. (T.17)

CONCLUSIONS OF LAW

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

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

ii. **Occupation**: Petitioner continues to serve as a Food Service Supervisor II. Petitioner credibly testified that his job duties aggravate his condition, particularly when he works 12-hour shifts. (T.15-23) He stated he is required to lift heavy pans and prepare food, which causes pain. (T.17) The Arbitrator places greater weight on this factor.

iii. **Age**: Petitioner was 35 years old at the time of his injury. He is younger and must live with her disability for an extended period of time. The Arbitrator places greater weight on this factor.

iv. **Earning Capacity**: There is no direct evidence of reduced earning capacity. The Arbitrator places no weight on this factor.

v. **Disability**: As a result of his repetitive job duties, Petitioner developed bilateral carpal and cubital tunnel syndromes. These failed to respond to conservative care and necessitated surgical intervention by way of bilateral carpal and cubital tunnel releases. (PX6) Petitioner testified that despite the improvement from surgery, his symptoms began to recur once he began engaging in prolonged work activity. (T.15-23) Petitioner testified that he is in pain after long shifts, that his left hand and elbow go numb with increased lifting/carrying or prolonged flexion, that his grip strength is diminished, and that he no longer has full extension in his left elbow. (T.16-18) He takes medication for his symptoms three (3) to four (4) times a week and stretches to relieve his symptoms. (T.18) His hobby of gardening has also been adversely affected. (T.17) The Arbitrator finds Petitioner's testimony credible and supported by the record, and therefore places significant weight on this factor.

Based upon the foregoing, the Arbitrator finds that Petitioner suffered serious and permanent injuries that resulted in the 15% loss of the right and 12.5% loss of use of the left hand and the 15% loss of use of the right and left arms.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC031154
Case Name	Laureano Orozco v. Total Facility Maintenance
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0503
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	David Menchetti
Respondent Attorney	Jacob Schneider

DATE FILED: 10/24/2024

/s/Maria Portela, Commissioner

Signature

24IWCC0503

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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LAUREANO OROZCO,

Petitioner,

vs. NO: 18WC31154

TOTAL FACILITY MAINTENANCE,

Respondent.

DECISION AND OPINION ON REVIEW

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

We modify the beginning date of temporary total disability (TTD) because Petitioner testified that he worked on March 22, 2018 and March 23, 2018. *T.19-20*. Petitioner was taken off work by Dr. Ewa Osolkowski on March 24, 2018. (Rx8, P198). Therefore, we find that Petitioner is entitled to 14-3/7 weeks of TTD benefits from March 24, 2018 through July 2, 2018.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $479.12 per week for a period of 14-3/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall receive credit of $3,737.76 for temporary total disability benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses for dates of service from March 22, 2018 through and including July 2,

2018 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 is entitled to a credit of $23,440.95 under §8(j) of the Act for payments made by its group health insurance carrier; 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.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of $3,509.30 under §8(j) of the Act for nonoccupational indemnity payments made; 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.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $431.21 per week for a period of 20.24 weeks, as provided in §8(e)10 of the Act, for the reason that the injuries sustained caused the 8% loss of use of the right arm.

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 $8,500.00. 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.

October 24, 2024

/s/ *Maria E. Portela*

/s/ *Amylee H. Simonovich*

/s/ *Kathryn A. Doerries*

SE/
O: 9/24/24
49

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC031154
Case Name	Laureano Orozco v. Total Facility Maintenance
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	David Menchetti
Respondent Attorney	Jacob Schneider

DATE FILED: 3/31/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 28, 2023 4.65%

/s/ Rachael Sinnen, 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

Laureano Orozco
Employee/Petitioner

v.

Total Facility Maintenance
Employer/Respondent

Case # **18** WC **31154**

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 **February 1, 2023.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 22, 2018**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being from March 22, 2018 through July 2, 2018 ***is causally*** related to the accident.

In the year preceding the injury, Petitioner earned $***37,371.36***; the average weekly wage was $***718.68***.

On the date of accident, Petitioner was ***54*** 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 $***3,737.76*** for TTD, $***0*** for TPD, $***0*** for maintenance, and $***3,509.30*** for other benefits, for a total credit of $***7,247.06***.

Respondent is entitled to a credit of $***23,440.95*** under Section 8(j) of the Act.

ORDER

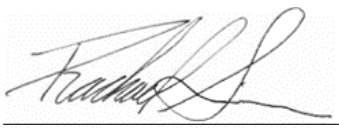
Respondent shall pay reasonable and necessary medical services for dates of service March 22, 2018 through and including July 2, 2018 as provided in Section 8(a) of the Act. Respondent shall be given a credit of $23,440.95 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any related 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 $479.12 per week for 14 5/7 weeks, commencing March 22, 2018 through July 2, 2018 as provided in Section 8(b) of the Act.

The Arbitrator makes an award of 8% loss of use of the right arm under Section 8(e)10 which corresponds to 20.240 weeks of permanent partial disability benefits at a weekly rate of $431.21. 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.



March 31, 2023

Signature of Arbitrator

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Laureano Orozco,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 18WC31154
Total Facility Maintenance,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on November 30, 2022 in Chicago, Illinois before Arbitrator Rachael Sinnen on Petitioner's Request for Hearing. The matter was bifurcated and resumed on February 1, 2023, at which point proofs were closed. Issues in dispute include accident, causation, unpaid medical bills, temporary total disability "TTD" benefits, and the nature and extent of the alleged injury. Arbitrator's Exhibit "Ax" 1.

Petitioner's Job Duties

Petitioner, Laureano Orozco, is a 59-year-old custodian, who had been working as a custodian for 18 years as of March 22, 2018. (T9). As part of his job duties, Petitioner is required to use machines to strip floors and apply wax, lift lunch tables, and pick up garbage. (T9). Petitioner testified that he suffered workplace injury to his right elbow Mach 22, 20218 while lifting a lunch table.

Petitioner's Prior Medical Condition

At trial, Petitioner testified that he took no prescribed medications and that everything was fine with his elbow functioning "in a normal, pain-free capacity" prior to March 22, 2018. (T13-14, 34, 36). He stated that he had no problems with household chores. (T34). Petitioner could not recall why he was attending physical therapy to the right elbow March 9, 2018. (T36).

Medical records submitted into evidence show that Petitioner underwent right ulnar nerve decompression surgery September 1, 2005 with the operative report outlining a history of years long right elbow pain. (RX8, P145). In 2015, Petitioner reported right hand numbness to his doctor (RX8, P151) and MRIs in 2015 showed severe degenerative changes as well as a lateral collateral ligament and lateral ulnar ligament chronically torn and a high-grade partial thickness tear of the common extensor tendon. (RX8, P157-59). A June 2016 CT of right elbow revealed amorphous

soft tissue thickening/scarring of the cubital tunnel with poor definition of transposed ulnar nerve. There were large adjacent degenerative osteophytes and calcified loose bodies. Severe arthritic changes of right elbow, including olecranon fossa with large joint effusion was seen. (RX8, P167).

In August 2016, medical records indicate that Petitioner declined to undergo an open release and debridement of osteophytes or total elbow arthroplasty as recommended by Dr. Gonzalez. At trial, Petitioner denied having discussed surgical options with Dr. Gonzalez in August of 2016. (T39).

On January 26, 2018, approximately 2 months before the work accident at issue in this case, Petitioner was seen by Dr. Benjamin Goldberg. Petitioner explained that his elbow pain was getting persistently worse and that "He is unable to do most of his activities of daily living with the right hand due to this." Positive Tinel's testing was found at the elbow and increased numbness and tingling in the hand was documented. Regional muscle atrophy was present. Petitioner was diagnosed with significant right elbow osteoarthritis with symptoms of ulnar nerve compression at the elbow. Surgical intervention was recommended via capsular release with pinnacle internal and external fixation with possible transposition of the nerve. (RX8, P194).

Petitioner underwent physical therapy at ATI in the months leading up to the instant work accident. Petitioner reported severe difficulty with heavy household chores, sleeping, and work. Petitioner was discharged from PT about 2 weeks before the instant work accident. The discharge report states that Petitioner continues to have deficits of edema, pain, issues weight bearing, and joint mobility. Petitioner had limitations carrying, lifting overhead, and pulling/pushing. Petitioner outlined persistent pain of 5/10 at rest and 8/10 with activity, again stating he was taking medications every other day. (RX8, P403).

Petitioner's Alleged Accident of March 22, 2018

Petitioner testified that on March 22, 2018 he lifted an estimated 75-pound lunch table when he felt pain in his arm with immediate swelling. (T15-17; 32). Petitioner notified his employer at 1 p.m. and worked the remainder of his shift. (T19). Petitioner returned to work the following day (Friday) and worked until 1 p.m., testifying that he left prior to his 2:30 p.m. end time due to pain. (T20).

Summary of Medical Records Post Accident

March 24, 2018, Petitioner was seen by Dr. Ewa Osolkowski describing right elbow pain and swelling after lifting a table at work. (RX8, P197-93). No physical examination findings were listed relative to the right elbow. Petitioner was assessed with pain in the right elbow and ordered to follow up with Dr. Gonzalez, his treater from before the accident. Medrol DosePak and Norco were prescribed. He was ordered off work. (RX8, P198).

April 20, 2018, Petitioner was seen by Dr. Gonzalez describing a fall at work one month prior on an outstretched right hand with increased elbow pain and numbness/tingling sensations in the ulnar nerve distribution. Exam notes listed range of motion from 20 to 100 degrees, which was "baseline for him." Tenderness was found over the medial and lateral epicondyle with diffuse

muscle atrophy around the elbow. Petitioner was assessed with severe right elbow arthritis pain and cubital tunnel syndrome. A ten-pound lifting restriction was provided for the right upper extremity. (RX8, P214).

April 24, 2018, CT was performed and compared to May 25, 2016 CT. Overall impression listed re-demonstration of abnormal elbow showing osteoarthritic degenerative changes; re-demonstration of multiple chronic well-corticated bone fragments surrounding the elbow; decreased and low attenuation soft-tissue density associated with the elbow. (RX8, P217).

Physical therapy commenced May 7, 2018 at ATI. Petitioner had 100 degrees of elbow flexion and 26 degrees of extension. Pain was 3/10 at rest and 9/10 with activity. (RX8, P234).

May 25, 2018, Petitioner was examined by Dr. Benjamin Goldberg. History of present illness included severe right elbow arthritis and cubital tunnel syndrome, status post cubital tunnel release at an outside institution 10 years ago. Petitioner told Dr. Goldberg that he had fallen 2 months ago on March 23, 2018 on his outstretched hand and had increased elbow pain, numbness and tingling in the ulnar nerve distribution. Petitioner stated he was now ready to move forward with surgery recommended by Dr. Goldberg in January. (RX8, P224).

July 2, 2018, Petitioner was discharged from ATI PT after completing 16 sessions of PT. Petitioner described 3/10 pain at rest and 7/10 pain with activity. On this date, Petitioner had 108 degrees elbow flexion, 18 degrees extension, 75 degrees supination, and 85 degrees pronation. (RX8, P234).

August 6, 2018, Petitioner underwent right elbow capsular release, removal of osteophytes and loose bodies, cubital tunnel release, internal fixation with Skeletal Dynamics IJS elbow stabilization system, and lateral collateral ligament repair. (RX8, P242).

October 8, 2018, imaging showed a failure of Skeletal Dynamics Stabilization System with the proximal most screw breaking. (RX8, P283). November 5, 2018, Petitioner underwent right elbow removal of hardware, revision of capsular release, removal of bone from humerus, repair of LUCL on an altered surgical field. (RX8, P291). PT was ordered after post-op follow-up November 9, 2022. (RX8, P311).

March 11, 2019, Petitioner saw Dr. Goldberg. (RX8, P336). Range of motion of the elbow was from 35-100 degrees with full supination. (*Id.* at P337). Petitioner was released from care to follow up as needed. (*Id.*). Petitioner was provided a work status note stating, "unable to return to work, no use of right hand and arm." (PX1, P173).

October 7, 2019, Petitioner was seen by Dr. Schiffman describing continued limited right upper extremity function due to pain and stiffness. Petitioner was diagnosed with right elbow dysfunction secondary to severe post-traumatic right elbow arthrosis. It was opined that he was not a candidate for further operation such as a total elbow replacement. (RX8, P360-62).

Petitioner's Current Condition

Petitioner has not returned to work since March 22, 2018 and is presently receiving retirement benefits from his union. (T27-28). Petitioner testified that his workplace restrictions prevent him from doing anything and he is unable to perform any activities with his right hand/arm due to swelling. (T40-43). On cross examination, Petitioner was asked about specific activities. He testified that he is unable of holding a leaf blower, pushing a lawn mower, washing his car, and holding an object overhead with his right hand/arm. (T36-44).

Surveillance Videos including Testimony of Joel Hammond and Lindsay Garry

Respondent presented investigators Joel Hammond and Lindsay Garry to provide the evidentiary foundation for surveillance videos on March 9-10, 2022; June 16, 2022; June 24, 2022; and October 13-14, 2022. Petitioner is seen over various dates and times lifting a car hood overhead with his right arm, carrying bags with his right arm after exiting a store (T36-37; RX7 at 54 min; RX7 at 14 min), wiping down/drying his car with his right upper extremity for a number of minutes (T95-97, 103; RX9 at 4 min), operating a leaf blower and lawn mower (T103-105; RX9 at 26 min; RX10 at 31 min), and carrying a 15 lbs. air compressor with his right upper extremity (T43; RX10 at 1 hour 14 min).

Deposition Testimony of Dr. Birman

Dr. Michael Birman was deposed on July 19, 2022. Dr. Birman examined Petitioner on May 13, 2019 and March 9, 2022 pursuant to Section 12 of the Act. (RX8, p5). Dr. Birman opined that the work accident did not significantly change Petitioner's condition or change his course of treatment. Dr. Birman noted that while the work accident may have elicited symptoms or, at most, a temporary aggravation, the work accident did not accelerate or change the treatment that Petitioner underwent. (*Id.* at 30). Dr. Birman estimated that any temporary aggravation would have resolved 6-8 weeks after the injury. (*Id.* at 32-34).

CONCLUSIONS OF LAW

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

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

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.

Petitioner credibly testified that his work as a custodian includes lifting lunch tables and that on March 22, 20218 he felt pain in his arm while lifting a lunch table at work. Petitioner reported his work accident to his employer and provided a history of a work accident to his doctor at his first appointment on March 24, 2018 with Dr. Osolkowski. Petitioner has shown by a preponderance of the evidence that an accident did in fact occur, was a risk distinctly associated with his employment and occurred in the course of his employment.

The Arbitrator finds that the accident did arise out of and in the course of Petitioner's employment by Respondent

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).

Although Petitioner was working full duty prior to his March 22, 2018 work accident, Petitioner prior medical records reveal a diagnosis of right elbow osteoarthritis with ulnar nerve compression at the elbow for which surgery was recommended. Petitioner's prior medical records also demonstrate significant complaints of pain and limitations in ADLs through his March 9, 2018 discharge from PT, 13 days prior to his work accident. Respondent's Section 12 examiner, Dr. Birman, opined that Petitioner's elbow condition and course of treatment was not accelerated by his work accident. Dr. Birman noted however that it was possible that the work accident may have elicited symptoms or a temporary aggravation. The Arbitrator agrees.

Initially after his date of accident, Petitioner treated conservatively with Dr. Goldberg with work restrictions, a CT and physical therapy. On May 25, 2018, Dr. Goldberg noted that Petitioner wanted to move forward with the surgery Dr. Goldberg recommended back in January. Petitioner

continued with PT until his discharge on July 2, 2018. Petitioner then underwent the recommended surgery in August.

Although Dr. Birman opined that Petitioner would only need 6-8 weeks to recover from a temporary aggravation, the medical records and physical therapy notes support a return to baseline on July 2, 2018 when Petitioner was discharged from PT. It is clear that after July 2, 2018, Petitioner resumed his original treatment plan with Dr. Goldberg (i.e., the surgery he had recommended back in January 2018).

The Arbitrator finds that Petitioner's condition of ill-being from March 22, 2018 through July 2, 2018 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 Petitioner's condition of ill-being from March 22, 2018 through July 2, 2018 to be causally related to the injury, the Arbitrator further finds Petitioner's treatment within those dates of service to be reasonable and necessary. While Respondent disputes liability for any medical bills, the parties stipulated that all bills have been paid and that Respondent is entitled to a Section 8(j) credit in the total amount of $23,440.95.

Respondent shall pay reasonable and necessary medical services for dates of service March 22, 2018 through and including July 2, 2018 as provided in Section 8(a) of the Act. Respondent shall be given a credit of $23,440.95 for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any related 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 temporary total disability benefits, the Arbitrator finds as follows:

On March 24, 2018, Dr. Osolkowski placed Petitioner off work ordered off work and on April 20, 2018, Dr. Gonzalez provided a ten-pound lifting restriction. Petitioner's work restriction was not accommodated. As the Arbitrator has found that Petitioner's condition returned to baseline when he was discharged from PT on July 2, 2018, no TTD benefits will be awarded after that date.

The Arbitrator finds Respondent liable for 14 5/7 weeks of TTD benefits (March 22, 2018 through July 2, 2018) at a weekly rate of $479.12 which corresponds to $7,049.91 to be paid directly to Petitioner.

Respondent has paid TTD benefits in the amount of $3,747.76.

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, the Arbitrator gives no weight to this factor.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner is a custodian, requiring the use of his right upper extremity in the execution of his work duties. 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 54 years old at the time of the accident. Petitioner's advanced age in the workforce, the Arbitrator gives moderate weight to this factor to the benefit of Respondent.

Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes that Petitioner retired following his work accident as he was unable to return to work given him pain and physical limitations. However, as the Arbitrator already finds that Petitioner returned to his pre-injury baseline on July 2, 2018, no evidence supports a reduction in future earning capacity as it relates to his work accident. The Arbitrator gives moderate 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 great weight to this factor to the benefit of Petitioner. The Arbitrator has found that Petitioner sustained a temporary aggravation of his pre-existing right elbow osteoarthritis with symptoms of ulnar nerve compression. Petitioner treated conservatively with a little over of 2 months of physical therapy, over the counter pain medication and work restrictions. Physical therapy records demonstrated increased pain with activity, limited strength, and limited range of motion.

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 8% loss of use of the right arm pursuant to §8(e)10 of the Act which corresponds to 20.240 weeks of permanent partial disability benefits at a weekly rate of $431.21.

It is so ordered:

Arbitrator Rachael Sinnen

March 31, 2023

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC030775
Case Name	John Hughes v. City of Springfield
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0504
Number of Pages of Decision	9
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Alex Rabin
Respondent Attorney	Kenneth Bima

DATE FILED: 10/24/2024

/s/Maria Portela, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Hughes,

Petitioner,

vs. NO: 22 WC 030775

City of Springfield Fire Department,

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

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

October 24, 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	22WC030775
Case Name	John Hughes v. City of Springfield
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Alex Rabin
Respondent Attorney	Kenneth Bima

DATE FILED: 5/7/2024

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MAY 7, 2024 5.155%

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
NATURE AND EXTENT ONLY

John Hughes
Employee/Petitioner

v.

City of Springfield Fire Department
Employer/Respondent

Case # **22** WC **030775**

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 **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **3/26/2024**. 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.

On the date of accident, **1/11/2022**, 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 $**89,692.20**, and the average weekly wage was $**1,724.95**.

At the time of injury, Petitioner was **50** years of age, ***married*** with **0** dependent children.

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

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 $**937.11**/week for a further period of **50** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **10% loss of use of the person as a whole**.

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.

Edward Lee_____
Signature of Arbitrator

May 7, 2024

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JOHN HUGHES,
Employee/Petitioner

v. Case No. 2022-WC-030775

CITY OF SPRINGFIELD
Employer/Respondent

FINDINGS OF FACT

THIS CAUSE HAS COME BEFORE THE COMMISSION on a stipulated arbitration hearing.

On January 11, 2022, Petitioner JOHN HUGHES was employed by Respondent City of Springfield Fire Department. John Hughes testified he had worked for Respondent for almost 21 years. John Hughes testified that he is a fire captain. (Arb. Tran. P.7).

John Hughes testified that he was on duty with the City of Springfield Fire Department on January 11, 2022. There was an emergency call that morning. The fire station was operating with truck 3, and it has a cockpit style of driving area, and it is difficult to get into. Mr. Hughes testified that he had his bunker gear on and was moving in haste. As he was getting into the cockpit, he used his left arm to grab the steering wheel and pull himself in. John Hughes had pain from his left shoulder through the collarbone and into the sternum.

The petitioner did not finish his shift that day. He went home early and told his supervisor that he did not want to go to the hospital at that time. (Arb. Tran. P.9). He did not get any relief that evening. John Hughes testified that he had pain, swelling, and difficulty moving his left shoulder. There was a limited range of motion. The petitioner sought medical treatment from the Springfield Clinic Orthopedics walk-in clinic.

Dr. Rishi Sharma examined John Hughes at the Springfield Clinic on January 12, 2022. Mr. Hughes provided a history of being injured at the fire department while at work on January 11, 2022. He complained of pain and discomfort in his left shoulder. Movement made it worse. Dr. Sharma noted anterior and posterior left shoulder tenderness. Range of motion was limited with associated pain and discomfort. X-rays showed advanced osteoarthritis of the left glenohumeral as well as acromioclavicular joint. Dr. Sharma recommended a sling for the left

arm and physical therapy. He prescribed oral prednisone. Work restrictions stated no use of the left upper extremity.

Dr. Sharma examined John Hughes on January 17, 2022. He provided an assessment of injury to left shoulder. Tramadol had been prescribed for pain management. X-rays of the clavicle were taken and interpreted as negative. An MRI of the left shoulder was ordered. He was ordered to stay off work. On January 25, 2022, Dr. Sharma examined John Hughes and discussed an ultrasound-guided steroid injection. On February 7, 2022, John Hughes complained of significant pain in his left shoulder and collarbone. He had received a steroid injection into his left glenohumeral joint.

John Hughes testified that the shoulder got worse within 10 days of receiving the steroid injection. He had been in physical therapy. A CT scan taken on February 14, 2022, revealed an infection described as septic arthritis in the left sternoclavicular joint. (Pet Ex. 1). John Hughes was referred to Dr. Brett Wolters with the Springfield Clinic Orthopedic Department.

Dr. Wolters examined Mr. John Hughes on February 15, 2022. Dr. Wolters diagnosed sternoclavicular joint pain, injury to left shoulder, and septic arthritis of left sternoclavicular joint. The pain was radiating up through his neck and into his jaw. The pain was described as sharp, dull, and throbbing and 10 out of 10 with some movement. Swelling was noted. On February 17, 2022, Dr. Wolters performed surgery on John Hughes consisting of a left open sternoclavicular joint excisional debridement. The surgery was performed at Memorial Medical Center in Springfield, Illinois. (Pet Ex 2).

Elizabeth Cheney examined Mr. John Hughes on February 28, 2022. The Petitioner reported improvement. He continued to have swelling and pain was present around the sternoclavicular joint. Mr. Hughes had a lot of pain with range of motion. The pain radiated up into his neck and head. The left shoulder pain was improving. Physical therapy was recommended. He was receiving IV antibiotic treatment. Elizabeth Cheney held Mr. John Hughes off work due to the swelling of his left shoulder. (Pet. Ex.2).

Dr. Lyndsey Heise with the Springfield Clinic infectious disease department monitored John Hughes infection and intravenous antibiotic treatment. (Pet. Ex. 3). John Hughes was examined by Dr. Brett Wolters on March 29, 2022. He reported improvement overall. It hurt to lay on his left shoulder, and it hurt to move the left shoulder above his head. Dr. Wolter stated in the medical record that the work-related injury must have caused the infection. The Petitioner still had some pain present that was reported to Dr. Wolter during an examination on May 31, 2022. The restrictions were set at a 40-pound limit for lifting, pushing, and pulling at that time.

Dr. Pearl Philip performed an independent medical examination with John Hughes at St. Luke's Hospital in Chesterfield, Missouri on May 11, 2022. Dr. Philip stated that the "development of left sided MSSA septic arthritis involving the left sternoclavicular joint and probable osteomyelitis of the manubrium and clavicle requiring excisional debridement on 2/17/22 and a 6-week course of IV antibiotic was due to injection of glucocorticoid to the left shoulder and clavicle." Dr. Philip stated that the injection was necessary for the treatment of Mr. Hughe's pain which was caused by the work-related injury on January 11, 2022. Dr. Philip

stated in her report that the patient did not develop the infection independently due to any pre-existing conditions or other events. (Pet. Ex.4).

Elizabeth Cheney examined Mr. John Hughes on June 28, 2022. The Petitioner voiced concerns that the pain and discomfort was permanent. He felt the left sternoclavicular joint was unstable. Mr. Hughes was in physical therapy, and it was making him stronger as stated in the medical record. His work restrictions were set at no lifting greater than 20 pounds overhead. Dr. Wolters noted significant improvement in the shoulder and neck during an office visit with John Hughes on July 29, 2022. Dr. Wolters cleared him to return to work full duty and recommended a follow-up in two months.

On September 30, 2022, John Hughes reported to Elizabeth Cheney that he was 75-80% improved. He voiced discomfort when pulling at the neck. He was released from care and deemed to have reached maximum medical improvement. (Pet. Ex.2). John Hughes testified that he did return to work full duty. He has a constant throbbing and crepitus in the left shoulder. High impact activities like swinging an axe are problematic for the shoulder. The pain is in the left shoulder down to the collarbone. The petitioner testified that he has some college education, is married, and does not have any dependent children.

CONCLUSIONS OF LAW

The Arbitrator hereby finds as follows:

V. Nature and Extent

Pursuant to Section 8.1(b) of the Act, in determining the level of permanent partial disability, the Arbitrator must look at the following five factors.

With regard to factor (i) of Section 8.1(b) of the Act, the reported level of impairment pursuant to subsection (a), the Arbitrator notes that neither party offered into evidence a reported level of impairment and as such, the Arbitrator gives no weight to this factor.

With regard to factor (ii) of Section 8.1(b) of the Act, the occupation of the injured employee, Petitioner was able to return to his full duty work as a fire captain on 7/31/2022. The Arbitrator notes that Petitioner's work can be physical on occasion. Especially when using impact tolls such as swinging an axe. The arbitrator finds his occupation to be a moderate factor.

With regard to factor (iii) of Section 8.1(b) of the Act, the age of the employee at the time of the injury, the Petitioner was 50 years old at the time of the injury. The Arbitrator finds that his age is a minor factor.

With regard to factor (iv) of Section 8.1(b) of the Act, the employee's future earning capacity, the Arbitrator concludes that Petitioner's earning capacity has not been impacted by this injury. Petitioner was promoted during his treatment for this injury and is now working as a fire captain and earning more money now than he was at the time of the injury. The Arbitrator finds this to be a neutral factor in arriving at a finding of permanent disability.

With regard to factor (v) of Section 8.1(b) of the Act, evidence of disability corroborated by the treating medical records, Petitioner testified that his left shoulder throbs during impact activities like swinging an ax or hammer. He has throbbing and crepitus in the left shoulder. High impact activities like swinging an axe are problematic for the shoulder. The pain is in the left shoulder down to the collarbone. The Arbitrator finds this factor to be significant.

Having considered the evidence and testimony before the Commission, **IT IS ORDERED:**

RESPONDENT SHALL PAY 10% PERMANENT PARTIAL DISABILITY FOR THE PERSON AS A WHOLE AS PROVIDED IN SECTION 8D(2) OF THE ACT.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC005309
Case Name	Raquel Washington v. Trinity Services Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0505
Number of Pages of Decision	15
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Carol Cesaretti

DATE FILED: 10/25/2024

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

☒ 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

RAQUEL WASHINGTON,

Petitioner,

vs. NO: 20 WC 05309

TRINITY SERVICES, INC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, benefit rates, wage calculation, causal connection, medical expenses, prospective medical, temporary total disability, 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 December 18, 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 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.

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.

October 25, 2024
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AHS/ldm
051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC005309
Case Name	Raquel Washington v. Trinity Services Inc.
Consolidated Cases	
Proceeding Type	19(b)/8(a) Petition
Decision Type	Amended Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Carol Cesaretti

DATE FILED: 12/18/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 12, 2023 5.19%

/s/ Paul Cellini, Arbitrator

Signature

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

☐ 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)/8(a)

RAQUEL WASHINGTON
Employee/Petitioner
v.
TRINITY SERVICES INC.
Employer/Respondent

Case # **20** WC **05309**

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 **Ottawa**, on **October 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. ☒ 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 19, 2016**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did 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 $**N/A**; the average weekly wage was $**N/A**.

On the date of accident, Petitioner was **42** 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

The Arbitrator finds that the greater weight of the evidence supports the finding that the Petitioner failed to prove she sustained accidental injuries arising out of and in the course of her employment with Respondent. The Arbitrator further finds that Petitioner's bilateral carpal tunnel syndrome condition is not causally related to her work activities 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

DECEMBER 18, 2023

STATEMENT OF FACTS

Petitioner testified she worked for Respondent as a teachers' assistant/paraprofessional at a therapeutic center for autistic children with behavioral issues. She began working for Respondent in 2014, testifying she was moved to new room in 2015 where she dealt with more intense behaviors from the children, who would act out such as biting, hitting, kicking, scratching, etc. The students in this new room were of junior high age, with relatively large students for the facility, with kids weighing up to 200 pounds. When a student's behavior warranted it, they would use "holds", which involves staff members on each side of the student locking arms and holding the student's arms against their own body to stop them from hurting themselves and others. More intense behaviors would involve additional staff performing the hold, with one holding legs and one holding shoulders while the child was seated in a chair and their arms would be held to the chair arms. Petitioner testified that a hold would be needed at least a couple times per day, and on average would last 3 to 4 minutes. The policy was to avoid going beyond 5 minutes, at which point staff would discuss whether the student needed to be moved to another room to calm themselves or if another plan was needed. Petitioner testified in detail as to how the holds would be performed. She testified that, prior to changing rooms in 2015 and performing the student holds, she had mild symptoms in her hands/wrists. Petitioner testified that when she started doing these holds about 2 times a day, she began to notice numbness, tingling, and pain that progressively worsened and would last longer. She denied any similar types of activities outside of her job.

The injury report completed by Petitioner was signed by Petitioner on 10/17/16 and by Mary Kate Burns and supervisor "Norma A_____" on 10/18/16. The report indicated no specific date of injury and that Petitioner's hands, fingers, and wrists had gradually worsened over time with pain, numbness, and burning, to where it had become unbearable. Petitioner stated: "I feel with the lifts and holds over time may have created the issues." A separate portion states it was "possibly due to the lifts and holds of the students." (Px7). Petitioner testified that "lifts" involved lifting students up when they would flop onto the floor, which she testified would also elicit symptoms. The supervisor's report completed by Ms. Burns states: "Employee cannot recall specific date of injury. Reports hand, fingers, wrists have been painful." As to the possible cause of injury, Burns indicated "unknown." Petitioner reported the injury on 10/17/16. (Px8). The injury report completed by Petitioner was signed by Petitioner on 10/17/16 and by Mary Kate Burns and supervisor Norma (last name unclear). Noting no specific date of injury and that her hands, fingers, and wrists had gradually worsened over time with pain, numbness, and burning, to where it had become unbearable. Petitioner stated: "I feel with the lifts and holds over time may have created the issues." A separate portion states it was "possibly due to the lifts and holds of the students." (Px7). The supervisor's report completed by Ms. Burns states: "Employee cannot recall specific date of injury. Reports hand, singers, wrists have been painful." As to the possible cause of injury, Burns indicated "unknown." Petitioner reported the injury on 10/17/16. (Px8).

Petitioner testified she initially sought treatment on 10/19/16, noting she had been tolerating her increasing symptoms until that time with ibuprofen until it just got too painful, and she discussed it with her supervisor. She testified she started noticing problems at home as well, such as when washing dishes and other household activities. The 10/19/16 report from MedWorks Occupational Health facility on 10/19/16 notes she was sent there by Respondent, and the history states that she services disabled kids 4 to 15 years old, some having behavioral problems requiring physical care. The report indicates Petitioner had numbness and tingling in her hands and wrists for many months, right greater than left, worsening since January 2016: "Describes this sensation as fleeting, comes and goes, more with movement." She also reported a burning sensation when working with clients and when washing dishes at home, and that the pain subsides when movement stops. Hand and wrist x-rays were normal bilaterally, while cervical films reflected C4/5 and C5/6 spondylosis and mild loss of lordosis. Dr. Xia recommended splinting. The report indicates work restrictions but doesn't say what they are in the status note. (Px2).

On 10/24/16, Dr. McGowan (MedWorks) noted Petitioner reported symptom exacerbations with daily household chores, typing, writing, and work duties. She was noted to be right handed, which Petitioner acknowledged in her testimony. EMG/NCV studies were ordered, and she was advised to wear splints at work. Petitioner followed up on 11/14/16 but the report from this visit was not part of the evidentiary record other than a work status report indicating work restrictions were instituted (no lifting, pulling, pushing over 5 to 10 pounds, and avoid repetitive use of the hands) and "follow up after hand." Petitioner was referred to hand physician Dr. Shah. (Px2).

11/9/16 EMG/NCV testing was positive for moderate to severe bilateral carpal tunnel syndrome (CTS), with no evidence of cervical radiculopathy. (Px2). On 11/23/16, Petitioner advised Dr. Shah of right greater than left hand pain for 11 months: "She works as a teacher's assistant handling disabled children. Her symptoms are work related issues involved with frequent forceful flexion as she is trying to guide the children." Splinting was providing minimal relief, and she was having trouble with many routine activities such as driving. Dr. Shah examined Petitioner and reviewed the EMG findings, concluding she had bilateral CTS, right greater than left. As Petitioner wanted to maximize conservative treatment versus the recommended surgical release, a right steroid injection was performed. She was returned to work with a 10 pound restriction with no forceful or repetitive grasping, as well as use of splints. At a 12/14/16 follow up, Petitioner reported good improvement with the injection and requested a left-sided injection, which was performed. Restrictions and splinting were to continue. (Px3). At her 12/16/16 follow up at MedWorks, Petitioner reported improvement with the injections and was advised to continue work restrictions and follow up with her hand specialist. (Px2).

On 1/11/17, Petitioner told Dr. Shah she had significant relief from the left injection as well with no further pain or burning sensation, just occasional tingling. She was advised to continue rest and restrictions to allow the full effect of the injections. She was to return to full duty on 1/30/18 and to follow up a month later to see if she had reached maximum medical improvement (MMI). Dr. Shah noted the possibility she could regress and need surgery. On 2/22/17, Petitioner continued to have relief with only infrequent tingling. She had no pain and was tolerating work, so she was released by Dr. Shah, who again noted surgery could still be needed in the future if there was a recurrence. (Px3).

Petitioner returned to Dr. Shah eight months later on 9/22/17 reporting she was doing fine until a few weeks prior when she had a recurrence and progressive increase in numbness and tingling. She reported working at the same job taking care of children with disabilities. Dr. Shah stated that surgery was recommended but Petitioner had an issue with the timing, so injections were again performed, the right on 9/22/17 (restricted to left hand duty for a month) and the left on 10/20/17 (restricted to right hand duty for a month). She was then released as of 11/27/17. Petitioner then did not return until 4/13/18, when while rehabilitating from a knee surgery, she had a recurrence of left hand pain and wanted a steroid injection. While Dr. Shah again recommended surgery, he allowed Petitioner to opt for temporary relief with the injection given she was still in recovery from the knee injury, and he deferred any work restrictions to her knee physician. On 6/15/18, Petitioner returned requesting a right hand injection. Dr. Shah declined because surgery was indicated. She again returned on 12/28/18 with ongoing right hand symptoms but did not feel she could pursue surgery at that time, as she estimated another 6 to 8 months of knee recovery, and Dr. Shah performed a repeat injection on the right. Petitioner again returned on 8/23/19 with her left hand "starting to act up", noting she was working full duty and was able to control some of the repetitive work she did. On 2/21/20, Dr. Shah injected Petitioner's right ring finger based on a diagnosis of trigger finger. Right carpal tunnel release surgery was planned over the next few months "when her schedule permits." (Px3).

Petitioner was examined by orthopedic surgeon Dr. Biafora at Respondent's request on 6/30/20. The history referenced was Petitioner developing the onset of bilateral hand pain, numbness, and tingling in January 2016. She progressively worsened despite splinting, and injections provided significant but temporary improvement.

As of the exam date, she reported constant tingling bilaterally in the thumb and index finger, occasionally in the middle and ring fingers, and she would experience night waking despite the splints. The work history indicated she worked as a paraprofessional for autistic behavioral children for the last 6 years: "She describes her activities as an assistant teacher. She performs various activities such as preparing material that includes dry erase board and working with IPads. When she worked with younger children, she would occasionally be required to perform safety holds a couple of times per day. She is currently working without restrictions." Following examination and review of Petitioner's medical records, Dr. Biafora diagnosed bilateral carpal tunnel and resolved right ring trigger finger. He opined that neither condition was causally related to Petitioner's employment. He stated that activities that could be considered causative would require forceful gripping for extended periods of time on a repetitive basis throughout the work shift. He also indicated that the use of hand or power tools on a prolonged basis would also reasonably contribute to these diagnoses. Dr. Biafora stated that Petitioner did not perform any form of gripping or grasping activity "on a repetitive or sustained basis for extended periods in completing her essential job tasks. Work as a teacher's assistant and using the dry-erase board, working with IPads, and occasionally placing safety holds on students would in no way be contributory to these conditions." Dr. Biafora did agree that Petitioner had carpal tunnel bilaterally and that surgical releases bilaterally would be reasonable, but not causally related to the employment. He opined that the trigger finger condition had resolved, and that Petitioner was capable of working full duty for the non-work related carpal tunnel condition. (Rx1, Ex. 2).

Dr. Shah, a plastic surgeon board certified in surgery, testified on 8/22/23 that there are no objective scales as to how much repetitiveness is required to prove a causal connection of an activity to CTS. The doctor was presented with a hypothetical history of Petitioner starting to perform restraining activities with the autistic students about 2 years prior to first seeing Dr. Shah, that she was symptom free when she started this work, that she had a flare of symptoms in January 2016, and that at least two times a day she had to forcefully restrain children into a seated spot or onto the floor for up to five minutes at a time. Dr. Shah testified: "From your description of what you just said, those symptoms can contribute to some of these conditions of issues that can present with the carpal tunnel." He agreed that, in his initial report, he noted that Petitioner guided the children through the day but did not reference how she physically did this or how she physically restrained the children, and opined that there might be a causal relationship of the activities to developing CTS. The injections he performed provided temporary relief to Petitioner. He testified his medical notes would reference any work status of Petitioner. Bilateral CTS release surgeries were recommended when Petitioner was last seen in 2020, and Dr. Shah continued to recommend this treatment if Petitioner had ongoing symptoms. While he testified it was hard to determine a post-surgical prognosis without having seen Petitioner in three years, he opined that in general there would be a greater likelihood of improved hand function and symptoms with surgery. After reviewing his records, Dr. Shah could not say if he restricted Petitioner's work activities at the last visit of 2/21/20. He agreed he had no knowledge of whether Petitioner was or was not diabetic or obese, which are known carpal tunnel risks. He reiterated that he believed Petitioner's carpal tunnel was a combination of risk factors: "so some of it is metabolic, but some of it is the type of work and overuse of the wrist, essentially, over time." He preferred to see her again before confirming his surgical recommendation. (Px1).

On cross, Dr. Shah agreed that Petitioner provided the stated history in his initial report of her symptoms being work-related issues involving frequent forceful flexion as she was trying to guide the children. He did not document any additional information from Petitioner at that time. He didn't document discussing how often or forceful Petitioner's flexion was at work. In terms of his own use of the descriptor "frequent, Dr. Shah testified this was not necessarily a set number, but rather that the activity is performed enough times during the day where you do the same maneuver that is causing symptoms: ". . . it's a number that is up for interpretation, but it has to be performed enough times during the workday." Dr. Shah could not say what "enough times" would be other than enough to where something is done over and over to cause symptoms. He did not know how many hours per day or days per week the Petitioner worked. Dr. Shah agreed he released Petitioner at MMI in

February 2017 and she then returned 7 months later, when he noted she was still taking care of children with disabilities. There was another gap in treatment after this where she was treating for an unrelated knee injury. She did not appear for her December 2017 follow up and then didn't return until April 2018. There were additional gaps in treatment between June 2018 and December 2018, and December 2018 and August 2019. Dr. Shah did not document any change in her job duties during those gaps. As to why Petitioner indicated on 6/15/18 that she didn't want carpal tunnel surgery, Dr. Shah believed this was related to recovering from knee surgery. He found her to be at MMI at that time also. He agreed he had no reason to believe the Petitioner's job changed during his treatment since it isn't documented in his records. Regardless of what Petitioner's work activities were after 2016, he opined that the original job duties and development of carpal tunnel remain one of the inciting factors of her ongoing symptoms. (Px1).

On redirect, counsel presented Dr. Shah with a hypothetical wherein Petitioner's job changed after he initially diagnosed her and treated her that she "could better control her need to restrain or forcefully move the kids around." As to whether he would still opine that the "etiology and progression" of the development of Petitioner's carpal tunnel was the restraint activities, Dr. Shah testified he would need more detail, and while in general once causation is determined and there is a treatment plan to provide activity modifications and conservative care (splinting, adjusting metabolic issues, there needs to be a reasonable period of time to evaluate the activity modification. Reviewing his 8/23/19 note, Dr. Shah now agreed that Petitioner did advise she was able to control some of the repetitive activities at work. She remained a surgical candidate at that time and per his 2020 note. The activity modification did not impact his causation opinion. (Px1).

Dr. Biafora also testified via deposition on 10/5/22. On direct, he referenced the exam findings in his 7/14/20 report, and his diagnoses of CTS and right trigger finger. The history of Petitioner's job duties was provided by the Petitioner herself. The x-rays taken of Petitioner's wrists in 2016 and those taken by Biafora in 2020 both showed no significant abnormalities. He agreed with the radiologist's findings as to the 11/9/16 EMG. As noted in his report, the trigger finger diagnosis was based on Petitioner's medical records, and he opined this was resolved by 2020 and was not causally related to Petitioner's work duties. Dr. Biafora diagnosed bilateral CTS based on subjective symptoms, exam findings, and EMG testing. His opinion the condition was not causally related was based on Petitioner's work activities needing to involve a lot of forceful gripping on a repetitive basis for a significant portion of the work shift for him to opine otherwise. It was his "strong" opinion that Petitioner's described activities, including intermittent restraining activities, were not contributory to the development of carpal tunnel. Most orthopedic surgeons see this condition multiple times per day, and by far the most common cause of carpal tunnel is idiopathic: "basically we don't know, it just happens." Known associated factors include female gender and significantly increased BMI. While unrelated to work, Dr. Biafora opined Petitioner's treatment to date and her surgical recommendations were reasonable, and that she was capable of continuing to work full duty as she had been. (Rx1).

On cross-exam, Dr. Biafora agreed there is no research definitively indicating how much forceful flexion is required to develop carpal tunnel in any particular job. The way to know someone is developing CTS is subjective complaints. As to whether there might be a causal relationship between activities one performs with forceful flexion and compression of the carpal canal based on symptoms occurring during the activity, Dr. Biafora testified: "No, not necessarily", and ". . . the manifestation of symptoms doesn't mean that that particular activity is causing that condition. I mean, if someone has a broken leg and they step on the broken leg, it doesn't mean they made their broken leg worse because they had pain." He testified that a medical practitioner uses judgment and experience to determine causation of a condition. He again agreed there is no specific number of forceful activities or specific wrist position that dictates this determination. A lot of forceful gripping potentially could cause swelling of the flexor tendons, which are in the carpal canal and can cause pressure on the nerve. While Petitioner said she had symptoms with work activities, she also said she had symptoms sleeping while using a brace, which means the wrist wasn't being flexed, and this does not mean

sleeping causes carpal tunnel. As to whether restraining children at work with forceful flexion could be a contributing factor to the Petitioner's CTS, Dr. Biafora testified that doing this a couple times a day is nowhere near frequently enough to attribute it as a cause: "There is no way that her work activities have contributed to CTS." Petitioner's counsel argued that because there is no research verifying or discounting the activities as causative, the doctor could not opine there was no causal connection. Dr. Biafora testified that this made no sense, as people could have numbness and tingling while watching TV, and the fact that there are no studies which state that watching TV doesn't cause CTS doesn't therefore mean that it does cause it. He testified that CTS symptoms happen, and it doesn't necessarily mean the activity being performed is causative. Dr. Biafora reiterated it was Petitioner herself who told him she did child restraints just a couple of times per day. (Rx1).

The Petitioner testified she was transferred out of the room she had been working in with Respondent by her supervisor, Joy Vrlek, as she wouldn't be able to work in that intense room due to her restrictions. She competed Rx7 after telling Ms. Vrlek she couldn't take it any longer. She also said she didn't have surgery because Respondent denied further treatment following Dr. Biafora's examination.

Petitioner testified she continued to work and while she still has to deal with student behaviors, it is not as intense as before. Her symptoms have remained the same since 2020 and she desires surgery, understanding she would first need to see Dr Shah again. She agreed she has had no lost time due to her symptoms.

Petitioner testified she was working 32.5 hours per week for years prior to treatment, making $10.50 an hour as of the date she reported the condition. Overtime was not allowed. She denied non-work activities creating her symptom onset as she hasn't done anything at home that would aggravate the symptoms.

Testifying on cross-examination, Petitioner indicated that following her discussing her condition with her supervisor, the supervisor recommended she not stay working in the room she was in. She believed this occurred "at the end of 2016 maybe, November December.", at which time she was moved into the room with older children. Prior to October 2016, she testified that her typical workday activities involved getting the kids situated in the morning, a meeting as to what was going to occur that day on the schedule (outings, etc), a lunch period, programs such as academics the students were working on, recess depending on weather, otherwise indoors, exercising ("movement"), group work/worksheets, the theme for the week (ex. Gardening, art), and getting them ready to go home. Her day would go from 8:30 / 8:45 a.m. to 3 p.m., and the students would be there from 9 a.m. to 2:20 p.m. She acknowledged there were days when no students required holds, which she estimated was about once a week. Her full time week would be 32.5 hours, and she agreed it could be less than that if she were off work for some reason.

In February 2017, she was released at MMI and to full duty after receiving injections with Dr. Shah, and she didn't return for further treatment until September 2017, and she agreed she didn't again return after October 2017 until April 2018, at which time she was off work for the unrelated knee condition. She could not recall if Dr. Shah provided her with work restrictions in April 2018 or December 2018, but would not disagree with whatever his records indicated. She thereafter didn't return to Dr. Shah until February 2020. As to her June 2020 visit with Dr. Biafora, Petitioner initially testified she didn't recall if he actually examined her, and that she wouldn't dispute it if his records indicated he did examine her and took a history from her, but that any exam "wasn't very thorough, I can tell you that."

As to performing the holds on students, Petitioner testified that the only way one person could perform a hold would be a bear hug from behind the individual. With two-person holds, she testified that which side she might be on would vary, as would which position she might be in during a three-person or more hold. On redirect, Petitioner testified that while there were "good" days with no holds, other days would involve multiple holds, up to 4, with the average day involving two holds, again performed for 2 to 4 minutes each. She reiterated the

holds would involve force and forceful gripping. Petitioner testified she just never had any problems prior to starting her work with Respondent, and that her prior jobs did not involve such holds.

Ms. Sierra Waller testified on behalf of Respondent, noting she has been Respondent's Risk Management/FMLA Coordinator for the past two years and that she took the place of Mary Kate Burns. Her job includes dealing with workers' compensation paperwork. She did not know the Petitioner personally, testifying the alleged workers' compensation claim occurred prior to her employment with Respondent but that she has reviewed the Petitioner's personnel file. Respondent is a non-profit facility for physical and mentally disabled children. The schools under Respondent's auspicies includes independent living coaches, teaches, teacher assistants, nurses (RNs), admin workers, directors, team leaders, etc. Ms. Waller testified that Respondent's policy regarding workers' compensation claims is that employees are to report any work related injury immediately, at least within 24 hours, to seek treatment within 48 hours, and to provide all documentation to their direct supervisor and/or director.

Ms. Waller identified Rx8 as the incident report, which is prepared for their insurer, which then may use the document in speaking with the employee. Ms. Waller testified that Rx4 is a job description for an "Individual Aide", and that this job has now been absorbed into Teacher assistant/ paraprofessional position. The current job description for this position was entered into evidence as Rx5 and has been in effect since 2014. Rx4 indicates physical activities involving balancing, fingering, pulling, pushing, standing, climbing, grasping, stooping, crouching, crawling, kneeling, reaching, lifting, repetitive motion, pushing wheelchairs, and lifting up to 40 pounds. Also included was the ability to intervene during student problem behavior when needed and to assist students with personal care tasks. In Rx5, the same activities are indicated along with the ability to push/pull 75 pounds, perform deep knee squats, prolonged sitting/standing, driving. Waller testified that the Petitioner signed off on her employee handbook in 2014, which includes a description of the policies regarding the reporting of workplace injuries and workers' compensation. (Rx6). Ms. Waller testified the handbook hasn't changed since 2014, including the attached excerpts. She testified Petitioner was hired on a full time basis and has continued to work with that status, which is 31 to 40 hours per week. There is no guarantee that Petitioner works 40 hours a week. Any work less than 31 hours per week would not be due to a lack of available work. 32.5 hours a week would be average for a Teacher's Assistant.

Ms. Waller indicated that Rx7 is the notice of injury, and agreed Petitioner's form references lifts and holds as the tasks being performed at the time of injury. Rx8, which is completed after risk management has been notified of injury, does note "unknown" as to cause. Boxes at the top of Rx7 check "injury questioned", meaning there is a question as to how the injury occurred. It means on Rx7 P indicated "injury unknown"

Ms. Waller agreed that MedWorks is one of the Respondent's company clinics, testifying employees are given the option to seek treatment at the company clinic, though that is not the only option. She didn't see anything indicating whether Respondent's insurer did or didn't accept the claim, and that this is not something that generally is part of the employee file. She agreed that Rx5 does not specify anything about the physical demands of lifts and holds. While she has some idea of what a Teacher's Assistant does in this regard, but acknowledged she has never herself performed a hold or lift herself. On redirect, Ms. Waller agreed that it was possible Petitioner's workdays went from 8:30 a.m. to 3 p.m. and that 31 or more hours per week is considered by Respondent to be full time employment. To her knowledge, Teacher Assistants still work the same hours. There could be variance based on the activity of a class, such as working 34 hours per week.

In rebuttal, Petitioner testified that she did not get to set her work schedule, it was dictated by the facility director, which is why she didn't work 40 hours per week. She worked the schedule she was given. She would have worked 40 hours to make more money.

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:

The allegation in this case is that the Petitioner developed bilateral CTS as the result of repetitive trauma at work. This type of alleged injury involves an intertwining of the issues of accident and causation, as the work activity must increase the risk of injury, and if this is the case it would stand to reason that the increase in the risk of injury by the activity would imply causation. The Petitioner is alleging that the work duties involving performing "holds" on mentally disabled students who act out is the causative activity. She testified that she performed such holds between zero and four times per day, with an average of two times a day. The Petitioner, per her initial incident report, also references "lifts", which involve situations where a student would flop onto the floor and have to be lifted off of it. No testimony was presented as to the frequency with which such lifts occurred or how the Petitioner utilized her upper extremities in performing lifts.

The issue of accident involves whether the work activities increased the risk of the development of carpal tunnel. The causation issue involves whether the work activities, more likely than not, were a causative factor in the CTS condition. Taking all of the evidence presented into account, the Arbitrator finds that the Petitioner has failed to prove that she sustained accidental injuries which arose out of her employment with Respondent, and failed to prove that her CTS condition was causally related to her work duties.

The evidence presented indicates the Petitioner performed the alleged causative activity of student holds two times per day for a total of two to four minutes each time. Even taking her testimony that holds could occur as many as four times per day, this supports the finding she spent a total of 14 minutes or less per day performing the activity in four separate occurrences. Her testimony, at least as to her description of a two-person hold, supports the idea that when she is doing such hold, one hand is exerting most of the force, which would at most be for four minutes. The Arbitrator does not believe this evidence supports the finding of an increased risk. The Petitioner never testified that any one instance of performing a hold resulted in symptoms but rather that there was a gradual onset, so a specific trauma would also be unsupported by the evidence.

Two surgeons testified in this case as to causation. While the Arbitrator acknowledges that both Dr. Shah and Dr. Biafora indicated that there is no "magic" number of repetitions to determine whether an activity may be causative of CTS, as noted above, the Arbitrator would consider the number of "hold" activities performed by Petitioner consisted of a significantly minimal amount and percentage of Petitioner's workday.

Dr. Shah's opinion with regard to causation was not very persuasive in the Arbitrator's view. The "frequent forceful flexion", as noted by Dr. Shah in his initial report, Petitioner reported to him is not described with any detail, yet the statement in that report was that the symptoms were related to work activities. In his deposition, Dr. Shah's testimony indicates he had a minimal understanding of what Petitioner's actual activities involved in terms of the physical use of her arms and hands. The initial report, in fact, only referenced her hand/wrist activities as "guiding" students, making no reference to holds or lifts. The hypothetical presented to Dr. Shah by Petitioner's counsel included the Petitioner having no prior symptoms. Her testimony was that she had mild symptoms in her hands/wrists prior to changing rooms with Respondent in 2015 and starting to perform student holds, which weakens Dr. Shah's opinion given there was evidence of bilateral CTS symptoms pre-dating the holds. Dr. Shah testified to causation without expressing an understanding of how Petitioner was using her hands and arms in performing student holds.

The Petitioner had several gaps in treatment after her initial visit with Dr. Shah, at least two of which were following injections that provided significant relief. Petitioner testified her job changed to where she did not have to perform the noted holds, but her symptoms continued to flare up at times. Dr. Shah testified he believed Petitioner's CTS involved a combination of risk factors, including metabolic as well as the "type of work and overuse of the wrist", but acknowledged he had no knowledge of any possible metabolic factors in Petitioner, such as diabetes or obesity, and that he had no real knowledge of what type of "overuse" occurred. On cross, Dr. Shah acknowledged he didn't document how often or forceful Petitioner's hand/wrist flexion was at work.

Dr. Shah testified the required frequency of hand/wrist use was "enough times" doing the same maneuver that was causing symptoms. The lack of any definition of "enough times" leads the Arbitrator to conclude that his belief was if someone had symptoms during an activity there is a causal relationship, as there is no way to define the any required minimum level of frequency. When asked on redirect how the Petitioner's change of job duties may have impacted any causation opinion, he testified he would need more detail and that there needed to be a reasonable period of time to evaluate any such activity modification, then testified such activity modification would not impact his causation opinion.

Dr. Biafora relied on Petitioner's stated history of her job duties. He opined the CTS condition was not causally related to Petitioner's work activities as they did not involve significant forceful gripping on a repetitive basis, noting she described only intermittent restraining activities. He also testified that CTS is most commonly an idiopathic condition without a known etiology. He agreed that there was no study indicating any specific numbers in terms of repetitiveness and forcefulness, but also testified that the fact that someone has CTS symptoms during an activity does not prove it is causally related to an activity any more than it would be if someone had pain using a previously broken leg (". . . the manifestation of symptoms doesn't mean that that particular activity is causing that condition."). He also noted that Petitioner reported having symptoms with multiple activities, as well as with sleeping while wearing splints, noting this would not prove that the CTS was caused by sleeping. Dr. Biafora testified that the hold activities a couple times a day would be nowhere near frequently enough to attribute it as a cause of the CTS, stating there was no way her work activities have contributed to CTS. The testimony of Dr. Biafora was significantly more persuasive than that of Dr. Shah.

While it is possible that the Petitioner's CTS condition is related to the work activities, the evidence simply does not support by the preponderance of the evidence that it is more likely than not. The Arbitrator finds that the alleged work activities did not constitute an accident arising out of the Petitioner's employment, and that the Petitioner's bilateral CTS conditions were not causally related to her work duties.

WITH RESPECT TO ISSUE (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to the issues of accident and causation, the Arbitrator further finds that this issue is moot.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to the issues of accident and causation, the Arbitrator further finds that this issue is moot.

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to the issues of accident and causation, the Arbitrator further finds that this issue is moot.

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 the issues of accident and causation, the Arbitrator further finds that this issue is moot.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the Arbitrator's findings with regard to the issues of accident and causation, the Arbitrator further finds that this issue is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC013946
Case Name	Richard Frye v. Brian Taylor Endeavors
Consolidated Cases	
Proceeding Type	***Remand from the Circuit Court of Cook County***
Decision Type	Commission Decision
Commission Decision Number	24IWCC0506
Number of Pages of Decision	16
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Michael Johnson
Respondent Attorney	Beth Young

DATE FILED: 10/29/2024

/s/Carolyn Doherty, Commissioner

Signature

24IWCC0506

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)
☐ Modify	☐ PTD/Fatal denied
☒ ON REMAND FROM CIRCUIT COURT	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICHARD FRYE,

Petitioner,

vs. NO: 22 WC 13946
24 IWCC 0008

BRIAN TAYLOR ENDEAVORS,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County. In accordance with the opinion of the circuit court filed on September 13, 2024, the Commission considers the issues of accident, employment relationship, causal connection, benefit rates, temporary total disability, medical expenses, and prospective care, and being advised of the facts and law, awards benefits pursuant to the Illinois Workers' Compensation Act for the reasons stated 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 Comm'n*, 78 Ill. 2d 327 (1980).

I. PROCEDURAL BACKGROUND

Petitioner initially filed a claim for benefits under the Act against the Respondent for ~~a~~ injuries he sustained on April 26, 2022. Following a hearing, the Arbitrator issued a decision on July 11, 2023, concluding that Petitioner failed to prove an employee-employer relationship existed between the parties and awarding no benefits. Petitioner sought review. On January 8, 2024, the Commission affirmed and adopted the Decision of the Arbitrator.

Petitioner sought administrative review in the Circuit Court of Cook County. On September 13, 2024, the circuit court entered an order reversing the finding that no employer-employee relationship existed between the parties "at the time of the accident" and remanded the matter to the Commission "for resolution of all remaining issues."

II. FINDINGS OF FACT

The Commission hereby incorporates by reference the "Findings of Facts" and findings included in the "Conclusions of Law" contained in the Arbitrator's Decision filed on July 11, 2023, attached hereto and made a part hereof, to the extent that they do not conflict with the Circuit Court of Cook County's order filed on September 13, 2024. The Commission also incorporates by reference the September 13, 2024, circuit court order, attached hereto and made a part hereof.

In addition, the Commission makes the following findings of fact regarding Petitioner's medical condition.

Petitioner did not submit records from the Rush Hospital emergency room. He testified that he was diagnosed with a fractured tibia and a sheared ligament. He also stated that he was referred to see Dr. Daniel Bohl of Midwest Orthopedics at Rush.

On May 4, 2022, Petitioner was seen by Dr. Bohl for an evaluation of bilateral lower extremity injuries. Petitioner reported a history of the April 26, 2022 incident, stating that he fell mostly on the right side, sustaining a twisting injury to the right ankle, as well as injuring his left leg, bilateral wrists, and head. Petitioner also reported that he was seen at the Rush emergency room, where he was diagnosed with a right ankle fracture, bilateral wrist sprains, and a mild TBI. Dr. Bohl noted that Petitioner was using a short leg splint, and using crutches or a wheelchair to ambulate. The doctor reviewed X-rays taken on April 26, 2022, noting that they demonstrated an isolated distal fibula Weber B ankle fracture, but no obvious fractures or dislocations at the foot. Following an examination, Dr. Bohl diagnosed: a right bimalleolar ankle fracture as of April 26, 2022; a left lateral ankle sprain as of the same date; and a questionable Lisfranc injury. The doctor ordered a left foot MRI and issued a pneumatic walking boot for the right foot. The MRI was to evaluate for Lisfranc fracture/dislocation.

On May 17, 2022, Petitioner underwent a right foot MRI. The interpreting radiologist's impressions were of: (1) extensive diffuse subcutaneous edema, likely post-traumatic; (2) mild diffuse muscle edema presumably representing strains; (3) no Lisfranc fracture or dislocation; (3) Lisfranc ligament difficult to assess but appearing intact; and (4) mild incidental FHL tenosynovitis at the master knot of Henry.

On May 24, 2022, Petitioner returned to Dr. Bohl, who reviewed the MRI results and discussed surgical vs non-surgical treatment of the right ankle fracture. Petitioner agreed to proceed with surgery, which Dr. Bohl noted had been delayed but was ultimately authorized by workers' compensation. The doctor also noted that the left ankle strain had resolved.

On May 25, 2022, Dr. Bohl performed: (1) an open reduction internal fixation of the lateral malleolus; (2) an open reduction internal fixation of the syndesmosis; and (3) deltoid ligament repair surgery. The pre- and post-operative diagnoses were of: (1) displaced fracture lateral malleolus of fibula; rupture of syndesmosis of the ankle; and (3) rupture of the deltoid ligament of the ankle.

On June 7, 2022, July 5, 2022, and August 16, 2022, Petitioner followed up with Dr. Bohl,

showing steady progress. Dr. Bohl recommended transitioning from a CAM boot to a regular shoe and scheduled a six-week follow-up visit.

On June 10, 2022, Petitioner presented to Family Medicine Antioch, his primary care provider, complaining of significant neck pain and popping. Nurse Connie McMahon recommended an orthopedic follow-up and X-rays.

On June 21, 2022, Petitioner was evaluated for physical therapy at Vista Ambulatory Care on referral by Dr. Bellucci based on complaints of worsening pain in the neck and very loud joint noise with movement. On June 24, 2022, Petitioner underwent cervical spine X-rays, which were read as showing no fracture or dislocation, but with mild moderate multilevel degenerative change. It appears that physical therapy for Petitioner's neck terminated on June 30, 2022.

On June 27, 2022, Petitioner returned to Family Medicine for a review of the X-ray results. Nurse Beth Kirby assessed cervicalgia and recommended physical therapy.

On July 6, 2022, Petitioner underwent a physical therapy evaluation for the right ankle after the CAM boot was removed. On August 24, 2022, after 15 visits, Dr. Bellucci recertified physical therapy. Petitioner's therapy continued through at least 27 visits as of October 19, 2022, though the note for that date indicates that there was one more visit authorized.

On July 26, 2022, July 29, 2022, and August 9, 2022, Petitioner was seen at Family Medicine and treated with lidocaine patches. Petitioner was referred to chiropractic treatment.

On July 27, 2022, Petitioner underwent a cervical MRI ordered by Dr. Bellucci-Jackson. The interpreting radiologist's impressions were of degenerative disc disease at C3-C4 through C6-C7, but with no acute findings.

On August 26, 2022, and September 26, 2022, Petitioner followed up at Family Medicine, but his status and treatment was essentially unchanged.

Between September 26, 2022, and November 22, 2022, Petitioner underwent chiropractic treatment by Dr. Tina Tews of Lakeside Chiropractic/Absolute Wellness Ltd for his neck complaints.

On November 29, 2022, Dr. Bohl released Petitioner to sedentary work.

Regarding his current condition, Petitioner testified that he was able to walk down a hall way without assistance. He stated, however, that he had been advised to use a crutch or cane when surfaces are icy or slippery because he did not have the muscle built back.

The Commission also makes further findings of fact below as necessary.

III. CONCLUSIONS OF LAW

Pursuant to the circuit court order, the Commission finds that an employer-employee relationship existed on the alleged accident date and proceeds to consider the issues of accident, causal connection, benefit rates, temporary total disability, medical expenses, and prospective care.

A. Accident

In order 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 his employment. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 194 (2002). An injury "arises out of" the employment if it originated from a risk connected with, or incidental to, the employment and involved a causal connection between the employment and the accidental injury. *Id.* "In the course of" the employment refers to the time, place, and circumstances of the accident. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989). Both elements must be present at the time of the claimant's injury to justify compensation under the Act. *Id.*

In this case, the record is undisputed that Petitioner was injured while disassembling a machine at the Rush Hospital job site to which he was assigned by Respondent. The time, place and circumstances of Petitioner's injuries support a finding that it was in the course of employment. Although Petitioner was injured after disregarding Respondent's advice to wait for the moving company to begin the work, the removal of the bolt as part of the disassembly of the machine was connected with what Petitioner had to do in fulfilling his job duties, supporting a finding that the injuries arose out of the employment. Accordingly, the Commission finds that Petitioner sustained an accident arising out of and in the course of his employment by Respondent on April 26, 2022.

B. Causal Connection

In order to obtain compensation under the Act, a claimant also must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A work-related injury need only be *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and subsequent injury resulting in a disability" may be sufficient to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982).

The Arbitrator observed that there was no dispute regarding Petitioner's injury, but found no causal connection to Petitioner's current condition based on the lack of an employer-employee relationship. Given the circuit court's finding of an employment relationship, the Commission considers that Petitioner was immediately diagnosed with a fractured tibia and a sheared ligament and subsequently diagnosed by Dr. Bohl with a right ankle fracture, bilateral wrist sprains, and a mild TBI. On May 25, 2022, Petitioner underwent: (1) an open reduction internal fixation of the lateral malleolus; (2) an open reduction internal fixation of the syndesmosis; and (3) deltoid ligament repair surgery. Petitioner underwent post-operative physical therapy. On June 10, 2022, Petitioner presented to his primary care provider, complaining of significant neck pain and

popping. By June 27, 2022, Petitioner was diagnosed with cervicalgia and underwent chiropractic treatment before being released to sedentary work on November 29, 2022. Petitioner testified without rebuttal that he was now able to walk down a hall way without assistance but had been advised to use a crutch or cane when surfaces are icy or slippery because he did not have the muscle built back.

In short, the record clearly establishes that Petitioner suffered an acute trauma while working for Respondent that required surgery and medical treatment, and that Petitioner has current residual symptoms from his work injuries. There is no evidence that Petitioner had a relevant pre-existing condition. Accordingly, the Commission concludes that the chain of events supports a finding of causal connection between Petitioner's work accident and his current condition of ill-being.

C. Earnings / Average Weekly Wage

As the Commission has found that Petitioner sustained an accident and that there is a causal connection between that accident and Petitioner's current condition of ill-being, the Commission finds it necessary to calculate Petitioner's average weekly wage (AWW). As our supreme court has noted, section 10 of the Act provides four different methods for calculating the average weekly wage:

> "(1) By default, average weekly wage is 'actual earnings' during the 52-week period preceding the date of injury, illness or disablement, divided by 52. (2) If the employee lost five or more calendar days during that 52-week period, 'whether or not in the same week,' then the employee's earnings are divided not by 52, but by 'the number of weeks and parts thereof remaining after the time so lost has been deducted.' (3) If the employee's employment began during the 52-week period, the earnings during employment are divided by 'the number of weeks and parts thereof during which the employee actually earned wages.' (4) Finally, if the employment has been of such short duration or the terms of the employment of such casual nature that it is 'impractical' to use one of the three above methods to calculate average weekly wage, 'regard shall be had to the average weekly amount which during the 52 weeks previous to the injury, illness or disablement was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer.'" *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 230-31 (2001).

Petitioner claims earnings not only from Respondent, but also from his concurrent employment with Karner Group and Wet N Wild Outfitters, as well as his self-employment as a tile setter. Section 10 of the Act provides that: "[w]hen the employee is working concurrently with two or more employers and the respondent employer has knowledge of such employment prior to the injury, his wages from all such employers shall be considered as if earned from the employer liable for compensation." 820 ILCS 305/10 (West 2022).

In this case, Petitioner's testimony establishes that his employment with Respondent

extended from late November or December 2021 through the injury date of April 26, 2022. Petitioner's employment therefore began within the 52-week period preceding the date of injury. Accordingly, the Commission applies the third method specified by section 10 to calculate Petitioner's AWW with Respondent.

Petitioner testified that his AWW regarding Respondent was probably $440.00 to $480.00. Petitioner submitted five checks from Respondent into evidence in the amounts of: $590.00 (January 26, 2022); $855.00 (March 24, 2022); $240.00 (April 2, 2022); $660.00 (April 14, 2022); and $412.14 (April 22, 2022). Given Petitioner's unrebutted testimony that he was paid $30.00 per hour, these checks would suggest payment for 19.67, 28.5, 8.0, 22.0, and 13.74 hours respectively. Petitioner testified that there were more checks, but he could not say with any certainty whether he received additional checks from January through March 2022.

Petitioner's testimony is corroborated by the documentation submitted into evidence. The checks suggest payment for 91.91 hours of work. Petitioner's testimony suggests that he averaged 16 hours of work per week for Respondent. Applying the third method of calculating AWW (weeks and parts thereof for those who have fewer than 52 weeks of history), dividing the former by the latter suggests that he worked 5.75 weeks during the periods for which checks were submitted. Dividing Petitioner's earnings as indicated in the checks ($2,757.14) by 5.75 weeks yields an average weekly wage of $479.50.

Regarding Petitioner's concurrent employment, Petitioner testified without rebuttal or objection that he worked for Karner Group as a building manager, making approximately $320.00 to $400.00 weekly. Petitioner also testified without rebuttal or objection that that he worked for Wet N Wild Outfitters as a fishing guide, earning between $275.00 to $325.00 per week. Petitioner further testified without rebuttal that he informed Respondent of his other jobs. He stated that he mentioned the Karner Group by name. He also stated that he was unsure whether he specifically named Wet N Wild Outfitters, but specifically informed Respondent that he worked as an ice fishing and open water fishing guide. He explained that he discussed his employment because Brian Taylor wanted Petitioner to understand that he was not offering regular full-time work and would need to supplement his income. Given this record, the Commission determines that Petitioner's AWW shall include $360.00 regarding the Karner Group and $300.00 regarding Wet N Wild Outfitters.

Regarding Petitioner's self-employment as a tile setter, Petitioner submitted no evidence that he insured himself regarding his self-employment, thereby removing the self-employment from the scope of the Act in this case. See 820 ILCS 305/3(20) (West 2022).

Accordingly, based on the record presented at the arbitration hearing, the Commission calculates that Petitioner's AWW was $1,139.50, which includes Petitioner's wages from Respondent, Karner Group and Wet N Wild Outfitters.

D. Medical Expenses and Prospective Care

As the Commission has found that Petitioner sustained an accident and that there is a causal connection between that accident and Petitioner's current condition of ill-being, the Commission next turns to the issue of Petitioner's medical expenses. Petitioner sought $11,629.35 in unpaid medical bills itemized by providers in the Request for Hearing as follows: (1) $6,709.35 by Midwest Orthopaedics at Rush; (2) $1,590.00 by Family Medicine Wauconda; (3) $1,410.00 by Absolute Wellness; and $1,920.00 by University Anesthesiologists. Petitioner also submitted medical billing records as Petitioner's Exhibit 7. Respondent raised no specific objections to Petitioner's claimed expenses. A review of Petitioner's bills generally supports his claim. However, the billing statement from Midwest Orthopaedics at Rush reflects an outstanding charge of $6,504.06. In addition, the bills from Family Medicine Wauconda reflect charges of $1,190.00. Accordingly, the Commission awards Petitioner $11,024.06 in medical expenses pursuant to sections 8 and 8.2 of the Act. The Arbitrator awarded Respondent a credit of $1,429.71 for medical expenses already paid. The Commission affirms this award, as Petitioner raised no objection thereto.

Petitioner also raised prospective care as an issue on his Request for Hearing and Petition for Review. However, Petitioner makes no argument in favor of an award of prospective care in his Statement of Exceptions and his treatment records do not identify any prospective care recommended by his treating physicians. Based on this record, the Commission does not award Petitioner prospective care.

E. Temporary Total Disability (TTD)

In the Request for Hearing, Petitioner claimed 30 and 2/7ths weeks of TTD benefits for the period commencing April 26, 2022, through the December 1, 2022 hearing date. The record on review indicates that Petitioner has been off work since the April 26, 2022 accident and was released to sedentary work on November 29, 2022, but that no work or accommodation was available to Petitioner as of the December 1, 2022 hearing date. In addition, the Commission awards Respondent a credit of $720.00 for TTD benefits already paid, as agreed by the parties in the Request for Hearing.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay Petitioner's reasonable and necessary medical services in the amount of $11,024.06, as set forth in Petitioner's Exhibit 7, to Petitioner pursuant to sections 8(a) and 8.2 of the Act. The Commission also awards Respondent a credit of $1,429.71 for amounts already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $759.67 per week for the period commencing April 26, 2022, through December 1, 2022, a period of 30 and 2/7ths weeks, that being the period of temporary total incapacity for work under section 8(b) of the Act. Respondent is entitled to a $720.00 credit for temporary total disability benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of

expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

Bond for the removal of this cause to the Circuit Court is hereby fixed at the sum of $32,000.00. 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.

October 29, 2024

d: 10/24/24
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	22WC013946
Case Name	Richard Frye v. Brian Taylor Endeavors
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Steven Fruth, Arbitrator

Petitioner Attorney	Michael Johnson
Respondent Attorney	Stuart Pellish

DATE FILED: 7/11/2023

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

/s/Steven Fruth, 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)

Richard Frye
Employee/Petitioner

Case # **22 WC 013946**

v.

Consolidated cases: _____

Brian Taylor Endeavors
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 **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **December 1, 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. ☐ 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, **April 26, 2022**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $**240.00**; the average weekly wage was $**12,480.00**.

On the date of accident, Petitioner was **54** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**720.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**1,429.71** in medical expenses, for a total credit of $**2,149.71**.

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

ORDER

Petitioner's Application for Benefits 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 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 11, 2023**

Signature of Arbitrator

Richard Frye v. Brian Taylor Endeavors
22 WC 13946

INTRODUCTION

This matter proceeded to hearing before Arbitrator Steven Fruth. The disputed issues were: ***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?; ***F:*** Is Petitioner's current condition of ill-being causally related to the accident?; ***G:*** What were Petitioner's earnings?; ***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? TTD

STATEMENT OF FACTS

Petitioner Richard Frye testified he worked numerous part time jobs, one of which was with Respondent Bryan Taylor Endeavors. He worked for Karner Group as a building manager, Wet N Wild Outfitters as a fishing guide, and was also self-employed as a tile setter and finish carpenter. He testified that Brian Taylor was aware of his other jobs.

Petitioner was paid $30/hour by Respondent, sometimes working 40 hours/week and sometimes only one day a week. He that Respondent paid him in cash and by check. Petitioner testified that Respondent did not withhold income taxes or Social Security taxes. Petitioner testified he earned an average of $400/week from Karner and an average of $300/week from Wet N Wild. Petitioner further testified that due to an injury he did not earn enough in 2021 to pay taxes on.

Petitioner testified that he believed he was an employee of Brian Taylor and covered by his Workers' Compensation insurance. He identified PX #4, a text received from Brian Taylor. Petitioner also identified PX #5 and PX #6, letters from Amy Stack RN, Medical Professional for Travelers/The Phoenix Insurance Co. He had received copies of those letters. PX #4, PX #5, and PX #6 were rejected as evidence.

Petitioner testified Brian Taylor would contact him when he was looking for someone to install or dismantle equipment, in conjunction with other work Mr. Taylor had agreed to perform. Mr. Taylor would contact Petitioner by phone, asking if he was interested in this work assignment. Petitioner testified that he could not turn down a work request from Mr. Taylor but then testified that he could turn down requests if he chose.

Prior to April 26, 2022 Petitioner was contacted by Mr. Taylor to see if he was interested in working on April 26. The assignment would entail assisting a moving company in the disassembly of a piece of medical equipment at RUSH hospital.

Petitioner testified that he was under the direct supervision of Brian Taylor at the time of his accident. He also testified that Mr. Taylor was not on site at the time of his accident. He testified that Mr. Taylor did not provide any tools or equipment for the work at RUSH. He would take directions from the moving company when on site.

Petitioner testified Mr Taylor told him not begin disassembling the hospital equipment until the moving company (Reebie) showed up to assist because the medical equipment was very heavy. On the morning of April 26, Petitioner received a phone call from Mr. Taylor, telling him the moving company would be late in arriving to the hospital. Petitioner was told to get a cup of coffee or a soft drink and wait until the moving company arrived before beginning to dismantle the medical equipment.

Prior to the arrival of the moving company, Petitioner began disassembling the hospital equipment. He described the machine as very heavy. He started removing one of the legs of the medical equipment when it collapsed onto his head, hand, and legs. He was transported by ambulance to RUSH ER. Petitioner was treated in the ER and then was referred to Midwest Orthopaedics at RUSH. He testified that he was diagnosed with a fractured tibia and a sheared ligament.

Petitioner followed with Midwest Orthopaedics and was cleared for surgery on May 20, 2022 by Dr. Ari Narsinghani. Dr. Daniel Bohl of Midwest Orthopaedics at RUSH performed an open reduction with internal fixation of the right lateral malleolus, an open reduction with internal fixation of the syndesmosis, and deltoid ligament repair on May 25, 2022. The preoperative and postoperative diagnosis were displaced fracture lateral malleolus of fibula, rupture of syndesmosis of ankle, and rupture of deltoid ligament of ankle. Petitioner received postoperative physical therapy at Vista Ambulatory Care Center.

Petitioner consulted his primary physician Dr. Jennifer Bellucci-Jackson on June 10, 2022 for his right ankle surgery and left ankle sprain. Petitioner also complained of continuing significant neck pain. He was referred for chiropractic care from Lakeside Chiropractic/Absolute Wellness Ltd for his neck complaints.

Petitioner testified that he had been released to sedentary work by Dr. Bohl on November 29, 2022. He testified that there was no sedentary work available with any of his employers.

CONCLUSIONS OF LAW

B: *Was there an employee-employer relationship?*

The Arbitrator finds that Petitioner failed to prove that an employee-employer relationship existed with Respondent on the date of injury.

Petitioner testified that he believed he was an employee of Respondent at the time of his accident. Petitioner's state of mind is irrelevant in determining whether an employee-employer relationship existed. That determination is based on the facts in evidence.

Many factors are considered to determine whether an employment relationship existed at the time of the claimed injury:

1) the right to control the manner in which the work is performed;
2) the right to discharge;
3) the method of payment;
4)) the deduction of withholding income taxes, Social Security taxes, Medicare taxes, etc.;
5) the skills required to perform the work;
6) the ownership of tools, materials, and equipment used in the work; and
7) the relationship of the work performed to the employer's purpose.

The employer's right to control the manner of the employee's work is the single greatest determining factor, even where other factors may conflict.

Petitioner testified that he used his own tools when for Respondent. He did not testify that any special skills were essential to performing the work for Respondent. No taxes were withheld from Petitioner's pay. Petitioner was paid in cash and by check. Payment in cash is suggestive of a lack of an employee-employer relationship. The Arbitrator assumes Respondent had the right to discharge Petitioner in that Respondent may choose to not hire Petitioner for a particular job. However, in this case Petitioner had the right, and had exercised that right, to refuse jobs.

The Arbitrator that Petitioner failed to prove that Respondent had control over his work. Petitioner testified that Brian Taylor had direct control over his work. However, Petitioner testified that the movers directed his work on site. Further, Petitioner testified that Mr. Taylor was not on site. The Arbitrator finds it is highly unlikely that Mr. Taylor could control Petitioner's work when he was not present at the worksite. There was no evidence that Mr. Taylor gave any direction to Petitioner other than wait for the movers before dissembling the medical equipment to be moved. There was no evidence that Mr. Taylor gave any specific instructions to Petitioner about the manner or method to dissemble the medical equipment.

The Arbitrator adds the observation that Petitioner had questionable credibility. Although there was no direct impeachment of Petitioner, the entirety of his testimony stretched credulity. Petitioner's testimony that he did not earn enough money to be liable to file a tax return did not align with his testimony regarding his earnings, particularly the testimony about cash payments for his work. He offered no corroborating evidence to support his tax filing claim. Someone with the complexity of Petitioner's claimed work history would normally have records of earnings, cost of supplies, and other deductions. Nothing of this nature was offered in evidence.

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

The Arbitrator has found that Petitioner failed to prove that there was an employee-employer relationship with Respondent. It then follows from that finding that there could not have been an accident that arose out of and in the course of employment by Respondent. This issue is mooted.

F: *Is Petitioner's current condition of ill-being causally related to the accident?*

There is no dispute that Petitioner was injured on April 26, 2022. However, in light of Petitioner's failure to prove that an employee-employer relationship with Respondent existed and his failure to prove a causal connection, this issue is mooted.

G: *What were Petitioner's earnings?*

In light of Petitioner's failure to prove that an employee-employer relationship with Respondent existed and his failure to prove a causal connection, this issue is mooted.

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?*

There is no dispute that Petitioner's required significant medical care, including surgery. However, in light of Petitioner's failure to prove that an employee-employer relationship with Respondent existed and his failure to prove a causal connection, this issue is mooted.

K: What temporary benefits are in dispute? TTD

In light of Petitioner's failure to prove that an employee-employer relationship with Respondent existed and his failure to prove a causal connection, this issue is mooted.

Steven J. Fruth, Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC027552
Case Name	Luis Jose Aguilar v. Behr Process Corp
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0507
Number of Pages of Decision	22
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Patrick Martin

DATE FILED: 10/30/2024

/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

JOSE LUIS AGUILAR,

Petitioner,

vs. NO: 13 WC 27552

BEHR PROCESS CORP.,

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 temporary total disability and the nature and extent of Petitioner's injury, 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 8, 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 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.

October 30, 2024

CAH/tdm
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	13WC027552
Case Name	Luis Jose Aguilar v. Behr Process Corp
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Antara Nath Rivera, Arbitrator

Petitioner Attorney	Steven Seidman
Respondent Attorney	Patrick Martin

DATE FILED: 2/8/2024

/s/Antara Nath Rivera, 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

Jose Luis Aguilar
Employee/Petitioner

v.

Behr Process Corp.
Employer/Respondent

Case # **13** WC **027552**

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 **Antara Nath Rivera**, Arbitrator of the Commission, in the city of **Chicago**, on **December 14, 2023**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **March 28, 2013**, 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 $**27,144.00**; the average weekly wage was $**522.00**.

On the date of accident, Petitioner was **59** 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 $**15,511.43** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**15,511.43**.

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

ORDER

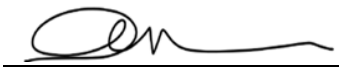
Respondent shall pay for reasonable and necessary medical services, in the amount of $12,461.41.00, pursuant to the medical fee scheduled and as outlined in PX 2, PX 5, PX 7, and PX 9, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner TTD benefits of $82,937.63, commencing on November 5, 2013, until May 4, 2018, (234 3/7 weeks) at a rate of $348.00/week as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner PPD benefits of $313.20 per week for 175 weeks, because the injuries sustained caused the minimum statutory loss of 35% loss of the person as a whole, as provided in Section 8(d)(2) of the Act.

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

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



Signature of Arbitrator

February 8, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATOR'S DECISION

Jose Luis Aguilar, Petitioner,	)	
v.	)	Case No. 13WC27552
Behr Process Corp., Respondent.	)	

This matter proceeded to hearing on December 14, 2023, in Chicago, Illinois before Arbitrator Antara Nath Rivera on Petitioner's Request for Hearing. Issues in dispute include causal connection, medical bills, total temporary disability ("TTD"), and nature and extent. (Arbitrator's Exhibit "AX" 1)

FINDINGS OF FACT

Job Duties

Jose Luis Aguilar ("Petitioner") testified that he is currently 70 years old and not working. [1] (Transcript "T." at 11, 25; AX 1) Petitioner testified that he worked for Behr Process Corp. ("Respondent"), as a line operator, for 13 years before December 2013. (T. 12-13) Petitioner testified that, as a line operator, he put orders in the computer to fill up a two or five gallon of paint. (T. 13) Petitioner testified that he also cleaned the containers in a large tank. *Id*. Petitioner testified that his job was to empty the bucket of paint and use a plastic spatula to clean the old paint out of the bucket. (T. 31) Petitioner testified that sometimes he had to do a repeated motion with the spatula, approximately 60-70 times, around the inside of the bucket. *Id*.

Petitioner testified that before he was a line operator, he used to pack the containers. (T. 28) Petitioner testified that he began as a line operator if someone did not show up to work, that there were seven lines, and that he was on line one most of the time when he was packing. (T. 28-29) Petitioner testified that he would stock five gallon buckets of paint on a pallet. (T. 29) Petitioner also testified that he went Olive-Harvey to learn English and take GED classes. (T. 24)

Accident

Petitioner testified that he was working on March 28, 2013. (T. 14) Petitioner testified that carried a full five gallon container to the tank to clean it when he felt a pop in his shoulder. (T. 15) Petitioner

[1] The Arbitrator observed that Petitioner could not raise his right hand when sworn in.

testified that despite the pop, the took the container and dropped it in the tank with is right hand and shoulder. *Id*. Petitioner testified that when he felt the pop he also had pain and felt as though his right shoulder automatically shrank and that he could not stretch it out. *Id.* Petitioner testified that his arms were in front of him when he was carrying the bucket of paint. (T. 30) Petitioner testified that he hurt his shoulder when he lifted the bucket. (T. 31) Petitioner testified that he told his supervisor Adolfo Rodriguez. (T. 30) Petitioner testified that he did not have any issues or medical care for his right shoulder before March 28, 2013. (T. 12) Petitioner also testified that he is right-handed. (T. 15)

Summary of Medical Records

On March 28, 2013, Petitioner first treated at Ingalls Occupational Health. (Petitioner's Exhibit "PX" 3; T. 16) Petitioner reported that he lifted a five gallon bucket when his injury occurred. (PX 3 at 7-8) Dr. Amjad Akhtar, DO, observed tender points over the anterior shoulder and a positive Hawkin's and Empty Can test which had to be stopped due to Petitioner's level of pain. *Id*. Dr. Akhtar diagnosed Petitioner with right shoulder pain after x-rays were negative for any acute or chronic findings. *Id*. Petitioner was given medication, instructed to ice his shoulder, given work restrictions of lifting no more than five pounds, and an MRI was ordered. *Id*. Petitioner testified that he received treatment with physical therapy and other treatment until April 18, 2013. (T. 16)

On April 11, 2013, Petitioner received a right shoulder MRI at Ingalls Memorial Hospital. (PX 6 at 12) Radiologist, Dr. Ritesh Darji, noted tendinosis and fraying of the supraspinatus with a partial-thickness bursal surface tear, as well as a small partial-thickness tear. *Id*. Dr. Darji opined that the MRI findings were "compatible with a SLAP tear of the superior labrum." *Id*.

On April 26, 2013, Petitioner initially presented to Dr. Philip Nigro, M.D. at Bone and Joint Physicians. (PX 7) Petitioner reported the injury, reported a pain level of 7 out of 10, and reported radiating pain down his arm toward the elbow. (PX 7 at 14-17) Dr. Nigro observed that Petitioner had a severely painful arc of motion and that his internal and external rotation were limited due to the severity of his pain. *Id*. The records indicated that Tylenol 3 did not help Petitioner and that he has not done any physical therapy up until that time. *Id*. Dr. Nigro reviewed the MRI and diagnosed Portioner with right frozen shoulder, adhesive capsulitis, and SLAP tear. *Id*. Dr. Nigro administered an intraarticular cortisone injection. *Id*. Dr. Nigro opined that Petitioner may need surgery for capsular release if nonoperative treatment fails. *Id*. Dr. Nigro released Petitioner back to work with instructions not to use his right shoulder. *Id*.

On May 9, 2013, Petitioner followed up with Dr. Nigro and complained of worsened right shoulder pain, which was at 9 out of 10 and radiating down into his arm. (PX 7 at 10) Dr. Nigro observed increased erythema over Petitioner's forearm. *Id*. Dr. Nigro performed a second injection into the glenohumeral joint of the right shoulder consisting of lidocaine and Depo Medrol. *Id*. Dr. Nigro opined that Petitioner was having nerve-type symptoms which could point toward the cervical spine or perhaps carpal or cubital tunnel syndrome. *Id*. Dr. Nigro ordered an MRI and EMG. *Id*.

On June 18, 2013, Petitioner underwent an EMG nerve conduction velocity study conducted by Dr. George E. Charuk. (PX 7 at 8) The EMG revealed mildly reduced motor amplitudes in the median nerve compared to the ulnar nerve; otherwise, the results were normal. *Id*.

On June 19, 2013, Petitioner underwent a cervical spine MRI at Ingalls Memorial Hospital. (PX 6 at 9) The MRI revealed small disc protrusions at C4-5 and C5-6 causing effacement of the central thecal sac and a small disc protrusion at C6-7 causing mild narrowing of the right neural foramen. *Id*.

On July 18, 2013, Petitioner followed up with Dr. Nigro. (PX 7 at 6) Dr. Nigro also diagnosed Petitioner with right upper arm extremity pain based on Petitioner's complaints. *Id*. Dr. Nigro noted that Petitioner refused a cortisone injection treatment that day because the injections minimally helped him. *Id*. Dr. Nigro kept Petitioner off work. *Id*. Petitioner testified that Dr. Nigro referred him to Dr. Benjamin Goldberg, M.D.. (T. 17)

On August 2, 2013, Petitioner presented to Dr. Goldberg at the University of Illinois Hospital & Health Sciences System, Department of Orthopedics. (PX 5) The records indicated that Petitioner complained of pain and that he had no relief from two injections. (PX 5 at 67-68) Dr. Goldberg reviewed Petitioner's MRI and diagnosed Petitioner with partial thickness bursal surface tear of the supraspinatus tendon, a partial thickness tear of the subscapularis tendon, and a large SLAP tear. *Id*. Dr. Goldberg noted that Petitioner's main problem was that his shoulder was very stiff and recommended physical therapy for six weeks. *Id.* Petitioner was given work restriction of working without the use of his right hand. *Id*.

On October 7, 2013, Petitioner followed up with Dr. Goldberg. (PX 5 at 59-62) Petitioner reported improvements in his range of motion and reduction in his pain to 3-4 out of 10 when at rest, 10 out of 10 when in motion. *Id*. Dr. Goldberg noted that conservative treatment did not help and recommended a right shoulder arthroscopy with subacromial decompression and arthroscopic capsular release. *Id.*

On November 5, 2013, Dr. Goldberg performed a right shoulder arthroscopy, subacromial decompression, capsular release. (PX 12 at 31-33) Dr. Goldberg noted that his right shoulder "demonstrated significant limitation to range of motion," particularly forward and internal rotation. *Id.* Dr. Goldberg performed a manipulation under anesthesia, with favorable responses to both flexion and internal rotation. *Id.* While Dr. Goldberg was unable to identify a labral tear and noted that the rotator cuff was intact, he noted significant synovitis most significantly in the rotator interval as well as significant bursitis in the subacromial space. *Id.* Dr. Goldberg used the arthroscopic shaver to debride the synovium then cauterize all bleeding areas left over. *Id.* Post-operatively, Dr. Goldberg diagnosed Petitioner with right frozen shoulder. *Id.*

On November 8, 2013, Petitioner presented to Dr. Goldberg for his first post-surgery follow up. (PX 5 at 54-55) Dr. Goldberg noted that Petitioner's pain was well controlled. *Id*. Dr. Goldberg recommended aggressive physical therapy and provided Petitioner with an ERMI splint for aggressive stretching. *Id*.

On November 25, 2013, Petitioner returned to Dr. Goldberg and complained of continued (but slightly improved) pain with range of motion. (PX 5 at 52) On physical examination, Petitioner demonstrated forward flexion to 110 degrees, abduction to 80 degrees, external rotation to 40 degrees, and internal rotation to 5-10 degrees. *Id*. Petitioner was instructed to continue physical therapy and work on his range of motion using the splint. *Id*.

On April 11, 2014, Petitioner followed up with Dr. Goldberg. (PX 5 at 45-46) Dr. Goldberg noted that his range of motion was now "pretty good," but that Petitioner still had pain with range of motion. *Id*. Dr. Goldberg reduced the restriction to one pound and prescribed him six weeks of work conditioning to be followed by a functional capacity evaluation ("FCE") (PX 5 45)

On April 23, 2014, Petitioner underwent an abbreviated FCE to establish his baseline functioning prior to commencing work conditioning. (PX 8 at 45-46) The examiner noted high levels of physical effort on Petitioner's behalf and indicated that Petitioner was willing to participate without requesting or taking rest breaks and that he demonstrated obvious upper extremity muscle recruitment during tasks. *Id*. The report noted that Petitioner demonstrated good body mechanics with lifting tasks. *Id*. The examiner opined that Petitioner was unable to return to his prior job and recommended that he undergo work conditioning. *Id*.

On May 16, 2014, Petitioner was discharged from the FCE program. (PX 8 at 533) Examiner Lisa Clark, OTR-L, noted that Petitioner was unable to tolerate minimal increases in the difficulty of his work conditioning activities due to pain. *Id*. She recommended that Petitioner not attempt to return to his job, but rather that he "seek further medical intervention." *Id*. Ms. Clark opined that Petitioner's job was categorized as being at the medium-heavy demand level and that Petitioner was at sedentary demand level. *Id*.

On May 30, 2014, Petitioner followed up again with Dr. Goldberg. (PX 5 at 43-44) Dr. Goldberg noted that Petitioner had difficulty with external rotation with his arm at his side, internal rotation, and forward flexion. *Id*. Dr. Goldberg recommended a repeat shoulder arthroscopy and capsular release. *Id.* The records indicated that surgery was scheduled for June 17, 2014, but was cancelled due to lack of authorization by workers' compensation. *Id*.

On August 11, 2014, Petitioner underwent an independent medical examination ("IME") with Section 12 Dr. Nikhil Verma, M.D.. (Respondent's Exhibits "RX" 1) Dr. Verma noted reduced range of motion in external rotation at the side, abduction, and external rotation in the right arm relative to the left,

as well as pain at the terminal ends of range of motion. (RX 1 at 5-6) He also noted reduced right shoulder strength relative to the left during strength testing. *Id*.

Dr. Verma opined that Petitioner was experiencing residual stiffness post-arthroscopy and capsular release; he opined that Petitioner required more treatment, with a combination injection to both the glenohumeral joint and the subacromial space with an additional four weeks of physical therapy and stretching. *Id*. Dr. Verma indicated that if Petitioner continued to have persistent motion deficits and pain after this, Petitioner would require additional treatment but, prior to proceeding with a repeat arthroscopy, a combined glenohumeral and subacromial injection with an additional four weeks of physical therapy should be considered. *Id*.

Dr. Verma further opined that Petitioner's diagnosis was frozen shoulder or adhesive capsulitis, and that this condition was not work-related because there was no discrete traumatic injury to the shoulder. *Id*. Dr. Verma noted that Petitioner's pain developed as a result of repetitively carrying buckets of paint which would not be associated with the development of adhesive capsulitis, as that condition commonly occurs insidiously in a general population. *Id*. Dr. Verma further noted that, based upon the operative report, there was no indication of any objective anatomic injury to the shoulder insofar as that report revealed an intact rotator cuff, labrum, and articular surfaces. Dr. Verma opined that Petitioner had not reached maximum medical improvement ("MMI") with respect to his non-work-related condition and could return to work with the restriction that he lift no more than 10 pounds with the right upper extremity and also avoid any overhead use. *Id*.

On October 6, 2014, Dr. Goldberg authored a rebuttal to Dr. Verma's Section 12 report. (PX 4 at 172) Dr. Goldberg opined that frozen shoulder could occur after injury and that Petitioner sustained frozen shoulder based on his accident and symptoms of stiffness. *Id*. Dr. Goldberg noted that Petitioner's injury was work related, that Petitioner's surgery should be approved, and that a delay of the surgery would worsen his prognosis to return to work. *Id*.

On April 17, 2015, Dr. Goldberg testified at an evidence deposition. (PX 10)

On July 18, 2016, Petitioner presented to Dr. Verma for a second IME. (RX 2) Dr. Verma reiterated his opinion that Petitioner's adhesive capsulitis was not work-related. *Id*.

On October 24, 2016, Petitioner presented to Dr. Goldberg again with continued complaints of pain and stiffness. (PX 5 at 36-37) Dr. Kian Setayesh, M.D., was also present during this examination with Dr. Goldberg. *Id*. Upon physical examination, Petitioner's right shoulder had regressed, with range of motion limited to only 85 degrees of forward flexion, 80 degrees of abduction, 45 degrees of external rotation, and 30 degrees of internal rotation. *Id*. Dr. Setayesh agreed that Petitioner's condition was causally related to his work accident and both doctors ordered an MRI. *Id*.

On January 16, 2017, Petitioner returned to Dr. Goldberg and reported a pain level of 7 out of 10 in his shoulder. (PX 5 at 34) Dr. Goldberg ordered thyroid studies to evaluate Petitioner for diabetes given his recurrent stiffness. *Id*.

Between April and June 2017, Petitioner presented to Dr. Goldberg with similar complaints. (PX 5 27-32) Dr. Goldberg ordered physical therapy and an MRI. *Id*. Petitioner's thyroid tests returned normal and the MRI revealed mild thickening of the inferior glenohumeral ligament "which can be seen with adhesive capsulitis," but no rotator cuff tears. *Id*. Petitioner complained of neck pain and Dr. Goldberg referred him to Dr. Michal Szczodry, M.D.. *Id*.

On August 16, 2017, Petitioner presented to Dr. Szczodry. (PX 5 at 24-26) Petitioner reported pain radiating into his shoulder from his neck. *Id.* Dr. Szczodry ordered an EMG to assess the extent to which Petitioner was experiencing nerve issues unrelated to his neck. *Id*.

On September 8, 2017, Petitioner underwent an EMG study with Dr. Terry Nicola, M.D.. (PX 4 at 129-132) The EMG revealed mild reduced motor recruitment in C8-T1 innervated muscles and normal studies for the median, ulnar, and radial nerves. *Id*. Dr. Nicola opined that the results were consistent with a lower cervical lesion from stenosis or a lower cervical lesion causing nerve root entrapment. *Id*. Dr. Nicola recommended a cervical MRI scan for correlation. *Id*.

On September 25, 2017, Petitioner returned to Dr. Goldberg, who opined that his EMG study showed mild C8-T1 radiculopathy. (PX 5 at 21-22) Dr. Goldberg reviewed Petitioner's right shoulder MRI from July; he stated that the MRI showed an intrasubstance tear of the supraspinatus tendon with flattening of the biceps tendon groove and associated fluid around it. *Id*. He further noted "some thickening of the inferior glenohumeral ligament which is worrisome for adhesive capsulitis." *Id*. Dr. Goldberg opined that Petitioner's ongoing pain was related to both shoulder stiffness and bicipital tendonitis. *Id*. Dr. Goldberg offered Petitioner the option of a repeat arthroscopy, which he accepted. *Id*. Dr. Goldberg scheduled a right capsular release and manipulation under anesthesia with subacromial decompression and biceps tenotomy for November 14, 2017. (PX 5 at 22-23)

On November 14, 2017, Dr. Goldberg performed the second surgery. (PX 4 at 169-170) The surgery involved an arthroscopic subacromial decompression, a manipulation under anesthesia, an arthroscopic capsular release, a proximal biceps tenotomy, and a distal clavicle resection. *Id*. Three days post-surgery, Dr. Goldberg prescribed four weeks of physical therapy. (PX 5 at 16) Petitioner continued to follow up with Dr. Goldberg, who opined that he was doing well. (PX 5 at 13, 15)

On February 16, 2018, Petitioner returned to Dr. Goldberg and complained of right shoulder pain with a pain level of 7 out of 10. (PX 5 at 11-12) The records indicated that Petitioner also complained of a deformity in his right arm, which Dr. Goldberg stated was related to Petitioner's biceps tenotomy. *Id*. Dr. Goldberg performed a physical examination; he opined that Petitioner's range of motion and strength were

back to normal. *Id*. Dr. Goldberg remarked that Petitioner's ongoing pain might be related to his neck. *Id*. He ordered a neck MRI to rule out referred pain from the cervical spine. *Id*.

On March 1, 2018, Petitioner underwent a cervical MRI. (PX 4 at 364-365) The MRI revealed no evidence of neural foraminal narrowing or central canal stenosis at any level, including C8-T1. *Id*.

On April 6, 2018, Petitioner followed up with Dr. Goldberg. (PX 5 at 9-12) On physical examination, Petitioner's right shoulder range of motion was once again diminishing, having lost 30 degrees of forward flexion and 50 degrees of external rotation since his examination two months prior. *Id*. Right shoulder x-rays showed narrowing of the right glenohumeral joint space as well as widening of the right AC joint, possibly related to low grade AC joint separation. (PX 4 at 363) Dr. Goldberg opined that Petitioner had three options: live with his condition, receive a steroid injection for pain relief, or undergo a third surgery. (PX 5 at 10) Petitioner was unable to decide during that visit; Dr. Goldberg instructed him to return in one month. *Id*.

On May 4, 2018, Petitioner returned to Dr. Goldberg for the last time. (PX 5 at 7; T. 22, 32-33) Petitioner complained of unchanged pain and stiffness in his right shoulder. (PX 5 at 7-8) Petitioner reported that he had been performing at-home physical therapy exercises, as instructed. *Id*. On examination, Petitioner had lost another 10 degrees of forward flexion since the month before. *Id*. Dr. Goldberg told Petitioner that his odds of improving his pain and range of motion via a third surgery were about 50/50. *Id*. Dr. Goldberg instructed Petitioner to continue at-home stretching and exercises, and to follow up with him on an as-needed basis. *Id*.

Petitioner's Current Condition

Petitioner testified that he did not have any improvement after surgery until now. Petitioner testified that today he cannot lift heavy things heavy and cannot lift his arm. (T. 23) Petitioner testified that he cannot do what he used to be able to do. *Id*. Petitioner testified that he does not take any medication. *Id*. Petitioner testified that at home, he tries to walk and tries to exercise his hand but he is unable to do so. (T. 24) Petitioner testified that he cannot even empty a soda into a glass. *Id*. Petitioner testified that he tries to cook with his right hand because his wife is ill. (T. 26) Petitioner further testified that he uses his left hand to go grocery shopping because he cannot stretch his right arm. *Id*. He testified that he has to go back and forth several times because he can only carry one bag at a time. (T. 27)

Petitioner testified that he cannot lift his arm above his head because it hurts and feels "tired." (T. 33) Petitioner testified that he cannot write because his whole arm gets tried and has to let go of the pencil. *Id*. Petitioner testified and demonstrated that he can only raise his right arm to chest level. (T. 33) Petitioner testified that he feels more soreness than numbness. *Id*. Petitioner testified that he was given pills after surgery and now does not take it on a daily basis because it is bad on his stomach. (T. 34)

Petitioner testified that, while he worked light duty for Respondent after the accident, Respondent did not accommodate the work restrictions given to him by doctors after "late" 2013. (T. 19-20) Petitioner testified that Respondent told him not to work until he was 100%. *Id*. Petitioner testified that he did not look for work within his restrictions because in Mexico if you are disabled, you can't find another job. *Id*. Petitioner testified that, in his opinion, it is illegal to look for work when he is ill. *Id*.

Petitioner testified that he is now 70 years old. (T. 24-26) Petitioner testified that he has a less-than-high-school level of education, having taken GED classes and failed the examination. *Id*. Petitioner testified that although he took some English classes, his English language skills are very limited. *Id*. Petitioner testified that he knows only basic phrases of the sort necessary to work with Respondent such as "bring me the pallet," "bring me the container," or "clean the machine," as well as words relating to weight and numbers and cannot read English at all. *Id*.

Petitioner presented evidence that at the time of his injury, Petitioner was married with no dependent children. (AX 1) Petitioner also presented evidence of outstanding medical bills totaling $12,461.41 and that Respondent paid $15,511.43 in TTD maintenance benefits. (AX 1; PX 2; PX 7; PX 9)

Dr. Benjamin Goldberg deposition testimony

On April 17, 2015, Dr. Goldberg testified at an evidence deposition. (PX 10) Dr. Goldberg testified that he is a board-certified orthopedic surgeon who has been practicing as a surgeon for 16 years and board certified for 13 years. (PX 10 at 2; Deposition Transcript "DT." page 4) Dr. Goldberg testified that he first saw Petitioner on August 2, 2013, and recorded a history that Petitioner had sustained an injury on March 28, 2013, while "lifting 50 pounds of paint." (PX 10 at 3; DT. page 7) After conducting an examination and reviewing MRI films, Dr. Goldberg concluded that Petitioner had sustained adhesive capsulitis with a partial-thickness rotator cuff as well as a SLAP tear. Dr. Goldberg testified that the SLAP tear was likely traumatic based upon the MRI findings and that Petitioner likely developed adhesive capsulitis or frozen shoulder as a result of the SLAP tear. (PX 10 at 3; DT. page 9) Dr. Goldberg testified that the SLAP tear was probably related, but that in the end he treated Petitioner for the adhesive capsulitis because Petitioner developed it as a result of his work accident. (PX 10 at 7; DT. page 24-25)

Dr. Goldberg further testified that Petitioner's adhesive capsulitis needed to be addressed before his SLAP tear could be repaired, as the necessary surgery—a biceps tenodesis—could make the shoulder stiffer. (PX 10 at 7-8; DT. page 25-26) He testified that the pain aspect of frozen shoulder can resolve on its own after three years, but the stiffness and range of motion won't get better on their own. (PX 10 at 15; DT. page 55)

Dr. Goldberg testified that during Petitioner's 2013 surgery, a resident was dictating the operative report, not him. (PX 10 at 9; DT. page 30) He testified that he found an inflamed synovium inside the SLAP joint and SLAP tear and that he addressed by cutting it. *Id*.

Dr. Goldberg testified that Petitioner's condition improved, however, he continued to exhibit restrictions due to pain in April of 2014 and was allowed to return to light duty work. (PX 10 at 4; DT. page 11) Dr. Goldberg testified that, on May 30, 2014, Petitioner still exhibited deficits with respect to range of motion and there was discussion about a second surgery. (PX 10 at 4; DT. page 12) Dr. Goldberg testified that a second surgery was recommended because Petitioner had still not achieved a normal range of motion. *Id*.

Dr. Goldberg testified that Petitioner could not return to his previous job, and that he would benefit from a repeat surgery. (PX 10 at 5-6; DT. page 17-18) Dr. Goldberg testified that his bills are fair and reasonable for the geographic area in which he practices. (PX 10 at 6; DT. page 18)

Dr. Goldberg testified that a second surgery would most likely normalize Petitioner's range of motion or very close to normal. (PX 10 at 10; DT. page 36) Dr. Goldberg testified that Petitioner had reached MMI from his first surgery in May of 2014 and that he could return to sedentary work. (PX 10 at 10; DT. page 37) Finally, Dr. Goldberg testified that he agreed with Dr. Verma's diagnosis that Petitioner was suffering from mild residual stiffness post-arthroscopy for which additional treatment was recommended. (PX 10 at 10; DT. page 41) However, Dr. Goldberg testified that he disagreed with Dr. Verma's opinion that Petitioner was suffering from a non-work-related condition and stated that Petitioner developed the "stiff shoulder" as a result of the work accident on March 28, 2013. (PX 10 at 5; DT. 15-17; PX 10 at 10; DT. page 49)

Vocational Rehabilitation Evaluation Report of Susan Entenberg

On November 12, 2021, vocational rehabilitation counselor Susan Entenberg, a certified rehabilitation counselor, interviewed Petitioner via Zoom; Petitioner's son, Luis, served as an interpreter during the entire interview. (PX 11 at 1) On November 18, 2021, Entenberg authored a vocational rehabilitation evaluation based on that interview. *Id*.

In the November 12, 2021, interview, Petitioner represented that he arrived in the United States from Mexico in 1996 and has completed two years of secondary school with no further education. He did take one year of GED classes in Spanish but never passed the GED test. *Id*.

At the time of the interview, Petitioner's activities of daily living consisted of making coffee and eggs for breakfast using his left arm; very slowly sweeping and vacuuming using his left arm only; washing dishes, but taking breaks when his arm got tired; doing laundry using his left arm, but not folding anything; going to the store, but using only his left arm; going on walks; and watching television. (PX 11 at 2) His nephew and neighbor took care of outdoor chores for him. *Id*. Petitioner did no reading. *Id*. Petitioner reported that he had no computer skills whatsoever. *Id*. He used his phone to text and make calls, but did not use email or the internet. *Id*. He paid his bills at the Currency Exchange. *Id*.

Ms. Entenberg was provided details of Petitioner's position as a line operator, a position which involved filling and packaging containers and stacking containers on pallets. Ms. Entenberg considered Petitioner's position as requiring a heavy exertional level insofar as it entailed lifting up to 50-60 pounds with frequent overhead activity and bilateral arm usage. Ms. Entenberg also considered Petitioner's position with the respondent to be unskilled. *Id*. Entenberg opined that Petitioner could not return to his past work as a line operator, as Petitioner was restricted to sedentary work while his past job was categorized as a heavy-duty occupation with frequent overhead activity and bilateral arm usage. (PX 11 at 3)

After reviewing the medical records and conducting an interview with Petitioner, Ms. Entenberg concluded that Petitioner was a very poor candidate for vocational rehabilitation based on an analysis of the *National Tea* factors. *Id*. Ms. Entenberg opined that Petitioner sustained a reduction in earning power and loss of job security since the work accident. *Id*. She further opined that Petitioner was not an appropriate candidate for vocational training due to his age, education, work history, and limitations with respect to his dominant arm. *Id*. She also opined that Petitioner was currently at retirement age and that his prognosis for returning to work was very guarded given his language deficits, minimal computer skills, work restriction, limited use of his dominant arm, and work experience. *Id*. She stated that Petitioner would likely not be able to obtain stable and gainful employment even if he received the services of a rehabilitation professional. *Id*.

MedVoc Rehabilitation Evaluation Report and Labor Market Survey

On October 16, 2023, at the request of Respondent, Petitioner was interviewed by Julie Bose, a rehabilitation consultant with MedVoc Rehabilitation, Ltd. (RX 3) An initial rehabilitation interview took place. On October 24, 2023, Bose authored an initial vocational rehabilitation evaluation report. Petitioner reported that he originally resided in Mexico and has been living in the United States for 25 years. While in Mexico, he completed both his primary and secondary education over a period of eight years. Petitioner speaks limited English and has a valid Illinois driver's license. He obtained his GED degree but did not pass that exam. He is fluent in Spanish. *Id*.

Ms. Bose outlined Petitioner's course of medical care and discussed his position as a line operator with the respondent wherein his primary task was to "fill paint into gallon paint cans." *Id*. He also performed ancillary duties such as recycling paint, cleaning paint containers, and storing containers. He operated a bailer machine and used a hand jack and scraper in that position. While performing light duty work for the respondent, he cleaned the warehouse and machines. At the time of his accident, he was earning $13.05 per hour and his position would be considered heavy and semi-skilled. *Id*.

Ms. Bose noted that Petitioner never looked for work due to his injury and, to his knowledge, was still an employee of the respondent. *Id*. He represented that he is currently collecting Social Security retirement benefits.

Ms. Bose then concluded that Petitioner's restrictions with respect to his right upper extremity precluded him from returning to his previous position as a line operator for the respondent and that he would best be suited for retirement-type jobs in the Spanish community, such as Spanish restaurant host, greeter, or light cleaner. *Id*.

Ms. Bose performed a Labor Market Survey. (RX 4) Ms. Bose identified a number of positions in which Petitioner would be employable at an entry level wage of $15.57 per hour such as a host/greeter in a Mexican restaurant, a light office cleaner, and a salesclerk available to him within the Spanish-speaking community in the Chicagoland area. *Id*. Ms. Bose further documented that "prospective employers were asked if they would consider an older worker who is primarily Spanish speaking with a work history as a production line operator." *Id*. She noted that fifteen of thirty-six employers "would consider an older worker and a primarily Spanish speaking employee." *Id*. While Ms. Bose noted that of these fifteen employers, ten "had a hiring need" she did not elaborate on whether those employers would consider Petitioner. *Id*.

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 Petitioner to be credible and that he was calm, well-mannered, and composed. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find material contradictions that would deem the witness unreliable.

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

Petitioner bears the burden of proving, by a preponderance of the evidence, every element of the claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980) To obtain compensation under the Illinois Workers' Compensation 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. 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) "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 Comm'n*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982)

The Arbitrator finds that Petitioner's conditions of ill-being, with respect to his right shoulder was causally related to the March 28, 2013, work accident.

The Arbitrator notes that, Petitioner was diagnosed with frozen shoulder, adhesive capsulitis, and SLAP tear. The Arbitrator notes that Dr. Darji initially diagnosed Petitioner tendinosis and fraying of the supraspinatus with a partial-thickness bursal surface tear, as well as a small partial-thickness tear, and a SLAP tear of the superior labrum, per the MRI findings. (PX 6 at 12)

The Arbitrator notes that Dr. Nigro diagnosed Portioner with right frozen shoulder, adhesive capsulitis, and SLAP tear. (PX 7 at 14-17) The Arbitrator also notes that Petitioner received two injections which provided minimal relief. *Id.*

Dr. Goldberg diagnosed Petitioner with partial thickness bursal surface tear of the supraspinatus tendon, a partial thickness tear of the subscapularis tendon, and a large SLAP tear. (PX 5 at 67-68) Further, Dr. Goldberg noted that as conservative treatment has not helped, he recommended a right shoulder arthroscopy with subacromial decompression and arthroscopic capsular release. (PX 5 at 59-62) The Arbitrator notes that Dr. Goldberg performed a right shoulder arthroscopy, subacromial decompression, capsular release. (PX 12 at 31-33) Post-operatively, Dr. Goldberg diagnosed Petitioner with right frozen shoulder. *Id*.

The Arbitrator notes that Petitioner was discharged from the FCE program due to Petitioner's inability to tolerate minimal increases in the difficulty of his work conditioning activities due to pain. (PX 8 at 533) The Arbitrator notes that the examiner recommended that Petitioner not attempt to return to his job, but rather that he "seek further medical intervention." *Id.* The Arbitrator notes that Dr. Goldberg recommended a repeat shoulder arthroscopy and capsular release. (PX 5 at 43-44)

The Arbitrator notes that Dr. Verma opined that Petitioner was experiencing residual stiffness post-arthroscopy and capsular release. (RX 1 at 5-6) The Arbitrator notes that Dr. Verma further opined that Petitioner's diagnosis was frozen shoulder or adhesive capsulitis, and that this condition was not work-related because there was no discrete traumatic injury to the shoulder. *Id*.

The Arbitrator notes that Dr. Goldberg disagreed with Dr. Verma and opined that frozen shoulder could occur after injury and that Petitioner sustained frozen shoulder based on his accident and symptoms of stiffness. (PX 4 at 172) Dr. Goldberg noted that Petitioner's injury was work related, that Petitioner's surgery should be approved, and that a delay of the surgery would worsen his prognosis to return to work. *Id*.

The Arbitrator notes that Petitioner testified that he did not have any improvement after surgery until now. Petitioner testified that today he cannot lift heavy things heavy and cannot lift his arm. (T. 23) Petitioner testified that he cannot do what he used to be able to do. *Id*. Petitioner testified that he does not take any medication. *Id*. Petitioner testified that at home, he tries to walk and tries to exercise his hand but he is unable to do so. (T. 24) Petitioner testified that he cannot even empty a soda into a glass. *Id*. Petitioner testified that he tries to cook with his right hand because his wife is ill. (T. 26) Petitioner testified that he cannot lift his arm above his head because it hurts and feels "tired." (T. 33)

Based upon the totality of the evidence, the Arbitrator finds the opinions of Dr. Goldberg and Dr. Nigro to be more persuasive than that of Dr. Verma. As such, the Arbitrator finds that Petitioner's current

condition of ill-being, with respect to his right shoulder was causally related to the March 28, 2013, 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:

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)

As the Arbitrator found that Petitioner's right shoulder was causally related to the March 28, 2013, work accident, the Arbitrator finds that the medical treatment and services Petitioner received, with respect to the right ankle only, were reasonable and necessary. (PX 2, PX 5, PX 7, and PX 9) The Arbitrator finds that Respondent shall pay for reasonable and necessary medical services, provided by Equian subrogation claim as a result of medical bills paid by Medicaid ($10,528.36) (PX2); Dr. Benjamin Goldberg ($64.60 balance) (PX5); Bone & Joint Physicians ($1,580.00 balance) (PX7); and Shirley Ryan Ability Lab ($288.45 balance) (PX9), pursuant to the medical fee scheduled and as outlined in PX 2, PX 5, PX 7, and PX 9, as provided in Sections 8(a) and 8.2 of the Act. The respondent is entitled to any credit to the extent that these bills have already been paid in full or in part.

WITH RESPECT TO ISSUE (K), WHAT TEMPORARY BENEFITS ARE IN DISPUTE, 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)

An employee is temporarily and totally incapacitated from the time an injury capacitates him for work until such as he is as far recovered or restored as the permanent character of his injury will permit *Archer Daniels Midland Co. v. Illinois Industrial Commission*, 138 Ill. 2d 107 (1990). In order to prove

entitlement to TTD benefits, a claimant must establish not only that he did not work, but that he was unable to work. *Sharwarko v. IWCC*, 2015 IL App 131733 WC.

As the Arbitrator found that Petitioner's current conditions of ill-being, with respect to his right shoulder was related to his work accident, the Arbitrator finds that Petitioner is entitled to TTD benefits. The Arbitrator notes that Petitioner was taken off work or on placed on work restrictions, throughout Petitioner's treatment, beginning March 28, 2013. The Arbitrator notes that while Dr. Goldberg determined that Petitioner reached MMI from his first surgery on May 4, 2014, Petitioner could only return to sedentary work. (PX 10 at 10; DT. page 37) The Arbitrator further notes that Petitioner testified that he worked for Respondent, as a line operator, for 13 years before December 2013. (T. 12-13) The Arbitrator notes that Petitioner also testified that Respondent did not accommodate any of the work restrictions given to him by doctors after "late" 2013 and that his surgery was November 5, 2013. (T. 19-20)

Based on the above, the Arbitrator finds Respondent shall pay Petitioner TTD benefits of $82,937.63, commencing on November 5, 2013, until May 4, 2018, (234 3/7 weeks) at a rate of $348.00/week as provided in Section 8(b) of the Act. Respondent has paid TTD benefits in the amount of $15,511.43 to Petitioner to date.

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

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:
(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that an American Medical Association ("AMA") impairment rating was not performed in this case. As such, the Arbitrator relies on the other four factors of permanent partial disability ("PPD")

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 line operator which requires Petitioner to carry and

clean two or five gallons of paint and emptying buckets of paint. Petitioner is also required to use a plastic spatula to clean the old paint out of the bucket in a repeated motion, with his hands, approximately 60-70 times. (T. 30-31) This position is considered unskilled to semi-skilled and consists of heavy lifting. Given his restrictions, the Arbitrator notes that he is unable to return to work in his prior capacity as a line operator due to his injury. As such, the Arbitrator gives greater weight to this factor.

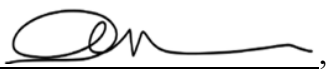
With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that the Arbitrator notes that Petitioner was 59 years old at the time of the accident on March 28, 2013. The Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner's average weekly wage was $522.00, which equated to $13.05 per hour. (AX 1) The Arbitrator notes that Ms. Bose identified a number of positions in which Petitioner would be employable at an entry level wage of $15.57. (RX 4) The Arbitrator notes that Petitioner has not made any attempts to look for work within his restrictions. The Arbitrator notes, however, that Ms. Entenberg opined that Petitioner sustained a reduction in earning power and loss of job security since the work accident. (PX 11 at 3) The Arbitrator also notes that Ms. Entenberg opined that Petitioner was currently at retirement age and that his prognosis for returning to work was very guarded given his language deficits, minimal computer skills, work restriction, limited use of his dominant arm, and work experience. *Id.* The Arbitrator found Ms. Entenberg's assessment to be more persuasive than Ms. Bose. Thus, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner was diagnosed with frozen shoulder and SLAP tear which turned into adhesive capsulitis despite reasonable and necessary surgical treatment. (PX 6, PX 7, PX 12) The Arbitrator notes that Petitioner received two injections and two right shoulder surgeries. (PX 4, PX 12) The Arbitrator notes that Petitioner did not improve and continued to complain of right shoulder pain despite having two surgeries. The Arbitrator further notes that Dr. Goldberg opined that Petitioner clearly has "limited range of motion and that his stiffness and pain are limiting him from being able to work and lift above his shoulder." (PX 5 3) The Arbitrator notes that Petitioner testified that he cannot lift objects heavier than 2-3 pounds with his right arm and lacking the ability to empty a can of soda into a glass. (T. 23-24) The Arbitrator notes that Petitioner testified and demonstrated that he can only raise his right arm to chest level. (T. 33) As such, the Arbitrator gives this gives greater weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Respondent shall pay Petitioner PPD benefits of $313.20 per week for 175 weeks, because the injuries sustained caused the minimum statutory loss of 35% loss of the person as a whole, as provided in Section 8(d)(2) of the Act.

It is so ordered:

 , Arbitrator Antara Nath Rivera

February 8, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC015595
Case Name	Daryl Oslon v. The Drake Hotel
Consolidated Cases	
Proceeding Type	Petition for Penalties
Decision Type	Commission Decision
Commission Decision Number	24IWCC0508
Number of Pages of Decision	5
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Karolina Zielinska
Respondent Attorney	Michael Chalcraft II

DATE FILED: 10/30/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Daryl Olson,	)	
	)	
Petitioner,	)	
	)	
v.	)	NO: 23 WC 015595
	)	
The Drake Hotel,	)	
	)	
Respondent.	)	

ORDER ON PETITIONER'S PETITION FOR PENALTIES AND FEES

This matter comes before Commissioner Carolyn M. Doherty on Petitioner's Petition for Penalties, Fees, And Costs For Failure to Pay An Award (hereinafter "Petitioner's Petition") filed on September 20, 2024, and due notice given, this cause came before the Commission on October 21, 2024. After due consideration, the Commission grants Petitioner's Petition and awards penalties and attorneys' fees for the reasons set forth below.

I. Procedural History

This matter was timely and properly filed before the Commission for an accident date of June 13, 2023. An arbitration hearing was held on the matter pursuant to sections 19(b) and 8(a) of the Act on April 25, 2024. The arbitration decision was filed on July 19, 2024, wherein Petitioner was awarded: (1) temporary partial disability (TPD) benefits in the amount of $19,198.27; (2) temporary total disability (TTD) benefits in the amount of $18,830.68; (3) unpaid medical expenses pursuant to sections 8(a) and 8.2 of the Act; and (4) the approval of prospective care including a right knee surgery. Respondent was awarded a credit for TTD already paid and other indemnity benefits in the amount of $19,560.10. PX1.

No party filed a Petition for Review or a section 19(f) Motion to Recall the arbitration decision for any clerical errors and it subsequently became final on August 19, 2024, 30 days after receipt of the July 19, 2024 decision by the parties.

On August 26, 2024, Petitioner's counsel sent an email to Respondent's counsel inquiring whether Respondent had approved the surgery and sent payment. PX2. On August 28, 2024, Petitioner's counsel sent an email to Respondent's counsel demanding approval of the surgery and payment pursuant to the award, calculating that Respondent owed: (1) $18,468.86 in TTD and TPD after applying Respondent's credit through April 25, 2024; (2) $18,251.28 in TTD

payments from April 26, 2024 through August 30, 2024; and (3) past medical expenses and approval of the surgery. PX3. On the same date, Respondent's counsel replied that he had contacted the adjustor, who had obtained authorization to pay the award and approve surgery. He added that he had emailed the adjustor to confirm that payment was issued and stated that he would provide that confirmation to counsel as soon as possible. PX7.

On September 3, 2024, Petitioner's counsel sent an email to Respondent's counsel inquiring whether payment had been issued and the amount of such payment, noting that Petitioner had yet to receive a check. PX4. On September 10, 2024, Petitioner's counsel sent an email notifying Respondent's counsel that a petition for penalties and fees would be filed in two days if there was no confirmation that a check had been sent, along with the number, date, and amount of the check. Petitioner's counsel also stated that Petitioner had undergone surgery because the surgeon relied on the arbitration award. PX5. On September 12, 2024, Petitioner's counsel again demanded payment of TTD and the award. PX6. On September 17, 2024, Respondent's counsel sent an email to Petitioner's counsel stating his intent to contact the adjustor regarding this matter. Respondent's counsel acknowledged that there had been no appeal and that Petitioner would not be inclined to consider any settlement until the surgery was completed. PX6. On the same date, Petitioner's counsel replied that Respondent had not paid for 60 days, which was not acceptable. PX6.

On September 20, 2024, Petitioner filed the instant Petition for Penalties, Fees, and Costs For Failure To Pay An Award. Respondent did not file a response to the petition but both parties appeared before the Commissioner Doherty on October 21, 2024, to present argument on the matter. The Commission has reviewed the Petition and argument thereon, and enters a ruling as stated below.

II. Conclusions of Law

In his Petition, Petitioner seeks penalties pursuant to Sections 19(k) and 19(l) of the Act, and attorneys' fees pursuant to 16 of the Act. The standard for granting penalties pursuant to section 19(l) differs from the standard for granting penalties and attorney fees under sections 19(k) and 16. Section 19(l) provides in pertinent part, as follows:

> "If the employee has made written demand for payment of benefits under Section 8(a) [820 ILCS 305/8] or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d) [820 ILCS 305/8.2]. In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days

> or more shall create a rebuttable presumption of unreasonable delay." 820 ILCS 305/19(l) (West 2022).

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 (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 (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. 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 (1982).

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, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act shall be considered unreasonable delay." 820 ILCS 305/19(k) (West 2022).

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 2022). Section 16 provides, in pertinent part, as follows:

> "Whenever the Commission shall find that the employer, his or her agent, service company or insurance carrier *** has been guilty of unreasonable or vexatious delay, intentional underpayment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier." *Id*.

Sections 19(k) and 16 require more than an "unreasonable delay" in payment of an award. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 514-15 (1998). It is not enough for the claimant to show that the employer simply failed, neglected, or refused to make payment or unreasonably delayed payment without good and just cause. *Id*. at 515. Instead, section 19(k) penalties and section 16 fees are "intended to address situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose." *Id*. In addition, while section 19(l) penalties are mandatory, the imposition of penalties and attorney fees under

sections 19(k) and section 16 is discretionary. *Id*. Respondent again bears the burden of demonstrating that its nonpayment was reasonable. *Residential Carpentry, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 975, 984 (2009).

In this case, regarding the request for penalties under section 19(l) of the Act, the evidence submitted demonstrates that Petitioner made a written demand for payment of the award. Petitioner did not receive payment within 14 days, which creates a rebuttable presumption of unreasonable delay. Neither the exhibits submitted by Petitioner nor the argument presented by Respondent raise any good or just cause for nonpayment of the award which would rebut the statutory presumption of unreasonable delay. Accordingly, the Commission awards Petitioner section 19(l) penalties in the amount of $1,890.00, representing $30.00 per day for the 63-day period from August 19, 2024, through October 21, 2024.

Regarding the request for penalties under section 19(k) of the Act, the Arbitrator in this case entered an award including TPD benefits, TTD benefits, medical expenses, and prospective care. Respondent did not seek review of the Decision of the Arbitrator, which has become final. Respondent did not pay the award. Furthermore, Respondent continued its failure to pay the final Arbitration award despite numerous requests from Petitioner's counsel for payment. At the hearing, Respondent offered no explanation for its conduct and failure to pay the award. Given this record, the Commission, acting in its discretion, awards Petitioner section 19(k) penalties in the amount of $11,202.20 [TPD benefits ($19,198.27) + TTD benefits ($18,830.68), + medical expenses ($3,735.55, per the statutory fee schedule, as reflected in PX8 and PX9) - Respondent's credit ($19,560.10), divided by 2].

Regarding the request for attorneys' fees and costs under section 16 of the Act, based on the reasons stated above for awarding section 19(k) penalties, the Commission awards Petitioner $2,967.55, representing 20% of the sum of the unpaid medical expenses and the section 19(k) penalties awarded above.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition for Penalties, Fees, And Costs For Failure to Pay An Award is granted. Petitioner is awarded: $1,890.00 in penalties pursuant to section 19(l) of the Act; $11,202.20 in penalties pursuant to section 19(k) of the Act; and $2,967.55 in attorneys' fees and costs pursuant to section 16 of the Act.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $16,200.00. 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.

October 30, 2024

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

r: 10/21/24
CMD/kcb
045

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000854
Case Name	Roger Molohon v. Maryan Mining, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0509
Number of Pages of Decision	17
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Julie Webb, Kenneth Werts

DATE FILED: 10/31/2024

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROGER MOLOHON,
Petitioner,

vs. NO: 20 WC 854

MARYAN MINING, LLC,
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 occupational disease and permanency 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 clarifies the Arbitrator's Decision regarding the reasoning of the denial of occupational disease, in part, on the basis of asthma. The Commission specifically relies on the testimony of Dr. Paul on behalf of Petitioner and Dr. Rosenberg on behalf of Respondent.

Dr. Paul's sole diagnosis for Petitioner was asthma and the Arbitrator summarized Dr. Paul's testimony regarding Petitioner's asthmatic condition. Dr. Paul testified that the results of Petitioner's methacholine challenge during his examination indicated asthma. Dr. Paul also testified that Petitioner had minimal obstructive airways disease. Dr. Paul based his conclusion on Petitioner's FEF25-75, which was 68% of normal.

Dr. Rosenberg testified that Petitioner's results on methacholine challenge testing were indicative of hyperreactive airways or asthma. He testified that the American Thoracic Society and the European Respiratory Society recommended one look solely to the FEV1/FVC ratio to determine whether an obstruction is present. Dr. Rosenberg testified that one generally does not pay attention to the small airways in diagnosing an obstruction. He testified that the more valid way of determining obstruction was having a FEV1/FVC ratio below the lower limit of normal. Dr. Rosenberg reviewed three sets of pulmonary function studies for Petitioner. He testified that Petitioner's FEV1/FVC ratio was above the lower limit of normal on all the spirometry tests that he reviewed. Dr. Rosenberg testified that there was no evidence of obstruction in Petitioner.

The issue in this case comes down to whether the changes seen in Petitioner's methacholine challenge testing were indicative of hyperreactive airways disease or asthma caused by Petitioner's occupational exposures in his coal mine work.

Dr. Rosenberg testified that the treatment records that he reviewed did not reveal the diagnosis of, or treatment for, asthma. Dr. Rosenberg testified that asthma or hyperreactive airways disease is not a condition caused by coal mine dust exposure. Dr. Rosenberg further testified that Petitioner's asthma, if present, had not resulted in airway remodeling or any permanent impairment in Petitioner. Dr. Rosenberg reviewed treatment records for Petitioner including spirometry tests performed on Petitioner both before and after his coal mine employment with Respondent. Dr. Rosenberg testified that the most common cause for asthma is an exposure to allergens that are commonly associated with farming. Dr. Rosenberg concluded based on his review of Petitioner's treatment records as well as report of Dr. Paul's examination and testing that Petitioner did not suffer any permanent pulmonary impairment related to his exposure in the coal mine.

In contrast, Dr. Paul did not review any treatment records regarding Petitioner. Dr. Paul testified that if one wanted to know whether or not a specific exposure caused an impairment in pulmonary function, he would want to have testing before and after said exposure for comparison. Dr. Paul did not have the benefit of reviewing spirometry tests performed on Petitioner both before and after his farming and coal mine employment in rendering his opinions. Dr. Paul was unaware of this history in rendering his opinion on causation. A physician's causal relationship opinion is only as good as the foundation upon which it is based. *See Larry Richards v. Peabody Coal Co.*, 97 WC 44250, 02 IIC 0925.

Dr. Paul's opinion was based on a single examination and history given by Petitioner. Dr. Rosenberg, however, not only reviewed the history taken by Dr. Paul and the results of his examination, but he also reviewed Petitioner's treatment records. The Commission, therefore, finds the opinions of Dr. Rosenberg more persuasive.

Based on the evidence, the Commission concludes that Petitioner's asthma, if present, was not caused by or permanently aggravated by his exposures in the coal mine and his current condition of ill-being is not causally related to his coal mine employment with the Respondent.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 23, 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 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.

October 31, 2024

MEP/dmm
O: 91024
49

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC000854
Case Name	Roger Molohon v. Maryan Mining, LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Kirk Caponi
Respondent Attorney	Julie Webb, Kenneth Werts

DATE FILED: 5/23/2023

THE INTEREST RATE FOR THE WEEK OF MAY 23, 2023 5.17%

/s/William Gallagher, Arbitrator

Signature

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Roger Molohon
Employee/Petitioner

v.

Maryan Mining, LLC
Employer/Respondent

Case # 20 WC 00854

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 March 24, 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 Sections 1(d)-(f) of the Occupational Diseases Act

FINDINGSFS

On December 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 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 $67,869.36; the average weekly wage was $1,305.18.

On the date of accident, Petitioner was 62 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

MAY 23, 2023

William R. Gallagher, Arbitrator
ICArbDec p. 2

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 December 12, 2019, 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 25 years.

At the time of trial, Petitioner was 65 years old. Petitioner completed his junior year in high school and later obtained a GED. After receiving his GED, Petitioner attended Wabash Valley Coal Mine Technology. Petitioner worked in the coal mines for between 24 and 25 years with all of that time being underground. Petitioner testified that during the course of his work in the coal mines, he was regularly exposed to coal dust, silica dust, roof bolting glue fumes, and diesel fumes. Petitioner's date of last employment in the coal mines for Respondent was December 12, 2019. Petitioner testified he did not have a job classification, but worked as a roof bolter. Petitioner testified he was exposed to coal dust on his last day of employment. Petitioner further testified that he was no longer able to perform his job because it was getting too hard to breathe and the breathing issues were part of the reason he left. Petitioner has not had any post mining employment.

Petitioner began working in the coal mine in April, 1979, for Freeman United Crown II in Virden. Petitioner was hired as a laborer. In that job he set props and rails. He testified that he had to cut big oak props to length to shore up the top. He testified that as a laborer he went in returns to throw rock dust in the air because they could not get the machine back in there. He testified that his other duties included shoveling any coal that fell off the belt that was taking it out of the mine. He testified that if a rib fell over on the belt they would have to go in there and bust it all up and get it off the belt. He testified that shoveling the belt was quite dusty. Petitioner worked as a laborer for about one year. Next Petitioner worked as an inby at the face where all the machines were extracting the coal. He testified that the inby was dustier than the outby. Petitioner testified that on inby he worked as a roof bolter. As a roof bolter he would go in after the continuous miner which was cutting the coal and drill holes in the top to anchor the bolt a foot into the rock. He testified that the policy was to drill 10 feet deep into the roof and insert 10 foot roof bolts. Petitioner used glue with the bolts. He would drill a hole, insert the glue in the hole and then push the bolt up into it which would bust the glue tube. Petitioner testified that when he inserted the bolt, there was enough glue that it would actually come out the bottom of the hole. He could smell the strong odor from the glue which was enough to take away his breath at times. Petitioner worked at Freeman for four years until he was laid off in 1983 or 1984. Petitioner testified that he worked for some farmers and at Cisco Steel for close to 10 years. At Cisco Steel, Petitioner ran steel down a steel line. A sheer would cut it and one guy would stack it and then it would be bundled. In June, 1999, Petitioner went back to work at Crown II mine as a roof bolter. He testified that the Crown II mine closed in 2007 and he was called over to Crown III. He worked at Crown III until 2013 or 2014. He testified that he was a roof bolter at Crown III and also ran a continuous miner when a miner operator was off. The continuous miner is a machine that cuts the coal from the face of the mine. In 2014, Petitioner began working for Respondent. Petitioner testified that when he went to work for Respondent they hired him because he could roof bolt and run a continuous miner. He testified that those were the two jobs that he did primarily from 2014 until he retired.

Petitioner testified that it was in the last two and one-half years that he worked that he first noticed breathing problems. He testified that he would have to take more breaks. Petitioner testified that even when he would take a shower after his coal mine shift, he could feel the dust up in his nostrils. He testified that when he cleaned his nose with a rag, it would be just black. Petitioner testified that from the first time he noticed breathing problems until the time he retired they got worse and were getting worse every day. He testified that since leaving the mine up until the time of trial, his breathing has gotten worse. He could walk five to six blocks on level ground at a normal pace before he would have to stop and rest. He could climb two flights of stairs pretty well and then he slowed. Petitioner testified that he uses a Primatene mist inhaler. Petitioner testified that when he fishes from the bank, he has to be sure to park where he does not have to climb a big hill. If he goes up a hill he starts huffing and puffing. Petitioner testified that he used to love coon hunting, but he cannot do it anymore because he cannot go up and down the hills. He testified that he used to be able to mow the whole yard with a push mower. Now he mows about half of the yard and goes in and waits until the next day to finish the yard because he is just out of air. Petitioner testified that his yard is 160 feet x 60 feet.

Petitioner testified that his primary care treatment is with Carlinville Family Practice. Petitioner testified that after he saw Dr. Glennon Paul, his primary care physician sent him to another physician regarding his breathing. He testified that his physicians were aware that he worked in the mines and he discussed his breathing issues with his physicians. Petitioner testified that he smoked from about age 19 to 24 and then started having kids and did not want to smoke around his children. He testified that when he smoked, he smoked four or five cigarettes per day. He testified that he has not had a cigarette since his mid 20's. Petitioner takes a blood pressure pill.

On cross-examination Petitioner testified that he worked at Crown II mine for Freeman from 1979 until 1983. In April, 1983, he went to work for Alford Farms. At Alford Farms from 1983 to 1992 the Petitioner performed all field work including plowing, discing and planting (Respondent's Exhibit 5, p 4). Immediately after working at Alford Farms, he began working at Cisco Steel in March, 1992. He worked at Cisco Steel until February, 1999, when he was called back to Crown II mine. He worked at Crown II until August, 2007. He was laid off for a short time and then called back to work at Crown III in April, 2008. He worked there until November, 2013. He testified that they were getting ready to close Crown III and he received a call of an offer of employment from the Lively Grove Mine in Marissa so he went there to work. He next worked for GMS Mine Repair as a contract laborer from November, 2013, until July, 2014, when he went to work for Respondent. Petitioner had 14½ years vested with the UMWA. He testified that he did not receive an UMWA pension. Once he left Respondent at the end of 2019, he signed up for Social Security. He testified that Respondent's mine closed within three months of him leaving. He has not worked anywhere since then.

Petitioner testified that Carlinville Family Health Care is also referred to as Girard Family Health Care. He has treated there with Rhonda Harms and most recently with Dr. Kate Wilkens. He testified that he was always honest with his medical providers as to the problems or symptoms he did or did not have.

Petitioner testified that if the weather is nice and he can get away with it, he will fish seven days a week. He testified that the lake is about six miles from his home. Petitioner testified that his day consists of piddling around his yard and in his garden in the summertime.

Petitioner saw Dr. Glennon Paul on February 11, 2020, at the request of his counsel (Petitioner's Exhibit 1, pp 8-9). Dr. Paul is board certified in allergy, immunology and asthma (Petitioner's Exhibit 1, p 9). Dr. Paul testified that when he did his fellowship in 1970 to 1972, there were not any pulmonary fellowships developed. He testified that during his fellowship he was responsible for what is called pulmonary diseases now (Petitioner's Exhibit 1, pp 9-10). Dr. Paul testified that he has worked in Springfield for 40 years. He was the medical director for St. John's respiratory therapy and clinical assistant professor of medicine at SIU Medical School for approximately 35 years until he retired. When he retired he was the senior physician at the Central Illinois Allergy and Respiratory Clinic. He testified that those physicians specialized in allergy and pulmonary disease and cared for patients with respiratory diseases, critical care, allergic diseases and some internal medicine problems (Petitioner's Exhibit 1, pp 6-7). Dr. Paul testified that he read 100 chest x-rays per week and interpreted the same number of pulmonary function tests (Petitioner's Exhibit 1, p 7). Dr. Paul has treated coal miners for coal mine lung disease since the 1970's (Petitioner's Exhibit 1, p 7). Dr. Paul is not a B-reader (Petitioner's Exhibit 1, p 44).

Petitioner reported to Dr. Paul that he was employed at a coal mine from 1979 to 1983 and again from 1998 to 2020. In between he worked other jobs. Dr. Paul testified that Petitioner worked 85% as a roof bolter and 15% at the face of the mine (Petitioner's Exhibit 1, pp 11-12). Dr. Paul testified that Petitioner denied significant shortness of breath, wheezing or coughing on a regular basis. However, when he gets a URI it lasts. Dr. Paul testified that Petitioner's wheezing and shortness of breath were symptoms of asthma and that the biggest trigger for his asthma was an upper respiratory tract infection. Dr. Paul testified that Petitioner also smoked four to five cigarettes a day which aggravated his asthma (Petitioner's Exhibit 1, pp 11-12). Dr. Paul testified that on physical examination Petitioner had mild wheezing on forced expiration. He testified that same was consistent with the diagnosis of asthma when it is in remission and an attack is not present (Petitioner's Exhibit 1, p 13).

Dr. Paul testified that he thought Petitioner's chest x-ray was negative and Petitioner's counsel stated that for purposes of this case it would be negative and they would not allege pneumoconiosis by chest x-ray. Dr. Paul testified that Petitioner's pulmonary function studies were normal at baseline but when Petitioner had inhalation of just three breaths of methacholine, he had a 30% fall in the FEV1. Dr. Paul testified that this result indicated asthma (Petitioner's Exhibit 1, p 14). Dr. Paul testified that Petitioner had a slight decrease in his diffusing capacity at 77% of normal (Petitioner's Exhibit 1, p 15). Dr. Paul agreed with the printout from the PFTs that stated there was a minimal obstructive lung defect that was confirmed by an increased RV and increased TLC. Dr. Paul testified that asthma is one of the chronic obstructive pulmonary diseases (Petitioner's Exhibit 1, p 16). Dr. Paul testified that based on all of the testing he did and the history he took Petitioner has asthma. Dr. Paul testified that the asthma was caused by the fumes from roof bolting glues. He testified that based on the diagnosis of asthma, Petitioner could not have any further exposure to the environment of a coal mine without endangering his health (Petitioner's Exhibit 1 pp. 16-17). Dr. Paul testified that at baseline Petitioner had minimal obstructive airways disease in that his FEF25-75 was 68% of normal and it should be between 80 and 100 (Petitioner's Exhibit 1, p 20).

Dr. Paul testified that he examined Petitioner on one occasion. He testified that he has examined over 100 individuals at the request of Petitioner's counsel. Dr. Paul has been semiretired for four years and is not seeing any new patients. He testified that he was still performing exams at the request of attorneys (Petitioner's Exhibit 1, p 46). Petitioner told Dr. Paul that he smoked four cigarettes a day

for five years. Dr. Paul testified that Petitioner had quit by the time that he saw him. Dr. Paul did not review any treatment records regarding Petitioner. Petitioner did not tell Dr. Paul that he left mining when he did on the advice of a physician or that he left mining when he did due to an inability to perform the duties of his job (Petitioner's Exhibit 1, pp 47-48). Dr. Paul testified that Petitioner was not taking any breathing medication when he saw him. He testified that he did not ask him if he had taken breathing medications in the past. Dr. Paul testified that he would have expected Petitioner to take something when he had an asthma attack (Petitioner's Exhibit 1, pp 48-49).

On cross-examination, Dr. Paul acknowledged that his report contained an error regarding pulmonary function studies and methacholine challenge. It should have read that there was a 19.1% drop after three breaths of methacholine. There was a decrease in FEV1 of 30.1% after eight breaths of methacholine (Petitioner's Exhibit 1, pp 53-54). Dr. Paul testified that his sole diagnosis for Petitioner was asthma. He testified that the asthma was induced by Petitioner's environment in the coal mine where he did a lot of roof bolting and inhaled a considerable amount of coal dust. He testified that coal dust can cause asthma. Dr. Paul testified that any small dust particle can cause evidence of intrinsic asthma, but since Petitioner was roof bolting his would be more likely related to the roof bolting. Dr. Paul could not say how long Petitioner had asthma. He testified that Petitioner did not have asthma when he went in the coal mine and had it when he retired (Petitioner's Exhibit 1, pp 55-56). Dr. Paul testified that he was referring to Petitioner's symptoms of coughing with respiratory tract infection, wheezing and shortness of breath. Dr. Paul testified that Petitioner did not say anything about asthma and that he did not even know that he had asthma until Dr. Paul diagnosed it (Petitioner's Exhibit 1, pp 58-59). Dr. Paul testified if you wanted to know whether or not a specific exposure caused an impairment in pulmonary function, you would want to have testing before and after the exposure (Petitioner's Exhibit 1, pp 24-25).

With regard to the diffusing capacity he performed, Dr. Paul did not know the hold time for the tracer gas. Dr. Paul also did not know the inspiratory volume for the tracer gas (Petitioner's Exhibit 1, p 49). Dr. Paul did not know what the second best diffusion capacity was for Petitioner. He testified that the testing requires more than one trial so that there is a best and second best result, but he did not know the second best result (Petitioner's Exhibit 1, pp 49-50).

Dr. Henry K. Smith, board certified radiologist and B-reader, interpreted the chest x-ray of Petitioner dated February 11, 2020. Dr. Smith interpreted the chest x-ray as revealing P/P opacities in all lung zones, profusion 1/1 (Petitioner's Exhibit 2).

Dr. Cristopher Meyer reviewed a chest x-ray of Petitioner dated February 11, 2020, from Central Illinois Allergy & Respiratory Clinic. Dr. Meyer read the film as quality 2 for improper position. He testified that improper position usually means a little bit of a scapula overlap or a slight rotation. Dr. Meyer testified that there were no small or large opacities on the chest x-ray. His impression was no finding of coal workers' pneumoconiosis (Respondent's Exhibit 1, p 41).

Dr. Meyer has been board certified in radiology since 1992 (Respondent's Exhibit 1, p 7). Dr. Meyer has been a B-reader since 1999 (Respondent's Exhibit 1, p 19). 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, pp 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. Dr. Meyer has participated in the course previously in studying for the examination and recently was 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. 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 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 old certifying exam was six hours long with 120 chest x-rays to be categorized. The pass rate for that examination ran roughly 60%. He testified that the current exam is 24 multiple choice questions and 72 cases in five hours (Respondent's Exhibit 1, p 33). Dr. Meyer testified that generally radiologists have about a 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 profusion is basically trying to describe the density of the small opacities in the lung (Respondent's Exhibit 1, p 30).

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 one of the issues with interpreting a chest x-ray for pneumoconiosis is making sure the individual who is interpreting the examination 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. 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 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 (Respondent's Exhibit 1, p 87). 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. David Rosenberg conducted a review of medical records and a chest x-ray regarding Petitioner at the request of Respondent's counsel (Respondent's Exhibit 2, pp 11-12). Dr. Rosenberg has been board certified in internal medicine since 1977. After graduating from medical school, he 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, pp 4-5). Dr. Rosenberg testified that board certification in pulmonary disease existed well before 1980 and that it could date back to the 1940's (Respondent's Exhibit 2, p 16). In 1995, Dr. Rosenberg received his board certification in occupational medicine (Respondent's Exhibit 2, p 6). He 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 included 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 for Petitioner dated February 11, 2020, from Central Illinois Allergy and Respiratory Clinic. Dr. Rosenberg testified that the film was quality 2. He noted slight atelectasis in the left upper lobe. Dr. Rosenberg gave the film a profusion of 0/0 (Respondent's Exhibit 1, p 22). Dr. Rosenberg testified that pathology is the gold standard for determining presence of coal workers' pneumoconiosis. He testified that an individual could have coal workers' pneumoconiosis with a chest x-ray that is considered normal by some readers. Dr. Rosenberg testified that a person could have coal workers' pneumoconiosis pathologically with a negative chest x-ray (Respondent's Exhibit 2, pp 60-61).

Dr. Rosenberg reviewed pulmonary function testing performed on the Petitioner on July 17, 2014, February 11, 2020 and June 23, 2020 (Respondent's Exhibit 2, pp 12-16). Dr. Rosenberg testified that to diagnose an obstruction with spirometry, one generally sees a reduction of the FEV1 in relationship to the FVC such that the FEV1/FVC ratio is reduced. He testified that the old conventional way of diagnosing an obstruction was FEV1/FVC ratio of roughly 70%. He testified that the other more valid way of determining obstruction was having FEV1/FVC ratio below the lower limit of normal. Dr. Rosenberg testified that the American Thoracic Society and the European Respiratory Society have recommended to look solely at the FEV1/FVC ratio to determine whether an obstruction is present. He testified that generally one does not pay attention to the small airways in diagnosing obstruction (Respondent's Exhibit 2, pp 18-19). Dr. Rosenberg testified that Petitioner's FEV1/FVC ratio was above the lower limit of normal in all the spirometry performed

(Respondent's Exhibit 2, p 19). Dr. Rosenberg testified that there was no evidence of obstruction in Petitioner (Respondent's Exhibit 2, p 19). Dr. Rosenberg testified that with regard to the testing performed by Dr. Paul, he did not know whether the diffusion capacity was valid. To determine validity in diffusion capacity, one needs to be sure that the patient inhales 85 to 90% of his vital capacity and holds that in an uninterrupted fashion for 10 seconds and there should be repetitive values within 10%. Dr. Rosenberg testified that he did not have any of that information in the testing performed by Dr. Paul. Dr. Rosenberg testified that the diffusion capacity later performed at Stat-Care was normal (Respondent's Exhibit 2, pp 20-21). Dr. Rosenberg testified that the treatment records that he reviewed did not reveal the diagnosis of or treatment for asthma (Respondent's Exhibit 2, p 21).

Dr. Rosenberg testified that he is familiar with the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition*, Chapter 5, The Pulmonary System. He testified that if Table 5-4 of the *Guides* was applied to the pulmonary function testing performed on Petitioner, he would fall under Class 0 impairment. Dr. Rosenberg testified that one looks to Table 5-5 if talking about a diagnosis of asthma. Dr. Rosenberg testified that based on Petitioner's bronchoreactivity on a methacholine challenge test, with his PC20 being around 3.30, Petitioner would fall in Class 1 impairment under Table 5-5 (Respondent's Exhibit 2, pp 19-20). Dr. Rosenberg testified that Petitioner's pulmonary function tests revealed a positive methacholine challenge test. Dr. Rosenberg testified that after eight breaths of the methacholine, based on a single concentration methodology, Petitioner's FEV1 dropped more than 20%, which was indicative of hyperreactive airways. Dr. Rosenberg testified that asthma or hyperreactive airways is not a condition caused by Petitioner's past coal mine dust exposure. He testified that coal mine dust is not an allergen which predisposes one to develop occupationally related asthma. Dr. Rosenberg testified that while prolonged asthma can result in airway remodeling and permanent impairment, such was not documented with respect to Petitioner (Respondent's Exhibit 2, pp 22-23).

Dr. Rosenberg testified that Petitioner's coughing could be caused by the Lisinopril which he was taking for treatment of hypertension. Dr. Rosenberg testified that Petitioner does not have a condition caused by his past coal mine dust exposure. He testified that there is no indication that Petitioner has developed permanent aggravation of any pre-existing respiratory disorder in relationship to his coal mine employment (Respondent's Exhibit 2, pp 23-24). Dr. Rosenberg testified that if one had asthma, he would generally see symptoms in the medical records of coughing, bronchitis symptoms and shortness of breath on a chronic basis. He testified that the treating physician may not recognize it is asthma, but he would expect the symptoms to be recorded in some fashion over a long time. He testified that if someone has chronic asthma, by definition, they are going to have chronic symptoms (Respondent's Exhibit 2, pp 31-32). Dr. Rosenberg testified that the treatment records did not document any asthma attacks. He testified that the records did not document the use of maintenance or rescue medication for asthma (Respondent's Exhibit 2, p 70). Dr. Rosenberg testified that Petitioner's exposure at the coal mine did not cause any permanent aggravation of his asthma (Respondent's Exhibit 2, p 72). Dr. Rosenberg testified that the most common cause for asthma is an exposure to allergens that are commonly associated with farming (Respondent's Exhibit 2, pp 70-71).

Medical records of Girard Family Practice were admitted into evidence. On June 27, 2014, Petitioner underwent echocardiography. Indication for the study was abnormal ECG and hypertension. The interpretation was left ventricular systolic function at the lower limit of normal. Right ventricular

function was normal (Respondent's Exhibit 4, p 100). Petitioner was seen on May 3, 2017, with complaint of lightheadedness. He had been diagnosed with hypertension two years prior and had not been taking his medication. Examination of the chest revealed normal and clear breath sounds (Respondent's Exhibit 4, pp 93-94). Petitioner was seen on June 27, 2017, in follow up for his hypertension. He denied shortness of breath. Examination of the chest revealed normal and clear breath sounds (Respondent's Exhibit 4, pp 91-92). Petitioner was seen on November 30, 2017, for follow up regarding hypertension. He denied shortness of breath. On examination he had normal and clear breath sounds (Respondent's Exhibit 4, pp 88-89).

Petitioner was seen on June 25, 2018. He denied dyspnea. Respiratory exam was negative. He had normal breathing pattern and unlabored breathing (Respondent's Exhibit 4, pp 82-85). Petitioner was seen on December 28, 2018, to review labs and follow up on hypertension. He had no complaints. He was noted to be a current every day smoker. He denied dyspnea. Review of systems respiratory revealed no cough. Respiratory exam was negative. He had normal breathing pattern and breath sounds. It was charted that he was encouraged to stop smoking and that he was not ready to do same (Respondent's Exhibit 4, pp 74-79). Petitioner was seen on March 19, 2019, complaining of right ear pain. He also complained of nasal congestion and sinus pressure. It was noted that he had a daughter who suffered from asthma. He was a current every day smoker. Review of systems respiratory was negative for cough. Respiratory examination was negative. He denied dyspnea. Diagnoses were right otitis media, sinus congestion, sinusitis and hypertension (Respondent's Exhibit 4, pp 68-73). Petitioner was seen on July 5, 2019, in follow up for hypertension. He denied dyspnea and review of systems respiratory was negative for cough. Respiratory exam was negative with normal breathing pattern and breath sounds (Respondent's Exhibit 4, pp 62-67).

Petitioner was seen on January 27, 2020, for med check and hypertension follow up. It was noted he was retired as of the beginning of the year. He denied dyspnea and cough. He was a current every day smoker. Physical examination of the chest was normal. He was encouraged to stop smoking. He related that he only smoked four cigarettes per day (Respondent's Exhibit 4, pp 58-61). Petitioner was seen on September 9, 2020, for medication recheck. It was charted that Petitioner was being evaluated for black lung and was recently diagnosed with asthma. Review of systems respiratory was negative for cough. Examination of the chest revealed normal breathing and breath sounds (Respondent's Exhibit 4, pp 50-53).

Petitioner was seen on August 17, 2021, for follow up on hypertension. Sole medication being taken by Petitioner was Lisinopril. He was noted to be a former smoker. Review of systems respiratory was negative for cough or difficulty breathing. Examination of the chest revealed normal and clear breath sounds (Respondent's Exhibit 4, pp 28-29). Petitioner was seen on November 14, 2021, for complaint of headache (Respondent's Exhibit 4, pp 24-25). Review of systems revealed fatigue. Examination of the chest revealed normal and clear breath sounds. Petitioner had been exposed to COVID and was advised to quarantine. His COVID test was negative. Petitioner was seen on December 13, 2021, for colonoscopy referral. In family history it was charted that his mother suffered from emphysema. Petitioner denied shortness of breath at rest or new cough. Examination of the chest revealed normal and unlabored breathing with clear breath sounds (Respondent's Exhibit 4, pp 22-23).

Petitioner was seen on June 6, 2022, in follow up for his hypertension. His symptoms did not include shortness of breath. Review of systems respiratory was negative for difficulty breathing, difficulty

breathing on exertion, shortness of breath or wheezing. Examination of the chest revealed the lungs to be clear to auscultation. He declined smoking cessation at that time (Respondent's Exhibit 4, pp 13-14). Petitioner was seen on December 12, 2022, in follow up for his hypertension. He denied shortness of breath. Petitioner was noted to be a former smoker. Physical examination of the chest revealed normal breath sounds with no adventitious sounds (Respondent's Exhibit 4, pp 5-6).

Conclusions 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 casually 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 February 11, 2020. When Dr. Paul testified that he thought that Petitioner's chest x-ray was negative, Petitioner's counsel stated that for purposes of this case it would be negative and they would not allege pneumoconiosis by chest x-ray. Despite counsel for Petitioner's pronouncement in Dr. Paul's deposition that he would not be alleging pneumoconiosis by chest x-ray, Petitioner submitted Dr. Smith's positive B-reading into evidence. Dr. Meyer and Dr. Rosenberg who are both B-readers, interpreted the chest x-ray of February 11, 2020, as negative for pneumoconiosis.

Dr. Paul's sole diagnosis for Petitioner was asthma. Dr. Paul testified that Petitioner's pulmonary function studies were normal at baseline but after eight breaths of methacholine there was a decrease in his FEV1 of 30.1%. Dr. Paul testified that the results of the methacholine challenge indicated asthma. Dr. Paul testified that Petitioner's asthma was induced by his environment in the coal mine where he inhaled a considerable amount of coal dust. Dr. Paul testified that coal dust can cause asthma. Dr. Paul testified that Petitioner had minimal obstructive airways disease based on his FEF 25-75 which was 68% of normal.

The Arbitrator finds the opinions of Dr. Meyer and Dr. Rosenberg to be persuasive. Based on the B-readings by Dr. Meyer and Dr. Rosenberg, the Arbitrator concludes that Petitioner does not suffer from coal workers' pneumoconiosis.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator makes no conclusion of law as this issue is rendered moot because of the Arbitrator's conclusion of law in disputed issues (C) and (F).

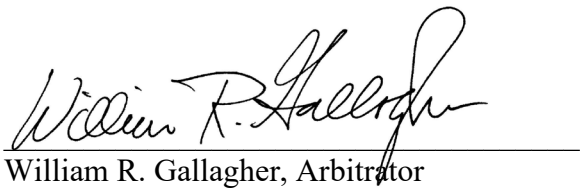
In regard to disputed issue (O) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner failed to prove by a preponderance of the evidence that he suffered a timely disablement as defined in Section 1(e) of the Occupational Diseases Act within two

years of the date of his last exposure to the hazards of an occupational disease as required by Section 1(f) of the Act.

In support of this conclusion, the Arbitrator notes the following:

Based upon the Arbitrator's conclusion of law in disputed issues (C) and (F) Petitioner failed to prove that he suffered a timely disablement pursuant to Sections 1(e) and (f) of the Occupational Diseases Act.



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC022043
Case Name	Sean Coughlin v. Bulk Equipment Corp.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0510
Number of Pages of Decision	20
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Arnold Rubin
Respondent Attorney	Kenneth Smith

DATE FILED: 10/31/2024

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LaSalle)

☒ 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

Sean Coughlin,

Petitioner,

vs. NO: 21 WC 22043

Bulk Equipment Corp.,

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, 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 19, 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.

October 31, 2024

O: 10/24/24
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	21WC022043
Case Name	Sean Coughlin v. Bulk Equipment Corp.
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	Roma Dalal, Arbitrator

Petitioner Attorney	Arnold Rubin
Respondent Attorney	Kenneth Smith

DATE FILED: 4/19/2024

/s/ Roma Dalal, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 16, 2024 5.155%

STATE OF ILLINOIS)
)SS.
COUNTY OF LaSalle)

☐ 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)

Sean Coughlin Case # **21WC022043**
Employee/Petitioner

v. Consolidated cases: **N/A**

Bulk Equipment Corp.
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 **Roma Parikh Dalal**, Arbitrator of the Commission, in the city of **Ottawa**, on **March 14, 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 present condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **6/30/2021**, 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 $**115,086.40**; the average weekly wage was **$2,213.20** .

On the date of accident, Petitioner was **53** years of age, ***married*** with **2** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services. (The issues was deferred and has not been waived.)

Respondent shall be given a credit of $**43,631.76** for TTD, $**Deferred and not waived** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**43,631.76**.

Respondent is entitled to a credit of $**Deferred and not waived** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits in the amount of **$1,475.47**/week for **29-4/7** weeks, for the period of **7/1/2021 through 1/24/2022**, which is the period of temporary total disability for which compensation is due. Respondent shall receive credit for amounts paid.

The issues of medical bills, 8(j) credit and credit for temporary partial disability benefits were deferred.

Petitioner has not waived his right to receive any statutory payments related to the work-accident.

Pursuant to Section 8(a) of the Act, the Respondent shall authorize and pay for, pursuant to the fee schedule, the treatment recommended by Dr. Jimenez, to include but not limited to a C5-C6 arthroplasty.

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 19, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

Sean Coughlin,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 21 WC 022043
	)	
Bulk equipment Corp.,	)	
	)	
Respondent.	)	

STATEMENT OF FACTS

This matter proceeded to hearing on March 14, 2024 in Ottawa, Illinois before Arbitrator Roma Dalal on Petitioner's 19(b) Petition for Hearing. Issues in dispute include causation and prospective medical treatment. The issues of medical bills, 8(j) credit and credit for payment of temporary partial disability benefits were deferred, but not waived by the parties. Evidence regarding the issues of payment of medical bills, 8(j) credit, and temporary partial disability benefits can be presented at a later date. Additionally, Petitioner has not waived his right to obtain statutory payment for the spinal fractures that he sustained as a result of the work-related accident of June 30, 2021. (Arb. Ex.1, T.4-7).

Sean Coughlin (hereinafter referred to as "Petitioner") testified he was employed by Bulk Equipment Corp., (hereinafter referred to as "Respondent") as a field mechanic since June 30, 2021. Petitioner was a member of Local 150, Operating Engineers for six years as of June 30, 2021. (T.9). Petitioner testified as a field mechanic he works with heavy equipment, to include large bulldozers, dump trucks, gantry cranes and side loaders. Petitioner was involved in erection, dismantling, maintenance, and repair of heavy equipment. (T.10-11). Petitioner had to climb stairwells, ladders, and walkways on machines, ranging from 8 to 100 feet. Petitioner used tools, such as ratchets, wrenches, pneumatic drills, and impact guns, weighing between 5 and 25 pounds. Petitioner also wore a backpack that weighed 75 to 100 pounds, filling with tools. (T.12-14).

Petitioner testified that prior to June 30, 2021 he never had any injuries to his neck or left arm/shoulder. (T.15). Prior to June 30, 2021, Petitioner testified he experienced some numbness in his left hand in the pointer and middle finger of the left arm/hand, sporadically, like once a month. He never received medical care for these types of complaints. (T.16).

On June 30, 2021, Petitioner was performing his job duties for Respondent in Langhorne, Pennsylvania at the Norfolk Southern Railroad yard. Petitioner was disassembling a side loader crane. (T.17). Petitioner was standing on the deck of the crane, 8 feet up looking towards the cab on the crane with a large chain pinned to the mast with a strap. The chain was 40 feet long and weighed 5,000 pounds made of steel links. The chain came loose and swung into Petitioner, swinging in a pendulum motion. The lower portion of the chain struck Petitioner in the back, neck, head, and shoulder. When the chain hit him, Petitioner was pushed forward into the cab of the machine. Petitioner testified that it was like being hit by a fast-moving car. Petitioner was thrown 10 feet into the cab. (T.18-21).

Petitioner was knocked unconscious. He was brought via ambulance to the hospital and woke up the following day. (T.21).

Petitioner testified he was a patient at St. Mary's Hospital from June 30, 2021 through July 1, 2021. (T.22). He underwent various diagnostic tests and was eventually discharged. His manager at the time drove out and drove him back to his truck. (T.22).

Petitioner subsequently began treatment with a neurosurgeon, Dr. Roi from July 6, 2021 through January 11, 2022 for medical care for his neck and spine. (T.23). Dr. Roi referred Petitioner to Dr. Garbis at Loyola Medical Center for medical care to his left shoulder. (T.24). Petitioner testified he underwent left shoulder surgery on July 19, 2021 and underwent physical therapy thereafter. He wore a sling for his shoulder for two to three months. His last medical visit with Dr. Garbis was May 3, 2022. (T.25-26).

Petitioner testified he underwent cervical surgery for his spine on July 16, 2021 and subsequently wore a cervical collar. (T.27). As of October 19, 2021, Petitioner testified he began weaning out of the cervical collar. (T.28). Petitioner subsequently underwent physical therapy and work conditioning. Petitioner testified he weaned himself out of the cervical collar on and off for another month. (T.29).

Petitioner testified when he stopped using the cervical collar, he began experiencing numbness in his left hand and sharp shooting pains from the neck through the shoulder to the left hand. Petitioner had never experienced numbness like this before. Prior to June 30, 2021, the numbness Petitioner experienced was limited to his pointer and middle finger. (T.29-31).

Petitioner testified that after Dr. Rossi left the practice, he began treatment with Dr. Jimenez. (T.32). He has been treating with Dr. Jiminez from January 19, 2022 to the present. (T.32).

Petitioner testified he was off work from July 1, 2021 through July 24, 2022 and now is working light duty. (T.33). Petitioner subsequently treated with Dr. Issa, a pain physician at Dr. Jimenez's referral. (T.34). Petitioner testified he underwent an epidural injection with Dr. Issa which provided minor pain relief for a month. (T.36). Dr. Jimenez has now recommended surgery for the C5-C5 level (T.37). Petitioner testified he wishes to proceed with the recommended surgery. (T.38).

Currently Petitioner continues to work light duty earning union wages. (T.41).

At Trial, Petitioner testified he feels weakness in his left shoulder, difficulty with overhead lifting and difficulty performing any awkward bending or moving on his left side. (T.41). He also has lost some range of motion with his left shoulder. (T.42). In regards to his neck/cervical spine he has difficulty turning his head left or right. He notices muscle stiffen and pain. (T.42). He still experiences periodic numbness, shooting pain from the neck down through the left arm/shoulder. He notices it when driving. (T.42). Petitioner testified he began noticing that pain when the cervical collar came off. (T.43).

On Cross-Examination, Petitioner confirmed he initially underwent a C2-C3 fusion with Dr. Rossi. (T.44). At that time, Dr. Rossi did not recommend any further surgery. (T.45). Petitioner confirmed that he weaned off the collar in November of 2021 and when he returned to Dr. Rossi on January 11, 2022, the record indicated Petitioner did not have any radicular or complaints of pain radiating into his left arm. (T.45).

Petitioner stated that the numbness continued to develop and worsen between his last visit with Dr. Rossi and his first visit with Dr. Jimenez. (T.47).

On redirect, Petitioner stated he stopped wearing his cervical collar as of December 2021. He started noticing shooting pain and numbness on the left side/arm. (T.52). Petitioner testified it varied from day to day but was not constant. He testified he did not tell Dr. Rossi because he thought it would diminish, but never did. The numbness continued to increase until that visit with Dr. Jiminez. (T.53-54).

Medical Treatment

Following the work-related accident of June 30, 2021, Petitioner sought medical treatment. Petitioner was taken via ambulance to St. Mary Medical Center. (PX1). The ambulance report documented Petitioner was working on a forklift when a chain broke loose and hit him across the chest and shoulders knocking him to the ground. Petitioner lost consciousness for several minutes. (PX1, p.5).

Petitioner was examined at St. Mary Medical Center on June 30, 2021 and discharged on July 1, 2021. The medical records document cervical pain and left shoulder pain. Petitioner was diagnosed with an acute cervical spine fracture and left clavicle fracture. (PX2). Petitioner underwent several diagnostic tests. The MRI of the cervical spine revealed bilateral interarticular fractures at C2 with slight annular subluxation and angulation of C2 and C3, broad based central/right paracentral disc herniation at C5-C6 moderately narrowing the central canal and deforming the cord, focal right disc herniation at C6-C7 and edema at C7-T1, T1-T2 and T2-T3. (PX3, RX5). The CT of the neck revealed no evidence of stenosis or dissection within the cervical vasculature, cervical and thoracic fractures, and edema. (PX3, RX6). The CT of the brain, facial bones and cervical spine revealed factures in the pars interarticularis of the C2 bilaterally, the fractures propagate through the posterior aspect of the vertebral body, which was slightly displaced, mildly displaced fracture through the posterior tubercle of the left transverse process of C6, moderately displaced fracture of the left C7 transverse foramen and minimally displaced fracture of the T2 spinous process. (PX3). Petitioner was discharged from St. Mary Medical Center on July 1, 2021 with the diagnosis of work-related injury, closed cervical spine fractures, fractures of the spinous process of the thoracic vertebrae, left scapula fracture, closed left clavicular fracture, closed head injury with concussion, chest wall contusions and rib fracture. (PX2).

On July 6, 2021, Petitioner presented to Dr. Rossi at Riverside Medical Center. Petitioner was evaluated after a work-related accident where he was hit with a hoist and chain and knocked unconscious. Petitioner reported neck and left shoulder pain. Dr. Rossi diagnosed Petitioner with a closed displaced fracture of the second cervical vertebra and closed fracture of the left shoulder. Dr. Rossi recommended brace, CT of the left shoulder, x-rays of the cervical spine, medication, and surgery. (PX4, p.1-4).

Petitioner was examined by Dr. Garbis on July 9, 2021. Dr. Garbis went over Petitioner's accident history and diagnosed him with a left displaced clavicle fracture and left comminuted scapula fracture with extension of the glenoid. Dr. Garbis recommended surgery for the shoulder to stabilize the clavicle and glenoid with a percutaneous screw and plate the clavicle. (PX5, p.9).

On July 16, 2021, Petitioner underwent cervical surgery performed by Dr. Rossi consisting of a cervical discectomy and fusion at C2-C3. The post-operative diagnosis was closed displaced fracture of the second cervical vertebra. (PX6).

Petitioner returned to Dr. Rossi on August 3, 2021 for a post-operative visit. Petitioner was to wear his cervical collar. Petitioner also noted mid back pain which was likely due to transverse process fractures from his initial accident. (PX4, p.13-15). Petitioner followed up with Dr. Rossi on August 17, 2021. Petitioner was neurologically intact and was to continue to wear the cervical collar at all times. Petitioner was to return in a month. *Id.* at 26. Petitioner returned on October 19, 2021. Petitioner continued to improve in posterior neck pain and left shoulder pain. He was to continue to wear his cervical collar when he was out of the house or in the car. He could also begin physical therapy for cervical spine. *Id.* at 32.

On July 19, 2021 Petitioner underwent shoulder surgery at Loyola Medical Center with Dr. Garbis. Dr. Garbis performed an open reduction internal fixation of the left clavicle fracture and arthroscopic evaluation and debridement of the left shoulder joint. The post-operative diagnosis was displaced clavicle fracture left shoulder and complex scapular fracture of the left shoulder with intra-articular extension. (PX7).

On August 16, 2021 Petitioner began physical therapy at JointPro Physical therapy. (PX8).

Petitioner returned to Dr. Garbis on September 3, 2021. Petitioner was six weeks out from surgery and doing well. He was still wearing a cervical collar. Petitioner was to return in six weeks. Petitioner was also ordered physical therapy. (PX5, p.13-16)

Petitioner returned to Dr. Garbis on October 15, 2021. Petitioner was having minimal issues. He was undergoing some physical therapy but was still wearing his C-collar and not cleared from his neck yet. Petitioner was to return in six to eight weeks. (PX5, p.18).

Petitioner returned on November 30, 2021 with Dr. Rossi. Petitioner was five months out from his C2-C3 cervical fusion for hangman's fracture. He was for the most part weaned out of the collar. He was to begin driving and was to continue to wean out of it. Petitioner would increase his activities with physical therapy. (PX4, p.36).

On December 17, 2021, Petitioner presented to Dr. Harel Deutsch. Dr. Deutsch went over Petitioner's accident history and medical care. (RX3). Dr. Deutsch examined Petitioner and diagnosed Petitioner with a C2 fracture with subtle anterior subluxation of C2 over C3 of approximately 3 mm and retrolisthesis of the posterior element relative to the adjacent spinous process suggesting mild interval distraction of the fracture. He was also noted to have a rib fracture, clavicle fracture, scapula fracture and thoracic spinous processes fractures. Dr. Deutsch noted Petitioner had a significant injury but noted there was some degree of symptom exaggeration as Petitioner continued to utilize the cervical collar despite being told to stop utilizing it. Petitioner was recommended to follow up with Dr. Rossi for further studies. Petitioner was not at maximum medical improvement. He would reach maximum medical improvement in about 3-5 months. Petitioner was unable to work full duty. He could return to work light duty with lifting 25 pounds. *Id*. at 5.

Petitioner returned to Dr. Garbis on December 3, 2021. Petitioner had been doing physical therapy and was off work because of his neck. Petitioner was doing quite well and was at maximum medical improvement. Petitioner was to follow up on an as-needed basis. (PX5, p.25).

On January 11, 2022, Petitioner presented to Dr. Rossi. Petitioner reported he had continued to wean out of his cervical collar and was tolerating it well. He had also begun mild physical therapy. Petitioner was to advance his activities in therapy and return in six weeks. (PX4, p.31-43).

Petitioner returned to Dr. Juan Jimenez on January 19, 2022. Petitioner complained of chronic bilateral neck pain with shooting sensations and left arm numbness. Petitioner was no longer using the cervical collar. Dr. Jimenez noted that Petitioner had post-traumatic acute disc herniations at C5-C6 and C6-C7 that were compounding the symptomatology due to the clavicular fractures and C5-C6 and C6-C7 herniations. He stated that based on the progression of the radicular symptoms treatment was necessary for the C5-C6 and C6-C7 disc herniations. Petitioner was to continue with physiotherapy. (PX4, p.46-48).

Petitioner followed up with Dr. Garbis on March 1, 2022. Petitioner complained of worsening shoulder pain and weakness. He recommended a cortisone injection, which he performed on March 1, 2022. He released Petitioner to work with a 25-pound lifting restrictions. (PX5, p.28-29).

Petitioner followed up with Dr. Jimenez on March 22, 2022. Petitioner returned to work and noticed a significant exacerbation of both neck and left shoulder pain. Petitioner noticed numbness and tingling in the left hand with activity. Dr. Jimenez recommended physical therapy. (PX4, p.51-53). Petitioner returned to Dr. Jimenez on April 29, 2022. Petitioner continued to have numbness to his left upper extremity. At this point, Petitioner was recommended work conditioning. *Id.* at 57.

Petitioner was last examined by Dr. Garbis on May 3, 2022. Dr. Garbis recommended work conditioning and an FCE. (PX5, p.30-31). Petitioner participated in work conditioning at Joint Pro. (PX8). Petitioner did not undergo the FCE.

Petitioner returned to Dr. Jimenez on June 28, 2022. Petitioner had completed work conditioning however was experiencing worsening left upper extremity radiculopathy in a C7 dermatomal pattern. Petitioner was experiencing numbness and painful tingling in the left upper extremity and into his hand. Dr. Jimenez recommended an updated MRI and referred Petitioner to pain management. (PX4, p.65).

Petitioner underwent a cervical MRI on July 13, 2022 which revealed postoperative changes at C2-C3 from an anterior fusion at C2-C3 and approximately 3 mm of anterolisthesis of C2 on C3, small broad based right paracentral disc herniation at C5-C6, which abutted and flattened the spinal cord with mild central canal stenosis and mild posterior disc bulge at C6-C7 and subtle posterior disc bulge at C7-T1 without evidence of central canal stenosis or foraminal compromise. (PX9).

On July 14, 2022 Petitioner presented to Dr. Mohammad Issa complaining of posterior neck pain radiating into both shoulders and bilateral hands with numbness and tingling. Dr. Issa stated that the pain was multifactorial and likely due to residual pain from the hangman's fracture and bilateral C6 radiculopathy given the distribution of pain and MRI evidence of C5-C6 broad-based right disc herniation which abutted and flattened the spinal cord causing mild narrowing of the central canal. Dr. Issa recommended an epidural steroid injection. (PX4, p.76).

Petitioner followed up with Dr. Jimenez on August 2, 2022. Dr. Jimenez set forth an assessment of traumatic disc herniation of the cervical spine and closed displaced fracture of the second cervical

vertebra. Dr. Jimenez recommended work restrictions and discussed a C5-C6 disc replacement. (PX4, p.79-81).

On September 2, 2022 Petitioner returned for another Section 12 examination with Dr. Harel Deutsch. (RX3, p.7). Dr. Deutsch went over Petitioner's medical care and examined Petitioner again. Dr. Deutsch opined that his diagnosis did not change. He noted there was no disc herniation diagnosed after the accident. Petitioner had no positive Waddell signs but noted a lot of complaints of pain were inconsistent. On his examination, there were no radicular symptoms and Petitioner did not complain of arm pain. At this time, Dr. Deutsch opined Petitioner could return to regular work duties and had no work restrictions. *Id*. at 12. Dr. Deutsch opined Petitioner was at maximum medial improvement. *Id* at. 13.

Petitioner returned to Dr. Jimenez on September 8, 2022. Dr. Jimenez noted he recommended a cervical epidural injection. (PX4, p.89).

Petitioner returned to Dr. Issa on December 14, 2022. Dr. Issa noted Petitioner was interested in moving forward with an epidural injection. Dr. Issa recommended an injection and was waiting for approval. (PX4, p.96-101).

On February 9, 2023, Petitioner returned to Issa. Since the last visit, Dr. Issa performed a C7-T1 epidural steroid injection on January 5, 2022 with no relief. Dr. Issa recommended an EMG to assess cervical vs brachial plexus vs. peripheral pathology. (PX4, p.102-108).

On February 21, 2023 Petitioner returned to Dr. Jimenez. Dr. Jimenez diagnosed Petitioner with a traumatic herniation of the cervical intervertebral disc and closed displaced fracture of the second cervical vertebra with routine healing. He agreed with the EMG and recommended a CT scan of the cervical spine. Pending the result, he would undergo a C5-C6 disc arthroplasty and possible C6-7, depending on the diagnostic tests. Petitioner was released to return to work with restrictions. (PX4, p.110-113).

Petitioner underwent the CT scan on March 28, 2023 which revealed postoperative changes at C2-C3, mild reversal of the normal cervical lordosis and approximately 3 mm of anterolisthesis of C2 and C3 with no new subluxations and multilevel degenerative changes with mild central canal stenosis at C5-C6. (PX10).

Petitioner underwent the EMG on March 30, 2023 which revealed mild left median neuropathy with conduction slowing across the wrist and plain consistent with mild left carpal tunnel syndrome and no evidence of active left ulnar neuropathy. (PX11).

Petitioner was last examined by Dr. Jimenez on April 13, 2023. Dr. Jimenez reviewed the EMG and CT scan. Based on the same, he recommended a C5-C6 arthroplasty. He noted Petitioner's pain limited his ability to work and function on a daily basis. (PX4, p.120-123).

On July 24, 2023 Dr. Jimenez authored a narrative report. (PX12). Dr. Jimenez went over Petitioner's medical care with his practice. Dr. Jiminez opined that Petitioner sustained a traumatic injury resulting in multiple fractures in the cervical and thoracic spine, left scapular and left clavicular fractures and a C5-C6 disc herniation. Dr. Jimenez opined Petitioner's current condition of ill-being, including the C5-C6 herniation, was causally connected to the work-related accident of June 30, 2021. Petitioner

reported left upper extremity numbness at the onset of injury. Upon increasing his activity and after removal of his neck brace, the radicular pain recurred. In addition, his light duty work duties aggravated his symptoms. Dr. Jimenez stated that the disc herniation with its associated mass effect on the cervical cord with flattening was distorting the normal anatomy and with movement and activities, the C6 nerve root is stretched producing the symptoms Petitioner described. Dr. Jimenez noted the literature supported the phenomenon. Dr. Jimenez reviewed the report of Dr. Deutsch and disagreed with his opinions. Dr. Jimenez noted Petitioner sustained a double crush injury due to the C6 radiculopathy and left median nerve entrapment noted on the EMG. Dr. Jimenez stated the MRI revealed a C5-C6 disc herniation contrary to Dr. Deutsch's opinion. Dr. Deutsch stated that there were no radicular symptoms until a year after the accident, which was contradicted by the report of left arm numbness after the accident as noted by Dr. Jimenez on January 9, 2022. He disagreed that Petitioner could return to work without restrictions since Petitioner was clearly symptomatic and had objective pathology with imaging. In addition, Dr. Jimenez disagreed that Petitioner had reached maximum medical improvement. Dr. Jimenez recommended a C5-C6 disc arthroplasty to decompress the affected cord and traction on the nerve root on the left. (PX12, p.3-4).

Evidence Depositions

Dr. Juan Jimenez

The parties proceeded with the evidence deposition of Dr. Juan Jimenez on October 19, 2023. (PX13). Dr. Jimenez is a board-certified neurosurgeon. *Id*. at 7-12. Dr. Jimenez testified he first saw Petitioner on January 19, 2022. *Id*. at 19. Petitioner presented to establish follow up care. Dr. Jimenez noted Petitioner previously had a C2-3 cervical discectomy and fusion and was still having bilateral neck pain that was intermittent. *Id*. at 22. He noted Petitioner had continued neck pain following his work-related injury. Dr. Jimenez commented on his MRI indicating it showed disc herniations at C5-C6 and C6-C7 which were posttraumatic in origin. *Id*. at 24. Dr. Jimenez noted he reviewed the CT scan and MRI from St. Mary Medical Center on June 30, 2021. *Id.* at 25. The MRI revealed a broad-based disc herniation at C5-C6 with moderate narrowing of the cord and deforming the cord, focal right paracentral disc herniation at C6-C7 with mild narrowing. The MRI report stated that the disc herniations may be posttraumatic. The interpretations of Dr. Gold, the radiologist, were consistent with Dr. Jimenez's reading of the MRI. *Id.* at 27-28.

Dr. Jimenez testified during the course of his care he never released Petitioner to return to work full duty. (PX13, p.30).

Dr. Jimenez stated Petitioner had subjective complaints of left upper extremity pain extending into the hand and thumb and numbness. Petitioner had objective findings, including sensory findings with numbness and decreased pinprick at the left C6 distribution, paresthesia on the left ulnar distribution, generalized diminished reflexes and paraspinal tenderness. (PX3, p.42). Dr. Jimenez set forth a diagnosis of traumatic herniation of the cervical intravertebral disc, status post fusion, closed displaced fracture of the second cervical vertebra and double crush syndrome. *Id.* at 43. The basis for his diagnosis was the diagnostic studies, exam, history, and clinical course. The disc herniations were at C5-C6 and C6-C7. *Id.* at 45. Petitioner sustained multiple transverse process fractures of the thoracic spine, left scapular and left clavicular fractures. *Id.* at 45. Dr. Jimenez testified that Petitioner's current condition of ill-being was causally connected to the work-related accident of June 30, 2021. *Id.* at 46. The basis for his opinion was

the evaluation and examination of Petitioner, history, diagnostic studies, and all of the medical evidence in the case. *Id.* at 46-47.

Dr. Jimenez explained that the force required to cause a hangman's fracture and impact the shoulder girdle to cause a fracture is significant. (PX13, p.48). The force was transmitted along the neck causing transverse fractures of the thoracic and upper thoracic spine and cervical spine. The cervical discs were close to the area of impact and correlate temporally with the diagnosis of traumatic disc herniation of C5-C6 and C6-C7. *Id.* at 48-49. The force was transmitted to the endpoint was the head being thrust forward and resulting in the fracture and cervical spondylolisthesis. All the force started in the shoulder and was transmitted up the body, resulting in multiple fractures dislocating the head and neck and rending Petitioner unconscious. The hangman's fracture was caused by Petitioner being thrown forward. *Id.* at 49. The left upper limb was symptomatic from the accident. *Id.* at 50. After the accident, the attention was given to the shoulder girdle injuries, but due to lack of improvement of the overall condition, the median nerve injury became apparent. *Id.* at 51.

The MRI showed the C5-C6 herniation indenting the spinal cord and nerve sac and making it a kidney bean shape as opposed to an oval shape. (PX13, p.54). The indention was the site of compression at C5-C6. Dr. Jimenez stated that the disc was in the center with lateralization to the right and Petitioner is symptomatic to the left due to a traction like effect on the left C6 disc. *Id.* at 54-55. Dr. Jimenez explained the cord was indented and Petitioner sustained the majority of trauma to the left side. The trauma rendered the C6 nerve more sensitive. *Id.* at 55-56. The pressure on the nerve was tugging or pulling on the nerve. Dr. Jimenez testified that the medical literature supported his opinions. *Id.* at 56.

Dr. Jimenez reviewed Dr. Deutsch's report and disagreed with the same. (PX13, p.58). Dr. Jimenez opined that the complaints of numbness and paresthesia were consistent with the objective findings on the MRI and EMG. *Id.* at 58-59. Dr. Jimenez disagreed with Dr. Deutsch that there was no disc herniation after the accident as the MRI report indicated a disc herniation at C5-C6 and C6-C7 that were likely traumatic. *Id.* at 59. Dr. Jimenez testified Petitioner was still symptomatic from the traumatic disc herniation at C5-C6 causing pain, numbness, and paranesthesia. Dr. Jimenez set forth that Petitioner could return to work at a sedentary level with no lifting over 25 pounds, no excess twisting or bending and activity as tolerated. *Id.* at 61-62.

Petitioner had not reached maximum medical improvement. (PX13, p.62). He recommended a disc replacement or disc arthroplasty to decompress the spinal cord and nerves and to replace the disc. Following the surgery, he would recommend physical therapy, work conditioning and an FCE. *Id.* at 63. Dr. Jimenez testified that the need for surgery, including the C5-C6 arthroplasty was causally related to the work-related accident of June 30, 2021. The basis for his opinion was the temporal association, original imaging studies, care and treatment, persistence of symptoms, repeated imaging, EMG, and physical examination. *Id.* at 65.

On Cross-Examination, Dr. Jimenez testified that Dr. Rossi relocated to another hospital. (PX13, p.68). Dr. Jiminez testified Petitioner's initial medical notes indicated Petitioner denied numbness or tingling. *Id.* at 70. Dr. Jimenez testified Dr. Rossi's treatment was focused on treating the cervical fractures and not the herniated disc. *Id.* at 72. The fracture dislocations at C2-3 were the acute pressing issue at the beginning of treatment. Dr. Jimenez noted that it was usual and customary in their practice to tackle one process or injury before tackling another. *Id.* at 73.

Dr. Jimenez based his opinions on clinical history, examination, and temporal association. Dr. Jimenez noted that as Petitioner raised his arm or performed other activities the traction injury to the nerve became more evident and the radicular pain developed. (PX13, p.76). Dr. Jimenez testified that over time with the removal of the cervical brace and once Petitioner began performing activities, the radiculopathy became evident. Dr. Jimenez agreed Petitioner did not immediately complain of numbness, but the main treatment emphasis was on the fractures and over time the symptoms became evident. *Id.* at 77.

Dr. Jimenez stated Petitioner was in a ridged collar that immobilized the neck which did not allow for motion of the neck. While Petitioner was wearing the brace, his symptoms were not evident. (PX13, p.89). Petitioner's symptoms became clear with an increase in activity, therapy and return to work. The shooting pain, radicular pain and numbness were mitigated by the immobilization. Once Petitioner began moving, the irritation and traction were triggered. *Id.* at 90.

Dr. Harel Deutsch

The parties proceeded with the evidence deposition of Dr. Harel Deutsch on December 20, 2023. (RX4). Dr. Deutsch is a board-certified neurosurgeon employed by Rush University Medical Center. He typically treats patients with spinal injuries and performs about 340 spine surgeries. *Id.* at 7-9.

He first examined Petitioner on December 17, 2021. He went over Petitioner's accident history and reviewed medical records. *Id.* at 11-14. Dr. Rossi performed surgery a C2-C3 cervical fusion in July 2021. In addition, Petitioner also sustained a clavicle fracture and had left shoulder issues. *Id.* at 12-13. Dr. Deutsch reviewed the June 30, 2021 cervical spine MRI as well as the CT scan of the cervical spine. He agreed with the cervical CT with a fracture of the C2 vertebrae and some spondylolisthesis of C2 and C3. *Id.* at 14. In reviewing the June 30, 2021 MRI, he opined there was no disc herniation. The report mentions disc herniations at C5-6 and C6-7, but the findings were more consistent with disc protrusions or degenerative changes and no evidence of any acute cervical disc herniation. *Id.* at 15. If there was some sort of traumatic disc herniation at C5-C6, he would not see some sort of chronic degenerative changes at C5-C6 where there is osteophyte loss and disc height loss. Those were suggestive of a chronic finding with disc bulging or protrusion at that level. In addition, you would have radiculopathy or other clinical findings if there was a large or traumatically caused herniated disc. He testified that the fracture at C2 suggested a significant injury. *Id.* at 16. Dr. Deutsch noted Dr. Rossi could have addressed the C5-6 level if that was a problem. *Id.* at 18. Dr. Deutsch stated there was no evidence of trauma to the C5-C6 disc. *Id.* at 19. Dr. Deutsch found that Petitioner sustained a work-related injury of a C2-C3 fracture and intradiscal hemorrhage at C2-C3. Petitioner did not sustain an injury to C5-C6. *Id.* at 20.

Dr. Deutsch examined Petitioner again on September 2, 2022. Once again, he examined Petitioner. *Id.* at 22. Petitioner underwent another cervical MRI which revealed post-operative changes at C2-C3, mild disc bulging and broad-based right paracentral disc herniation which flattens the spinal cord. *Id.* at 23. Dr. Deutsch did not believe Petitioner would benefit from additional surgery to the cervical spine. *Id.* at 24. Dr. Deutsch acknowledged the MRI report indicated a right-sided paracentral disc herniation at C5-C6. He noted these report findings were similar to the report findings from June 30, 2021. Dr. Deutsch testified that if the disc bulge was on the right side, then the person would not have left sided symptoms. *Id.* at 25. Dr. Deutsch stated that if Petitioner had neck pain, it would be reasonable for him to have surgery. However, the surgery would not be related to the work accident of June 30, 2021. *Id.* at 27. Dr. Deutsch opined the MRI images are clear in terms of where there is edema and swelling in nature to the

where the fracture occurred, and these findings at C5-6 are degenerative and are really inconsistent with his current complaints where he has left arm pain. *Id.* at 27-28. He acknowledged that Petitioner sustained a left shoulder clavicle fracture that required surgical repair. Dr. Deutsch testified that the medical records did not document radicular symptoms and Petitioner did not complain of radicular symptoms. *Id.* at 28. Dr. Deutsch did not find that the C5-C6 degeneration was the cause of the radiculopathy. *Id.* at 29. He stated that the radiculopathy would appear immediately after the accident. *Id.* at 30.

On Cross-Examination, Dr. Deutsch noted this was considered a serious injury. (RX4, p.32). Dr. Deutsch noted that he did not find evidence in the records that showed significant radicular pain. *Id.* at 35. He further noted Petitioner was in a cervical collar. The cervical collar would immobilize the spine so a patient would be in less motion. He noted the cervical collar would not cure radiculopathy. *Id.* at 36. Dr. Deutsch agreed that the accident was severe and caused several fractures and a hospitalization. Petitioner had negative Waddell signs. *Id.* at 40.

Dr. Deutsch stated that the MRI report was reasonable and there may have been bulges at C5-C6 but were not acute disc herniations. (RX4, p.46). He agreed that Dr. Gold, the radiologist, found a broad-based central right paracentral disc herniation at C5-C6 moderately narrowing the central canal and deforming the cord. He stated that the deforming of the cord was consistent with degenerative changes. *Id.* at 46. He disagreed with Dr. Gold that the findings were post-traumatic. *Id.* at 47. He did not think that surgery would be reasonable because Dr. Jimenez noted that he was complaining of left-sided radicular symptoms and the only findings were based on his right side. If he had complaints on the right arm and some sort of neck pain, then surgery would be reasonable for those complaints. But those complaints related to his left-sided fracture does not seem like they are related to the cervical spine. *Id.* at 50. Dr. Deutsch did not agree that a person could have a herniation on one side and symptoms on the other side. *Id.* at 52. Dr. Deutsch testified that given the trauma Petitioner underwent, he could sustain a disc herniation at C5-C6. *Id.* at 55. Dr. Deutsch confirmed that the basis for his opinion was that the radicular complaints were not documented until a year following the accident. *Id.* at 59. He stated Petitioner would have to have consistent complaints after the accident for it to be causally related. Dr. Deutsch did not find any consistent complaints of radicular complaints or documentation of radiculopathy in the year after the accident. *Id.* at 60. Dr. Deutsch found Petitioner to be credible. *Id.* at 64. Lasty, Dr. Deutsch indicated that if someone had a traumatic injury that caused radicular-type symptoms, those would be expected to manifest immediately or within a day. *Id.* at 68.

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 his testimony to be persuasive. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and finds the witness reliable. While the Arbitrator did note some inconsistencies, the Arbitrator recognizes that there was no evidence to contradict his testimony.

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

The Findings of Fact and Conclusions of Law, as stated above, are adopted 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. "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). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Commission*, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

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' Compensation Commission*, 864 N.E.2d 266, 272-273 (5th Dist. 2007). 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. Industrial Commission*, 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. Industrial Commission*, 834 N.E.2d 583 (2d Dist. 2005).

The Arbitrator notes Petitioner sustained a significant injury resulting in fractured ribs, left arm and shoulder, including the left scapula fracture and left clavicle fracture, chest wall contusion, thoracic fractures from T2 through T7, and cervical spine, including the C2-C3 fracture and C5-C6 and C6-C7 disc herniation with traction injury and radicular complaints, which were causally connected to the work-related accident of June 30, 2021. The only dispute in the instant case is the C5-C6 and C6-C7 herniations.

In the instant case, the Arbitrator finds Petitioner's current condition of ill-being is causally related to his work accident of June 30, 2021. Petitioner testified he was working full duty in regards to his neck and left shoulder. Petitioner testified he experienced some numbness in his left hand in the pointer and

middle finger of the left arm/hand, sporadically, like once a month. The Arbitrator notes, however, Petitioner never received medical care for these types of complaints. The chain of events presented in this case show Petitioner's left shoulder and neck became symptomatic after the work injury. There is no evidence whatsoever that prior to Petitioner's work accident he received any medical treatment to his neck and shoulder let alone a surgical recommendation. The record does not reflect Petitioner had ever taken time off work due to neck or shoulder pain. No evidence was introduced about Petitioner's pre-accident work performance not being satisfactory. There was no mention Petitioner requested any accommodation due to an injury. In addition, Petitioner has remained under constant medical care for his neck that continues to the present date, including a recommendation for surgery. The Arbitrator finds Petitioner met his burden of proof by a preponderance of the evidence that his condition of ill-being was causally related to his work accident based on the chain of events in addition to the medical opinions contained in the record giving causal connection. Based on the lack of prior symptoms, immediate medical treatment, severity of the accident, bracing and sling and immediate left arm complaints, the Arbitrator finds that the left arm and shoulder, ribs, thoracic spine, and cervical spine are causally connected to the work-related accident of June 30, 2021 since Petitioner was in good health prior to the accident and is now experiencing symptoms and under active and ongoing medical care.

In addition, in reviewing the medical testimony, the Arbitrator relies on the medical records admitted at hearing, the credible testimony of Petitioner and the opinions of Dr. Jimenez. The Arbitrator considered the opinions of Dr. Deutsch, Respondent's Section 12 physician, and accords them little weight. *See International Vermiculite Company v. Industrial Commission*, 77 Ill.2d 1, 394 N.E.2d 1166 (1979) (holding that the Commission can accord greater weight to the medical opinions of the petitioner's treating physicians).

Petitioner established that the cervical spine condition was causally connected to the work-related accident of June 30, 2021 through the medical opinions of Dr. Jimenez. Dr. Jimenez set forth that Petitioner sustained a significant traumatic injury resulting in multiple fractures in the cervical and thoracic spine, left scapular and left clavicular fractures and a C5-C6 disc herniation. Dr. Jimenez opined that Petitioner's current condition of ill-being, including the C5-C6 herniation, was causally connected to the work-related accident of June 30, 2021. He noted that Petitioner reported left upper extremity numbness at the time of the accident, which improved with bracing and minimal activity. When the activity increased and the collar was removed, the radicular pain reoccurred. Dr. Jimenez stated that the disc herniation with its associated mass effect on the cervical cord with flattening was distorting the normal anatomy and with movement and activities, the C6 nerve root is stretched producing the symptoms Petitioner described.

Dr. Jimenez set forth a diagnosis of traumatic herniation of the cervical intravertebral disc, status post fusion, closed displaced fracture of the second cervical vertebra and double crush syndrome, multiple transverse process fractures on the thoracic spine and left scapular and left clavicular fractures. The basis for his diagnosis was the diagnostic studies, exam, history, and clinical course. Dr. Jimenez testified that the current condition of ill-being was causally connected to the work-related accident of June 30, 2021. The basis for his opinion was the evaluation and examination of Petitioner, history, diagnostic studies, and all the medical evidence in the case. Dr. Jimenez explained that the force required to cause a hangman's fracture and impact the shoulder girdle to cause a fracture was significant. The force was transmitted along the neck causing transverse fractures of the thoracic and upper thoracic spine and cervical spine. The cervical discs were close to the area of impact and correlated temporally with the diagnosis of traumatic disc herniation of C5-C6 and C6-C7. The force was transmitted up the body and ended with the

head being thrust forward and resulting in the fracture and cervical spondylolisthesis. All the force started in the shoulder and was transmitted resulting in multiple fractures dislocating the head and neck and rendering Petitioner unconscious.

Dr. Jimenez testified that Dr. Rossi was focused on treating the cervical fractures and not the herniated disc. The fracture dislocations at C2-3 were the acute pressing issue at the beginning of treatment. Dr. Jimenez noted that it was usual and customary in their practice to tackle one process or injury before tackling another.

The Arbitrator also considered the opinions of Dr. Deutsch, Respondent's Section 12 physician. Dr. Deutsch examined Petitioner and diagnosed Petitioner with a C2 fracture with subtle anterior subluxation of C2 over C3 of approximately 3 mm and retrolisthesis of the posterior element relative to the adjacent spinous process suggesting mild interval distraction of the fracture. He was also noted to have a rib fracture, clavicle fracture, scapula fracture and thoracic spinous processes fractures. Dr. Deutsch stated that there was no evidence of trauma to the C5-C6 disc. The Arbitrator notes that Dr. Deutsch indicated the MRI was consistent with degenerative changes. Dr. Gold, the radiologist, however, found a broad-based central right paracentral disc herniation at C5-C6 moderately narrowing the central canal and deforming the cord. Dr. Deutsch testified that if the disc bulge was on the right side, then they would not have left sided symptoms. Dr. Deutsch confirmed that the basis for his opinion was that the radicular complaints were not documented until a year following the accident. He stated that Petitioner would have had to have consistent complaints after the accident for it to be causally related.

In reviewing the medical opinions, the Arbitrator finds Dr. Jimenez to be more persuasive. The Arbitrator notes that the MRI revealed herniations at C5-C6 and C6-C7. Further, Dr. Jimenez fully explained and showed the herniations and cord compression and deformity. Thus, the objective findings support the herniation. Further, the Arbitrator notes the severe nature of the accident, multiple fractures and surgeries required and force of the accident. The Arbitrator finds that the accident is a competent cause of the neck condition, including the disc herniations. The Arbitrator agrees that given the ongoing left upper extremity fractures and surgery, sling and cervical collar, the extent of Petitioner's symptoms may not have been immediately evident. Accordingly, the Arbitrator relies on the opinions of Dr. Jimenez to find that Petitioner's cervical spine condition, including the disc herniations, was causally connected to the work-related accident of June 30, 2021.

Based on the evidence set forth above, the Arbitrator finds that Petitioner's current condition of ill-being in connection with his fractured ribs, left arm and shoulder, including the left scapula fracture and left clavicle fracture, chest wall contusion, thoracic fractures from T2 through T7, and cervical spine, including the C2-C3 fracture and C5-C6 and C6-C7 disc herniation, were causally connected to the work-related accident of June 30, 2021.

With respect to Issue (K) whether Petitioner is entitled to any prospective medical care, the Arbitrator finds the follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. Regarding the issue of whether Petitioner is entitled to any prospective medical care, following consideration of the testimony and evidence presented, the same is incorporated by reference, it is found Petitioner's condition is causally related to his work accident and has not stabilized or otherwise reached

MMI. Petitioner seeks prospective care of surgery, to include a C5-C6 arthroplasty as recommended by Dr. Jimenez. In support of this finding, the Arbitrator relies on Petitioner's credible and unrebutted testimony, the medical records admitted into evidence, the diagnostic studies, and the opinions of Dr. Jimenez. Having found that the C5-C6 disc herniation and traction injury with radiculopathy was causally connected to the work-related accident of June 30, 2021, the Arbitrator finds that the recommended surgery is reasonable and necessary.

The Arbitrator finds Petitioner is entitled to prospective medical care as recommended by his treating physicians. For the reasons stated above, Respondent shall authorize and pay for this and such other reasonable medical treatment pursuant to the statutory fee schedule.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC025111
Case Name	John Foreman v. State of Illinois - Dept. of Innovation & Technology
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0511
Number of Pages of Decision	16
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Joseph L. Moore

DATE FILED: 10/31/2024

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN FOREMAN,

Petitioner,

vs. NO: 20 WC 25111

STATE OF ILLINOIS-
DEPARTMENT OF INNOVATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and 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 remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 20, 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.

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.

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.

October 31, 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	20WC025111
Case Name	John Foreman v. State of IL-Dept. of Innovation & Technology
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Kevin Morrisson
Respondent Attorney	Joseph L. Moore

DATE FILED: 12/20/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 19, 2023

/s/ Jeanne AuBuchon, Arbitrator
Signature

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

December 20, 2023

/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
19(b)

John Foreman
Employee/Petitioner

v.

State of IL-Dept. of Innovation & Technology
Employer/Respondent

Case # **20** WC **025111**

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 **Springfield**, on **11/27/2023**. 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, **9/11/2020**, 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 $**127,800.00**; the average weekly wage was $**2,457.69**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **0** dependent children.

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

Respondent is entitled to a credit ***for any 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 for all 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 reasonable and necessary medical services as listed in Petitioner's Exhibit1, as provided in Section 8(a) and 8.2 of the Act and in accordance with the fee schedule.

Respondent shall authorize and pay for medical treatment as recommended by Dr. Greating – specifically bilateral carpal tunnel surgery – as provided in 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.

Jeanne L. AuBuchon

Signature of Arbitrator

DECEMBER 20, 2023

ICArbDec19(b)

PROCEDURAL HISTORY

This matter proceeded to trial on November 27, 2023, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) the causal connection between the accident and the Petitioner's carpal tunnel condition; 3) payment of medical expenses based on liability; and 4) entitlement to prospective medical care for the Petitioner's carpal tunnel syndrome.

FINDINGS OF FACT

The Petitioner has been employed with Respondent in information technology (IT) for the past 23 years. (T. 10) As of September 11, 2020 – the date of injury – the Petitioner was 55 years old. (AX1) He wrote scripts to deploy computer applications across the state and upgraded computer systems. (T. 10) He explained that writing scripts involved typing command lines rather than "point and click." (T. 12) He said the work did not involve graphical interface but was all keyboarding. (Id.) He did not have a drop-down keyboard and typed at desk level above his waist. (T. 15) He said that around July 2020, he was a first-level manager when he department inherited a project involving bring all of the food stamp, welfare and medical systems into one-stop assistance for the entire state. (T. 15-16) He said that he immediately had to hire six contractors, which involved writing contracts and job descriptions, interviewing candidates and getting them on board. (T. 16) He said the amount of typing grew exponentially and was nonstop for more than eight hours per day. (T. 16-17) He said he was getting called four or five times a night because the system would go down. (T. 20) He said he started the first-level management position in 2017 or 2018 and still did all the typing plus managerial duties. (T. 26) He said that he started having severe pain in his wrists and no strength in his hands. (T. 17) He acknowledged having

complained to medical providers that he noticed loss of strength in his hands about five years prior. (Id.)

The Petitioner testified that during the COVID pandemic, he worked from home on a table and laptop, which aggravated his condition. (T. 19) He said he then set up a desk in his home office with the keyboard in a keyboard tray, which he said helped somewhat, but at the end of the day, it was still painful. (T. 19-20) He said that during the pandemic, he was working 12-16-hour days for six to eight months. (T. 28)

The Petitioner sought treatment on July 20, 2020, at Springfield Clinic, Nurse Practitioner Mirjam Naughton in the office of orthopedic surgeon Dr. Mark Greatting. (PX1) He complained of numbness and tingling in both hands that had been progressively worsening over the past five years and was present on a fairly consistent basis over the past several months. (Id.) He noticed grip weakness and dropping light items. (Id.) He felt occasional electrical pain into all fingers. (Id.) NP Naughton sent the Petitioner for electromyography and nerve conduction studies (EMG/NCS) He was provided with wrist splints. (Id.)

The EMG/NCS were performed on August 14, 2020, and were positive for mild bilateral carpal tunnel syndrome with no evidence of ulnar or radial neuropathy or cervical radiculopathy. (Id.) The Petitioner returned to Dr. Greatting's office on September 11, 2020, and NP Naughton discussed treatment options, including carpal tunnel releases. (Id.) The Petitioner opted to proceed with surgery. (Id.) He testified that he did not have the recommended surgery yet because he did not want to use his benefit time to take off work. (T. 24)

The Petitioner saw Dr. Greatting on January 7, 2021, and told him he was employed by the state of Illinois for more than 25 years in information technology. (PX1) He said that over the past year he regularly worked more than 40 hours a week with frequent/repetitive use of a mouse

and keyboard. (Id.) He noted significant increase in his symptoms while doing his work activities and with lifting. (Id.) He said his symptoms progressed to the point where they felt almost constant in the fingers of both hands and were most severe in his thumb, index and middle fingers bilaterally. (Id.) Dr. Greatting felt that, based on the history the Petitioner provided, the Petitioner's work activities had been a significant contributing factor to exacerbating or accelerating the symptoms of his bilateral carpal tunnel syndrome to the point where he was going to require surgical treatment. (Id.)

Dr. Greatting testified consistently with his records at a deposition on September 13, 2021. (PX2) He said the ergonomics of an office worker's workstation can contribute to the development or aggravation of carpal tunnel syndrome. (Id.) He said that in an ergonomically positive work environment, one would want people to have their wrists aligned straight or neutral and elbows not to be too flexed but in more of a partially bent position. (Id.) He said his opinion that the Petitioner's work activities were a significant contributing factor to his condition was based solely on the history of the Petitioner's symptoms being significantly worse while doing his work activities. (Id.)

During the deposition, Petitioner's counsel showed Dr. Greatting a photo of the Petitioner's workstation at the time of Dr. Greatting's examination. (PX2, Deposition Exhibit 2) Dr. Greatting pointed that although the chair appeared to be adjustable, there was not much adaptability as far as positioning of a keyboard or mouse. (Id.) On cross-examination, Dr. Greatting stated that he was unable to tell whether the Petitioner had neutral alignment in his elbows and wrists by looking at the photo itself. (Id.) He admitted that the Petitioner did not demonstrate to him how he held his hands at work. (Id.) He also acknowledged that the Petitioner had other risk factors for developing carpal tunnel syndrome – obesity, abnormal glucose and hypertension. (Id.)

In 2021, the Petitioner became a senior manager and prepares employee evaluations, personal services contracts and vendor contracts. (T. 11) He said the position is more managerial, and he is not coding as much. (T. 21)

On February 15, 2022, the Petitioner underwent a Section 12 examination by Dr. Patrick Stewart, an orthopedic hand surgeon at Sarah Bush Lincoln Health Center. (RX2, Deposition Exhibit 2) Dr. Stewart reviewed the Petitioner's medical records and a position description for public service administrator in the IT department that broke down duties for the position into percentages. (Id.) This document was not submitted as evidence at arbitration. In his report, Dr. Stewart also referred to medical records referring to elevated hemoglobin A1c in 2019 and an evaluation on June 29, 2020, by Dr. Scott Morton, a family medicine specialist at Springfield Clinic. (Id.) These records also were not submitted at arbitration.

Dr. Stewart diagnosed bilateral carpal tunnel syndrome. (Id.) In his report, he responded to specific questions. (Id.) One question was: "Is there a causal relationship between the claimant's current objective findings and the reported accident? If not, what are they a result of?" (Id.) Dr. Stewart did not answer yes or no but stated the Petitioner's symptoms predated the increase in work that occurred since COVID. (Id.) He said a study from the Mayo Clinic demonstrated that even individuals who are doing eight hours of data entry per day do not have an increased risk for developing compression neuropathy when compared to others of a similar age and comorbidities. (Id.) He pointed out that the Petitioner had an elevated blood sugar in 2019, elevated body mass index, treatment for hypertension and advancing age. (Id.) He said additional treatment was necessary for the Petitioner, who was an appropriate candidate for operative intervention because of failure to have resolution of symptoms with conservative treatment. (Id.)

Dr. Stewart testified consistently with his report at a deposition on October 17, 2023. (RX2) He noted that the Petitioner reported to his primary care physician an exacerbation of symptoms when moving furniture and concluded that the Petitioner related his exacerbation more to lifting than to other activities. (Id.)

As to the Petitioner's data entry activities, Dr. Stewart stated that studies have not shown definitively that data entry puts people at risk, but things that increase risk for developing carpal tunnel are forceful and repetitive activities. (Id.) He explained that the Mayo Clinic study he cited in his report was a study of clinic employees and did not find that people who did data entry had a higher risk pattern for developing carpal tunnel than patients with similar backgrounds. (Id.) He also mentioned a medical publication that looked at different studies and did not definitely see that data entry put people at increased risk. (Id.)

Dr Stewart said the Petitioner did not give a specific time period of how much typing he did but didn't have a problem with the job description provided by the Respondent that Dr. Stewart said showed a third of the Petitioner's day would be associated with data entry. (Id.) Dr. Stewart testified that the Petitioner had been a supervisor since 2005, therefore would "really" not be germane to symptoms that developed a decade later. He also pointed to other risk factors that the Petitioner had.

On cross-examination, Dr. Stewart stated that the Petitioner's work was not at all even 1 percent of a contributing factor in his development of carpal tunnel syndrome.

The Petitioner testified that at the time of arbitration his condition had not changed, and he can't type any more than a short paragraph without having to stop and take a break. (T. 20) He said he wants to proceed with the surgery. (T. 32)

CONCLUSIONS OF LAW

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

As a preliminary issue, the Arbitrator finds the Petitioner to be credible. His testimony and reports to the medical providers were consistent and uncontroverted.

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

The claimant in a worker's 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 as an element a causal connection between the accident and the condition of claimant. *Cassens Transp. Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330, 633 N.E.2d 1344, 199 Ill. Dec. 353 (2nd Dist. 1994) An injury is considered "accidental" even though it develops gradually over a period of time as a result of repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Id*. Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor. *Laclede Steel Co. v. Indus. Comm'n.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (Ill. 1955)

The claimant's injury need not be the sole factor that aggravates a preexisting condition, so long as it is a factor that contributes to the disability. *Id*. The appropriate question is whether the evidence can support an inference that the accident aggravated the condition or accelerated the processes which led to the claimant's current condition of ill-being. *Id*. The Commission may find

a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by the accident. *Id*. at 332.

The Arbitrator notes that the Petitioner had comorbidities putting him at a higher risk for developing carpal tunnel syndrome. However, these do not foreclose the possibility that the Petitioner's work was a causative factor for his condition. Drs. Stewart and Greatting disagreed as to whether the Petitioner's work caused or aggravated his condition.

Dr. Stewart testified that the Petitioner's work was not a causative factor. However, the Arbitrator finds inaccuracies and inconsistencies in his opinion and testimony. The first issue is the fact that the job description he reviewed was not submitted at arbitration, and the Petitioner was not asked whether this was an accurate representation of his job duties during the years that he began developing carpal tunnel syndrome. Although Dr. Stewart testified that the Petitioner "didn't have a problem" with the job description, his report reflects that the Petitioner had a point of contention in that he was a "working administrator." The Petitioner testified that after becoming a first-level administrator, he was still writing scripts as well as performing managerial duties.

Second, Dr. Stewart testified that the Petitioner had been a supervisor since 2005, which would predate the Petitioner's onset of symptoms. This is inaccurate. The Petitioner testified that he became a first-level manager in 2017 or 2018. The Petitioner testified that his duties did not become more administrative until 2021.

Third, Dr. Stewart's reliance on the Mayo Clinic study and journal article for his opinions does not sway the Arbitrator. Dr. Stewart did not give enough information to correlate the Petitioner's work duties and those of the Mayo Clinic study participants. Further, the journal article Dr. Stewart cited only stated that it was not shown "definitively" that data entry puts people at risk of developing carpal tunnel syndrome.

Last, Dr. Stewart also relied on the Petitioner's statement that lifting exacerbated his symptoms to conclude that the Petitioner related his exacerbation more to lifting than to other activities. The Arbitrator did not get that impression. The Petitioner consistently complained of increased symptoms with work.

On the other hand, Dr. Greatting thoroughly explained the bases for his opinion – his reliance on the Petitioner's reports of symptoms with his work and the progression of those symptoms. The Arbitrator did not find any inaccuracies or inconsistencies that were present in Dr. Stewart's report and testimony.

For all these reasons, the Arbitrator gives Dr. Greatting's opinions more weight than those of Dr. Stewart.

The Arbitrator finds the timeline of the Petitioner's work and his symptoms supports the conclusion that his condition is causally related to his work. He wrote scripts for nearly 20 years. His initial onset of symptoms started while he was doing this work. When he became a first-level manager, he continued this work in addition to having administrative duties. His work increased during the COVID pandemic and with the project he undertook to combine public aid services into one computer application. For six to eight months in 2020, he worked 12-16-hour days. It was during this time that he noticed an increase in symptoms that caused him to seek treatment.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his injury arose out of and in the course of his employment.

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

Based on the causation findings above regarding whether the injury was in the course of and arose out of employment, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his bilateral carpal tunnel syndrome is causally related to the 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, 1273 (2009).

No evidence was presented to show that the medical services the Petitioner has received to date were unreasonable or unnecessary. Based on this and the findings above regarding causation, the Arbitrator finds that these services were reasonable and necessary and orders the Respondent to pay for the the medical treatment contained in Petitioner's Exhibit 1. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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).

Although Dr. Stewart differed on causation of the Petitioner's condition, he stated that carpal tunnel surgery would be reasonable and necessary for the Petitioner. Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care as recommended by Dr.

Greatting – specifically bilateral carpal tunnel releases – and the Respondent shall authorize and pay for such 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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC017781
Case Name	Larry Pharher v. TTI, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b) Remand Arbitration
Decision Type	Commission Decision
Commission Decision Number	24IWCC0512
Number of Pages of Decision	13
Decision Issued By	Deborah Simpson, Commissioner

Petitioner Attorney	Parag Bhosale
Respondent Attorney	Daniel Egan

DATE FILED: 10/31/2024

/s/ Deborah Simpson, 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

Larry Pharher,

Petitioner,

vs. NO: 23 WC 17781

TTI, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, 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. 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 25, 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 $50,000.00. 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.

October 31, 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	23WC017781
Case Name	Larry Pharher v. TTI, Inc.
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	Stephen Friedman, Arbitrator

Petitioner Attorney	Parag Bhosale
Respondent Attorney	Daniel Egan

DATE FILED: 3/25/2024

/s/Stephen Friedman, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 19, 2024 5.13%

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)

Larry Pharher
Employee/Petitioner

v.

TTI, Inc.
Employer/Respondent

Case # **23** WC **017781**

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 **Waukegan**, on **March 11, 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, **June 29, 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 $**75,669.36**; the average weekly wage was $**1,455.18**.

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

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

Respondent shall be given a credit of $**16,907.81** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**16,907.81**.

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

ORDER

Respondent shall pay Petitioner temporary partial disability benefits of $970.12/week for 19 3/7 weeks, commencing June 30, 2023 through November 12, 2023, as provided in Section 8(a) of the Act. Respondent shall be given credit for $16,907.81 for TTD benefits paid under Section 8(b) of the Act.

Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations of Dr. Nixon and Dr. Flanagan including a right knee replacement surgery, any post operative treatment, physical therapy or other reasonable and necessary 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.

/s/ Stephen J. Friedman
Signature of Arbitrator

March 25, 2024

ICArbDec19(b)

Statement of Facts

Petitioner Larry Pharher testified he has worked in the trades and gotten a CDL. After several years driving an 18-wheeler, he worked in a family business. About 9 years ago he started driving over-the-road with the Respondent TTI, Inc in the reefer division. Prior to 6/29/2023, he testified he would drive 400 to 600 miles per day. Petitioner's job description was admitted as PX 4. It notes that the job required him to hook and unhook a trailer, and details the physical requirements of the various tasks required included the weight and forces required (PX 4). Petitioner testified he has always been a large man, 6' 3" tall and 360 pounds. He did not have any prior accidents or injuries. He testified he has had prior surgeries to both shoulders.

On June 29, 2023, Petitioner was in his truck traveling northbound on I-57 near Arcola. He noticed cars in front of him swaying in heavy wind gusts. His truck started to tip over onto the right wheels, but he was able to bring the truck back on all fours. He reduced speed from 55 mph and another gust of wind tipped his truck over onto the right side. He ended up hanging from his seat. His left leg caught under the dashboard. He reached for a small knife he kept within reach and cut his seatbelt. He then fell onto the passenger's side of the cab. He could see that he had a laceration above his left shin that was bleeding. He also felt pain all along the right side of his body and chest pain along the location where his seatbelt was.

Petitioner testified that he first called Respondent and told them about his accident. He was told to call 911, which he did. Petitioner testified that EMS pulled him out through the windshield. The EMT report confirms that he suffered a laceration of the left leg and complained of pain in the right knee and hip, and bruising across his chest. He was taken by ambulance to the Carle Clinic ER (PX 1, p 28). Petitioner complained of pain over an obvious chest contusion, right hip and right knee pain, as well as the aforementioned laceration of the left shin. X-rays of the right hip revealed mild to moderate right hip osteoarthritis, but no acute fracture or dislocation. X-rays of the right knee revealed no acute fracture or dislocation and no joint effusion. There was described moderate medial compartmental joint space narrowing with small marginal osteophytes cyst with osteoarthritis. Petitioner's left shin was sutured (PX 1, p 34-40). Petitioner was given a slip authorizing him to return to work July 6, 2023 full duty (RX 2).

Petitioner testified that he next came under the care of his primary care physician, Dr. Vrasich (PX 2). He called Dr. Vrasich on the date of the accident to schedule the appointment (PX 2, p 175). Petitioner saw Dr. Vrasich on July 7, 2023. Petitioner treated primarily for his left shin laceration with Dr. Vrasich who noted the wound was healing, but not well appropriated. He encourage Petitioner to abstain from work due to mental strain. Petitioner advised he felt unsafe to even drive (PX 2, p 157, 164). He kept Petitioner off work until the end of July (PX 2, p 173). Petitioner testified he treated with Dr. Vrasich throughout July and August 2023.

He telephoned the office to report an anxiety attack when he went to get his things from his truck on July 11, 2023 (PX 2, p 154). His stitches were removed. On August 2, 2023, Dr. Vrasich kept Petitioner off work through September 6, 2023 due to pain, discomfort and mental anxiety from the accident. He noted Petitioner needs to pursue evaluation from what is likely PTSD (PX 2, p 88-89). Petitioner testified he asked Dr. Vrasich about doing therapy in his brother's swimming pool. Petitioner denied he asked Dr. Vrasich whether he could go in his brother's pool during a pool party. The Arbitrator notes that on August 14, 2023, Petitioner sent a message asking if he could attend a pool party or if he was still restricted (PX 2, p 83). Petitioner testified that this swimming pool was an above ground pool four feet deep that required the use of a ladder for entry and exit in the pool. On August 17, 2023, Dr. Vrasich noted the laceration has healed as expected. He encouraged mental health evaluation (PX 2, p 61).

On July 12, 2023, Petitioner saw Dr. Nixon of Northwestern Medicine (PX 3). The appointment was made on July 8, 2023 (PX 3, p 80). Petitioner testified he had been seen at this practice for a prior injury. Petitioner complained of 10/10 pain in his right knee with giving out and right hip pain. He noted difficulty walking and was using a cane (PX 3, p. 82). Petitioner testified he used a cane because of knee pain. He received the cane from a friend. No physician prescribed use of a cane for him. Physical exam on this date revealed no effusion to the right knee. X-rays were noted to show no fracture or arthritic changes. Petitioner is noted to be 6'3" tall and 360 pounds. Dr. Nixon placed a cortisone injection to the right knee (PX 3, p. 82-83).

Petitioner returned to Dr. Nixon on August 9, 2023. An MRI of the knee was ordered and a referral to physical therapy for the hip was made (PX 3, p 63). The MRI of the right knee performed on August 24, 2024 noted cystic changes along the proximal anterior cruciate ligament. The posterior cruciate ligament is intact. The medial and lateral collateral ligaments are intact. The extensor mechanism is intact. There is multidirectional signal abnormality within the body of the medial meniscus with extrusion of the body into the medial gutter. No discrete tear of the lateral meniscus. In the patellofemoral compartment there is a long segments of grade 3 chondral loss with marginal osteophyte formation. Grade 3 chondral loss on the weightbearing medial femoral condyle and grade 2 chondral loss and medial tibial plateau. Lateral compartment articular cartilage is intact. Small knee joint effusion. No Baker's cyst. The conclusion was mildly complex medial meniscus tear, ganglion cyst, tricompartmental chondromalacia (PX 1, p. 75).

On September 8, 2023, Petitioner complained of continued knee pain which interferes with function. He is limping. Physical exam showed Petitioner to fully extend his knee while seated. He had tenderness along the medial joint line and pain with rotational motion. There was no effusion. His hip pain was present but not problematic. Dr. Nixon recommended arthroscopic surgery. He limited Petitioner from regular work noting he is unable to squat, climb, or carry any significant weight (PX 3, p 49-50)

On October 5, 2023, Petitioner saw Dr. Bruce Summerville for a Section 12 examination at Respondent's request (RX 1, Ex. 2). Dr. Summerville performed a physical exam and studied Petitioner's records and diagnostic studies. He concluded Petitioner sustained a right hip contusion with posttraumatic greater trochanteric bursitis and a right knee contusion with preexisting right knee medial compartment arthrosis and degenerative change, neither worsened, consistent with degenerative changes, but no traumatic findings. Dr. Summerville opined Petitioner would benefit from an injection into the right hip. He felt Petitioner had reached MMI with regard to the right knee. He opined Petitioner did not require further treatment to his right knee as a result of the work accident. He opined Petitioner could return to work as an over the road truck driver (RX 1, Ex. 2). Petitioner testified his temporary benefits were terminated. Petitioner testified that he contacted the Respondent to find out when and where he should report for work. He testified Nancy Smith told him that Respondent would not be taking him back to work unless his treating doctor released him back to work without any restrictions.

On October 18, 2023, Dr. Nixon performed an injection into the right hip. Dr. Nixon noted the right knee MRI showed surface cartilage loss in the medial compartment. He stated he did not see meniscal treating that would likely improve with arthroscopic intervention. He recommended joint arthroscopy and referred Petitioner to Dr. Flanagan to discuss right total knee replacement (PX 3, p 18).

Petitioner saw Dr. Flanagan on November 10, 2023. Dr. Flanagan noted that Petitioner had lost about 10% of his body weight over the last couple of years without improvement. Dr. Flanagan noted he reviewed an x-ray of the right knee that clearly showed bone on bone arthritis in the medial aspect of the knee with subchondral

sclerosis change and large osteophyte formation on both sides of the joint. He diagnosed right knee osteoarthritis with worsening symptoms. He noted that given his lack of response to weight loss, anti-inflammatories and cortisone injections, Petitioner was a candidate for knee replacement surgery. He stated he thinks Petitioner would do well with surgery and notes Petitioner would like to proceed (PX 3, p 166-170). Petitioner testified he was planning to having surgery using his health insurance. Petitioner was scheduled for surgery on December 13, 2023 (PX 3, p 153).

On 11/24/2023, Dr. Nixon noted right hip pain was at a 5/10 and could be mild or escalated depending on how much time he spent in one position. The right hip MRI showed mild degenerative changes, but no other structural abnormalities. Dr. Nixon notes the prior injection did not provide much difference which suggests the bursa was not the primary issue. He discussed another injection, but this was deferred pending right knee surgery (PX 3, p 192-193).

Petitioner testified he returned to work on November 13, 2023 for Respondent. He is driving the same type of truck, but is doing local deliveries. Before he might have had to unload on occasion. On December 6, 2023, Petitioner cancelled surgery saying his FMLA ran out and his employer would not approve him to be off work. He is planning to proceed with surgery in July (PX 3, p 20). Petitioner testified that he understood that he would not have his insurance paid or be paid for his lost time. He thought he could lose his job.

Nancy Smith testified that she has worked for Respondent for 35 years. She is the Safety Director and HR manager. She testified to a conversation with Petitioner on December 6, 2023 when she advised him that he was out of FMLA, having used up the 12 weeks allowed. Respondent would no longer pay for his health insurance if he was off work. He could apply for a personal leave and keep his insurance but would have to pay for it. Petitioner had taken a previous personal leave in 2021.

Dr. Nixon testified by evidence deposition taken on December 20, 2023 (PX 5). Dr. Nixon testified that Petitioner sustained injuries to his chest, left leg, right hip, and right knee as a result of his work accident. Dr. Nixon diagnosed Petitioner with hip pain. The right knee MRI noted a tear of the medial meniscus and chondromalacia. The Petitioner's symptoms were preventing him from functioning normally. He initially recommended arthroscopy for the right knee. After further discussion on Petitioner's options, he felt joint replacement would more likely solve his issues. Dr. Nixon does not do knee replacements and referred Petitioner to Dr. Flanagan, who has a niche in doing those types of procedures. The referral to Dr. Flanagan was necessary due to the injuries suffered in the work accident. Dr. Nixon opined that Petitioner had moderately advanced preexisting knee arthritis. The injury did not cause the arthritis, but escalated the symptoms and aggravated the condition to the point of necessitating the follow-up treatment and the recommended surgery. He testified that when he permitted Petitioner to return to work doing primarily seated activities, he did not envision him doing over-the-road truck driving. He thought it would be desk work (PX 5).

Dr. Nixon testified that based upon Petitioner's height and weight, he would be considered obese. This increases the forces across the joint and tends to accelerate the wear process. It can cause the articular cartilage to wear down. As the arthritis progresses, the meniscus tends to get damaged and extruded. The cystic changes on the MRI are not traumatic. It is not specific. The findings of chondromalacia would be indicative of a longer standing problem. These are degenerative findings. The meniscal abnormality is typically a degenerative finding. Given that Petitioner is 59 years old, 6' 3" and weighs 360 pounds, he would expect some of these findings, which are a typical wear pattern (PX 5).

Dr. Bruce Summerville testified via evidence deposition on January 22, 2024 (RX 1). He testified to the records he reviewed, the diagnostic studies and his physical examination of Petitioner pursuant to his report. X-rays revealed advanced arthritis of the medial compartment of the right knee. He found no significant abnormalities on pelvic x-rays. With respect to the right hip, he opined Petitioner may have trochanter bursitis, which is typically not traumatic, but some individuals may sustain traumatic bursitis. With respect to the knee, Petitioner had preexisting arthritis and suffered a contusion or bruise in the accident. Dr. Summerville opined that Petitioner is not a candidate for a total knee arthroscopy because of his BMI over 40. The only knee condition related to the accident is a contusion. The arthritis is not related. Petitioner had a contusion to the hip with some ongoing tendinitis/bursitis. No further treatment is needed for the right knee related to the work accident. Dr. Summerville opined Petitioner could return to work unrestricted as a truck driver (RX 1).

Dr. Summerville testified Petitioner was cooperative with the examination. He did not dispute Petitioners complaints or symptoms. He stated the arthritis was not aggravated by the accident. Petitioner potentially could be a candidate for right knee replacement dependent on his BMI. If Petitioner's BMI was less than 40, he would be a candidate for the surgery. The diagnosed contusions to the right hip and knee would cause symptoms. Dr. Summerville testified that his return to regular work opinion is because Petitioner's underlying condition was unchanged by the accident. So, since he could do his job with the arthritis before, he could do it now (RX 1).

Petitioner testified he is currently managing with his right hip. He is taking Celebrex for his knee pain. He ices his knee every night.

Conclusions of Law

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

A Workers' Compensation Claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. *Horath v. Industrial Commission*, 449 N.E.2d 1345, 1348 (Ill. 1983) citing *Rosenbaum v. Industrial Com.* (1982), 93 Ill.2d 381, 386, 67 Ill. Dec. 83, 444 N.E.2d 122). The Commission may find a causal relationship based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000).

Petitioner sustained an undisputed accident on June 29, 2023 when his truck was blown over during a storm, with injuries to multiple body parts. There is no dispute with respect to Petitioner's left leg laceration, chest bruising, or left hip contusion and possible bursitis. While acknowledging that Petitioner suffered an initial contusion to the right knee, Respondent is disputing the ongoing causal connection of the current condition of ill-being in Petitioner's right knee and the recommended treatment including surgical intervention.

The Arbitrator notes that, while Petitioner was obese and diabetic prior to June 29, 2023, he was able to perform his full duty activities as an over-the-road trucker. Petitioner denied any previous injuries, treatment or problems with his right knee. No evidence of any prior right knee condition was offered. Following the accident, Petitioner advanced immediate complaints in the right knee and began a continuous and consistent course of treatment with Dr. Vrasich and Dr. Nixon which included physical therapy, an MRI, an injection, and ultimately Dr. Nixon's recommendation for surgical intervention and referral to Dr. Flanagan for his complaints of pain and loss of function in the right knee. Petitioner offered the opinions of Dr. Nixon that Petitioner had moderately advanced preexisting knee arthritis. The injury did not cause the arthritis, but escalated the symptoms and aggravated the condition to the point of necessitating the follow-up treatment and the recommended surgery. Respondent offered the opinions of Dr. Summerville who opined that the only knee condition related to the accident is a contusion. The arthritis is not related. No further treatment is needed for the right knee related to the work accident.

It is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999). Expert testimony shall 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 Commission*, 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, 960 N.E.2d 587, 355 Ill. Dec. 705. 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, 274 Ill. Dec. 284 (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.

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); *ARA Services, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 225, 168 Ill. Dec. 756, 590 N.E. 2d 78 (1992).

Here, we are faced with a situation where an accident is claimed to have aggravated a preexisting condition. A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982). If the claimant had health problems prior to a work-related injury, he bears the burden of showing that the preexisting condition was aggravated by the employment and that the aggravation occurred as a result of an accident which arose out of and in the course of his employment. *Nunn v. Industrial Comm'n, 157 Ill. App. 3d 470, 476, 510 N.E.2d 502, 505, 109 Ill. Dec. 634 (1987)*. 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). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007).

The Arbitrator heard the testimony, reviewed the deposition testimony and medical records, and finds the opinions of Dr. Nixon more persuasive. The Arbitrator found the Petitioner a credible witness. Despite his testimony with respect to the pool party and his confusion over his FMLA rights, his overall presentation was consistent with the medical records. The Arbitrator notes that both Dr. Nixon and Dr. Summerville found him cooperative and that he did not exhibit any symptom magnification. Both Dr. Nixon and Dr. Summerville found that he had degenerative conditions in his right knee for which the proposed knee replacement that would justify the total knee replacement surgery recommended. Petitioner had no symptoms or complaints in his right knee before the June 29, 2023 accident, and thereafter has had consistent symptoms. There was no suggestion before the accident that he was in need of treatment or, more particularly, surgical intervention for his right knee.

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. *Nanette Schroeder v. The Illinois Workers' Compensation Comm'n*, 2017 IL App (4th) 160192WC (4th Dist., 2017). Where an accident accelerates the need for surgery, a claimant may recover under the Act. Caterpillar Tractor Co., 92 Ill. 2d at 36. Petitioner's June 29, 2023 accident resulted in a deterioration of the condition of his right knee and accelerated the need for the recommended surgery.

Based upon the record as a whole, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that his current condition of ill-being in the right knee is causally connected to the accidental injury on June 29, 2023.

In support of the Arbitrator's decision with respect to (K) Prospective Medical, the Arbitrator finds as follows:

Petitioner is seeking prospective medical care for the June 29, 2023 accident. There is no current recommendation for treatment for any body part or condition of ill-being except for the right knee. The Arbitrator therefore is making no findings with respect to any other body part and is addressing only the right knee condition and recommended treatment at this time.

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 necessary to diagnose, relieve, or cure the effects of his injury. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165, 351 Ill. Dec. 63 (2011)*. Based upon the Arbitrator's finding with respect to Causal Connection, reasonable and necessary treatment for the right knee would be compensable.

In weighing the reasonableness and necessity of treatment, the Commission considered the medical opinions presented. Expert testimony shall 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 Commission*, *309 Ill. 591, 138 N.E. 211 (1923).* In determining the reasonableness and necessity of treatment, the Commission also has considered whether the records demonstrate subjective or objective improvement or whether the treatment failed to provide demonstrable benefit. *Hugo Alvarez v AMI Bearings, 16 IWCC 0408; Nelson Centeno v. Minute Men, 13 IWCC 0914, affirmed Centeno v. Illinois Workers' Compensation Commission, 2016 IL App (2d) 150575WC-U; 2016 Ill. App. Unpub. LEXIS 1261.*

Dr. Nixon has recommended that Petitioner undergo a right knee total knee replacement and has referred him to Dr. Flanagan to perform this procedure. Dr. Summerville agreed that the Petitioner is a candidate for the procedure but stated he would need to reduce his BMI below 40 before he would agree to the procedure. The Arbitrator notes that Dr. Nixon raised no such concern and that when Petitioner saw Dr. Flanagan, who specializes in knee replacements, he stated Petitioner was a candidate for knee replacement surgery. He stated he thinks Petitioner would do well with surgery. He specifically noted that he considered Petitioner's weight. The Arbitrator finds the opinions of Dr. Nixon and Dr. Flanagan persuasive. The Arbitrator notes that Dr. Flanagan's records confirm that Petitioner agreed to undergo the surgery and that it was actually scheduled. Even when the surgery was cancelled due to the insurance issues, Petitioner stated he would want it as soon as he was able to reinstate his lost time benefits.

Based upon the record as a whole and the Arbitrator's finding with respect to Causal Connection, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence the need for prospective medical care and finds that Respondent shall authorize and pay for additional reasonable and necessary treatment consistent the recommendations of Dr. Nixon and Dr. Flanagan including a right knee replacement surgery, any post operative treatment, physical therapy or other reasonable and necessary care.

In support of the Arbitrator's decision with respect to (L) Temporary Compensation, the Arbitrator finds as follows:

Temporary compensation is provided for in Section 8(b) of the Workers' Compensation Act, which provides, weekly compensation shall be paid as long as the total temporary incapacity lasts, which 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. Based upon the Arbitrator's findings with respect to Causal Connection and Prospective Medical, Petitioner is not yet at maximum medical improvement. Petitioner was taken off work through July 6, 2023 by the Carle Clinic ER and thereafter through September 6, 2023 by Dr. Vrasich. Dr. Nixon placed Petitioner on restrictions that are inconsistent with his job requirements as detailed in his job description.

Respondent paid temporary total disability from June 30, 2023 through October 5, 2023, when benefits were terminated based upon Dr. Summerville's opinion that Petitioner could return to regular work as a result of the accident. Dr. Summerville based his opinion on the fact that Petitioner's arthritic and degenerative conditions in the right knee were not aggravated by the accident. Therefore, if he could do his job with these degenerative conditions before the accident, he should be able to do so now. Dr. Nixon has limited Petitioner from returning to over-the-road driving. As more fully discussed above with respect to causal connection, the Arbitrator finds Dr. Nixon's opinions more persuasive and aligned with the medical evidence in this matter. Petitioner was off work, under active medical care by Dr. Nixon through November 13, 2023, when he returned to driving locally for Respondent. No prior offer of work was made by Respondent.

Based upon the record as a whole, and the Arbitrator's findings with respect to Causal Connection and Prospective Medical, the Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he is entitled to temporary total disability from June 30, 2023 through November 12, 2023, a period of 19 3/7 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018296
Case Name	Vince Westerman v. Gilster-Mary Lee Corporation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	24IWCC0513
Number of Pages of Decision	10
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Jason Coffey
Respondent Attorney	Pieter Schmidt

DATE FILED: 10/31/2024

/s/ Amylee Simonovich, 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

VINCE WESTERMAN,

Petitioner,

vs. NO: 21 WC 18296

GILSTER-MARY LEE 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 causal connection, 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 29, 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 $9,700.00. 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.

October 31, 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	21WC018296
Case Name	Vince Westerman v. Gilster-Mary Lee Corporation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Jason Coffey
Respondent Attorney	Pieter Schmidt

DATE FILED: 12/29/2023

THE INTEREST RATE FOR THE WEEK OF DECEMBER 27, 2023 5.08%

/s/Edward Lee, Arbitrator

Signature

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Vince Westerman
Employee/Petitioner

v.

Gilaster-Mary Lee Corporation
Employer/Respondent

Case # **21** WC **018296**

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 **November 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. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Credit for TTD overpayment of $1,324.64**

FINDINGS

On **May 28, 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 $**11,817.80**; the average weekly wage was $**456.29**.

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

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

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

Respondent shall be given a credit of $**2,757.78** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**2,757.78**.

Respondent is entitled to a credit of $**14,894.75** under Section 8(j) of the Act.

ORDER

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 be able to claim a credit of $1,324.64 for a previous overpayment of TTD to Petitioner. This credit shall be deducted from the permanency award rendered herein.

Respondent shall pay Petitioner permanent partial disability benefits of $273.77/week for 35 weeks, because the injuries sustained caused the 7% 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.

Edward Lee_____ **DECEMBER 29, 2023**
Signature of Arbitrator

FINDINGS OF FACT

The parties presented for arbitration on November 2, 2023 with Petitioner alleging to have suffered a back injury arising out of and in the course of his employment with the Respondent. The Respondent disputed causation, and the nature and extent of the injuries to the Petitioner. The Respondent wrote on the Request for Hearing Form "Respondent agrees petitioner had an acute lumbar strain, lumbar contusion and acute nondisplaced sacrococcygeal fracture in the work accident but disputes petitioner had a nondisplaced fracture at L1, a disc injury at L5-S1, or an aggravation of spondylolisthesis at L5-S1."

The Petitioner testified he had an injury at Gilster-Mary Lee on May 28, 2021. He reported the injury to his employer. The report indicated the Petitioner was washing pallets at the time of his injury. The Petitioner was soaping and bleaching wooden pallets when he slipped and fell on the wet floor injuring his low back.

The Petitioner sought medical treatment for his low back injury. He eventually ended up with Dr. Matthew Gornet, an orthopedic surgeon, He underwent MRI evaluation per Dr. Gornet. He also underwent two injections in his spine. He did not undergo surgery.

The Petitioner was released to return to work without restrictions. However, Dr. Gornet feels the Petitioner will need future medical treatment as a result of his work injury.

The Petitioner testified he has worked his entire adult life in factories doing manual labor. Throughout his adult life, he had never missed any time period for a back injury. He had never received medical treatment for back pain. He had never undergone a prior low back MRI. He had never had any physical therapy to address low back pain.

The Petitioner testified he has returned to work, but now the Respondent allows him to sit down to rest his back. He can use a chair at work when his back pain gets bad. The Petitioner also has to watch his does with activity to avoid back pain at this time.

On cross-examination, the Petitioner testified he is not in the same job position as before the injury. He is mostly assigned to damaged goods which is a lot easier for him.

The medical records entered into evidence indicated the Petitioner was first seen on June 1, 2021. A Gilster-Mary Lee Medical Treatment Record was completed by Victoria Koch, FNP-BC (Px. 1). The record indicates a diagnosis of L1 compression fracture, L5-S1 spondylolisthesis, acute low back pain and acute sacral pain (Px. 1). The Petitioner was referred for an orthopedic evaluation with the record stating "Dr. Derkes aware of XR-Ortho referral advised" (Px. 1).

The Petitioner was treated by Dr. Donald Bassman on June 16, 2021. Dr. Bassman diagnosed the Petitioner with an acute L1 compression fracture, ordered the Petitioner off work, and requested a one-month follow-up (Px. 1). On July 14, 2021, Dr. Bassman noted the Petitioner's continued low back pain and requested a neurosurgery referral (Px. 1).

The Petitioner was then seen by Dr. Matthew Gornet on September 16, 2021. Dr. Gornet took a consistent history of injury, performed a physical examination, and reviewed diagnostic films (Px. 3). Dr. Gornet diagnosed the Petitioner with a disc injury at L5-S1 and a coccygeal fracture. He recommended the Petitioner undergo physical therapy and placed him on light-duty (Px. 3). On December 2, 2021, the Petitioner returned to Dr. Gornet. Dr. Gornet noted the Petitioner had aggravated underlying preexisting spondylolisthesis with a disc

injury at L5-S1 (Px. 3). He noted the Petitioner had been engaged in physical therapy and felt now was the time for a transforaminal steroid injection at L5-S1 (Px. 3). The petitioner was continued on light-duty work (Px. 3).

The Petitioner returned on March 3, 2022 with Dr. Gornet noting the Petitioner underwent an epidural injection on January 25, 2022, and a transforaminal injection on February 8, 2022 (Px. 3). The Petitioner reported substantial pain relief following the injections (Px. 3). By June 9, 2022, the Petitioner was ready to try a trial full work duty release without restrictions (Px. 3). The Petitioner was released by Dr. Gornet and placed at MMI by November 3, 2022 (Px. 3).

Dr. Gornet testified, via evidence deposition, on June 26, 2023, and the transcript of said deposition was received into evidence at arbitration. Dr. Gornet is a board-certified orthopedic surgeon whose practice is dedicated to spine surgery (Px. 3). He will treat approximately 100 to 120 patients per week and perform 5 to 10 spine surgeries per week depending upon complexity (Px. 3). Dr. Gornet testified about his treatment of the Petitioner, and his testimony was consistent with his medical records (Px. 3). Dr. Gornet opined the Petitioner current condition was causally related to his work injury (Px. 3). The condition which was related was an aggravation of preexisting spondylolisthesis, a L5-S1 disc injury, and a fracture (Px. 3).

Dr. Gornet reviewed the IME report of Dr. Minges and did not agree with it (Px. 3). Dr. Gornet testified Petitioner's injury involved more than just a fracture or acute sprain (Px. 3). He characterized Dr. Minges' opinion as silly because the Petitioner did not improve until after the injections to treat the spondylolisthesis and disc injury (Px. 3). Dr. Gornet felt the treatment he recommended and performed were both reasonable and necessary in light of the diagnosis (Px. 3). Dr. Gornet also testified the Petitioner has a significant chance for future medical treatment (Px. 3).

On cross-examination, Dr. Gornet testified he did not believe the Petitioner had a lumbar strain (Px. 3). He asked "what strained his back? [h]e fell directly on it" (Px. 3). Dr. Gornet agreed there was no L1 compression fracture (Px. 3). He felt there was a coccygeal fracture (Px. 3). Dr. Gornet also felt the MRI clearly showed the Petitioner had severe bilateral foraminal stenosis with visible nerve impingement which was being caused by a disc herniation and disc injury (Px. 3). Dr. Gornet admitted a disc herniation was not mentioned on the MRI report, but was willing to circle the finding on the actual film to show counsel (Px. 3).

Dr. Gornet testified the Petitioner might need surgery to address this injury in the future, but he might not as well (Px. 3).

The Respondent solicited a Section 12 evaluation with Dr. David Minges. Dr. Minges authored a report which was received into evidence. The report was dated July 12, 2021 (Rx. 4). Dr. Minges state the work-related injury was a contributing factor in causation to Petitioner's acute lumbar strain, acute lumbar contusion, and acute nondisplaced sacrococcygeal fracture (Rx. 4). Dr. Minges felt there was no evidence of disc herniations, disc protrusions, or other structural findings on MRI (Rx. 4). Dr. Minges did see evidence of a chronic spondylolisthesis at L5-S1 (Rx. 4). At the time of the report, Dr. Minges felt the Petitioner should continue working light duty (Rx. 4).

CONCLUSIONS OF LAW

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 his 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 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)

Dr. Gornet's opinion is more persuasive than Dr. Minges under these facts. The Petitioner is now 53 years of age who has worked his entire adult life in manual labor without any evidence of low back pain until his work injury on May 28, 2023. He fell directly on his low back and since that time, has required medical treatment and light-duty work. It is important to note the Petitioner had little to no improvement in his symptoms following the injury until he received the injections. These injections are not used to treat strains/sprains and/or fractures. They are utilized to alleviate the pain caused by disc injury and impingement. The chain of events and circumstantial evidence alone, all in favor of the Petitioner, is sufficient to establish causation herein.

L. ☒ What is the nature and extent of the injury?

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

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a manual laborer in a factory 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 Petitioner is allowed to sit down intermittently at work in a chair due to the lingering effects of the injury and no longer washes the wood pallets. Because of the modification in the employment setting, the Arbitrator, therefore, gives great weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 51 years old at the time of the accident. Because of the Petitioner's return to manual labor employment, and the fact he will be required to do this type of work for the next several years of his life, the Arbitrator therefore gives great weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes there was no evidence presented indicating the Petitioner has lost any future earnings capacity. Because of lack of evidence indicating future earnings capacity, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Dr. Gornet testified Petitioner has a significant risk for the need of future medical treatment.

Because of the significant risk for future medical treatment as a result of the work injury, the Arbitrator therefore gives great weight to this factor.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 7% loss of use of the person as a whole pursuant to §8(d)2 of the Act.

O. ☒ Other **Credit for TTD overpayment of $1,324.64**

The parties stipulated on the record the Respondent overpaid the Petitioner TTD in the amount of $1,324.64. The Respondent can withhold this amount from the total amount awarded herein in order to resolve this credit.